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CONSOLIDATED
Digest of Decisions

Under the Interstate Commerce Act.
(1887 to 1924)

IN TWO VOLUMES

VOLUME II.

By
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Of the
Chicago Bar

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TABLE OF CONTENTS

References are to pages.

LONG AND SHORT HAULS 1209

I. CONTROL AND REGULATION 1209

§1. Constitutionality of section 4 1209

§2. Jurisdiction of Commission 1209

II. SECTION 4 AS AMENDED 1211

§2½. Construction in general 1211

§3. Constitutionality 1215

§4. Exceptions 1215

§4¼. Direct lines 1229

§4¼a. State rates 1230

III. APPLICATION OF SECTION 4 TO RATES 1230

§4½. In general 1230

§4½a. Back haul combinations 1235

§4¾. Circuitous routes 1235

§5. Intermediate points 1238

§6. Intermediate points off line 1257

§6¼. Comparison of rates 1258

§6½. Participation in route 1258

§6¾. Exceeding combination of intermediates 1258

§6¾a. Combinations subject to section 4 1260

§6⅞. Discrimination and reasonableness 1261

IV. COMPETITION AS JUSTIFICATION 1267

§7. In general 1267

§7½. Cross-country competition 1281

§8. Markets 1282

§8½. Motor truck competition 1284

§9. Railroad competition 1284

§10. Water competition 1288

V. PROCEDURE 1297

§10½. In general 1297

§11. Complaints and orders 1299

§12. Evidence 1301

(1) Burden of proof 1301

(2) Circumstances of probative force 1304

§13. Reparation 1306

§14. Form and effect of fourth section application 1309

§15. Suspension of new tariffs 1310

§16. Tariffs and construction 1310

§17. Actions at law 1311

LOSS AND DAMAGE 1311

I. THE CARMACK AND CUMMINS AMENDMENTS 1312

§1. Constitutionality 1312

§2. Construction in general 1313

§2¼. Construction of bill of lading 1320

§2¼a. Bill of Lading act 1321

§2½. The Cummins amendment 1321

§3. Effect of state legislation 1322

§4. Jurisdiction of commission 1325

§5. Jurisdiction of state courts 1327

II. CARRIER'S LIABILITY 1328
§5½. In general 1328
§5¾. Assignments 1330
§6. Initial carrier 1330
§7. Intermediate carrier 1333
§7½. Inspection 1334
§8. Delivering carrier 1334
§8½. Act of God or other exception 1334
§8¾. Act of shipper 1334
§9. Agreed or restricted valuation 1335
§10. Common law liability in general 1342
(1) Liability for negligence 1344
(2) Limitation of liability 1345
§10¼. Damages in general 1347
§10½. Damages for delay 1348
§10¾. Damages for mental anguish 1348
§10⅞. Forwarders authority 1348
§11. Notice of loss 1348
§11¼. Payment of claims after time limit 1351
§11½. Presumptions 1351
§11¾. Partial loss 1351
§11⅞. Punitive damages 1351
§12. Settlements and rights inter se 1352
§12½. Sale of shipment 1352
§13. Special damages 1352
§13a. Strikes 1352
§13½. Time to bring suit 1352
§13⅝. Waiver of provisions 1354
III. EVIDENCE 1355
§13¾. In general 1355
§14. Acts of connecting carrier 1356
§15. Burden of proof 1356
§15a. Election of remedies 1357
§16. Judicial notice 1357
§17. Parties and pleadings 1358
§17½. Counter claims 1359
§18. Filing of tariffs 1359
IV. CRIMINAL LIABILITY 1359
§19. In general 1359

LOTTERY TICKETS 1359

MAILS 1360

MANDAMUS 1361

MARINE INSURANCE 1361

MARKET COMPETITION 1361

MARKING AND ADDRESSING 1361

MEXICO 1361

MILEAGE SCALE 1362

MILLING 1362

MINIMUM CHARGES 1362

MINIMUM RATES 1362

MINIMUMS 1363
I. APPLICATION OF MINIMUM 1363
§1. In general 1363
§2. Tariffs and Publication 1364
§3. Furnishing car of minimum ordered 1365
§4. Larger car furnished than ordered 1366
§5. Minimum higher than car capacity 1366
§6. Mixed carloads 1368
§7. Reasonableness and discrimination 1368
§8. Two cars for one ordered 1376
§9. Follow-lot shipments 1377
§10. Tank cars 1377
§11. Reparation 1377
MISBILLING 1378
MISROUTING 1378
MISSIONARY RATES 1378
MISTAKE 1378
MIXED CARLOADS 1378
MIXING 1378
MONOPOLIES 1378
MOTOR COMPETITION 1378
NARROW-GAUGE RAILROADS 1379
NAVIGABLE WATERS 1379
NEGLIGENCE 1379
NESTING 1379
NET RATES 1379
NEWLANDS ACT 1380
NON-AGENCY STATION 1381
NOTICE 1381
OPEN CARS 1381
ORDER NOTIFY SHIPMENT 1381
ORDER OF COMMISSION 1381
ORIGIN OF TRAFFIC 1381
ORIGIN WEIGHTS 1381
OVERCHARGES 1381
OWNERSHIP OF COMMODITIES 1388
PACKAGE RATES 1388
PACKING 1388
PADDING 1388

PANAMA CANAL ACT 1388
PAPER RATES 1392
PARCEL POST RATES 1392
PARTIAL LOSS 1392
PARTICIPATION IN THROUGH TRAFFIC 1392
PARTIES 1392
PASSENGER FARES AND FACILITIES 1392
I. CONTROL AND REGULATION 1393
§1½. In general. 1393
§1. Jurisdiction of Commission 1395
II. REASONABLENESS AND DISCRIMINATION 1396
§2. In general 1396
§3. Basing fares 1403
(1) Combination on state fares 1403
(2) State fares 1405
(3) The fourth section 1405
§3a. Caretakers 1406
§4. Certificate plan 1406
§4½. Conductor's penalty charge 1407
§5. Commutation fares 1407
§5¼. Compartments, parlor cars and drawing rooms 1411
§5½. Excess fares 1411
§5¾. Local fares 1412
§6. Mileage, excursion rates and scrip 1412
§6½. Military passengers 1417
§7. Party rates 1418
§7a. Pooling 1419
§7¼. Reduced rates 1419
§7½. Round-trip tickets 1422
§7¾. Special trains and services 1423
(1) Surcharges 1425
§7⅞. Transfers 1425
§8. Validation 1426
III. DISCRIMINATION IN FACILITIES 1426
§9. Regulations in general 1426
§10. Baggage 1428
§11. Colored passengers 1430
§11½. Divisions 1436
§12. Free transportation and passes 1436
§12a. Land settlers 1442
§13. Stations 1442
§13½. Stopovers 1443
§14. Through routes and rates 1444
§14½. Tourist cars 1447
IV. CLAIMS FOR DAMAGES 1447
§14¾. In general 1447
§14¾a. Burden of proof 1448
§15. Errors of ticket agents 1448
§16. Lost tickets 1449
§16½. Redemption of tickets 1449
V. OPERATION 1450
§17. In general 1450
§18. Publication and tariffs 1451
§19. Procedure 1451

PASSES 1451
PAST RATES 1451
PEDDLER CARS 1451
PEDDLER CAR SERVICE 1451
PENALTY RATES 1452
PER CAN RATES 1453
PER CAR RATES 1454
PERCENTAGE RATES 1455
PER DIEM CHARGES 1458
PERISHABLE FREIGHT 1458
PERSONAL INJURIES 1463
PHYSICAL VALUATION 1464
PIPE LINES 1465
I. CONTROL AND REGULATION 1466
§1. In general 1466
§2. Constitutionality of act 1466
II. AS COMMON CARRIER 1466
§3. In general 1466
§4. As interstate carrier 1467
III. TARIFFS AND REGULATION 1467
§5. In general 1467
§6. Reasonableness of rates 1467
IV. OPERATION 1469
§7. In general 1469
PLEADING AND PRACTICE 1469
POOL CARS 1469
POOLING OF TRAFFIC 1469
PORT DIFFERENTIALS 1471
PORT HANDLING CHARGES 1471
PORT-TO-PORT RATES 1471
PORTO RICO 1472
POSTING 1473
POTENTIAL COMPETITION 1473
PRECOOLING 1473
PREPAY STATIONS 1476

PREPAYMENT OF CHARGES 1476
PRESUMPTIONS 1476
PREVIOUS DECISION OF COMMISSION 1476
PRIOR ADJUDICATION 1476
PRIORITY OF SHIPMENTS 1476
PRIVATE CARS 1476
PRIVATE SIDINGS 1477
PROCEEDINGS BEFORE COMMISSION 1477
I. PRACTICE 1477
§1. In general 1477
§1a. Investigation by Commission 1483
II. COMPLAINT 1483
§2. Form and issues tendered 1483
§3. Notice of complaint 1489
§4. Amendment 1490
§4a. Answer 1492
§5. Hearing 1492
§6. Briefs 1494
§7. Oral argument 1494
§8. Rehearing 1494
§9. Costs, attorney's fees, etc. 1497
III. MOTIONS 1497
§10. Dismissing complaint 1497
(1) In general 1497
(2) Adjustment since filing 1502
(3) Interveners 1507
(4) Moot cases 1507
IV. ORDERS OF COMMISSION 1508
§11. Modification, validity and effect 1508
§12. Review 1511
§12a. Suspension of rates 1511
V. PARTIES 1511
§13. Necessary and proper parties 1511
VI. SET-OFF 1516
§14. In general 1516
VII. EFFECT OF EVIDENCE 1516
§14½. In general 1516
§14½a. Burden of proof 1516
§14¾. Depositions 1517
§15. Equities of cause 1517
§15¼. Exparte affidavits 1517
§15½. Reports by examiners 1518
§16. Judicial notice 1518
§17. Res adjudicata 1518
§18. Requesting information of carrier 1519
§18½. Reparation statements and pleadings 1520
§19. Tests of revenue 1521
§19½. Unreported opinions 1521
VIII. DEFENSES AND EVIDENCE 1521
§20. In general 1521
§21. Immunity 1522
§21a. Moot question 1522

§22. Witnesses and subpoena Duces Tecum ... 1523
§23. New procedure ... 1525
(1) Evidence in writing ... 1525

PROPORTIONAL RATES ... 1525
I. APPLICATION ... 1525
II. DISCRIMINATION AND REASONABLENESS ... 1528
III. LEGALITY ... 1531
IV. EVIDENCE ... 1532
V. CONTROL AND REGULATION ... 1535
§1. Jurisdiction of Commission ... 1535
VI. TARIFFS AND PUBLICATION ... 1535
VII. REPARATION ... 1535

PROTECTIVE SERVICE ... 1535

PUBLIC INTEREST ... 1537

PUBLIC RECORDS ... 1537

PULLMAN COMPANY ... 1537

QUARANTINE REGULATIONS ... 1537

RAIL-AND-WATER RATES ... 1538

RAILROAD COMPETITION ... 1542

RATE BREAKING POINTS ... 1542

RATE VIA COMPETING LINES ... 1542

REASONABLE RATES ... 1542

REASONABLENESS OF RATES ... 1542
I. CONTROL AND REGULATION ... 1543
§1. In general ... 1543
§1½. Procedure in general ... 1546
II. ELEMENTS DETERMINING REASONABLENESS ... 1546
§2. In general ... 1546
§2½. Absorption ... 1566
§3. Actions of state commissions ... 1566
§4. Attractiveness of traffic ... 1567
§5. Capitalization ... 1567
§6. Car-mile or train-mile revenue ... 1567
§7. Changed circumstances ... 1568
§7¼. Combination of rates ... 1569
§7½. Comparisons ... 1569
§8. Competition ... 1577
(1) In general ... 1577
(1½) Market competition ... 1579
(2) Railroad competition ... 1580
(3) Rail-and-water competition ... 1581
(4) Water competition ... 1581
(5) Wagon or motor competition ... 1582
§8½. Concerted action ... 1582
§8¾. Congestion ... 1582
§9. Cost of service and operation ... 1582
§10. Distance ... 1586
§10½. Divisions ... 1589

§11. Earnings 1590
§12. Economical management 1591
§12½. Equalizing commercial condition 1591
§13. Equipment furnished 1592
§13a. Erroneous rate 1593
§14. Investment relying upon rate 1593
§15. Investment of carrier 1594
§15½. Loading 1595
§16. Long continued adjustment 1595
§16½. Low prior rate 1597
§17. Manufactured product 1598
§18. Mineral lands owned by carrier 1598
§18½. Motive of carrier 1598
§19. Natural advantages 1599
§20. Need for revenue 1600
§21. Obsolescence 1600
§22. Origin of traffic 1601
§23. Ownership or use of commodity 1601
§24. Paper rate 1602
§25. Past rates 1602
§26. Permanent improvements 1604
§26½. Prior adjudication 1604
§27. Profits of shipper 1606
§27¼. Public interest 1608
§27½. Rate via competing route 1608
§27¾. Rate in opposite direction 1611
§28. Relativity of the rate 1612
§29. Reproduction value of road 1627
§30. Revenues of road 1627
§30½. Risk 1628
§31. Special service 1628
§32. Standard for carriers 1628
§32½. Subsequent reduction 1630
§33. Surplus 1637
§34. Terminal facilities 1638
§35. Time of changing rate 1638
§36. Ton-mile revenue 1638
§37. Two-line haul 1640
§38. Value of commodity 1640
§39. Value of service 1642
§39½. Valuation of carrier 1643
§40. Volume of traffic 1643
§40½. Wages 1645
§41. Weight 1645

REBATES 1645

REBILLING 1645

RECEIVERS 1645

RECIPROCAL DEMURRAGE 1648

RECIPROCAL SWITCHING 1648

RECONSIGNMENT 1649
I. LEGALITY 1649
§1. Right to grant privilege 1649
II. DISCRIMINATION 1652
§2. In general 1652

III. REASONABLENESS OF CHARGES 1653
§3. In general 1653
§3½. Duty of carrier to afford 1658
IV. TARIFFS AND PUBLICATION 1660
§4. Necessity of publishing 1660
§4½. Embargoed destination 1661
§5. Construction in general 1662
§5½. Notice 1664
§6. Retroactive application 1665
§6¼. Road haul rates applicable 1665
§6½. Rules and regulations 1667
V. PROCEDURE AND REPARATION 1668
§7. In general 1668
§8. Parties to complaint 1669
§9. Jurisdiction of Commission 1669
§10. Damages and reparation 1670

REDUCED RATES 1670
I. CONTROL AND REGULATION 1670
§1. Jurisdiction of Commission 1670
§2. Power to suspend 1672
II. LEGALITY OF REDUCED RATES 1672
§2½. In general 1672
§3. Charitable institution, fairs or emergency 1673
§4. Government or municipal shipments 1674
§4½. Reasonableness and discrimination 1675
§4½a. Land grant roads 1682
§5. Returned or old shipments 1682
§5½. Used containers 1686
§6. Company material 1687
§6½. To encourage markets 1689
III. TARIFFS AND PUBLICATION 1691
§7. In general 1691
IV. PROCEDURE 1691
§8. In general 1691
§9. Evidence and burden of proof 1692

REFRIGERATION 1692
I. CONTROL AND REGULATION 1692
§1. Jurisdiction of Commission 1692
II. DUTY TO FURNISH 1694
§2. In general 1694
§3. Incidental services and charges 1694
§3½. Icing and re-icing 1695
III. REASONABLENESS OF CHARGES 1698
§4. In general 1698
§4½. Facilities used 1702
§4½a. Private refrigerator cars 1703
IV. TARIFFS AND PUBLICATION 1703
§4¾. In general 1703
§5. Obligation to file 1703
§6. Construction in general 1704
§6½. Rules 1705
V. WEIGHTS 1705
§7. Minimums 1705
VI. REPARATION 1705
§8. In general 1705
§9. Liability for damage 1706

REFRIGERATION LINES 1706

REGROUPING 1706

RELATIVE RATES 1706

RELEASED RATES 1706
I. CONTROL AND REGULATION 1707
§½. In general 1707
§1. Jurisdiction of Commission 1707
II. CONSTRUCTION AND APPLICATION 1708
§1½. In general 1708
§2. Duty to inform shipper 1711
§3. Intention to use 1711
§3½. Knowledge of shipper 1712
III. LEGALITY 1712
§4. In general 1712
IV. REASONABLENESS 1715
§5. In general 1715
V. LIMITATION OF LIABILITY 1716
§6. Effect in general 1716
VI. TARIFFS AND CONSTRUCTION 1717
§7. In general 1717

RELOADING CHARGES 1717

REPARATION 1717
I. JURISDICTION OF COMMISSION 1718
§½. In general 1718
§1. Necessity of and primary action by Commission 1721
§2. Necessity of and effect of finding of reasonableness 1722
§3. Power to award tort damages 1724
II. RIGHT TO RECOVER 1725
§3½. Extent of recovery 1725
§4. Necessity of protest 1726
§5. Necessity of first paying tariff rate 1726
§6. Parties entitled to recover 1726
§7. Statute of limitations 1737
III. CIRCUMSTANCES DETERMINING RIGHT 1742
§7½. In general 1742
§8. Erroneous publication or quotation 1747
§8½. Previous action of Commission 1750
§9. Failure to post tariff 1753
§10. Laches 1753
§10½. Necessity of showing damage 1753
§10½a. Paper rate 1757
§11. Rate via competing line 1757
§12. Readjustment of rates 1759
§13. Res adjudicata 1760
§14. Special rate 1760
§15. Unpublished charges 1760
§16. Voluntary or subsequent reduction 1760
§17. Willingness of carrier to pay 1768
IV. LIABILITY FOR REPARATION 1769
§17a. In general 1769
§17½. Interest and costs 1769
§18. Measure of reparation 1770
§19. Parties to make refund 1771
§20. Release of liability 1773
§20½. Undercharges or overcharges 1774

V. PROCEDURE 1774
§20¾. In general 1774
§21. Formal proceedings 1775
§22. Informal proceedings 1777
§23. Court pleadings and procedure 1778
§24. Intervening petitions 1779
§25. Statements for reparation 1779

REPORTS 1781

REPRODUCTION VALUE 1781

RES ADJUDICATA 1781

RESHIPPING RATES 1781

RESTRICTED RATES 1781

RETURNED RATES 1782

RETURNED SHIPMENTS 1782

REVENUES 1782

REWEIGHING 1782

RISK 1782

RIVER CROSSINGS 1782

ROUND TRIP TICKETS 1783

ROUTING AND MISROUTING 1783
I. CONTROL AND REGULATION 1784
§1. Jurisdiction of Commission 1784
II. CARRIER'S DUTY TO TRANSPORT 1785
§1½. In general 1785
§2. Accustomed or natural route 1786
§3. Conflict in billing between rate and route 1788
§3½. Conflict between billing and shipping ticket 1789
§4. Direct and cheapest available route 1789
§4¼. Existence of embargo 1794
§4½. Interstate or intrastate route 1794
§5. Lower rate via competing line or route 1795
§5½. Particular junction or terminal 1798
§5¾. Reconsigned shipments 1799
§6. Right of carrier to route or restrict routes 1800
§6½. Rail-and-water route 1802
§7. Shipper's instructions 1802
§7½. Washouts 1808
III. LIABILITY FOR MISROUTING 1808
§7¾. In general 1808
§8. Burden of proof 1809
§8½. Missing transit privilege 1809
§9. Measure of damages 1809
§10. Parties to make refund 1810
§10½. Procedure 1811
§11. Reparation in general 1811
§12. Unpublished rate 1811
§13. State courts 1812
§14. Procedure 1812

RULES AND REGULATIONS 1812
SACKING 1812
SAFETY APPLIANCE ACT 1812
SALE OF FREIGHT 1816
SCALE WEIGHTS 1817
SCALEAGE AND SHRINKAGE 1817
SEALS 1817
SEASON RATES 1817
SHERMAN ACT 1817
SHIPPING POUND 1817
SHRINKAGE RATES 1817
SIDE TRACKS AND SPUR TRACKS 1818
SLEEPING CAR COMPANIES 1821
SPACE RENTAL CHARGES 1824
SPECIAL CONTRACTS 1824
I. CONTROL AND REGULATION 1824
§1. Constitutionality of act 1824
II. LEGALITY AND EFFECT SINCE PASSAGE OF ACT 1824
§2. In general 1824
§2½. Previous validity 1831
III. LIABILITY 1833
§3. Criminal liability 1833
§4. Damages for breach 1834
(1) In general 1834
(2) Jurisdiction of Commission 1835
§5. Discrimination through contract 1835
IV. ACTIONS TO ENFORCE 1836
§5½. In general 1836
§6. Defenses 1836
V. AS EVIDENCE OF REASONABLE RATES 1838
§7. In general 1838
SPECIAL DAMAGES 1838
SPECIAL RATES AND SERVICES 1838
SPECIAL TRAINS 1841
SPLIT CLASSES 1841
SPOTTING 1841
STAGE LINES 1841
STAKING 1841
STANDARD OF RATES 1841
STATE RATES AND REGULATIONS 1841
STATION FACILITIES 1882
STATUTE OF LIMITATIONS 1882
STATUTES 1882

STEVEDORING 1887
STOCKHOLDERS 1887
STOCK PILE 1887
STOCK YARD COMPANIES 1887
STOP OVERS 1895
STOPPAGE IN TRANSIT 1895
STORAGE 1896
I. CONTROL AND REGULATION 1896
§1. Jurisdiction of Commission 1896
II. CHARGES 1897
§2. Reasonableness and discrimination in general 1897
III. TARIFFS AND CONSTRUCTION 1901
§3. In general 1901
STORAGE IN TRANSIT 1904
STORE DOOR DELIVERY 1907
STREET RAILROADS 1907
STRIKES 1907
SUBSTITUTION OF TONNAGE 1907
SUSPENDED RATES 1912
SUSPENSION OF RATES 1913
SWITCH TRACKS AND SWITCHING 1913
I. CONTROL AND REGULATION 1913
§1. In general 1913
§2. Jurisdiction of Commission 1914
II. ABSORPTION OF SWITCHING 1916
§3. In general 1916
III. DISCRIMINATION AND REASONABLENESS OF CHARGES 1920
§4. In general 1920
§4½. Contracts for sidetracks 1930
§5. Incidental services 1931
§6. Reciprocal switching 1933
§7. Right to connection 1937
§7½. Switching for other carriers 1940
§8. Validity of regulations 1941
§9. Reparation 1942
§9a. Secondary switching 1942
§9½. Switching reclaims 1942
§10. Tariffs and publication 1942
§11. Team tracks and sidetracks 1944
IV. PROCEDURE AND EVIDENCE 1945
§12. In general 1945
§12a. Evidence 1946
V. SWITCHING DISTRICT 1947
§13. In general 1947
§14. Lateral branch lines 1948

TAILBOARD DELIVERY 1948
TANK CARS 1948
TAP LINES 1948
I. CONTROL AND REGULATION 1949
§1. Definition of tap line 1949
§1½. Suspension 1949
§2. Jurisdiction of Commission 1949
§3. Test of status 1950
(1) In general 1950
(2) Effect of incorporation 1950
§4. When plant facility 1951
§5. Scope of tap line investigation 1953
II. POWERS AND DUTIES 1953
§6. When common carriers 1953
§6½. Amount of allowances 1956
§7. Legality of divisions, allowances or practices 1960
§8. Passes to officers 1964
§8½. Amendments 1964
§9. Right to allowances 1964
III. THROUGH ROUTES AND JOINT RATES 1966
§10. Right in general 1966
IV. TARIFFS AND PUBLICATION 1968
§11. In general 1968
§12. Reparation 1968
§12½. Per diem reclaims 1969
V. PROCEDURE AND PLEADING 1969
§13. In general 1969

TARIFFS 1970
I. CONTROL AND REGULATION 1970
§1. Jurisdiction of Commission 1970
§1½. Suspension 1972
§2. Power of Congress 1972
II. PUBLICATION 1972
§3. Effect in general 1972
(1) Adherence to published rate 1974
(2) Erroneous quotation or publication 1980
(3) Notice to shipper 1982
§4. Necessity of publication 1985
§5. Purpose of publication 1987
III. POSTING 1988
§6. In general 1988
§6a. Form of tariffs 1990
IV. CONSTRUCTION 1991
§7. In general 1991
§8. Ambiguity 2001
§8½. Amendments and supplements 2002
§9. Cancellation 2003
§9a. Combination rule 2004
§9½. Changes during suspension period 2004
§10 Concurrences 2004
§11. Conflict in rates 2005
§11½. Description 2007
§12. Cross-references 2007
§12¼. Exceptions 2007
§12½. Guide book 2008
§13. Index 2008
§14. Legality 2009
§15. Reasonableness 2010

§16. Shipments in bulk 2011
§17. State rates 2011
§18. What is legal rate 2011
§19. As evidence 2019
§20. Court proceedings 2019

TAXES 2019

TEAM TRACKS 2036

TEAMING 2036

TELEPHONE AND TELEGRAPH COMPANIES 2036
I. DISCRIMINATION IN SERVICE 2036
§1. In general 2036
II. CHARGES AND REGULATIONS 2038
§2. In general 2038
§2½. Private wire service 2041
III. CONTROL AND REGULATION 2043
§3. In general 2043
§3½. Jurisdiction of commission 2051
IV. LIABILITY FOR DAMAGES 2051
§4. In general 2051
V. REPARATION 2054
§5. In general 2054
VI. CONTRACTS BETWEEN COMPANIES 2054
§6. In general 2054

TERMINAL FACILITIES 2056
I. CONTROL AND REGULATION 2056
§1. Jurisdiction of Commission 2056
§1½. Jurisdiction of courts 2058
II. DUTY TO PERFORM TERMINAL SERVICE 2058
§2. In general 2058
§3. Duty to allow use 2060
§3½. Employment of agents 2065
§4. Publication of terminal charges 2065
§5. Reasonableness of charges 2066
§5a. Reparation 2069
§6. What are public terminals 2069
III. STATUS OF TERMINAL ROADS 2070
§7. In general 2070
§8. Definition of "terminal charges" 2070
§9. Allowances 2070
§10. Discrimination 2071
§11. Through routes and joint rates 2071

THREAD RATES 2072

THROUGH ROUTES AND JOINT RATES 2072
I. CONTROL AND REGULATION 2073
§1. Jurisdiction of Commission 2073
§1a. State legislation 2080
§2. What is through route or "common arrangement" 2080
§3. What is joint rate 2085
§3½. Participation in through traffic 2087
II. ESTABLISHMENT BY CARRIER 2089
§4. In general 2089
§5. Dispute over divisions 2094
§6. Circuitous routes 2095

§7. Obligation to carry 2096
§7½. State courts and laws
§8. Relation to similar points 2097
§9. Right to favor own line 2098
§10. Status of intermediate carrier 2101
§11. What is satisfactory route 2101
(1) In general 2101
(2) When through route ordered or denied 2102
III. BILLS OF LADING 2109
§12. Issuance in general 2109
IV. REASONABLENESS AND DISCRIMINATION 2109
§13. In general 2109
§13a. Burden of proof 2132
§13½. Factor of the rate 2132
§14. Divisions 2138
§15. Exceeding combination of intermediates 2141
§15½. Rate via other routes 2152
§16. Reparation 2153
§16½. State rates 2155
V. TARIFFS AND CONSTRUCTION 2156
§17. In general 2156
§18. Application of proportional rate 2159
§19. Breaking transit 2162
§20. Change in rate while shipment at transit point 2163
§20a. Combination rule 2164
§20½. Concurrences 2164
§20¾. Different classifications applicable 2166
§21. Intermediate clause 2166
§22. What is legal rate 2167
§23. Procedure 2177
§23a. Court action 2179
VI. RIGHT TO WITHDRAW 2179
§24. In general 2179
VII. DUTY TO FURNISH FACILITIES 2183
§25. In general 2183
§26. Restriction of routes or traffic 2185

TICKETS 2187

TON MILE REVENUE 2187

TONNAGE 2187

TOURIST CARS 2187

TIME ZONES 2187

TOLLS 2189

TRACK SCALES 2189

TRACK STORAGE 2189
I. CONTROL AND REGULATION 2189
II. REASONABLENESS AND DISCRIMINATION 2190
III. TARIFFS AND CONSTRUCTION 2191

TRACKAGE AGREEMENTS 2192

TRAFFIC CONTRACTS 2194

TRAIN MILE REVENUE 2194

TRAINLOAD RATES 2194
TRANSFER 2195
TRANSFER COMPANIES 2196
TRANSIT 2196
TRANSPORTATION 2196
I. WHAT IS TRANSPORTATION SERVICE 2196
§1. In general 2196
§1½. Jurisdiction of Commission 2197
II. DUTY OF CARRIER TO TRANSPORT 2197
§2. In general 2197
§3. Company material 2201
§3½. Confiscation of fuel 2202
§4. Collection of charges 2202
§5. Delivery or receipt 2202
§5½. Free transportation 2206
§6. Notifying consignor or consignee 2207
§6½. Notice to carrier 2207
§7. Prompt and safe carriage 2207
§7½. Receipt by consignee 2207
§8. Special services 2208
§9. State interference 2208
§10. Unloading or loading at terminal 2208
§11. When transit ends 2209
III. OPERATION OF RAILROAD 2210
§11½. In general 2210
§12. Right of carrier to make regulations 2210
§13. Economy of management 2211
§14. What are operating expenses 2211
§15. Right to traffic 2211
§16. Eminent domain 2211
TRANSPORTATION ACT 2212
TRAP CARS 2212
TRANSSHIPMENT 2213
TROLLEY COMPANIES 2213
TRUCK COMPETITION 2213
TUNNEL CHARGES 2213
TWENTY-EIGHT HOUR LAW 2213
TWO LINE HAUL 2213
UNDERCHARGES 2213
I. CONTROL AND REGULATION 2213
§1. Jurisdiction of commission 2213
§1½. Jurisdiction of courts 2213
II. DUTY OF CARRIERS TO COLLECT 2214
§2. In general 2214
§3. Defenses 2214
III. EVIDENCE 2215
§3½. In general 2215
§4. Admissibility of tariff copies 2215
§5. Burden of proof 2215
§6. Testimony as to rate 2216

IV. LIABILITY TO PAY 2216
§7. In general 2216
§7½. State courts and laws 2217
§8. Waiver 2217
§9. Pleading 2217
UNIFORM CLASSIFICATION 2217
UNIFORM DEMURRAGE CODE 2217
UNITED STATES COURTS 2217
UNLOADING 2217
UNPUBLISHED RATE 2217
USE OF COMMODITY 2218
VALIDATION 2218
VALUE OF SERVICE 2218
VALUE OF SHIPMENT 2218
VENTILATION 2218
VERDICT 2219
VOLUME OF TRAFFIC 2219
VOLUNTARY RATES 2219
VOLUNTARY REDUCTION 2219
WAGES 2219
WAGON COMPETITION 2221
WAGON ROADS 2221
WAGON WEIGHTS 2221
WAIVER 2221
WAR IN EUROPE 2221
WAR LEGISLATION 2221
WAR POWER 2222
WAR TAXES 2222
WAREHOUSING 2223
WASHOUTS 2225
WATER CARRIERS 2225
I. CONTROL AND REGULATION 2225
§1. In general 2225
§2. Jurisdiction of Commission 2229
II. DISCRIMINATION AND REASONABLENESS 2232
§3. In general 2232
III. TARIFFS AND CONSTRUCTION 2235
§4. In general 2235

§4½. Facilities furnished 2236
§5. Reparation 2236
§5½. Bills of lading 2236
IV. THROUGH ROUTES AND JOINT RATES 2236
§6. In general 2236
§6½. Free transportation 2244
§6½a. Barge lines and rail carriers 2245
§6¾. Wharfage 2246
V. EVIDENCE 2246
§7. In general 2246
VI. REASONABLENESS OF RATES 2247
§8. In general 2247
§9. Advancing charges 2248

WATER COMPETITION 2248

WEATHER INTERFERENCE 2248

WEIGHTS AND WEIGHING 2248
I. CONTROL AND REGULATION 2249
§1. In general 2249
§2. Jurisdiction of commission 2249
II. METHOD OF COMPUTING CHARGES 2249
§2½. In general 2249
§3. Actual weight 2253
§4. Capacity weight 2254
§5. Estimated weight 2255
§5a. Net weight rates 2258
§5½. Origin weights 2258
§6. Reweighing 2259
§7. Scaleage and shrinkage 2261
§7½. Track scales 2262
§7¾. Wagon weights 2265
III. DISCRIMINATION 2265
§8. In general 2265
IV. EVIDENCE AND BURDEN OF PROOF 2266
§9. In general 2266
V. REPARATION 2266
§10. In general 2266
VI. TARIFFS AND CONSTRUCTION 2267
§11. In general 2267
§12. Inspection bureaus 2267
VII. REASONABLENESS OF CHARGES 2268
§13. In general 2268
VIII. WEIGHING ALLOWANCES 2268
§14. In general 2268

WHARFAGE 2269

WITNESSES 2269

YARDAGE 2269

ZONE RATES 2269

APPENDIX
Index of Cases 2273
Index of Commodities 2325
Index of Localities 2337
I. C. R. and I. C. C. Cases 2373
Additional Crossreferences 2379

LONG AND SHORT HAULS

I. CONTROL AND REGULATION
§ 1. Constitutionality of section 4
§ 2. Jurisdiction of Commission
II. SECTION 4 AS AMENDED
§ 2½. Construction in general.
§ 3. Constitutionality.
§ 4. Exceptions.
§ 4¼. Direct lines.
§ 4¼a. State Rates.
III. APPLICATION OF SECTION 4 TO RATES.
§ 4½. In general.
§ 4½a. Back Haul Combinations.
§ 4¾. Circuitous routes.
§ 5. Intermediate points.
§ 6. Intermediate points off line.
§ 6¼. Comparison of rates.
§ 6½. Participation in route.
§ 6¾. Exceeding combination of intermediates.
§ 6¾a. Combination subject to section 4.
§ 6⅞. Discrimination and reasonableness.
IV. COMPETITION AS JUSTIFICATION.
§ 7. In general.
§ 7½. Cross-country competition.
§ 8. Markets.
§ 8½. Motor truck competition.
§ 9. Railroad competition.
§ 10. Water competition.
V. PROCEDURE
§ 10½. In General.
§ 11. Complaints and orders.
§ 12. Evidence.
(1) Burden of proof.
(2) Circumstances of probative force.
§ 13. Reparation.
§ 14. Form and effect of fourth section application.
§ 15. Suspension of new tariffs.
§ 16. Tariffs and construction.
§ 17. Actions at law.

CROSS REFERENCES

See Advanced Rates § 5 (2½).

I. CONTROL AND REGULATIONS.

See Control and Regulations.

§ 1. Constitutionality of Section 4.

See Constitutional Law.

IMPORTANT CASES SINCE 1908

(a) The Act of June 18, 1910, amending the long-and-short-haul clause is not unconstitutional as being a delegation to the Commission of legislative powers which Congress was incompetent to make. United States v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 986, 991; 234 U. S. 476; 58 L. ed.—

(b) That the long-and-short-haul clause imposes upon the Commission in a proper case the duty of refusing an application for relief from the rule, does not render the statute void on the ground that in such a contingency the statute would amount to an imperative enforcement of the clause; for a general enforcement of the clause would not be repugnant to the constitution. United States v, A. T. & S. F. Ry. Co., 34 Sup. Ct. 986, 992; 234 U. S. 476; 58 L. ed.—

ALL OTHER CITATIONS

A. T. & S. F. Ry. Co. v. U. S. 191 Fed. 856, 860; In Re Application of the S. P. Co. for relief under the provision of the Fourth Section, 22 I. C. C. 366, 374; City of Spokane v. N. P. Co., 21 I. C. C. 400, 411.

§2. Jurisdiction of Commission.

See Jurisdiction of commission.

CASES 1887-1908

(a) Judgment of carriers in respect to circumstances and conditions is not final and is subject to authority of the Commission and of the courts to decide whether error has been committed or statute violated. Re Southern R. & S. Asso. 1 I. C. R. 278.

(aa). While the Act authorizes the Commission to permit exceptions, it does not authorize it to require exceptions. Thatcher v. Fitchberg R. R. Co. 1 I. C. R. 356.

(b) Goods shipped from Cincinnati, Ohio, to points in the State of Georgia are interstate traffic and all the roads forming a part of the line over which such goods are carried to their destination are engaged in interstate commerce and are subject to the Act to Regulate Commerce. Where two or more roads forming a continuous connecting line between points in different states bill and carry interstate traffic through to certain stations on the last road forming such line, neither the roads together nor any one of them can evade the obligations of the fourth section of said Act by declaring that as to such traffic destined to such stations on such terminal road it is a local carrier. James & Mayer Bugg Co. v. Cincinnati, N. O. & T. R. Co., 3 I. C. R. 682.

(c) It is within the jurisdiction of the Interstate Commerce Commission to consider whether a railroad company transporting interstate freight and charging a higher rate for a shorter than for a longer distance over the same line in the same direction, is doing it under substantially similar circumstances and conditions. Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission (U. S. Sup.) 5 I. C. R. 391.

(d) The Supreme Court of the United States, while denying power in the Interstate Commerce Commission to enforce the provision of section 1 of the Act to Regulate Commerce,—namely, that all rate charges "shall be reasonable and just,"—by orders prescribing reasonable maximum rates, expressly recognizes the authority and duty of the Commission to enforce sections 2, 3, and 4 of the Act. Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co., 167 U. S. 506, 42 L. ed. 256. Phillips, Bailey & Co. v. Louisville & Nashville R. Co. 8 I. C. C. 93.

IMPORTANT CASES SINCE 1908

(e) The construction formerly given section 4 by the Supreme Court, did not prove efficacious in correcting the evils sought to be corrected by it, so Congress under the 1910 amendment laid an absolute inhibition upon a departure from the long-and-short haul rule, except in special cases authorized by the Commission. Green v. A. & V. R. R. Co., 43 I. C. C. 662, 677.

(f) Section 15 of the Act empowers this Commission either on complaint or on its own initiative, without complaint, to establish through routes and joint rates and classifications. In view of these broad powers it is hardly conceivable that the Congress could have intended that the fourth section of the Act should be so construed and administered as to preclude relief unless all of the carriers parties to the through route involved were voluntary parties to the application requesting relief. Such construction would make unworkable and defeat the purposes of the amendment and is at variance with the broad discretion vested in the Commission and the prevailing practice of administrative tribunals. Proportional Rates to Gulf Ports for Export, 44 I. C. C. 543, 546.

(g) The Commission's administrative power under the fourth section is in some respects narrower than before its amendment by the transportation act, 1920. Observance is required of certain administrative rules which the Commission was enforcing prior to the amendment, but which in some measure lay within its sound discretion to modify or change. The Commission is now also required to accord due observance to section 500 of the transportation act, which indicates the purpose of Congress to foster and preserve rail and water transportation. Transcontinental Cases of 1922, 74 I. C. C. 48, 71.

(h) The provisions of the fourth section apply where the point of origin is in an adjacent foreign country and the intermediate point and more distant point of destination are in the United States. United Paperboard Co. v. C. N. Rys., 74 I. C. C., 733, 736.

(i) After a long-and-short-haul departure is removed, it may not be lawfully restored without the special authority of the Commission, even though the departure was in existence when the fourth section was amended. Conf. Rulings 395 and 406. Intermediate Application of Class Rates, 77 I. C. C. 427, 430.

(j) Jurisdiction of Commission over intrastate rates subsequent to Federal control is prescribed by sections 3 and 13 of the act. The Commission has no authority to pass upon measure of such rates except where they are shown to be prejudicial to interstate commerce, and long-and-short-haul provision of section 4 does not apply thereto. Producers Refining Co. v. M., K. & T. Ry. Co., 80 I. C. C. 339, 340.

(ja) Contention that long-and-short-haul provision of section 4 of the act, as amended, denies the commission authority to grant relief "under any conditions where distances from intermediate points are not greater than short-line distances from competitive point," and that commission has so construed the statute, not sustained, following Murfreesboro Board of Trade, 55 I. C. C. 648, 73 I. C. C. 228, and Memphis Southwestern Investigation 80 I. C. C. 157. Owensboro Chamber of Commerce v. L. H. & St. L. Ry. Co. 81 I. C. C. 145, 150, 151.

(jb) Included in the fourth section of the act is a mandate that "the commission shall not permit establishment of any charge to or from more distant point that is not reasonably compensatory for services performed." Comodity Rates from Jacksonville to Miami, 83 I. C. C. 207, 210.

(k) Section 4 of the Interstate Commerce Act makes it unlawful for a carrier to charge a higher rate for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, provided, however, that upon application to the Interstate Commerce Commission the carrier may in special cases, after investigation, be authorized to charge less for longer than for shorter distances. Shortly prior to the amendment the Commission ordered certain changes in west-bound rates to points in Nevada, and thereafter transcontinental carriers made applications for authority to continue the practice of making commodity rates to the Pacific Coast lower than to Nevada points. Sacramento, Stockton, San Jose, and Santa Clara had long been designated as Pacific Coast terminals, and the applications did not propose to disturb the terminal or short haul rates to these points, and at no time in the ensuing proceedings did they ask the Commission to suspend the long and short haul clause with respect to these points; but the Commission removed these points from the class of Pacific Coast terminals and increased the west-bound rates to those points above the rates to San Francisco and other ports of call of steamship lines. HELD, that the Commission had no power to suspend the long and short haul clause in this respect without an application being made to it by the carriers for that purpose and a hearing upon that particular application as in a special case, and the order to that extent was therefore void. Merchants' & Manuf. Traffic Assn. v. United States, 213 Fed. 292.

(l) General Order No. 28 of the Interstate Commerce Commission authorizing a general increase in rates, and permitting carriers to violate the long and short haul clause in so far as necessary to permit the increase to go into effect, merely permitted such violation in cases where the greater charge for the shorter haul had been previously authorized, and did not legalize a continued violation by the carrier, which had previously violated Interstate Commerce Act, § 4, as amended. Davis v. Parrington, 281 Fed. 10.

(m) An order of the Interstate Commerce Commission relieving carriers in certain respects from the operation of the long-and-short-haul clause need not be based upon an application asking only the precise relief granted; and such an order is, therefore, not invalid because the carriers asked leave to charge on west-bound transcontinental freight to a number of coast and interior points much less than to intermountain territory, and the Commission, while permitting them to charge to ports of call as much less as the application requested, as to the other points, which were interior cities, permitted the carriers to charge only somewhat less, since such amended section not only empowers the Commission "upon application" to authorize a carrier "to charge" less for longer than for shorter distances, but empowers the Commission to prescribe from time to time the extent to which the designated carriers may be relieved from the operation of such section. U. S. v. Merchants' & M. Traffic Asso., 37 Sup. Ct. 24, 242 U. S. 178, 61 L. Ed. 233.

ALL OTHER CITATIONS

City of Spokane v. N. P. Ry. Co., 21 I. C. C. 400, 415, 414; Bluefield Shippers' Ass'n v. N. & W. Ry. Co., 22 I. C. C. 519, 530, 529, 525; Stewart-Greer Lumber Co. v. St. L. I. M. & S. Ry. Co., 29 I. C. C. 120, 122; Cement Rates from Mitchell, Ind., 32 I. C. C. 93, 95; U. S. v. L. & N. R. R. Co., 35 Sup. Ct. Rep. 113, 115, 235 U. S. 314, 236 U. S. 318, 59 L. ed.; Railroad Commrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 652; Import and Domestic Rates, 36 I. C. C. 389, 399; Reopening Fourth Section Applications, 40 I. C. C. 35, 41; Transcontinental Rates, 46 I. C. C. 236, 253, 254; Darby Coal Sales Co. v. C. & O. Ry., 51 I. C. C. 370, 372; Birmingham Packing Co. v. Director General, as Agent, 59 I. C. C. 81, 89; Atlantic Refining Co. v. Director General, as Agent, 59 I. C. C. 109; Lee Hardware Co. v. A., T. & S. F. Ry. Co., 59 I. C. C. 728, 729; Buckeye Veneer Co. v. Director General, 61 I. C. C. 673, 675; Coal tar oil from Chattanooga, Tenn., 61 I. C. C. 729, 730; Odell Daly Material Co. v. Director General, 62 I. C. C. 12; Du Pont de Nemours & Co. v. Director General, 62 I. C. C. 151, 152; State Corporation Commission of New Mexico v. Director General, 62 I. C. C. 352. 356.

II. SECTION 4 AS AMENDED.

§2½. Construction in general.

CASES 1887-1908

(a) The phrase "under substantially similar circumstances," in the fourth section, is used in the same sense as in the second section; and under the quali-

fied form of the prohibition in the fourth section carriers are required to judge in the first instance with regard to the similarity or dissimilarity of the circumstances and conditions that forbid or permit a greater charge for a shorter distance. Re Southern Ry. & S. S. Asso. v. 1 I. C. R. 278.

(b) The prohibition in the fourth section of the Interstate Commerce Act against a greater charge for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance, as qualified therein, is limited to cases in which the circumstances and conditions are substantially similar. Re Southern Ry. & S. S. Asso. v. 1 I. C. R. 278.

(ba) Mere desire for construction of Act is not sufficient to support proceeding charging violation of section 4. Boston & A. R. R. Co. v. Boston & L. R. R. Co. 1. I. C. R. 571.

(c) The words "substantially similar circumstances and conditions" as found in the second and fourth sections of the Act to Regulate Commerce, in certain important particulars define the rights and duties of carriers and the rights of shippers as well. For example: if the carrier claims to act under the compulsion of circumstances and conditions of his own creation or connivance in the making of an exceptional rate, then these will not avail him; or if the carrier claims to act under a compulsion of circumstances and conditions in the making of an exceptional rate which he could obviate by reasonably fair and just exertion on his part, then they will not avail him. But if the carrier is in good faith acting under a compulsion of circumstances and conditions beyond his control, not of his own connivance, and which he could not obviate by any reasonably fair and just effort on his part, and to avoid large loss adopts exceptional rates on a portion of his line, not unreasonable in themselves, and forced upon him by the action of an independent state railroad, which is not subject to the Act to Regulate Commerce, and which is operating a slightly shorter and competing line with his own, these are circumstances and conditions under the operation of the statute which justify him in adopting such exceptional rates thus forced upon him on this portion of his line. Business Men's Asso. v. Cg. St. P. M. & O. R. Co., 2 I. C. R. 41.

(d) The fourth section does not apply where the circumstances are dissimilar: first, competition with water carriers not subject to the act; second: competition with railroads in foreign countries or situated wholly within a single state, and not subject to the act; third, special and peculiar cases of competition between carriers which were subject to the act. Matter of alleged violations of the fourth section of the act by the Santa Fe, 7 I. C. C. 61, 63.

(e) Section four of the act applies when the traffic is over the same line and in the same direction and to transportation under substantially similar circumstances and conditions, and the shorter must be included within the longer distance; and any injustice or undue hardship which may result to carriers from compliance with the statute is removable by the Commission upon application by such carriers under the procedure authorized by the proviso clause of that section. Fewell v. R. & D. R. Co., 7 I. C. C. 354, 374.

(f) The higher rate for the shorter distance point is not of itself a violation of the fourth section of the act, but only becomes such when the circumstances and conditions of the long and short hauls are similar. Rock Hill Buggy Co. v. Southern Ry., 11 I. C. C. 229, 233.

IMPORTANT CASES SINCE 1908

(g) The principal change in the law resulting from the amendment of 1910 is to the effect that carriers may not upon their own initiative (and before determination by the Commission upon proper application) deviate from the long-and-short-haul rule of section 4; that is, under the present law they must first have a determination of the question by the Commission upon its merits, whereas, prior to the amendment of 1910, they could act upon their own judgment and initiative, their action being subject to subsequent investigation and determination by the Commission. There is nothing to be found in the amendment or elsewhere in the law which justifies the Commission permitting the establishment, or after full hearing the continuance, of a rate unreasonable under the first section, or unduly discriminatory under the third or fourth sections. Rates on Boots and Shoes from Boston, Mass., 31 I. C. C. 154, 157.

(h) Section 4 of the amended act provides that when a rail carrier in com-

petition with a water carrier shall reduce its rates to or from a competitive point, it shall not be permitted to increase such rate unless after hearing by the Commission it shall be found that such increase rests upon changed conditions other than the elimination of water competition. But that clause is a part of the amendment of June 18, 1910, and it applies only to rates reduced subsequent to that date. And in determining the reasonableness of a rate increased or sought to be increased which was reduced prior to that date, the Commission may consider conditions existing without regard to whether or not they are "changed conditions" as compared with the conditions when the rates were reduced. Westbound Lake and Rail Knit Goods Commodity Rates, 32 I. C. C. 54, 57.

(i) Section 4 must be construed in the light of other sections and in view also of the purpose and intent of this particular section. Reopening Fourth Section Applications, 40 I. C. C. 35, 40.

(j) The fourth section of the act to regulate commerce does not apply to intrastate shipments. Alaska Junk Co. v. Director General, 68 I. C. C. 615, 616.

(k) Interpretation of the amended fourth section of the act holding that a "reasonable compensatory" rate can not be less than a rate which, if imposed by a regulatory tribunal, would be adjudged nonconfiscatory, can not be accepted by the Commission. Transcontinental Cases of 1922, 74 I. C. C. 48, 68, 69.

(l) In section 500 of the transportation act, it is expressly declared the policy of Congress to foster and preserve in full vigor both rail and water transportation. The Commission thinks the amendment was the Congress way of saying that it should follow a less liberal policy in dealing with departures from the long and short haul rule than had been followed in former years. The administrative power of the Commission at this time is in more respects narrower than before the amendment. The fourth section, as amended, requires the observance by the Commission of certain administrative rules which it was enforcing prior to the amendment, but which in some measure lay within its sound judgment to modify or change. Transcontinental Cases of 1922, 74 I. C. C. 48, 70.

(m) The Commission does not agree with contention that the fourth section has not been changed in substance by the amendments in the transportation act, 1920. The amendment has made mandatory what theretofore rested in the commission's sound discretion as to compensation for the service performed to the more distant point, as to circuity, and as to potential water competition. Moreover, section 500 of the transportation act, 1920, wherein it is declared the policy of Congress to foster and preserve rail and water transportation, was Congress's way of saying that the commission should follow a less liberal policy in dealing with departures from the long-and-short-haul rule than had been followed in former years. Transcontinental Cases of 1922, 74 I. C. C. 48, 70.

(n) The criterion of a reasonably compensatory rate under the amended fourth section of the act, summarized in the formula "out-of-pocket-expenses-plus-some-profit," rejected by the Commission as insufficient, standing alone. Transcontinental Cases of 1922, 74 I. C. C. 70.

(o) In the administration of the fourth section the words "reasonably compensatory" imply that a rate properly so described must cover and more than cover the extra or additional expenses incurred in handling the traffic to which it applies; be no lower than necessary to meet existing competition; not be so low as to threaten the extinction of legitimate competition by water carriers; and not impose an undue burden on other traffic or jeopardize the appropriate return on the value of carrier property generally, as contemplated by section 15a of the act. Where carriers apply for relief from the long and short haul clause of the fourth section and propose the application of rates which they designate as "reasonably compensatory" they should affirmatively show that the rates proposed conform to the criteria indicated above. It goes without saying that carriers should not propose rates or rate structures for approval in a fourth section application which create infractions of other provisions of the act, and particularly of section 3. Transcontinental Cases of 1922, 74 I. C. C. 48, 71.

(p) The Commission's administrative power under the fourth section is in some respects narrower than before its amendment by the transportation act, 1920. Observance is required of certain administrative rules which the Commission was enforcing prior to the amend-

ment, but which in some measure lay within its sound discretion to modify or change. The Commission is now also required to accord due observance to section 500 of the transportation act, which indicates the purpose of Congress to foster and preserve rail and water transportation. Transcontinental Cases of 1922, 74 I. C. C. 70, 71.

(q) It would be a vain thing to find a technical violation of the fourth section of the act and immediately enter an order relieving the carrier from the necessity of observing the section, and thus altering in no respect the existing status. Fares between New York and points west of Newark, 74 I. C. C. 516, 520.

(r) Relief from the provisions of the fourth section would be given in situations of the kind disclosed only where the evidence is clear that the lower rate to the more distant point is actually required by conditions at that point beyond the control of the petitioning carriers and the rate required is actually subnormal. Wrought Iron Pipe and Iron Pipe Fittings from and to points in the southwest. 81 I. C. C. 691, 694.

(s) The words "reasonably compensatory" imply that a rate properly so described must (1) cover and more than cover the extra or additional expenses incurred in handling the traffic to which it applies; (2) be no lower than necessary to meet existing competition; (3) not be so low as to threaten the extinction of legitimate competition by water carriers; (4) not impose an undue burden on other traffic or jeopardize the appropriate return on the value of carrier property generally, as contemplated in section 15a of the act. It may be added that rates of this character ought, wherever possible, bear some relation to the value of the commodity carried and the value of the service rendered in connection therewith. Where carriers apply for relief from the long and short haul clause of the fourth section and propose the application of rates which they designate as "reasonably compensatory" they should affirmatively show that the rates proposed conform to the criteria indicated above. Wrought Iron Pipes and Iron Pipe Fittings from and to points in the southwest. 81 I. C. C. 691, 696.

(t) Section four of the Act as amended provides that in exercising the authority conferred upon the Commission to grant relief from its provisions the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed. Wrought Iron Pipe and Iron Pipe Fittings from and to points in the southwest. 81 I. C. C. 691, 696.

(u) Included in the fourth section is a mandate that the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the services performed. Commodity Rates from Jacksonville to Miami. 83 I. C. C. 207, 210.

(v) Since the amendment of Interstate Commerce Act, § 4, by Act June 18, 1910, a carrier no longer has the right as it did prior thereto to determine in the first instance whether a dissimilarity in conditions justifies the charge of a greater rate for a shorter haul than for a longer haul over the same route, but any such charge is illegal, unless the Commission has previously made an order consenting to the higher rate to the intermediate point. Davis v. Parrington, 281 Fed. 10.

(w) Under the long-and-short-haul clause of the 4th section, previous to 1910, the carier was permitted to judge primarily of competitive conditions and meet them at its election; though this power was primary, not absolute, since its exertion by the carrier was made the subject of both administrative control and ultimate judicial review. The amendment of June 18, 1910, stated no new rule or principle, but, by the elimination of the "substantially similar circumstances and conditions" clause, simply shifted the power conferred by the section as it originally stood. That is, it took from the carriers the deposit of public power previously lodged in them and vested it in the Commission as a primary instead of a reviewing function. Power in the carrier primarily to meet competitive conditions by charging a lesser rate for a longer than for a shorter haul, has ceased to exist. United States v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 986, 990; 234 U. S. 476; 58 L. ed.

ALL OTHER CITATIONS

Atlanta Journal Co. v. S. A. L. Ry., 28 I. C. C. 186, 190; Hess v. U. P. R. R. Co., Unrep. Op. A-385; Transcontinental Commodity Rates, 32 I. C. C. 449, 453; Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 619; Board of Trade of Kansas City v. C. M. & St.

P. Ry., 34 I. C. C. 208, 209; Bennett & Son v. C. & O. Ry. Co., 38 I. C. C. 310, 314; Hessig-Ellis Drug Co. v. L. & N. R. R. Co., 39 I. C. C. 459, 467; Reopening Fourth Section Applications, 40 I. C. C. 35, 40 41; Proportional Rates to Gulf Ports for Export, 44 I. C. C. 543, 546, 547; Royal Milling Co. v. G. N. Ry., 47 I. C. C. 263, 270; Marsh & Truman Lumber Co. v. L. & N. R. R., 49 I. C. C. 605, 607; Johnston v. A. T. & S. F. Ry., 51 I. C. C. 356, 361; Heider Mfg. Co. v. C. G. W. R. R., 51 I. C. C. 713, 718; Cottonseed Products Co. v. St. L. S. F. Ry. Co., 53 I. C. C. 574, 577; Perry County Coal Corp. v. Director General, 60 I. C. C. 52, 54; Seaboard Oil Refining Co. of Texas v. Director General, as, Agent, 60 I. C. C. 451, 452; Anaconda Copper Mining Co. v. Director General, as Agent 64 I. C. C. 136; Clinchfield Coal Corp. v. Director General, as Agent, 64 I. C. C. 143; Pioneer Pole & Shaft Co. v. Director General, as Agent, 744, 747; Meridian Rate Case, 66 I. C. C. 179, 183; Salt from Louisiana Mines to Chicago, 60 I. C. C. 81, 91; Wilson & Co. v. Director General, as Agent, 74 I. C. C. 555.

§3. Constitutionality.

See Constitutional Law.

IMPORTANT CASES SINCE 1908

(a) The proviso in the fourth section, as amended in 1910, permitting the Commission in particular instances to authorize the charging of a higher rate at the intermediate point is not void as a delegation of legislation authority. City of Spokane v. N. P. Ry. Co., 21 I. C. C. 400, 411.

ALL OTHER CITATIONS

City of Spokane v. N. P. Ry. Co., 21 I. C. C. 400, 412.

§4. Exceptions.

See Advanced Rates, §5 (2½); Tariffs, §12½.

CASES 1887-1908

(a) Application made to the Commission by the Southern Ry. and Steamship Company for authority to charge less for longer than for shorter distances for the transportation of property from and to Boston, Providence, New York City, etc., and points southerly therefrom. HELD, authority granted for a period of ninety days until the Commission is able to secure the facts surrounding the application. Re Southern Ry. & Steamship Association, 1 I. C. C. 15.

(b) Application of the Detroit Grand Haven & Milwaukee R. R., for relief from the long and short haul clause of section 4 on traffic across lake to Grand Haven, thence to Detroit and St. Clair. HELD, application granted for a period of ninety days until the facts may be disclosed to the Commission. Re Detroit Grand Haven & Milwaukee R. R. Co., 1 I. C. C. 17.

(c) The Commission is confined to entertaining and deciding applications presented to it under section 4 of the Act (the long and short haul section) for relief from the provisions of that section, and complaints under section 13, in relation to acts or omissions in contravention of the provisions of the Act. Re Order of Ry. Conductors v. 1 I. C. R. 18.

(d) Petition for exemption from the fourth section of the act (the long and short haul clause). HELD, the Commission will not grant a general suspension of the fourth section of the act to any road, but will give relief only as to the traffic between specified points. Re Richmond & Alleghany R. R. Co., 1 I. C. C. 22.

(e) The cases in which the Commission is authorized to make orders for suspension of operation of Act are exceptional. Jurisdiction of Commission, 1 I. C. R. 73.

(f) Petition of the Minneapolis and Northwestern Ry for a suspension of the fourth section of the act. HELD, the Act provides that suspension of the operation of the fourth section must come after investigation by the Commission and the Commission must consider in each case what effect the giving of relief will have upon all interests involved. Petition denied. Jurisdiction of the Commission, 1 I. C. C. 73.

(fa) Petition of the Minneapolis & Northwestern Ry. Co. for a suspension of the Fourth section. HELD, the Interstate Commerce law contemplates that the cases in which the Commission is authorized to make orders for suspension of its operation are exceptional cases, and that where only general reasons operate, the general law shall be left to its general course, however serious the consequences in particular cases. Any order for suspension must be based upon investigation. Incidental injuries under the act must be borne for the public good, until the Legislature provides a remedy. The mere prob-

ability that injury will result from the operation of the act will not authorize the Commission to direct a suspension. Jurisdiction of the Commission. 1 I. C. C. 73, 74.

(g) Mere probability that injury will result will not authorize Commission to direct suspension. Jurisdiction of Commission, 1 I. C. R. 73.

(h) The Interstate Commerce Law contemplates that the cases in which the Commission is authorized to make orders for suspension of its operation are exceptional cases, and that where only general reasons operate, the general law shall be left to its general course, however serious the consequences in particular cases. Jurisdiction of the Commission v. 1 I. C. R. 73.

(i) In the matter of the petitions of the L. & N. R. R., for relief under section four of the act. HELD, the order for temporary relief which was made in favor of petitioner, will be allowed to remain in force until the day originally limited for its expiration; and in the meantime its officers will have the opportunity to make thorough revision of its freight and passenger tariffs in order to bring them as nearly as may be into harmony with the general rule of the statute. Re Southern Ry. & Steamship Asso., 1 I. C. C. 278.

(ia) In the matter of the petitions of the L. & N., R. R. Co., for relief under section 4 of the act. HELD, the prohibition in the fourth section of the Act against a greater charge for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance, as qualified therein, is limited to cases in which the circumstances and conditions are substantially similar. The phrase "under substantially similar circumstances" in the fourth section, is used in the same sense as in the second section; and under the qualified form of the prohibition in the fourth section carriers are required to judge in the first instance with regard to the similarity or dissimilarity of the circumstances and conditions that forbid or permit a greater charge for a shorter distance. The judgment of carriers in respect to the circumstances and conditions is not final, but is subject to the authority of the Commission and of the courts to decide whether error has been committed or whether the statute has been violated. And in case of complaint for violating the section of the act, the burden of proof is on the carrier to justify any departure from tion of the act, the burden of proof is on the general rule prescribed by the statute showing that the circumstances and conditions are substantially dissimilar. The provisions of section 1, requiring charges to be reasonable and just, and of section 2, forbidding unjust discrimination, apply when charges are made under section 4, as they do in other cases. The existence of actual competition which is of controlling force in respect to traffic important in amount, may make out dissimilar circumstances and conditions, entitling the carrier to charge less for the longer than for the shorter haul over the same direction, the shorter being included in the longer, in the following cases. When the competition is with carriers by water which are not subject to the provisions of the statute; When the competition is with foreign or other railroads which are not subject to the provisions of the statute. In rare and peculiar cases of competition between railroads which are subject to the statute, when a strict application of the general rule of the statute would be destructive of legitimate competition. When a greater charge in the aggregate is made for the transportation of passengers or the like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance, it is not sufficient justification therefor that the traffic which is subjected to such greater charge is way or local traffic, and that which is given the more favorable rates is not. Nor is it sufficient justification for such greater charge that the short haul traffic is more expensive to the carrier, unless when the circumstances are such as to make it exceptionally expensive, or the long haul traffic exceptionally inexpensive, the difference being extraordinary and susceptible of definite proof. Nor that the lesser charge on the longer haul has for its motive the encouragement of manufactures or some other branch of industry; Nor that it is designed to build up business or trade centers; Nor that the lesser charge on the longer haul is merely continuation of the favorable rates under which trade centers or industrial establishments have been built up; The fact that long haul traffic will only bear certain rates is no reason for

carrying it for less than cost at the expense of other traffic. Re Southern Railway & Steamship Association. 1 I. C. C. 278.

(j) A complaint, in effect asking from the Commission an order requiring defendant roads to receive freight at Schenectady for transportation to Boston, for rates less than are now charged by some roads for transportation of like freights to Boston from stations nearer Boston, under substantially similar circumstances and conditions must be dismissed. Thatcher v. Fitchburg R. Co., 1 I. C. R. 356.

(ja) While the act authorizes the Commission to permit exceptions, it does not authorize it to require exceptions. Thatcher v. Fitchberg R. R. Co. 1 I. C. R. 356.

(k) The Act does not authorize the Commission to require exceptions. Thatcher v. Fitchburg R. Co., 1 I. C. R. 356.

(l) The complainant, the owner of a grain elevator at Schenectady, N. Y., ships grain from his elevator to Boston, over the roads of the defendant companies. Prior to the Act to Regulate Commerce, the defendants carried complainant's shipments at the proportion of through rates from Chicago to Boston allowed to the lines from Schenectady to Boston, but since the Act took effect they have refused to accept this proportion, on the ground that it would violate the fourth section of the Act, since the rates from other points nearer Boston than Schenectady is, are greater than such proportion would be. The complaint asks that the defendants be compelled to accept such proportion of the through rate. HELD, (a) That the complaint, in effect asks from the Commission an order that shall require the defendant roads to receive freights at Schenectady for transportation to Boston, at rates less than are now charged by the same roads for the transportation of like freights to Boston from stations nearer Boston, under substantially similar circumstances and conditions. (b) That such order, if issued, would require the roads to depart from the general rule laid down in the fourth section of the Act. (c) That while the Act authorizes the Commission to permit exceptions, it does not authorize it to require exceptions. (d) That the Commission has not power to make rates generally, but only to determine whether rates imposed by the railroads are in conflict with the Statute. (e) That the question whether the rates now charged complainant are excessive is not raised by the complaint. (f) That the complaint must be dismissed. Ralph W. Thatcher v. Fitchburg R. R. Co., 1 I. C. R. 356.

(m) The right to make greater charges for short than for long hauls is exceptional and depends in every case upon the peculiar circumstances and conditions; and a ruling in reference thereto in the case of one carrier would not be applicable to another carrier differently circumstanced. Boston & A. R. R. Co. v. Boston & L. R. R. Co., 1 I. C. R. 571

(n) Where relief granted in the form desired by petitioners might be understood as deciding that the circumstances prevailing in the district about Opelika are such as to justify making that town an exception under the fourth section of the Act to Regulate Commerce, as against the local stations about it, the Commission declined to enter such an order, because the question of the exceptional circumstances and conditions authorizing such an order was not presented by the petition or proofs, and the points that would be injuriously affected by such an order are not before the Commission, and have had no opportunity to be heard. Permission was granted to amend the petition so as to set out the facts on which complainants claim for themselves lower rates than are given to towns nearer Atlanta, Montgomery and Columbus. If such an amendment is made, notice will be given to the localities to be affected and a further hearing granted. If the general subject of freight rates from points in other States to the various points on the line of defendant's roads, including Opelika, is to be brought before the Commission, the petition may be so amended as to distinctly so state, that towns interested may be advised of the relief sought affecting their interests, but if complainants shall see fit to ask for a strict enforcement of the long and short haul clause as against Columbus and Montgomery, or either, an amendment of the petition must be made, and the towns now favored with the lower charges on the shorter hauls, given an opportunity for a hearing. Harwell v. Columbus & Western R. R. Co., 1 I. C. R. 631.

(o) Authority from the Interstate Commerce Commission is not necessary

where the circumstances and conditions are substantially different, to enable a carrier lawfully to charge more for a shorter than for a longer distance over the same line, under the Interstate Commerce Act, § 4 (24 Stat. at L. 379), providing that it shall be unlawful to make such charge for transportation of passengers or like kind of property under substantially similar circumstances and conditions, but that the Commission may, after investigation, authorize a less charge for longer than shorter distances. Interstate Commerce Commission v. Atchison, T. & S. F. R. Co. (C. C. S. D. Cal.), 4 I. C. R 323.

(p) "It is not necessary for a carrier to apply to the Interstate Commerce Commission for relief from "the long and short haul" clause of the Act to Regulate Commerce, when the circumstances and conditions are substantially dissimilar, since the carrier, in acting upon them, would commit no breach of the law, though it would be responsible in case it were found that the circumstances and conditions were misconceived, or misjudged." Case Quoted: 1 Inters. Com. Rep. 278, Re Louisville & N. R. Co. Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co., 4 I. C. R. 332.

(q) Complainant attacked rates from Memphis, Tenn., to Summerville, S. C., higher than from Memphis through Summerville to Charleston, S. C., as unjust and unreasonable. HELD, the law does not permit a violation of the fourth section simply because of competition of carriers subject to the act without permission of the Commission under a proper proceeding, defendants ordered to discontinue such violation. Belhmer v. M. & C. R. Co., 4 I. C. C. 520.

(r) Upon application by carriers to be relieved from the operation of § 4 of the Act as to the transportation of grain and feed over their lines, on the ground that through failure of crops the people of the longer distance localities were in a measure destitute, and without necessary food for themselves and animals, a temporary order of relief was granted. Application of Fremont, Elkhorn, & M. V. R. Co., et al, 6 I. C. C. 293.

(s) A temporary order of relief was granted upon an application by carriers to be relieved from the operation of the Act to Regulate Commerce, § 4, as to the transportation of grain and feed over their lines, so as to charge less for certain longer than for shorter distances on the ground that through failure of crops the people of such longer distance localities were in a measure destitute and without necessary food for themselves and animals. Re Fremont, E. & M. V. R. Co., 6 I. C. C. 293.

(t) The Interstate Commerce Commission may, under the proviso of the Act to Regulate Commerce, § 4, determine, in the exercise of a reasonable and lawful discretion, the description or exceptional character of the "special cases" in which such Commission may, after investigation, authorize common carriers to charge less for longer than for shorter distances, and the extent to which they may be relieved from the operation of such section. Re Cincinnati, H. & D. R. Co., 6 I. C. C. 323.

(u) No general rule can be laid down to guide the Interstate Commerce Commission in determining whether such a "special case" exists within the proviso of the Act to Regulate Commerce, § 4, as will authorize the Commission in its discretion to permit a common carrier to charge less for longer than for shorter distances for the transportation of passengers or property. Re Cincinnati, H. & D. R. Co., 6 I. C. C. 323.

(v) Under the proviso to the 4th section of the Act to Regulate Commerce it is left to the Commission, in the exercise of a reasonable and lawful discretion, to determine the description or exceptional character of the "special cases" in which the Commission may, after investigation, authorize common carriers to charge less for longer than for shorter distances, and the extent to which such carrier may be relieved from the operation of this section of the Act. Petition of Cincinnati, Hamilton & Dayton R. Co., 6 I. C. C. 323.

(w) The exceptional and special nature of the cases in which the discretion of the Commission may be exercised as to relief from the fourth section, renders the application of any general rule impracticable, and every special case must be determined upon its own facts and special circumstances and in view of the objects for which the law was enacted. Petition of the C. H. & D. R. for relief from fourth section, 6 I. C. C. 323, 327.

(x) Competition by a carrier subject to the Act to Regulate Commerce and all matters relative thereto may be presented to the Interstate Commerce Com-

mission for determination upon application of defendant carriers for relief from the operation of § 4, under the proviso contained therein. McClelen v. Southern R. Co., 6 I. C. C. 588.

(y) Under the fourth section a carrier is not justified in charging more for the shorter than the longer distance by competition at the longer distance point of other carriers which are themselves subject to the act, in the absence of authority from the Commission under the proviso clause of said section. Board of Trade of Lynchburg, Va. v. Old Dominion S. S. Co., 6 I. C. C. 632, 645.

(z) No disturbance of rates, secret or open, creates such dissimilarity of circumstances and conditions under the Interstate Commerce Act, § 4, as will justify either of two or more competing carriers in charging more for the short than for the long haul without an order of the Interstate Commerce Commission. Re Alleged Violation of the 4th Section of the Act to Regulate Commerce, 7 I. C. C. 61.

(aa) American carriers will be temporarily relieved from the requirements of the Act to Regulate Commerce, § 4, that no higher rate shall be made to intermediate than to more distant points, to enable them to compete with a Canadian railway company which is not subject to the provisions of such Act, and which has greatly lowered the price charged for passengers traveling to and from the Klondike. Re Atchison, T. & S. F. R. Co., 7 I. C. C. 593.

(aaa) The defendants are justified in maintaining rates from the Pacific Coast which are lower to Missouri River points than to Denver upon rice, hemp, baking powder, blankets, books, boot and shoe heels, chocolate, cocoa, and extracts, as exceptions to the general rule that, in the making of trans-continental rates, Denver must receive the same treatment that is accorded to cities in the Middle West and Missouri River territory. Kindel v. Atchinson, T. & S. F. R. Co. 9 I. C. C. 606.

IMPORTANT CASES SINCE 1908

(bb) The Congress intended to say by the new fourth section that as a general rule there should be no lesser charge to the more distant points, but it was not willing to say that there should not be some exceptions to this rule. The railroads, however, were not to make these exceptions themselves, Such exceptions were to be made only upon petition to the Commission upon public justification being shown. R. R. Commission of Nevada v. S. P. Co., 21 I. C. C. 329, 335.

(cc) The more difficult labor of the Commission latterly has been to adjust difficulties as between communities, and it has as one guide in this respect the fourth section of the Act. Congress felt the old section to be inadequate; it substituted another; it cast the burden upon the carrier of establishing its right to an exception from the general rule which it lays down and to which it expects adherence—the shorter haul shall not be charged the higher rate. R. R. Commission of Nevada v. S. P. Co., 21 I. C. C. 329, 337.

(dd) The test which the Commission must now apply to determine whether the carrier may be given the advantage of an exception to the general rule of section 4 as amended, is the same test that it may apply with respect to any other discrimination or inequality. There is incorporated in section 4 every standard set up by Congress as a guide to this Commission which is to be found in any section of the Act. And the leeway or discretion which may properly be exercised by the Commission under any other section may properly be exercised under this section. For instance, it is for it acting within the limitations of the law to determine what is a reasonable practice for a common carrier to pursue. This calls for the widest exercise of discretion. And if its judgment is arbitrary or it transcends those limitations properly binding such a tribunal its act may be set aside. But in every decision of the Commission under any section whatsoever there enters the element of personal judgment, just as in every verdict of a jury the result is colored necessarily by the mental attitude and experience of the juror. R. R. Commission of Nevada v. S. P. Co., 21 I. C. C. 329, 338, 339.

(ee) The Commission has not been left without a proper test to apply under section 4 as amended: the test of justness, of reasonableness, of discrimination, of preference and advantage; the test of fair play as between communities. With this construction of the statute, which is historically supported, as well as by those more or less variable measures known as the canons of statutory construction, the statute be-

comes both practicable and constitutional. The Commission is neither forced to disregard it as a whole nor to eliminate any of its provisions; the section does not become an absolute long-and-short-haul section, because the proviso permitting of exceptions remains; the provisional clause does not relegate the entire section to the limbo of unconstitutionality, because it may be administered in thorough harmony with the whole Act, part of which it is, and the tests and standards to be applied are not matters of fancy, but are the express and positive words in the law itself. In short, Congress has undertaken to specify distinctly one practice which it wishes especially to destroy and charges the Commission not to permit it to obtain unless such discrimination, such preference, such practice may be shown not to be a discrimination that is unjust, a preference that is undue, or a practice that is unreasonable because of peculiar facts and conditions. All the burdens of establishing these justifying conditions are cast upon the carriers; the doubts are to be resolved against them; the wish of Congress is expressed and clear. The carrier may no longer float along as under the old section, needing no other justification for its policy than its own conscience, but must set forth clearly what it is doing and convince those constituted to judge that this exceptional policy in a special case is in harmony with the intent of Congress that communities shall be treated fairly, one with relation to the other. The more distant community shall not be preferred over the nearer one because it may please the carrier to develop the one and retard the other. As it costs more to carry traffic a longer distance, so the rate to the farther point shall not be made less than the rate to the nearer point merely because of railroad policy. So far the section establishes a shipper's principle and is in sympathy with and expressive of the most primary principle of equality. The proviso, however, is primarily for the carrier's benefit; it recognizes that the railroad may engage in competition for traffic to more distant points at lower rates than may be charged to intermediate points without doing injury or injustice to such intermediate points. But to this policy a limit may be, indeed must be, put. Railroad Commission of Nevada v. S. P. Co., 21 I. C. C. 329, 339.

(ff) There comes before the Commission upon application for permission to deviate from the prohibitive clause of the fourth section the inclusive question whether by such deviation any provision of the Act will be violated, and the burden rests upon the carrier to satisfy the Commission that no such result would be effected by the granting of such permission—that no injustice will be done to the intermediate points with relation to the more distant point. The purpose of the statute succinctly stated is to preserve harmony between communities, individuals and carriers, to allay discord and prevent so far as may be oppression and injustice. The unhampered exercise of a railroad policy may make for the material benefit of the carrier—at least for its immediate profit—but work a wrong with which the public must concern itself. To be concrete it may be (although this fact has not been established) that it is to the financial interest of the transcontinental carriers to make the same rates from the Missouri River as from Chicago, Pittsburgh and New York to the coast cities which lie on or near the ocean's edge, and compel the intermediate points to base their rates upon these coast terminals; but this decision on their part is certainly subject to review, and when Congress says that the Commission "may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section," it means to lodge with the Commission, if it means anything at all, the power to pass in judgment upon the effect of a railroad policy which departs from the intendment of the law. A community is entitled to something more than a reasonable rate; it is entitled to a nondiscriminatory rate. A carrier may not say, "We will give to this community a reasonable rate," and meet the full requirement of the law; it must view its rates as a whole and see to it that they effect no advantage or preference to one community over another which does not arise necessarily out of the transportation advantages which the one has over the other. Railroad Commission of Nevada v. S. P. Co., 21 I. C. C. 329, 366.

(gg) The Commission must regard the proviso in the fourth section ("That upon application to the Interstate Commerce Commission such common carrier

may in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section: . . .") as subordinate to the preceding clause prohibiting the higher rate for the shorter haul, and to carry out this intent of the law a carrier must establish before the Commission in order to secure an order of exception thereunder more than merely its own desire to haul a great volume of traffic between two distant points; it must prove that by such policy it will not impose unreasonable rates upon any intermediate point, and that its policy will not work an injustice of which such intermediate point may fairly complain. Unless it does make such proof the Commission is not justified under the law in excusing it from adopting its rates to the more distant point as the basis for rates to the nearer points. Railroad Commission of Nevada v. S. P. Co., 21 I. C. C. 329, 368.

(hh) Under the decision of the courts construing the fourth section of the Act before it was amended, it was the law that if circumstances and conditions at the more distant point were dissimilar carriers might, without restraint, depart from the long-and-short haul rule. This virtually repealed that section for the reason that it is always possible to show in the interlacing network of railways in this country, and in view of the intricate commercial conditions, that circumstances are different at one point from another. To hold that carriers may, wherever the dissimilarity exists, meet that competition or decline to meet it, partially meet it here and fully meet it there, is to hold that they may without practical restraint discriminate between different localities. The Commission was forced to and did dismiss complaint after complaint upon the ground that there was a substantial dissimilarity of conditions at the more distant point without inquiring whether in point of fact under the circumstances the discrimination against the intermediate point should have been permitted. That provision of the section authorizing the Commission to prescribe the instances in which carriers might depart from the rule of the section and the extent of that departure could be given no practical effect. This situation has been changed by the section as amended. The effect of the present section is certainly to require carriers to first obtain from the Commission leave to depart from the rule of that section, and that of itself is a most significant and important thing. There is certainly a wide difference between the situation formerly when some complainant must attack the existing rate and make good by evidence his complaint and now, when the railroad must assume the burden of its justification. It is a matter of consequence that every discrimination of this sort must be brought directly to the attention of the Commission and passed upon by that body, but something beyond this was within the legislative mind. Bearing in mind the authority which the Commission now administers in prescribing a reasonable rate and in declaring and correcting an undue preference it seems evident that the purpose of Congress was to commit to this body the duty of determining whether, if the carrier was permitted to charge a higher rate at the intermediate point, that would result in a violation of the provisions of the Act. But in so doing the Commission cannot act arbitrarily. It must investigate each case and if after such investigation it is of the opinion that a departure from the rule of the fourth section would not result in unreasonable rates or undue discrimination it must permit that departure. If, upon the other hand, it is of the contrary opinion, it must refuse the permission Such is the only possible construction which can be put upon this section in connection with the entire Act, and if any doubt as to the real purpose of Congress could exist it must be effectively put at rest by an examination of the history of the passage of this measure. City of Spokane v. N. P. Ry. Co., 21 I. C. C. 400, 409, 410, 412, 413.

(ii) The amended fourth section provides as did the original section that the Commission may from time to time prescribe the "extent to which such designated common carrier may be relieved from the operation of this section." Congress has evidently had it in mind at all times that cases might arise where carriers should properly be permitted to charge a lower rate at the more distant point, and has intended to arm the Commission with

authority to do justice in such instances by permitting a deviation from the rule of the section and prescribing the maximum difference which may be made against the intermediate point, or by fixing a rate at the more distant point below which the carrier must not go, or by defining the territory from which the higher intermediate charge may be made. City of Spokane v. N. P. Ry. Co., 21 I. C. C. 400, 415.

(jj) Upon the mere suggestion of water competition the Commission cannot grant unlimited relief from the rule of the fourth section. In re Lumber Rates from the South, 25 I. C. C. 50, 61.

(kk) In point of law the Commission has before it, on every application by carriers for deviation from the long and short haul clause of section 4 of the Act, the reasonableness of the rates which are involved in the carrier's application. It was not the intention of Congress to permit a carrier to discriminate in favor of a more distant point to such an extent as to effect not only an undue discrimination against the nearest point, but the imposition of an excessive charge. In Re Application of the S. P. Co., 22 I. C. C. 366, 373.

(ll) The Commission, in granting exemption to carriers from the provisions of the long and short haul clause of section 4 of the Act, may accomplish the result (1) by fixing a geographical limit within which there can be no discrimination, and permitting higher rates from other territory, having regard to the extent of the competition which justifies the discrimination; or (2) it may fix the limit of the rail rate at the more distant point with reference to the rate to intermediate points, thereby prescribing a zone of rate discrimination which may be lawful and justified; or (3) where either of these methods does not seem to be practicable, it may permit the carrier to continue the rates to the more distant point, and, dealing with intermediate points alone, prescribe the reasonable rate which the carrier, as an outgrowth of its policies or its methods of making rates, may not exceed. In Re Application of the S. P. Co., 22 I. C. C. 366, 373.

(mm) While the existence of a wrong cannot, of itself, justify its continuance, and while the very purpose of the original fourth section of the Act and of the last amendment of June, 1910, was to prevent discrimination by charging a higher rate to intermediate points, still, in determining what, under all the circumstances, is just and reasonable, in pursuance of the authority delegated to the Commission by the amended section it must certainly be to some extent guided by conditions as it finds them. Bluefield Shippers' Ass'n v. N. & W. Ry. Co., 22 I. C. C. 519, 525.

(nn) The relieving power of the Commission is not to be exercised arbitrarily, but it is its duty to permit a higher intermediate charge whenever the resulting rates will not contravene the Act in that they are unjust and unreasonable or unduly discriminatory. This embraces both the preference against the intermediate point and the rate which that point is required to pay. Bluefield Shippers' Ass'n v. N. & W. Ry. Co., 22 I. C. C. 519, 530.

(oo) Where a carrier, applying for relief from the fourth section to enable it to charge a higher rate to an intermediate point, is shown to control the rate at the farther distant point and where it can determine the effect to be given to the competitive conditions at the farther point, the Commission may also determine whether the carrier is justified in giving to those competitive conditions the effect which it does give, may determine the effect which such conditions may properly have, and fix the extent to which those conditions shall be given effect. Bluefield Shippers' Ass'n v. N. & W. Ry. Co., 22 I. C. C. 519, 531.

(pp) It is possible that cases might arise where even though the long-distance rate were beyond the control of the application for relief, nevertheless some relation ought to be established between the rate to the more distant point and those to the intermediate points. The intermediate rate plus a reasonable local charge from the more remote back to the intermediate point, and should perhaps in some cases be even less. Bluefield Shippers' Ass'n v. N. & W. Ry. Co., 22 I. C. C. 519, 531.

(qq) If the applicant for relief controls the long-distance rate and can determine what effect shall be given to competitive conditions which are supposed to justify the reduction at the farther point, then the Commission may also determine whether the carrier is justified in giving to those competitive conditions the effect which it does; may determine the effect which such conditions might properly have, and may fix the extent to which those conditions shall be given

effect. Bluefield Shippers' Ass'n v. N. & W. Ry. Co., 22 I. C. C. 519, 531.

(rr) Relief from the rule of section 4 granted where water competition forced below what would be otherwise reasonable the rate on wool between the Pacific coast terminals and the Atlantc seaboard, the higher rates at intermediate points being reasonable, and no undue preference being given one locality over another. In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 178.

(ss) So long as every point of production is given a rate which the Commission holds to be reasonable, and so long as the effect of water competition is applied uniformly and without preference to western points of origin the Commission is inclined to grant transcontinental lines relief under the fourth section. In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151 179.

(tt) The justification for a departure from the fourth section is very frequently based upon the competition of short-line carriers, but where no such competition or other controlling factor is shown, no such defense can successfully be maintained; in other words, a fourth section violation should not extend beyond the real necessities of the competitive or other controlling influences. Emlenton Petroleum Rates, 29 I. C. C. 519, 521.

(uu) The fourth section was intended to restrain carriers from continuing lower rates to more distant than to intermediate points except in special cases where relief from the long-and-short-haul requirement is afforded by the Commission. The fundamental reason for granting relief to any line at a given point is the meeting at that point of the competition of other carriers against which competition the petitioner is at a disadvantage. Fourth Section Violations in the Southwest, 30 I. C. C. 153, 304.

(vv) The general rule adopted by the Commission is that carriers will be allowed to continue higher rates to intermediate points than to more distant points where their lines are not less than 15 per cent longer than the short line between the same points. Rates on Tropical Fruits from Gulf Ports, 30 I. C. C. 621, 633.

(ww) The relief afforded from the fourth section should be sufficient in each instance to permit the carriers to continue to compete for the terminal traffic so long as it may be secured at rates that are sufficient to yield a revenue in excess of operating cost. The maximum of public benefit from the fourth section will result from the enforcement of conditions that will tend to preserve and promote and not to diminish or retard competition. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 629.

(xx) In dealing with the through rates from points of origin to points of destination, relief from the provisions of the fourth section should be given only where evidence is clear that the lower rate to the more distant point is actually required by conditions at that point beyond the control of the petitioning carriers and that the rate required is actually subnormal. R. R. Comm'rs of Ia. v. A. T. & S. F. Ry., 34 I. C. C. 111, 113.

(yy) The mere allegation that the rates between any given point are fixed by other carriers has not been considered as sufficient to authorize the Commission to relieve a carrier operating the short route from the rule of the amended fourth section. In determining whether a given line or route is entitled to relief from the rule of the fourth section the Commission has, therefore, inquired as to what substantial disadvantage the petitioning line is under in meeting the rates of its competitors, and has repeatedly held that in competition between rail carriers the rates of the direct route must conform to the law. Class & Commodity Rates from Louisville, 36 I. C. C. 317, 320.

(zz) Weaker lines should be afforded a greater measure of relief in meeting rates in effect via their stronger competitiors than would be granted were conditions more equal. Bituminous Coal to Mississippi Valley Territory, 39 I. C. C. 378, 386.

(3a) Generally speaking, relief will be granted where the distance via the indirect line or route is more than 15 per cent greater than the distance via the direct line or route. Oklahoma Cottonseed Crushers' Asso. v. M., K. & T. Ry. Co., 39 I. C. C. 497, 512.

(3b) Departures from the fourth section not protected by applications are unlawful. Parkersburg Rig & Reel Co. v. T. & P. Ry., 66 I. C. C. 323, 329.

(3c) Orders of the Commission authorizing departures from the long-and-

short-haul provision of section 4 of the Act, do not permit the continuance of such violations after the application for relief with respect to particular rates has been passed upon by the Commission. Butter, Eggs, and Dressed Poultry from Texas, 73 I. C. C. 466, 470.

(3d) Fourth section applications of transcontinental lines proposing to establish from and to the Pacific coast terminals lower rates than are in effect to and from intermediate points on traffic having origin or destination in defined territories lying east of the Rocky Mountains, for the purpose of meeting the low rates maintained by steamship lines operating between the Atlantic and Gulf Ports and the Pacific Ports through the Panama Canal, denied, except as to east-bound commodities moving to New York City only, via rail-and-water through Galveston, Tex., and on sulphur from Texas and Louisiana mines to California and north Pacific coast terminals. Transcontinental Cases of 1922, 74 I. C. C. 48.

(3e) Carriers should not propose rates or rate structures for approval in a fourth-section application which create infractions of other provisions of the act, and particularly of section 3. Transcontinental Cases of 1922, 74 I. C. C. 48, 71.

(3f) Carriers operating via in direct routes, to, from, and between points in the Southeast authorized to meet rates of direct lines between competitive points, while maintaining higher rates at intermediate points, provided that such authority shall not include intermediate points as to which the haul of the circuitous route is not longer than that of the direct line or route between the competitive points, and that the lowest combination of intermediate rates is not exceeded. Live Stock to, from and Between Points in the Southeast, 74 I. C. C. 419, 424.

(3g) It would be a vain thing to find a technical violation of the fourth section of the act, and immediately enter an order relieving the carrier from the necessity of observing the section and thus altering in no respect the existing status. Fares Between New York and Points West of Newark. 74 I. C. C. 520.

(3h) Departure from the fourth section was not protected by any application on file with the Commission and was unlawful. Wilson & Co. v. Director General, 74 I. C. C. 555.

(3i) The fact that rates contravene the long-and-short-haul provision of the fourth section of the act does not of itself establish that the higher rates to the intermediate points are unreasonable. Nivison-Weiskopf Co. v. Director General, as Agent, 77 I. C. C. 107, 108.

(3j) Under the general policy of the fourth section as amended, which is to prohibit greater charges for shorter than for longer distances over the same line or route the condition that the granting of such authority shall not include intermediate points as to which the haul of the petitioning line or route is not longer than that of a direct line or route between the competitive points, should be imposed in connection with relief granted from the provisions of that section in respect of rates based on distance. Memphis-Southwestern Investigation, 77 I. C. C. 522.

(3k) Except in unusual cases, carriers are not to be granted relief from long-and-short-haul provision of section 4 of the act to meet, over unduly circuitous routes, rates of shorter lines. Ft. Worth Freight Bureau v. Director General, as Agent, 80 I. C. C. 237, 246.

(3ka) Fourth section relief denied where carrier did not ask for relief on ground of circuity, but simply on ground of geographical location and desirability of avoiding gateway via short route, which sometimes becomes congested. Ohio-Michigan Cases, 80 I. C. C. 663, 675.

(3kb) Rates may not be so low to a particular point as to place burden on other traffic; nor may fourth-section relief be granted unless rate structure is reasonable and nonprejudicial. Commodity rates from Jacksonville to Miami, 83 I. C. C. 207, 210

(3kc) This report is issued in response to Senate Resolution No. 472, adopted from the operation of section four were none, between June 29, 1906 and June 18, 1910, 11,442 between June 18, 1910 and Feb. 28, 1920 and 1,071 between Feb. 28, 1920 and Nov. 1, 1923. The amendment of June 18, 1910 eliminated the words "under substantially similiar circumstances and conditions" thereby giving full effect to the prohibition of the section, subject only to the power of the Commission after investigation to grant relief in special cases. Broadly speaking, the primary purpose intended to be ac-

complished by the filing of these applications is to enable the applicant carriers to meet, at points served by them, competitive conditions existing at such points, thereby securing traffic which they could not otherwise obtain, and to charge higher rates at intermediate points where such competition is absent. Applications may be divided into three classes: To meet rail competition, to meet water competition and to meet market competition. The results actually accomplished by the granting of such applications have been (1) that the railroads which have been granted fourth section relief have, in most cases, accomplished their purpose of securing a portion of the traffic between the competitive points, thereby obtaining additional revenue; (2) that shippers located at competitive points have enjoyed the benefit of an additional route of an additional market, and of such other advantages as normally result from competitive service; (3) that prejudice is thereby created at intermediate points to which higher rates are permitted, but not in the opinion of the majority, undue prejudice. The effect of granting an application to meet rail competition has been taking from the competing railroad so much of the traffic between the competitive points as was thereby secured by the applicant railroad. The granting of an application to meet water competition has in some instances the effect of taking traffic from other rail carriers which might participate in a portion of the haul from an interior point to the port for movement beyond by water. The interest of localities in applications into which the element of market competition enters is much more pronounced and widespread than where that element is absent. The record establishes that in a majority of instances such applications have been filed, not as a result of any pressure from shippers or localities, but because the railroads conceived that their best interests would be served thereby. Administration of fourth section, 87 I. C. C. C. 564.

(3l) The guide to the exercise of the Commission's discretion in exempting carriers from the operation of the long and short haul provision in section 4 of the Act as amended June 18, 1910, is to be found in the other sections of the Act, thereby making the discretion to exempt carriers from the prohibition in fact not unlimited and imposing upon the Commission, not merely the right, but also the duty to grant such exemptions whenever on investigation it shall find that no violation of any section of the Act would thereby be involved. A. T. & S. F. Ry .Co. v. U. S., 191 Fed. 856, 860.

(3m) It is beyond the statutory power of the Commission to suspend the operation of section 4 without an application made to it by the carriers for that purpose, and a hearing upon that particular application as in a special case. If the Commission suspends the operation of section 4 without such application and hearing, the United States District Court will issue an interlocutory injunction restraining such an order. Merchants' & Manuf. Traffic Assn. v. United States, 213 Fed. 292, 300.

(3n) The express or implied statutory recognition of the authority on the part of carriers to primarily determine for themselves the existence of substantially similar circumstances and conditions as a basis of charging a higher rate for a shorter than for a longer distance within the purview of the 4th section of the Act to Regulate Commerce, and the right to make a rate accordingly, to continue in force until, on complaint, it was corrected in the manner pointed out by statute, ceased to exist after the adoption of the amendment to § 4. This results from the fact that by the amendment in question, the original power to determine the existence of the conditions justifying the greater charge for a shorter than was exacted for a long distance was taken from the carriers and primarily vested in the Interstate Commerce Commission, and for the purpose of making the prohibitions efficacious it was enacted that after a time fixed no existing rate of the character provided for should continue in force unless the application to sanction it had been made and granted. U. S. v. L. & N. R. R. Co., 35 Sup. Ct. Rep. 113, 115, 235 U. S. 314, 236 U. S. 318, 59 L. ed.

ALL OTHER CITATIONS

City of Spokane v. N. P. Ry. Co., 21 I. C. C. 400, 414; Railroad Commission of Nevada v. S. P. Co., 21 I. C. C. 329, 325, 341; Grand Junction Chamber of Commerce v. D. & R. G. R. R. Co., 23 I. C. C. 115; Bowling Green Business Men v. L. & N. R. R. Co., 24 I. C. C. 228, 242; In Re Application Under Fourth Section as to Rates on Salt, 24 I. C. C. 192; In Re Rates on Salt, 24 I. C. C. 192, 195; In Re Advances on Lime,

24 I. C. C. 170, 172; In Re Application of S. P. Co., Under the Fourth Section, 24 I. C. C. 34; In Re S. Ry. Co., 25 I. C. C. 407, 409; Lebanon Commercial Club v. L. & N. R. R. Co, 25 I. C. C. 277; In Re Lumber Rates from the South, 25 I. C. C. 50, 59, 60, 61; McCullough v. L. & N. R. R. Co., 25 I. C. C. 48; Janesville Clothing Co. v. C. & N. W. Ry. Co., 26 I. C. C. 628, 630; National Refrigerator & Butchers' Supply Co., v. St. L. I. M. & S. Ry. Co., 26 I. C. C. 524, 527; Gillis & Son v. P. B. & W. R. R. Co., 26 I. C. C. 61, 62; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 26 I. C. C. 53, 58; Lumber Rates from Memphis and Other Points to New Orleans, 27 I. C. C. 471; In Re Coal Rates to Points on the New Haven R. R., 28 I. C. C. 235; United States v. U. P. R. R. Co., 34 Sup. Ct. 995; 234 U. S. 495; 58 L. ed—; Burlington Lumber Co. v. C. & A. R. R. Co., Unrep. Op. A-170; United Gypsum Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-310; Archer-Daniels Linseed Co. v. C. M. & St. P. Ry., Unrep. Op. A-277; Stearns & Culver Lumber Co. v. L. & N. R. R. Co., Unrep. Op. A-320; Moore Hardware & Iron Co., Unrep. Op. A-392; Export Rates on Grain and Grain Products, 31 I. C. C. 617, 620; Rates on Tropical Fruits from Gulf Ports, 30 I. C. C. 621, 628; Rates on Sugar, 31 I. C. C. 495, 502, 510; Fourth Section Violations in Rates on Sugar 31 I. C. C. 511, 527; Chattanooga Bottle & Glass Mfg. Co. v. N. C. & St. L. Ry. Co., Unrep. Op. A-575; Murphey Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-631; Railroad Commrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 652; Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 613, 618, 619, 621, 622, 631; Walker v. M. P. Ry. Co., Unrep. Op. A-777; Red Wing Linseed Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-778; Westbound Transcontinental Rates on Buckwheat and Corn Flour, Unrep. Op. A-841; Markley & Co. v. A. C. L. R. R. Co., Unrep. Op. A-845; Guilford Foundry Co. v. S. Ry. Co., Unrep. Op. A-873; K. B. R. Milling Co. v. M. P. Ry. Co., Unrep Op. A-874; Lipman v. A. C. L. R. R. Co., Unrep. Op. A-896; New Prague Flouring Mill Co. v. M. & St. L. R. R. Co., Unrep. Op. A-902; Ellis & Meyers Lumber Co. v. V. Ry. Co., Unrep. Op. A-904; Wilson Produce Co. v. N. & W. Ry. Co., Unrep. Op. A-905; Valley Planing Mill Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-906; Harmon & Co. v. N. P. Ry. Co., Unrep. Op. A-918; Atha Tool Co. v. N. C. & St. L. Ry., Unrep. Op. A-919; City of Charlotte, N. C. v. S. Ry., 34 I. C. C. 128; Louisville & N. R. Co. v. United States, 225 Fed. 571, 581; Class and Commodity Rates from Louisville, 36 I. C. C. 317, 321; Through Rates from Buffalo-Pittsburgh Territory, 36 I. C. C. 325; Rates on Bituminous Coal, 36 I. C. C. 401, 410, 411, 418, 420; Import and Domestic Rates, 36 I. C. C. 389, 399; Morris & Co. v. U. P. R. R. Co., 36 I. C. C. 540, 543; Pig Iron from Virginia Furnaces 36 I. C. C. 552, 555; Through Rates to Points in Louisiana and Texas, 38 I. C. C. 153; Rates on Iron and Steel Articles, 38 I. C. C. 237; Class and Commodity Rates between St. Louis, East St. Louis and Ohio River Points, 38 I. C. C. 411; Bituminous Coal from Points on Penn. R. R., 38 I. C. C. 658; Mount Pleasant Fertilizer Co. v. N. O. & N. E. R. R., 38 I. C. C. 602; McCaull-Dinsmore Co. v. C. & N. W. Ry. Co., Unrep. Op. 2148; Reynolds Tobacco Co. v. L. & N. R. R., 39 I. C. C. 600; Marshalltown Buggy Co. v. Wabash R. R., 39 I. C. C. 633; Tulsa Traffic Asso. v. A. T. & S. F. Ry. Co., 40 I. C. C. 9, 15; Reopening Fourth Section Applications, 40 I. C. C. 35; Bituminous Coal to Mississippi Valley Territory, 39 I. C. C. 378, 390; Sheldon Bottling Works v. C. R. I. & P. Ry., 40 I. C. C. 527; Coal to Red Wing, Minn., 41 I. C. C. 309; Lumber to New Mexico Points, 41 I. C. C. 331; Walsh & Weidner Boiler Co. v. C. H. & D. Ry. Co., 41 I. C. C. 457, 459; Lumber Rates from Helena, Ark., and Other Points, 41 I. C. C. 565, 578, 583; Merchants' & Manuf. Traffic Assn. v. United States, 213, Fed. 292, 295; Condon Bros. v. C. & N. W. Ry. Co., 42 I. C. C. 31, 32; Miller Bros. v. St. L. & S. F. R. R. Co., 42 I. C. C. 261, 267; Inman-Poulsen Lumber Co. v. S. P. Co., 42 I. C. C. 275, 279; Worden-Allen Co. v. C. M. & St. P. Ry., 42 I. C. C. 362; Lamb-Fish Lumber Co. v. Y. & M. V. R. R., 42 I. C. C. 458; Bagdad Land & Lumber Co. v. G. R. & I. Ry., 43 I. C. C. 251; Proportional Rates to Ohio River Crossings, 43 I. C. C. 458, 468, 466; La Crosse Shippers' Asso. v. C., M. & St. P. Ry. Co., 43 I. C. C. 605, 610; Moore v. St. L. & S. F. R. R., 43 I. C. C. 749; Proportional Rates to Gulf Ports for Export, 44 I. C. C. 543, 544; 547, 546; Wisconsin Rate Cases, 44 I. C. C. 602, 604, 643; Rates from

New Orleans and Galveston, 44 I. C. C. 727, 742; Transcontinental Rates, 46 I. C. C. 236; Milk and Cream Rates to New York City, 45 I. C. C. 412, 431; U. S. v. Merchants' & M. Traffic Asso. 37 Sup. Ct. 24; Transcontinental Rates, 46 I. C. C. 236, 245, 246, 274, 276; C. F. A. Class Scale Case, 46 I. C. C. 475, 477; Barber Agency Co. v. K. & E. Ry., 46 I. C. C. 523, 526; Lake Charles Rice Milling Co. v. S. P. Co., 46 I. C. C. 661, 664; New Orleans Cotton Exchange v. L. & N. R. R., 46 I. C. C. 712, 750; Louisville & N. R. R. v. United States, 38 Sup. Ct. 141; Coulbourn v. N. Y. P. & N. R. R., 47 I. C. C. 54, 57; Western Trunk Lines Iron and Steel, 47 I. C. C. 109, 113; Advance Lumber Co. v. S. Ry., 47 I. C. C. 237, 238; National Petroleum Asso. v. M. K. & T. Ry., 47 I. C. C. 355, 364; Conquest & Son v. S. A. L. Ry., 47 I. C. C. 517, 522; Alabama Packing Co. v. L. & N. R. R. Co., 47 I. C. C. 524, 531; Arkansas Rice Shippers' Traffic Bureau v. A. A. R. R. Co., 47 I. C. C. 566, 575; Rates between C. F. A. Territory and Points on C. & O. Ry., 47 I. C. C. 576, 580; Ariental Textile Mills v. A. & V. Ry. Co., 48 I. C. C. 31, 38; Transcontinental Commodity Rates, 48 I. C. C. 79, 95; Mosby v. Y. & M. V. R. R. Co., 48 I. C. C. 499, 500; Roth-Blum Packing Co. v. S. P. Co., 48 I. C. C. 470, 472; Kansas Bluff Brick & Mfg. Co. v. M. P. Ry. Co., 48 I. C. C. 473, 474; Standard Oil Co. (Ky.) v. Y. & M. V. R. R. Co., 48 I. C. C. 493, 495; Carolina Wood Products Co. v. S. Ry. Co., 48 I. C. C. 582, 586; Alabama Packing Co. v. A. G. S. R. R. Co., 48 I. C. C. 596, 599; Butte Wholesale Grocery Co. v. B., A. & P. Ry. Co., 48 I. C. C. 657, 661; Purity Ice Cream Co. v. A. T. & S. F. Ry. Co., 48 I. C. C. 684, 686; Lookout Paint Mfg. Co. v. T. A. & G. R. R., 49 I. C. C. 40, 42; New Orleans Cotton Exch. v. L. & N. R. R., 49 I. C. C. 271; Fies & Sons v. L. & N. R. R., 49 I. C. C. 393, 394; Blackman & Griffin Co. v. A. C. & Y. Ry., 49 I. C. C. 649; Kansas Flour Mills Co. v. M. V. R. R., 49 I. C. C. 602, 604; Fogarty & Sons v. N. Y. N. H. & H. R. R., 49 I. C. C. 744, 749; Kalamazoo Tank & Silo Co. v. C. C. C. & St. L. Ry., 49 I. C. C. 709, 712; Western Trunk Line Potatoes, 50 I. C. C. 407, 415; Southern Engineering & Construction Co. v. St. L. & S. F. Ry. Co., 50 I. C. C. 95, 97; Richmond Oil Co. Inc. v. A. C. L. R. R., 50 I. C. C. 213, 215, 216; Indian Refining Co. v. B. & O. R. R., 50 I. C. C. 249, 252; Mount Pleasant Fertilizer Co. v. L. & N. R. R., 50 I. C. C. 253, 256; Western Trunk Line Potatoes, 50 I. C. C. 407, 415; Northwestern Traffic & Service Bureau v. M. St. P. & S. Ste. M. Ry., 50 I. C. C. 575, 577; Standard Oil Co. (Ky.) v. N. Y. C. R. R., 51 I. C. C. 140, 142; Johnston v. A. T. & S. F. Ry., 51 I. C. C. 356, 362; Rice Potato Co. v. B. & O. R. R., 51 I. C. C. 364, 368; Chamber of Commerce, Houston, Tex. v. M. L. & T. R. R. & S. S. Co., 51 I. C. C. 653, 656, 658; Sunderland Bros. Co. v. C. & N. W. Ry., 51 I. C. C. 630, 632; Stough v. K. C. S. Ry., 51 I. C. C. 683, 685; Heider Mfg. Co., v. C. G. W. R. R., 51 I. C. C. 713, 718, 719; West Virginia Rail Co. v. I. C. R. R. Co., 53 I. C. C. 21, 27; Strasburg Steam Flouring Mills v. S. Ry. Co., 53 I. C. C. 53, 58; Earle Cooperage Co. v. St. L. I. M. & S. Ry. Co., 53 I. C. C. 295, 302; Booth Fisheries Co. v. American Express Co., 53 I. C. C. 735; Tribune Co. v. G. N. Ry. Co., 53 I. C. C. 745, 748; Memphis Southwestern Investigation, 55 I. C. C. 515, 572, 565, 576; Merchants Freight Bureau of Little Rock, Ark. v. A. C. L. R. R., 55 I. C. C. 119, 121; Hebe Co. v. Director General, 55 I. C. C. 214, 217; Roxana Petroleum Co. of Oklahoma v. Director General, 55 I. C. C. 607, 608; Garrett Lumber Co. v. C. & O. Ry., 55 I. C. C. 637, 643; Montgomery Chamber of Commerce v. Director General, 55 I. C. C. 688, 690; Park v. L. & N. R. R., 55 I. C. C. 703, 705, 707; Darchmer Iron & Metal Co. v. Director General, 55 I. C. C. 730, 732; Model Mill Co. v. Director General, 56 I. C. C. 227; Skinner & Eddy Corp. v. S. 39 Sup. Ct. Rep. 375; Newton Oil Mill v. Director General, as Agent, 60 I. C. C. 433, 437; Indian Refining Co. v. Director General, as Agent, 60 I. C. C. 438, 440; South Bend Chamber of Commerce v. Director General, 61 I. C. C. 67, 72; United Iron Works v. Director General, as Agent, 61 I. C. C. 33, 34, 38, 41; Daugherty & Son Refining Co. v. Director General, as Agent, 61 I. C. C. 197, 199; Davis Mfg. Co. v. Director General, as Agent, 61 I. C. C. 607, 609; Buckeye Veneer Co. v. Director General, as Agent, 61 I. C. C. 673, 676; Speir & McKay v. Director General, as Agent, 61 I. C. C. 736, 737; Weir Smelting Co. v. Director General, as Agent, 62 I. C. C. 113, 115; Texas Carnegie Steel Asso. v. Director General, as Agent, 62 I. C. C. 253, 257; Seaboard By-Products Coke Co. v. Director General, as Agent, 62 I. C. C.

317, 330; Security Mills & Feed Co. v. Director General, as Agent, 62 I. C. C. 657, 667; Green Coffee from Gulf Ports, 64 I. C. C. 26, 30; United Iron Works (Inc.) v. A. T. & S. F. Ry. Co., 63 I. C. C. 184, 192; Standard Oil Co. (Ky.) v. Director General, as Agent, 63 I. C. C. 200, 202; Birmingham Rail & Locomotive Co. v. Director General, as Agent, 63 I. C. C. 249, 251, 252; Coffee from Galveston and Other Gulf Ports, 64 I. C. C. 26, 30; Empire Cotton Oil Co. v. Director General, as Agent, 64 I. C. C. 64, 65, 66; Coad v. C. St. P. & O. Ry. Co., 64 I. C. C. 178, 180; Railroad Commission of La. v. A. H. T. Ry. Co., 64 I. C. C. 197; Tribune v. B. A. & P. Ry. Co., 64 I. C. C. 557, 560; United Iron Works v. Director General, as Agent, 64 I. C. C. 601, 603, 604; Atlantic Refining Co. v. Director General, 64 I. C. C. 702, 703; Gaynor Lumber Co. v. Director General, as Agent, 66 I. C. C. 109, 112; Arkansas Jobbers & Mfrs. Asso. v. Director General, 57 I. C. C. 231, 240; Sioux City Concrete Pipe Co. v. C., M. & St. Paul Ry. Co., 57 I. C. C. 303, 307; Fourth Section Departures Lake Michigan Ports, 57 I. C. C. 418; Home Packing & Ice Co. v. Director General, 57 I. C. C. 691, 697; Gazette Publishing Co. v. B. F. & I. F. Ry., 58 I. C. C. 503, 507; Zelnicker Supply Co. v. Director General, 58 I. C. C. 745, 747; Boehmer Coal Co. v. P. C. C. & St. L. R. R. Co., 58 I. C. C. 133, 134; Feenberg & Co. v. Director General, as Agent, 58 I. C. C. 191, 192; Bretney Co. v. Director General, as Agent, 58 I. C. C. 217, 219; Increased Rates, 1920, 58 I. C. C. 220, 255; Strasburg Steam Flouring Mills v. S. Ry. Co., 58 I. C. C. 337, 341; Alabama-Georgia Syrup Co. v. L. & N. R. R. Co., 58 I. C. C. 521, 526; Empire Refineries (Inc.) v. Director General, as Agent, 58 I. C. C. 713, 714; Rice Potato Co. v. C. B. & Q. R. R. Co., 58 I. C. C. 757, 760; Birmingham Rail Locomotive Co. v. Southern Ry., 59 I. C. C. 602, 603; American Cement Plaster Co. v. C. & A. R. R. Co., 59 I. C. C. 165, 167; Indian Refining Co. v. Director General, as Agent, 59 I. C. C. 246, 248; Royal Bank of Canada v. S. A. L. Ry. Co., 59 I. C. C. 367, 368; Arkansas Jobbers & Mfrs. Asso. v. Director General, as Agent, 59 I. C. C. 751, 754; Iron and Steel Articles from Galveston and Houston, 61 I. C. C. 270; Hirth Krause Co. v. Director General, 61 I. C. C. 350; Standard Oil Co. v. Director General, as Agent, 60 I. C. C. 105, 109; Everybody's Mercantile Co. v. C. & N. W. Ry. Co., 60 I. C. C. 143; Federal Oil & Supply Co. v. Director General, 60 I. C. C. 185, 187; Montgomery Chamber of Commerce v. Director General, as Agent, 60 I. C. C. 203, 209; Parkersburg Rig and Reel Co. v. T. & P. Ry., 66 I. C. C. 327; Choate Oil Corp. v. Director General, as Agent, 66 I. C. C. 562, 565; Standard Rail and Steel Co. v. L. & N. R. R. Co., 68 I. C. C. 9, 10; Decker and Sons v. Director General, as Agent, 68 I. C. C. 34; Petroleum from Oklahoma to Southern Illinois, 69 I. C. C. 34; Lake Charles Rice Milling Co. v. L. W. R. R. Co., 69 I. C. C. 509, 517, 518; Swift and Co. v. Director General, as Agent, 69 I. C. C. 532, 534; Lumber from Calif. to Minnesota and Wisconsin, 69 I. C. C. 721; Murfreesboro Board of Trade v. L. & N. R. R., 73 I. C. 2 C. 228; H. D. Lee Mercantile Co. v. B. & M. R. R., 73 I. C. C. 623; Increased Rates Between Ruston and Texas Points, 73 I. C. C. 341; Manure from New Orleans, 73 I. C. C. 400, 403,; Silicia from Southern Illinois, 73 I. C. C. 406, 409; Increased Rates on Hosiery, 73 I. C. C. 477; Jiffy Dessert Co. v. Director General, as Agent, 73 I. C. C. 525; Silica Sand Producers Traffic Asso. v. Director General, as Agent, 73 I. C. C. 549; Coal from the Southwest to Omaha, Neb., and related Points. 74 I. C. C. 359; Transcontinental Cases of 1922, 74 I. C. C. 48, 99; Lime Between C. F. A. Points and from C. F. A. to Canadian Points, 74 I. C. C. 105; United Iron Works v. Director General, as Agent, 74 I. C. C. 277, 282, 283; Niedringhaus Metal Ware Corp. v. A. T. & S. F. Ry. Co., 74 I. C. C. 502; Fertilizer to Montezuma, 74 I. C. C. 657, 661; Alpha Portland Cement Co. v. P. R. R. Co., 74 I. C. C. 697, 698; Paper and Paper Articles from Defined Territories to Southwestern Points, 78 I. C. C. 600; Memphis Southwestern Investigation, 80 I. C. C. 157; Petroleum to Memphis and Ohio River Points, 77 I. C. C. 73, 75, 77; Oakes Co. v. M., St. P. S. S. M. Ry. Co., 77 I. C. C. 93; Cleveland Builders' Supply & Brick Co. v. P. R. R. Co., 77 I. C. C. 309; Intermediate Application of Class Rates from Lexington, Ky., 77 I. C. C. 427; Memphis Southwestern Investigation, 77 I. C. C. 473, 518, 520; 525, 526; Knight & Sons v. Director General, as Agent, 78 I. C. C. 187; Archenhold Automatic Supply Co. v. A. S. R. R. Co., 78 I. C. C. 434, 438. Fort Worth Cotton Oil Mill v. A.T. & S. F. Ry. Co., 80 I. C. C. 18, 25; Rocbond Co. v. Director

General, as Agent, 80 I. C. C. 26; Armour Co. v. Director General, as Agent, 80 I. C. C. 108; Memphis Southwest Investigation, 80 I. C. C. 157; Fort Worth Freight Bureau v. Director General, as Agent, 80 I. C. C. 237, 244, 247; Derby, K. C. S. Ry Co., 80 I. C. C. 374; Dewey Bros. Co. v. N. & W. Ry. Co., 80 I. C. C. 499; Lumber from California to Minnesota and Wisconsin, 80 I. C. C. 595, 598, 599; Oklahoma Corp. Comm. v. A. R. R., 80 I. C. C. 607, 618; Ohio-Michigan Coal Cases, 80 I. C. C. 633, 675; Cotton via Elberton & Eastern R. R., 81 I. C. C. 261; Chamber of Commerce v. L., H. & St. L. Ry. Co., 81 I. C. C. 145, 154; Northwestern Marble & Tile Co. v. Director General, as Agent, 81 I. C. C. 167, 168; Cotton via Elberton & Sugar Cases of 1922, 81 I. C. C. 448, 454, 462; Hartburg Lumber Co. v. B., S. L. & W. Ry Co., 81 I. C. C. 497, 498, 499; Mid-Continent Equip. & Mach. Co. v. M. & O. R. R. Co., 81 I. C. C. 510, 512; Memphis Freight Bureau v. C. G. W. R. R. Co., 81 I. C. C. 626, 628; Pittsburgh Crucible Steel Co. v. Director General, as Agent, 81 I. C. C. 659; Wrought Iron Pipe and Iron Pipe Fittings, 81 I. C. C. 691; Rio Grande Chamber of Commerce v. St. L., B. & M. Ry. Co., 81 I. C. C. 703, 715, 717. Commodity Rates from Jacksonville to Miami, 83 I. C. C. 207. Sandusky Cooperate & Lumber Co. v. N. C. & St. L. Ry., 83 I. C. C. 271, 274; Hale-Halsell Co. v. A. & V. Ry. Co., 83 I. C. C. 535, 536, 537; Grand Rapids Plaster Co. v. L. S. & M. S. Ry Co., 83 I. C. C. 682; Paper and paper articles to New Orleans, 88 I. C. C. 345; Rates to Gray's Harbor and Willapa Bay points, 88 I. C. C. 512; Grain and Grain Products to Texas, 89 I. C. C. 141.

§4¼ Direct lines.

See Infra § 9.

CASES 1887-1908

(a) The fact that a railroad which is subject to the Act to Regulate Commerce makes between two points charges unreasonably low does not authorize a rival, extending between the same points, to make on its line greater charges for the shorter hauls in the same direction to intermediate points than it does to the termini. Re Chicago, St. Paul, & Kansas City R. Co. 2. I. C. R. 137.

IMPORTANT CASES SINCE 1908

(b) Commission has repeatedly held that in competition between rail carriers the rates of the direct route must conform to the law. Class and commodity Rates from Louisville, 36 I. C. C. 317, 320.

(c) The Commission has frequently held that where carrier competition is the only influence which has operated to reduce rates to a competitive point the direct lines and those less than 15 per cent longer must observe the fourth section and not charge higher rates to intermediate points. Arkansas Shippers & Mfgrs. Assn. v. Director General, 57 I. C. C. 231, 240.

(d) The Commission is not empowered to authorize a carrier, because of circuity of route, to maintain a higher charge to an intermediate point than to a farther distant competitive point where the haul of the petitioning carrier to that intermediate point is not longer than over the direct line or route to the competitive points. Alpha Portland Cement Co. v. Pennsylvania R. R. Co., 74 I. C. C., 697, 698.

(e) Under the general policy of the fourth section as amended, which is to prohibit greater charges for shorter than for longer distance over the same line or route, the condition that the granting of such authority shall not include intermediate points as to which the haul of the petitioning line or route is not longer than that of a direct line or route between the competitive points should be imposed in connection with relief granted from the provisions of that section in respect of rates based on distance. Memphis-Southwestern Investigation, 77 I. C. C. 522.

(f) Fourth section relief denied where carrier did not ask for relief on ground of circuity, but simply on ground of geographical location and desirability of avoiding gate-way via short route, which sometimes becomes congested. Ohio-Michigan Coal Cases 80 I. C. C. 663, 675.

ALL OTHER CITATIONS

Rates on Bituminous Coal, 36 I. C. C. 401; New Orleans Cotton Exchange v. L. & N. R. R. 49 I. C. C. 271, 290; Kansas City Hay Dealers Asso. v. C. G. W. R. R. 49 I. C. C. 372, 377; Arkansas Jobbers & Mfrs. Asso. v. Director General, 57 I. C. C. 231, 240; Portland Traffic and Transportation Asso. v. Director General, 59 I. C. C. 606, 609; Buckeye Veneer Co. v. Director General, as Agent, 61 I. C. C. 673, 675; Coffee from Galveston and other Gulf Ports, 64 I. C. C. 26, 30.

§4¼a. State Rates.

IMPORTANT CASES SINCE 1908

(a) Jurisdiction of commission over intrastate rates subsequent to Federal control is prescribed by sections 3 and 13 of the act. The commission has no authority to pass upon measure of such rates except where they are shown to be prejudicial to interstate commerce, and long-and-short-haul provision of section 4 does not apply thereto. Producers Refining Co. v. M. K. & T. Ry. Co., 80 I. C. C. 339, 340.

III APPLICATION OF SECTION 4 TO RATES.

§4½ In general.

CASES 1887-1908

(a) The prohibition in section 4 of the Interstate Commerce Act is limited to cases in which circumstances and conditions are substantially similar. Re Southern R. & S. Asso., 1 I. C. R. 278.

(aa) The prohibition in the fourth section of the Act against a greater charge for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance, as qualified therein, is limited to cases in which the circumstances and conditions are substantially similar. Re Southern Railway & Steamship Association, 1 I. C. C. 278, 291.

(ab) The phrase "under substan- substantially similar circumstances and conditions in the fourth section, is used in the same sense as in the second section, and carriers are required to judge in the first instance with regard to the similarity or dissimilarity of the circumstances and conditions that forbid or permit a greater charge for a shorter distance. Re Southern Railway & Steamship Association. 1 I. C. C. 278, 291.

(ac) When a greater charge in the aggregate is made for the transportation of passengers or the like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance, it is not sufficient justification therefor that the traffic, which is subjected to such greater charge is way or local traffic and that which is given the more favorable rates is not. Nor is it sufficient justification for such greater charge that the short haul traffic is more expensive to the carrier, unless when the circumstances are such as to make it exceptionally expensive, or the long haul traffic exceptionally inexpensive, the difference being extraordinary and susceptible of definite proof. Nor that the lesser charge on the longer haul has for its motive the encouragement of manufactures or some other branch of industry; Nor that it is designed to build up business or trade centers; Nor that the lesser charge on the longer haul is merely a continuation of the favorable rates under which trade centers or industrial establishments have been built up. The fact that long haul traffic will only bear certain rates is no reason for carrying it for less than cost at the expense of other traffic. Re Southern Railway & Steamship Association. 1 I. C. C. 278, 291.

(b) The "long and short haul rule" of the statute was intended to maintain and promote, and not to destroy or neutralize, natural commercial advantages resulting from location, and competition at St. Paul with sugar from the East refined in New York, although necessitating the prevailing low rates to St. Paul on sugar from the West refined at San Francisco, does not justify the greater charge on the latter to Fargo than to St. Paul. Raworth v. Northern Pacific R. Co. 3 I. C. R. 857.

(c) The fourth section of the Act to Regulate Commerce construed, and the principles laid down in Re Petitions of Louisville & Nashville R. Co., 1 Inters. Com. Rep. 278, 1 I. C. C. Rep. 31, reaffirmed, except the ruling therein whereby carriers were permitted to judge for themselves in the first instance of what constitutes "rare and peculiar cases of competition between railroads which are subject to the statute, when a strict application of the general rule of the statute would be destructive of legitimate competition," which is hereby overruled. Trammell v. Clyde S. S. Co. et al 4 I. C. R. 121.

(d) The rule expressed by the Act to Regulate Commerce, § 4, that distance shall ordinarily limit the adjustment of rates, is not rendered inoperative by the existence at one point of converging lines subject to the Act, for the law applies to each of these lines and neither can put in rates to that point which are lower than shorter-distance charges on its line until, upon a showing of special considerations grounded in justice to its patrons and itself, it obtains permission

from the regulating authority so to do. This principle applies both to lines between the same points and to lines reaching the same destination from different points of consignment. Gerke Brew. Co. v. Louisville & N. R. Co. (Com.) 4 I. C. R. 267.

(e) The 4th section of the Act to Regulate Commerce provides, that it "shall be unlawful for any common carrier, subject to the provisions of this Act, to charge or receive any greater compensation, in the aggregate, for the transportation of passengers, or of like kind of property, under substantially similar circumstances and conditions, for a shorter, than for a longer distance, over the same line, in the same direction, the shorter being included within the longer distance." There is a clear distinction between the term "railroad" as used in the other parts of the Act, and the term "line" as used in the 4th section. The use of the word "line" is significant. Two carriers may use the same "road," but each has its separate "line." One railroad company may lease trackage rights to another; but the joint use of the same track does not create the same "line," so as to compel either company to graduate its tariff by that of the other. Case Cited: Inters. Com. Rep. 257, 52 Fed. Rep. 912, Chicago & N. W. R. Co. v. Osborne. Interstate Commerce Commission v. Cincinnati N. I. & T. P. R. Co. 4 I. C. R. 332.

(f) The fourth section of the Act to Regulate Commerce cuts off any presumption in favor of as great compensation for short as for long distances, and is based on the assumption that ordinarily a higher charge for a shorter distance is discriminating and excessive. Cordelle Machine Shop v. Louisville & N. R. Co., et al, 6 I. C. C. 361.

(fa) Rates for the transportation of specified articles from a given point to another point in a different state, which are higher than rates on the same articles from the same point of shipment to a more distant point, violate the provision of the Act to Regulate Commerce requiring reasonable and just transportation charges, and forbidding undue or unreasonable prejudice or disadvantage to any locality in any respect whatsoever. Johnston-Larimer Dry Goods Co. v. Atchinson, T. & S. F. R. Co. 6 I. C. C. 568.

(g) Section 4 of the Act applies when the traffic is "over the same line" and "in the same direction" and to "transportation under substantially similar circumstances and conditions," and "the shorter" must be included within "the longer" distance; and any injustice or undue hardship which may result to carriers from compliance with the statute is removable by the Commission upon application by such carriers under the procedure authorized by the proviso clause of that section. Jewell v. Richmond & D. R. Co., 7. I. C. C. 354.

(h) A carrier engaged with others in the through transportation to Chicago of freight from numerous points on its road cannot lawfully call itself merely a local carrier from an intermediate point while engaged in through carriage from more distant points on its line, and thereby justify higher rates to Chicago for the shorter distance from the intermediate points than for the more distant points of shipment. Re Alleged Violations of Act to Regulate Commerce, 8 I. C. C. 290.

(i) Under section 4 of the Act the question for the Commission is one of fact, and the interests of the producing market, the consuming markets and the carriers are to be considered in determining whether upon the whole situation there is such dissimilarity of circumstances and conditions as justifies the rates in question. Louisville & N. R. Co. v. Behlmer, 175 U. S. 648, Adv. S. 209, 20 Sup. Ct. Rep. 209 cited and applied. Danville v. Southern R. R. Co., 8 I. C. C. 409.

(j) If the circumstances and conditions at the longer-distance point are substantially dissimilar from those at the shorter-distance point then § 4 of the act is inapplicable. Citing: Re Louisville & N. R. Co. 1 I. C. C. Rep. 57, 1 Inters, Com. Rep. 278; Interstate Commerce Commission v. Atchison, T. & S. F. R. Co. 50 Fed. Rep. 300, 4 Inters. Com. Rep. 323; Behlmer v. Louisville & N. R. Co. 71 Fed. Rep. 839; Interstate Commerce Commission v. Alabama Midland R. Co. 168 U. S. 144, 42 L. ed. 414; Disapproving Interstate Commerce Commission v. East Tennessee, V. & G. R. Co. 85 Fed. Rep. 107. Interstate Commerce Commission v. Western & Atlanta R. R. Co., 8 I. C. C. App. XIII.

(k) If a greater charge be made for a shorter than for a longer distance

over the same line, etc., and the circumstances and conditions at the longer-distance point are substantially similar to those at the shorter-distance point, it is a violation of § 4; but if the circumstances and conditions at the longer-distance point are substantially dissimilar, within the meaning of the act, to those at the shorter distant point § 4 is not violated. Interstate Commerce Commission v. Western & Atlantic R. R. Co., 8 I. C. C. App. XIII.

(ka) The Commission having decided in Board of Trade of Chattanooga v. East Tennessee, V. & G. R. Co. Rep. 546, 4 Inters. Com. Rep. 213, that freight rates from New York and other eastern points were unlawfully higher for the shorter distance to Chattanooga than for the longer distance through Chattanooga to Nashville, and the United States Supreme Court having, in a proceeding to enforce the order of the Commission refused to direct enforcement of such order and reversed the decision of the Circuit Court and Circuit Court of Appeals in that proceeding, but "without prejudice to the right of the Commission" to proceed further and "hear and determine the matter in controversy according to law" (181 U. S. 29, 45 L. ed. 729 21 Sup. Ct. Rep. 512), and the case having come before the Commission for re-investigation upon complaint of the Chamber of Commerce of Chattanooga against lines involved in the original proceeding and also lines reaching Chattanooga and lines reaching Nashville via Cincinnati, it is found, applying the law as construed by the United States Supreme Court, that the traffic from New York and other eastern points is carried to Nashville and Chattanooga under substantially different circumstances and conditions, and held that the higher rate to Chattanooga is not unlawful under section four of the statute and cannot be otherwise condemned merely because a lower rate is granted to Nashville, and that the rates to Chattanooga are not shown to be unreasonable within the meaning of section one of the Act. Chamber of Commerce of Chattanooga v. S. Ry. Co. 10 I. C. C. 111.

(l) Complainant attacked class rates from Louisville, Cincinnati, Memphis and Nashville to Moultrie, Ga., as unreasonable and unjustly discriminatory. Rates to Moultrie are higher than to Tifton, Valdosta, Quitman, Thomasville and Fitzgerald, points in nearby territory although the conditions surrounding the transportation are substantially similar. HELD, rates attacked unreasonable to extent they exceed rates to Tifton. Southern Grocery Company v. Georgia Northern Ry. 12 I. C. C. 230

IMPORTANT CASES SINCE 1908

(m) The fundamental reason for granting relief to any line at a given point is the meeting at that point of the competition of other carriers, against which competition the petitioner is at a disadvantage. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 304.

(n) Where the rate per 100 lbs. is less for the longer than for the included haul there is a violation of the fourth section, notwithstanding the fact that the minimum weight prescribed for the former rate exceeding that prescribed for the latter, the carload charge at the former minimum may exceed that at the latter; for cars shipped to the intermediate point may be loaded in excess of the minimum. Fourth Section Violations in Rates on Sugar, 31 I. C. C. 511, 523.

(o) Where relief is denied under the fourth section, carriers may correct undue discrimination by increasing the rate to the more distant point, decreasing rates to intermediate points, or by simultaneous increases and reductions. Corp. Comm. of New Mexico v. A. T. & S. F. Ry. Co., 34 I. C. C., 292, 303.

(p) Difficulty of complying with the law because of lack of uniformity in the three classifications can not be accepted as an excuse for existing violations of section 4 Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co. 39 I. C. C. 224, 238.

(q) Where carrier competition is the only influence which has operated to reduce rates to a competitive point the direct lines and those less than 15 per cent longer than the direct lines must observe the fourth section and not charge higher rates to intermediate points. Rates from New Orleans and Galveston, 44 I. C. C. 727, 734.

(r) The fourth section was intended to restrain carriers from continuing lower rates to more distant points except in special cases where relief from the long-and-short haul requirements is afforded by the Commission. Such relief has been granted in cases where competition of water lines is strong, and where

carriers operate circuitous routes in competition with direct lines. Dewey Bros. Co. v. P. C. C. & St. L. Ry., 46 I. C. C. 388, 395.

(s) A carrier may not cite its literal observance of the long-and-short-haul clause of the fourth section of the Act as excusing it from its legal obligation to maintain from points on connecting lines to destinations on its own lines rates which in the light of all relevant considerations are non-prejudicial to the traffic so originating on its connections Weis-Peterson Box Co. v. M. & O. R. R. 46 I. C. C. 693, 696.

(t) The fact, standing alone, that in some instances discriminatory rates, or violations of the fourth section, result from the application of different classifications, does not necessarily justify condemnation of the ratings attacked. On the other hand a finding that the ratings have been justified does not sanction any undue discrimination or excuse any violation of any provision of the Act. Showers Bros. Co. v. C. B. & Q. R. R., 48 I. C. C. 518, 523.

(u) Interpretations of the amended fourth section of the act holding that a "reasonably compensatory" rate can not be less than a rate which, if imposed by a regulatory tribunal, would be adjudged nonconfiscatory, can not be accepted by the commission. Transcontinental Cases of 1922, 74 I. C. C. 48, 68, 69.

(v) The commission does not agree with contention that the fourth section has not been changed in substance by the amendments in the Transportation Act, 1920. The amendment has made mandatory what theretofore rested in the commission's sound discretion as to compensation for the service performed to the more distant point, as to circuity, and as to potential water competition. Moreover, section 500 of the Transportation Act, 1920, wherein it is declared the policy of Congress to foster and preserve rail and water transportation was Congress's way of saying that the commission should follow a less liberal policy in dealing with departures from the long-and-short-haul rule than had been followed in former years. Transcontinental Cases of 1922, 74. I. C. C. 70.

(w) The criterion of a reasonably compensatory rate under the amended fourth section of the act, summarized in the formula "out-of-pocket-expenses-plus some-profit," rejected by the commission as insufficient, standing alone. Transcontinental Cases of 1922 74 I. C. C. 70.

(x) In the administration of the fourth section of the act the words "reasonably compensatory" imply that a rate properly so described must cover and more than cover the extra or additional expenses incurred in handling the traffic to which it applies; be no lower than necessary to meet existing competition; not be so low as to threaten the extinction of legitimate competition by water carriers; and not impose an undue burden on the other traffic or jeopardize the appropriate return on the value of carrier property generally as contemplated in section 15a of the act. Rates of this character ought, whenever possible, to bear some relation to the value of the commodity carried and the value of the service rendered in connection therewith. Transcontinental Cases of 1922 74 I. C. C. 71.

(y) In applying the provisions of the fourth section of the act, rates and fares of the same kind should be compared. Conf. ruling 304. Fares between New York and points west of Newark. 74 I. C. C. 519.

(z) Contention that the fourth section of the act does not apply to joint through rates from points in Canada to points in the United States, not sustained. The provisions of the fourth section apply where the point of origin is in an adjacent foreign country and the intermediate point and more distant point of destination are in the United States. Conf. Ruling, 447 United Paperboard Co. v. C. N. Rys., 74 I. C. C. 733, 736.

(aa) After a long-and-short-haul departure is removed, it may not lawfully be restored without the special authority of the commission, even though the departure was in existence when the fourth section was amended. Conf. Ruling 395 and 406. Intermediate Application of Class Rates from Lexington, Ky., 77 I. C. C. 430.

(bb) Where a departure from the fourth section was not authorized by any fourth section order nor protected by any application on file with the Commission it is unlawful. Sunderland Brothers Co v. C. B. & Q. R. R. 78 I. C. C. 295, 296

(cc) The publication of rates in connection with rule 77 of Tariff circular 18-A, authorizing publication of rates

from intermediate points on one days notice, is a substantial compliance with the requirements of section 4 of the act. Montrose Oil Refining Co. v. St. L. S. F. Ry. 78 I. C. C. 572, 573.

(dd) The notation on a tariff in accordance with rule 77 of Tariff Circular 18-A authorizing the publication of rates from intermediate points on one days notice, is a substantial compliance with the fourth section requirements, and a request for the publication of a rate under that rule prior to the movement of shipments is not essential in order that the shipper may take advantage of such provision. Armour & Company v. Director General 80 I. C. C. 59, 60.

(ee) In exercising the authority conferred upon the Commission in section 4 it shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed. Memphis Southwestern investigation 80 I. C. C. 157, 168.

(ff) The words "reasonably compensatory" imply that a rate properly so described must cover and more than cover the extra or additional expense incurred in handling the traffic to which it applies; be no lower than necessary to meet existing competition; not be so low as to threaten the extinction of legitimate competition by water carriers; and not impose an undue burden on other traffic or jeopardize the appropriate return on the value of carrier property generally, as contemplated in section 15a of the act. Rates of this character ought, whenever possible to bear some relation to the value of the commodity carried and the value of the service rendered in connection therewith. Where carriers apply for relief from the long and short haul section and propose the application of rates which they designate as reasonably compensatory, they should affirmatively show that the rates proposed conform to the criteria indicated above. Memphis Southwestern Investigation 80 I. C. C. 157, 168.

(ffa) A departure from the terms of the fourth section is unlawful when unauthorized by the Commission. Lynchburg Traffic Bureau v. Pennsylvania R. R., 88 I. C. 619, 620.

(ffb) The provisions of the fourth section of the act apply where the point of origin is in an adjacent foreign country and the intermediate point and more distant point of destination are in the United States. Duluth Iron & Metal Co. v. Director General, 89 I. C. C. 343, 345.

(gg) Since Interstate Commerce Act, § 4, which originally prohibited a greater rate under substantially similar circumstances for a shorter than for a longer haul over the same line, was amended by Act June 18, 1910, which added the words "or route" after the word "line," the long and short haul clause is no longer limited to transportation over the line of a single carrier, but includes transportation under a joint rate by connecting carriers. Davis v. Parrington, 281 Fed. 10.

(hh) Carrier by water published a higher rate from San Francisco to Portland, wholly by water, than it did from San Francisco to North Portland, which route was by water to Portland, thence by rail to North Portland. This rate was published without permission of the Interstate Commerce Commission HELD, that such rate was a violation of Section 4 and was illegal. Davis v. Parrington, 281 Fed. 10.

(ii) A realignment which creates or exaggerates departures from the rules of the fourth section can not be sanctioned upon the evidence. Cement Rates from West Coplay, Pa., Unrep. Op. 1990.

ALL OTHER CITATIONS

Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 580; Meridian Fertilizer Factory v. L. & N. R. R. Co., 30 I. C. C. 494; Corporation Com. of Oklahoma v. A. T. & S. F. Ry., 31 I. C. C. 532, 533; Daily Coal Co. v. C. & A. R. R. Co., 33 I. C. C., 467, 469; Elm City Lum. Co. v. A. C. L. R. R., 37 I. C. C. 571, 572; Class and Commodity Rates between St. Louis, East St. Louis and Ohio River Points, 38 I. C. C. 411, 422, 426, 428; Slane Glass Co. v. V. & S. W. Ry. Co. 39 I. C. C., 586; Lumber from Louisiana Points, 40 I. C. C. 268, 271; Rates from New Orleans and Galveston, 44 I. C. C. 727, 741; Transcontinental Rates, 46 I. C. C. 236, 246, 247; Memphis Freight Bureau v. A. & V. Ry., 45 I. C. C. 121, 122; C. F. A. Class Scale Case, 45 I. C. C. 254, 282; Paducah Board of Trade v. N. C. & St. L. Ry., 45 I. C. C. 359, 360; Heckle v. C. B. & Q. R. R. 46 I. C. C. 513, 514; Grain Transit at Michigan Stations, 47 I. C. C. 104, 107; Galion Iron Works & Mfg. Co. v. B. & O. R. R., 47 I. C. C. 36, 140; Royal

Milling Co. v. G. N. Ry., 47 I. C. C. 263, 269, 271; Pierpont Mfg. Co. v. S. Ry., 50 I. C. C. 81, 82; Sunderland Bros. Co. v. C. & N. W. Ry., 51 I. C. C. 630; Waco Chamber of Commerce v. A. T. & S. F. Ry., 51 I. C. C. 668, 669; Heider Mfg. Co. v. C. G. W. R. R., 51 I. C. C. 713; Roxana Petroleum Co. of Oklahoma v. Director General, 55 I. C. C. 607, 608; Murfreesboro Board of Trade v. L. & N. Ry., 55 I. C. C. 648, 655; Du Pont de Nemours & Co. v. Director General, as Agent, 59 I. C. C. 199; Proctor & Gamble Distributing Co. v. A. C. Ry., 61 I. C. C. 700, 706; New Mexico Corp. Comm. v. Director General, 62 I. C. C. 352, 356; Lumber from North Tonawanda to Canandaigua, 64 I. C. C. 530; Chittenden & Eastman Co. v. Director General, as Agent, 68 I. C. C., 267; Alaska Junk Co. v. Director General, As Agent, 68 I. C. C. 615; Humble Pipe Line Co. v. Director General, as Agent 68 I. C. C. 652; Alpha Portland Cement Co. v. Pennsylvania R. R. Co., 74 I. C. C. 697, 698. Electric Point Mining Co. v. Director General, as Agent, 78 I. C. C. 21; Standard Export Lumber Co. v. Director General, as agent, 78 I. C. C. 337 340; Paper and Paper Articles to Southwestern Points, 78 I. C. C. 600. Fairbanks Co. v. B. & A. R. R., 87 I. C. C. 725, 727.

§4½a. Back haul combinations.

CASES 1887-1908

(a) Complainant attacked rates from St. Louis, Nashville and Chattanooga to Hampton, Fla., as unreasonable and unjustly discriminatory. Rates attacked are the combinations of the through rates for the haul thru Hampton to Palatka and the local rates from Palatka back to Hampton. The result of this system of rate making is to enable the merchants at Palatka to compete with merchants at Hampton at their own doors on equal terms, while the latter are debarred from such competition with the former, and as to territory between the two localities, Palatka merchants are given such an advantage on rates as to enable them to undersell Hampton merchants. This system of rate making results in one of the principal evils which the act was designed to remedy. While the location of Palatka on the St. Johns river and the fact that there is more competition by rail to Palatka than at Hampton, may justify rates to Palatka somewhat lower than to Hampton the Hampton rate should not be higher than the Palatka rates by the locals from Palatka to Hampton; and in fixing the interest of the community at Hampton as well as its own interests and they must not put in rates to Hampton which prohibits its citizens from the transactions of business in competition with Palatka. HELD, the present Hampton rates are in violation of both the fourth and third sections of the act, but the Hampton rates may properly be made higher than the Palatka rates by the differentials now existing between the Palatka and Jacksonville rates. Board of Trade of Hampton, Fla., v. N. C. & St. L. R. Co. 8 I. C. C. 503.

ALL OTHER CITATIONS

Humble Pipe Line Co. v. Director General, as Agent, 68 I. C. C. 652;

§4¾ Circuitous routes.
See Circuitous Lines.

CASES 1887-1908

(a) A charge by carriers which form an indirect line over which they transport freight, of greater compensation in the aggregate for a shorter than for a longer distance which, includes the shorter is unlawful and in conflict with the Act to Regulate Commerce, § 4, even though a more direct line is formed and used for transportation by which the mileage to the longer-distance point by the indirect line is less than that to the shorter-distance point. Hill v. Nashville, C. & St. L. R. Co. 6 I. C. C. 343.

(b) Where carriers form an indirect line over which they transport freight and charge and receive greater compensation in the aggregate for a shorter than for a longer distance, the shorter being included within the longer: HELD to be unlawful and in conflict with section 4 of the Act to Regulate Commerce: and HELD, further: the fact that a more direct line, over which the mileage to a longer distance point (Macon or Americus) by the indirect line is less than the mileage to a shorter distance point (Cordele) by such indirect line, may be or is formed and used in transporting grain to or from such longer distance point (Macon or Americus), does not alter or so change the conditions of transportation over the indirect line as to take it out of the rule of the statute. S. J. Hill & Bro. v. Nashville, C. & St. L. R. R. Co., 6 I. C. C. 243, 359.

(c) The fact that one competing carrier has the long line does not create a

dissimilarity in circumstances and conditions which justifies it in disregarding the rule of the fourth section, while competing short lines are bound by that rule. To permit the carrier by the long line to meet lower competitive rates at a more distant point without making as low rates from intermediate stations, while its competitors are obliged in all cases to make no higher charge from intermediate points on their lines, would place those competitors at the mercy of such long-line carrier. When a carrier comes into the field of competition, whether it be as the long line or as the short line, it comes subject to the same limitation as every other competitor. Geo. Tileston Mill Co. v. Northern P. R. Co. 8. I. C. C. 346, 356.

(d) Complainant attacked as unreasonable and discriminatory rate charged on lumber from Sheridan, Ind., to Boston and Boston points higher than from Indianapolis, Ind., a farther distant point. Defendant C. I. & L., charges on lumber from Sheridan, Ind., a noncompetitive point, on its road, than from Indianapolis, Ind., although the latter is the longer distance point by its line. Indianapolis is a competitive point and numerous lines run from that city both east and west. The short lines from Sheridan to the east are through Indianapolis, and by those lines Sheridan is a longer distance point. Indianapolis takes 93% of Chicago rates to the east, and Sheridan, is charged the Chicago rates. The rates to Boston and Boston points at the time of complaint were 27 c from Sheridan and 25 c from Indianapolis; but they have since been reduced to 26½c and 24½c respectively. The circumstances and conditions governing the traffic from Sheridan are substantially and materially different from those applying on the traffic from Indianapolis. HELD that no undue discrimination results to Sheridan because by defendants indirect route the rate is 2c less from Indianapolis than it is from Sheridan. G. C. Pratt Lumber Co. v. C. I. & L. Ry. Co. 10 I. C. C. 29.

IMPORTANT CASES SINCE 1908

(e) If lines can not meet reasonable rates by direct lines they should relinquish the traffic. Export Grain Case, 37 I. C. C. 190, 192.

(f) In no case has the Commission granted fourth section relief because of market competition as to points of origin where the petitioning carrier has not been shown to be at some substantial disadvantage by reason of having a circuitous route. Proportional Rates to Ohio River Crossings, 43 I. C. C. 458, 469.

(g) There is a substantial difference between "indirect" or circuitous, as distinguished from so-called short-line routes, which are the principal or regular avenues of traffic, on the one hand and routes which include out of line or lateral departures therefrom, on the other. Grain Transit at Michigan Stations, 47 I. C. C. 104, 107.

(h) Relief should not be granted for the purpose of permitting extremely circuitous routes to compete with the direct lines. Rates Between C. F. A. Territory and Points on C. & O. Ry., 47 I. C. C. 576, 581.

(i) Carriers which have indirect routes to points reached by more direct lines or routes authorized to meet the rates established via such direct lines or routes, and to maintain higher rates to intermediate points, provided that rates to such intermediate points do not exceed the rates via the shortest route or for the same distance via the shorter route to the competitive or common point. Holmes & Hallowell Co. v. G. N. Ry. Co. 60 I. C. C. 687, 714.

(j) Carrier having circuitous routes authorized to meet the short line rates at common points while carrying higher rates to intermediate points. Hudson Mule Co. v. L. & N. R. R. Co., 63 I. C. C. 6, 14.

(k) If a circuitous rail line or route is, because of such circuity, granted authority to meet the charges of a more direct line or route to or from competitive points and to maintain higher charges to or from intermediate points on its own line, the authority shall not include intermediate points as to which the haul of the petitioning line or route is not longer than that of the direct line or route between the competitive points. United Iron Works Inc. v. A. T. & S. F. 63 I. C. C. 184, 192.

(l) By the transportation act, 1920, it is provided that if authority is granted a circuitous line, because of such circuity, to meet the charges of a more direct line at competitive points and to maintain higher charges at intermediate points, the authority shall not include

intermediate points as to which the haul of the petitioning line or route is not longer than that of the direct line or route between the competitive points. While this limitation does not apply in terms to relief granted because of market competition, the Commission has felt in exercising its discretion under the law the same principle should be applied in cases of market competition, believing that the same reason for such a limitation exist in the one case as in the other. Green coffee from Gulf ports 64 I. C. C. 26, 30.

(m) Carriers having indirect routes authorized to establish same as those in effect over the direct lines from and to the same points and to maintain higher rates at intermediate points, provided that authority granted shall not extend to intermediate points via the circuitous line to which the haul is not longer than that of the direct line or route from and to the competitive points; and that the rates from the other intermediate points shall in no case exceed the lowest combination. Chamber of Commerce of Johnson City, Tenn. v. S. Ry. Co., 64 I. C. C. 709.

(n) There is no inhibition in the act upon a circuitous carrier that may desire to meet the fares of a competitor between common termini, either freely or to a limited extent, so long as such fares are not so unduly low as to place a burden on other traffic and do not contravene the provisions of section 4. Proportional basing fares to Ogden 73 I. C. C. 434, 437.

(o) The amended fourth section of the act provides that a circuitous line or route may not, because of such circuity, be granted authority to maintain higher charges to intermediate points in its line as to which the haul over such line is not longer than that of the direct line or route between the competitive points. United Iron Works v. Director General, 74 I. C. C., 277, 283.

(p) Carriers operating via indirect routes to, from, and between points in the Southeast authorized to meet rates of direct lines between competitive points, while maintaining higher rates at intermediate points, provided that such authority shall not include intermediate points as to which the haul of the circuitous route is not longer than that of the direct line or route between the competitive points, and that the lowest combinations of intermediate rates are not exceeded. Live Stock to, from and between points in the Southeast, 74 I. C. C. 419, 424.

(q) For the purpose of the instant case a circuitous route defined as one which exceeds the short line by at least 15 per cent. Michigan R. R. Co. v. P. M. R. R. Co. 74 I. C. C. 496, 500

(r) The commission is not empowered to authorize a carrier, because of circuity of route, to maintain a higher charge to an intermediate point than to a farther distant competitive point where the haul of the petitioning carrier to such intermediate point is not longer than over the direct line or route to the competitive point. Alpha Portland Cement Co. v. P. R. R. Co., 74 I. C. C. 697, 698.

(s) Carriers having circuitous routes between competitive points authorized to establish rates the same as maintained via the short lines or routes from and to the same points, and to maintain higher rates at intermediate points, excepting intermediate points as to which the haul of the circuitous line is not longer than that of the direct line, and which in no case exceed the lowest combinations. Texas Chamber of Commerce v. A. & S. Ry. Co. 77 I. C. C. 67, 71.

(t) Under the fourth section of the act, as amended, it is incumbent upon circuitous lines or routes that desire to meet short-line competition to show that the rates proposed are reasonably compensatory. It may not necessarily follow that the rates of the short line between two points would not be reasonably compensatory, for instance, if applied via a route more than twice as long between the same points. There would, however, be a strong presumption that if the rates for the shorter distance via the direct line or route are reasonable they would not be so for a haul of more than twice that distance. Memphis-Southwestern Investigation, 77 I. C. C. 473, 526.

(u) As a general rule, the commission has declined to grant fourth-section relief to lines of extreme circuity in order to permit them to meet short-line competition. Memphis-Southwestern Investigation 77 I. C. C. 526.

(v) Authority to continue to charge rates via unduly circuitous routes lower than to intermediate points, so as to meet direct-line competition, denied.

Memphis-Southwestern Investigation, 77 I. C. C. 526, 527.

(w) A markedly circuitous route or other adverse conditions affecting operation which place one carrier at a substantial disadvantage in meeting competition of another operating under more favorable conditions are, generally speaking, sufficient grounds for granting of relief from provisions of section 4. Memphis-Southwestern Investigation 80 I. C. C. 157, 167.

(x) Except in unusual cases, carriers are not to be granted relief from long-and-short-haul provision of fourth section of the act to meet, over unduly circuitous routes, rates of shorter lines. Fort Worth Freight Bureau v. Director General, as Agent, 80 I. C. C. 237, 246.

(y) Commission does not approve the meeting over unduly circuitous routes of rates over shorter lines. Fort Worth Bureau v. Director General as Agent, 80 I. C. C. 246.

ALL OTHER CITATIONS

Railroad Commission of Louisiana v. A. H. T. Ry. Co., 41 I. C. C. 83, 123; Lumber Rates from Helena, Ark., and Other Points, 41 I. C. C. 565, 580; Wiley & Morehouse v. C. B. & Q. R. R. Co., 42 I. C. C. 313, 316; City of Memphis v. C. R. I. & P. Ry. Co., 43 I. C. C. 121, 124, 125; Kentucky-Indiana Hardwood Co. v. S. Ry. Co. in Miss., 43 I. C. C. 154, 155; Fruit from Florida, 43 I. C. C. 595, 604; Chamber of Commerce Houston, Tex. v. A. T. & S. F. Ry., 44 I. C. C. 349, 351; C. F. A. Class Scale Case, 46 I. C. C. 475, 476, 477; New Orleans Cotton Ex. v. L. & N. R. R. 46 I. C. C. 744, 746; Conquest & Son v. S. A. L. Ry., 47 I C. C. 517, 522; Lookout Paint Mfg Co. v. T. A. & G. R. R., 49 I. C. C. 40, 42; Cohen-Schwartz Rail & Steel Co. v. M. L. & T. S. S. Co., 50 I C. C. 202, 203; West Virginia Rail Co. v. I. C. R. R. Co., 53 I. C. C. 21, 27; Commercial Club of Greeley v. C. & S. Ry. Co., 53 I. C. C. 66, 69; Freight Adjustment Steering Committee v. A. C. L. R. R. Co., 53 I. C.C. 506, 509; Memphis Southwestern-Investigation, 55 I. C. C. 515, 566. Garrett Lumber Co. v. C. & O. Ry., 55 I. C. C. 637, 643; Arkansas Jobbers & Mfrs. Asso. v. Director General, 57 I. C. C. 231, 240; Express Rates, 1920 58 I. C. C. 281, 297; Coffee from Galveston, Tex. and other Gulf ports, 58 I. C. C. 716, 727; Proctor & Gambel v. A. C. 61. I. C. C. 700, 706; South Bend Chamber of Commerce v. Director General, 61 I. C. C. 67, 72; Green Coffee from Gulf Ports, 64 I. C. C. 26, 30, 32; Lake Superior Paper Co. v. Director General, 64 I. C. C. 33, 34, 35; St. Tamany Ice & Mfg. Co. (Ltd.) v. Director General, as Agent, 64 I C. C. 491, 492; Tribune v. B. A. & P. Ry. Co., 64 I. C. C. 557, 560; Brick from Danville 64 I. C. 624; Chicago Bridge & Iron Works v. Director General as Agent, 69 I. C. C. 761, 764; MacGowan Coffee Co. v. N. O. N. E. R. R. Co., 77 I. C. C. 385; Sand and Gravel from La-Fayette, Ind., 77 I. C. C. 719.

§5. Intermediate Points.

See Supra § 4; Through Routes and Joint Rates § 21.

CASES 1887-1908

(a) Complainant attacked rates charged on freight from San Francisco, Calif., to Denver, Colo., as compared with the rate to Kansas City, Mo., and also that the rate from San Francisco to Kansas City plus the rate from Kansas City to Denver made lower than the rate direct from San Francisco to Denver as in violation of the fourth section and amounting to unjust discrimination. The difference in classification adopted by the western classification which applies on business from the Pacific coast to all points west of the Missouri River, between raisins and dried fruits by which a higher carload rate is imposed on raisins than on other dried fruits, while by the Pacific coast eastbound classification (which applies on business over the same roads from the Pacific coast to points on the Missouri River and east thereof) such distinction is not imposed —is, in connection with the different rules of the two classifications as to mixed carloads, an unreasonable discrimination. An intermediate local rate should never exceed the through rate to the terminus of the line plus the local rate back to the intermediate point. The use by carriers of different freight classifications, the effect of which is to increase the revenue from local traffic as compared with that obtained from through traffic, is as much a violation of section 4 of the act as would be the imposition of a higher tariff upon the same class in the same classification. HELD, in the absence of competition from Canadian railways the circumstances and conditions of traffic from San Francisco to Denver are not so materially different from those of the traffic from San Francisco to the Missouri River as to justify the trans-

continental roads subject to the act, in charging a greater sum for the shorter distance. Tariffs will be modified so that the rate to Denver will not exceed the rate to Kansas City. Martin v. S. P. Co. 2 I. C. C. 1.

(b) In the absence of competition from Canadian railways (which are not subject to the Interstate Commerce Act), the circumstances and conditions of the traffic from San Francisco to Denver are not so materially different from those of the traffic from San Francisco to the Missouri River as to justify the transcontinental roads subject to the Act in charging a greater sum for the shorter distance. Martin v. Southern P. Co. (Com.) 2 I. C. R. 1.

(c) The Chicago St. Paul and Kansas City Ry., operates a line of railroad from Chicago, Ill., through Dubuque, Iowa., to St. Paul and Minneapolis, Minn., and in meeting the competition of shorter carriers from and to the points in question, maintains higher rates at intermediate points. HELD, this is a violation of the fourth section and the higher rates at intermediate points are illegal. Re Chicago, St. Paul & Kansas City R. Co. 2 I. C. C. 137.

(d) The fact that a railroad which is subject to the act makes between two points charges unreasonably low does not authorize a rival, extending between the same points, to make on its line greater charges for the shorter haul in the same direction to intermediate points than it does to a terminus. Re Chicago St. Paul & Kansas City R. Co. 2 I. C. C. 137, 150.

(e) Complainant attacked as unjustly discriminatory and in violation of section four rates on grain and livestock from Iowa points to Chicago higher than from points west thereof. HELD, this is a violation of the fourth section and rates should be so adjusted as to eliminate this situation. Northwestern Iowa Grain and Stock Shippers Asso. v. C. & N. W. R. 2 I. C. C. 431.

(f) The Chicago & Northwestern R. Co. has two routes or lines between Chicago and Sioux City formed by its main line and different branch lines, and a greater charge for a shorter than for a longer distance in the same direction, the shorter being included in the longer distance, on either of said routes or lines is unlawful under the fourth section of the Act to Regulate Commerce. Northwestern Iowa Grain & Stock Shippers' Asso. v. Chicago & N. W. R. Co., 2 I. C. R. 431.

(g) A greater charge for a shorter distance is not justified by the fact that the lumber business of the roads of a connecting line, or any of them, was done in cars which carried machinery to a longer-distance point, where profitable return loads were not always to be had. James v. East Tennessee, V. & G. R. Co., (Com.) 2 I. C. R. 609.

(h) The greater charge for the shorter distance, if included within the longer haul, over the same line and in the same direction and under substantially similar conditions, would be clearly unlawful not only because it is prohibited by the fourth section, but because it is in itself unjust discrimination. Lehmann Higginson & Co. v. S. P. Co. 3 I. C. C. 80, 87.

(i) Complainant attacked transcontinental rates from eastern territory to San Bernardino, Calif., as unreasonable as compared with the rates to Los Angeles, Calif., the rates to the former point being higher than to the latter, although intermediate. HELD, rate attacked in violation of the fourth section, defendants required to maintain same rates to both points. San Bernardino Board of Trade v. A. T. & S. F. R. 3 I. C. C. 138.

(j) Rates on interstate shipments from points on the initial carrier's line were shown to be greater for the shorter distance from Lawtey than for the longer distance over the same line in the same direction from Gainesville, and defendants were ordered to bring their rates from Lawtey and other points in that territory in conformity with the provisions of the 4th section of the Act to Regulate Commerce. The fact that the initial carrier's line joins its connecting line at both Callahan and Gainesville and that traffic from Lawtey, an intermediate station, may be routed through Gainesville, the longer distance point, does not authorize defendants to charge the higher rate from Lawtey when the traffic from that point and from Gainesville is in fact routed through Callahan. Perry v. Fla. Central & Peninsular R. Co. 3 I. C. R. 740.

(k) Complainants in cases No. 324 and No. 325 dismissed. In cases Nos. 314, 315, 316, 317 and 326, defendants ordered to cease and desist from charg-

ing more to shorter than to longer distance points mentioned in the complaints, or file applications for relief under the proviso clause of the fourth section and show cause thereon, within a time specified. Trammel v. Clyde S. S. Co. et al., 4 I. C. R. 121.

(l) "Blanket" class rates applying upon the Northern Pacific road for a distance of over five hundred and eighty miles found relatively unreasonable: also held, that rates to Spokane, the principal distributing center to which such blanket rates apply, are unreasonable in themselves. Defendants ordered to cease and desist from charging rates on property from eastern points to Spokane which materially exceed 82 per cent of class rates now in effect both to Spokane and Pacific coast terminals. Provision made for reopening the case if necessary, and bringing in other carriers who may be affected by the order. Merchants' Union v. Northern Pacific R. Co., 4 I. C. R. 183.

(m) In the matter of carload and mixed carload rates, minimum weight of shipments entitled to carload rates, and in all other respects, defendants are required to provide for and allow the same privileges, facilities and advantages on shipments to Spokane as are provided or allowed on like shipments to Portland or other Pacific coast terminals. Merchants' Union v. Northern Pacific R. Co. 4 I. C. R. 183.

(n) Class rates in effect upon the defendant lines and the lower commodity rates to their Pacific terminals examined and discussed: held, that the only justification for a through rate less than an intermediate rate on the same article is the compulsion of rail carriers to accept the reduced compensation or suffer ocean rivals to perform the service, and where the pressure of this alternative is not felt there is no ground upon which the lower through charge can be excused. No article should be carried to terminal points on commodity rates which, if the class rates were imposed would still seek rail rather than water transportation, and any violation of this rule is unjust discrimination against the intermediate town compelled to pay the higher class rates on the same article. Merchants' Union v. Northern Pacific R. Co. 4 I. C. R. 183.

(o) Any greater charge for the transportation of like kind of property from seaboard points to Chattanooga than for the longer distance through Chattanooga to Nashville is in violation of the Act to Regulate Commerce, § 4. Chattanooga Bd. of Trade v. East Tennessee, V. & G R. Co. (Com.), 4. I. C. R. 213.

(p) The fact that two carriers have established a joint tariff rate between two points will not, under the provisions of the long and short haul clause of the Interstate Commerce Act, prevent each from charging its local rates upon shipments to and between intermediate points, although the combined local rates exceed the through rate for the longer haul. United States v. Mellen (D. C. D. Kan.) 4. I. C. R. 247.

(q) No violation of the long and short haul clause of the Interstate Commerce Act which will sustain an action for damages is shown by the mere fact that a larger tariff rate was collected for shipments between points on a carrier's road than the proportion of a joint through rate which such carrier received for hauling over its road similar commodities billed to points beyond its road a longer distance which included the shorter one. Chicago & N. W. R. Co. v. Osborne (C. C. App. 8th C.) 4 I. C. R. 257

(r) Complainant attacked rates on beer carloads from Cincinnati, O., to Middlesborough, Ky., as unreasonable and unjust compared with rates maintained to points beyond Middlesborough on the same line. HELD, This is a violation of the fourth section and should be removed. Gerke Brewing Company v. L. & N. R. Co. 4 I. C. C. 267.

(s) The rule expressed by the fourth section that distance shall ordinarily limit the adjustment of rates is not rendered inoperative by the existence at one point of converging lines subject to the act, for the law applies to each of these lines, and neither can put in rates to that point which are lower for shorter distance charges on its lines, until, upon a special showing or special considerations grounded in justice to its patrons and itself it obtains permission from the regulating authority so to do. This principle applies both to lines between the same points, and to lines reaching the same destination from different points of consignment. Gerke Brewing Co. v. L. & N. R. Co., 4 I. C. C. 267, 271.

(t) When rates from any causes are made greater for shorter than for long-

er distances the difference between such rates must in no instance be unreasonable. Gerke Brewing Company v. L. & N. R. Co. 4 I. C. C. 267, 273.

(u) Complainant attacked alleged discrimination in rates to Troy, Ala., compared with rates maintained to Montgomery and Columbus from Baltimore, New York and eastern points. Troy is intermediate to the competing points via some routes. HELD, defendants required to charge to Troy the same rates applicable to Montgomery and Columbus. Board of Trade of Troy, Ala., v. A. M. R. Co. 4 I. C. C. 348.

(ua) Defendants ordered to cease and desist from making higher aggregate charges on hay under similar circumstances and conditions, over their connected roads from Memphis, Tenn., to Summerville, S. C. than they charge for carrying said commodities for the longer distance from Memphis over said connecting line through Summerville to Charleston, S. C. without prejudice to defendants' right to apply to the Commission for relief under the proviso clause of the 4th section. H. W. Behlmer, v. Memphis & Charleston R. Co. et al. 6 I. C. C. 257.

(v) Complainant attacked rates as unreasonable and in violation of the fourth section from Nashville, Tenn., to Cordele, Ga., than to Albany and Americus, Ga. Traffic from Nashville via an indirect line to Albany and Americus moves through Cordele and the indirect line meets the rates of the direct line at Albany and Americus. HELD, this constitutes a violation of the fourth section and should be removed. S. J. Hill & Bro. v. N. C. & St. L. R. Co. 6 I. C. C. 343.

(w) Carriers operating shorter lines between given points cannot, although they have the advantage in making rates and in carrying under them, dictate a system of charges which the operators of long lines cannot charge as to their own roads, and the latter cannot justify greater charges for shorter distances on the ground that they must confrom to such system in order to get business on such longer line. Cordele Machine Shop v. Louisville & N. R. Co. 6 I. C. C. 361.

(x) Complainants attacked as unreasonable rates on cotton piece goods, molasses, sugar, rice or coffee from Galveston, Houston or other shipping points in Texas to Wichita, Kans., compared with rates to Kansas City and other Missouri River points. HELD, inasmuch as via some of the defendants, Witchita is intermediate to Kansas City, rates attacked are in violation of the fourth section, and carriers required to maintain to Wichita, Kans., rates not higher than to Kansas City, Mo. Johnston-Larimer Dry Goods Co. v. A. T. & S. F. R. Co. 6 I. C. C. 568.

(y) The exaction, without lawful exercise, of a greater compensation in the aggregate for the shorter than for the longer haul over the same line in the same direction, the shorter being included in the longer, which is forbidden by § 4 of the Act to regulate Commerce, is only a form of unjust discrimination or undue preference, to which, it seems, Congress desired to call particular attention because of its prevalence in certain sections of the country McClelen et al. v. Southern Ry. Co. et al. 6 I. C. C. 588, 599.

(z) Complainant attacked as unreasonable and unjustly discriminatory rates on classes from Baltimore, Md., to Piedmont, Ala., as compared with the rates to Anniston, Ala., Piedmont being intermediate via the same line and in the same direction. HELD, the maintenance of rates to Anniston lower than to Piedmont being in violation of the fourth section are unreasonable and unjustly prejudicial to Piedmont and carriers will be required to eliminate the violation and publish same rates to Piedmont as to Anniston. McClelen v. Southern Ry 6 I. C. C. 588.

(aa) Complainant attacked as unreasonable and unjustly discriminatory rates on cotton of 80c from South Canadian and Eufaula, Indian Territory to St. Louis, Mo., as compared with a rate to St. Louis from Denison, Tex., a farther distant point, points of origin being intermediate. The defendant carries and for several years has carried, cotton from the Indian territory points to St. Louis, to be forwarded to New York, and receives for its haul to St. Louis 65 c. Out if this it pay 10 c for compressing, first hauling it to Denison for that purpose. All the conditions necessary to lower rates are more favorable now than they were then. The freight could bear a higher rate then, and is carried at lower cost now, and competition for the traffic was not then more active. The earnings now derived on uncompressed cotton at

the prevailing rates far exceed the earnings from other freights carried to and from the Indian territory and are excessive in comparison with defendants charges on other traffic. HELD, rates attacked unreasonable to extent they exceed 60 c from Wagoner, Eufaula and South Canadian and 65c from Stringtown, reparation awarded. Jerome Hill Cotton Co. v. M. K. & T. R. Co. 6 I. C. C. 601.

(bb) A higher charge for a shorter than for a longer distance is sought to be justified by the existence of a compress at the longer distance point where cotton may be compressed and shipped thence to destination at less expense than cotton from the shorter distance can be hauled to the longer distance point, there compressed, and hauled to destination, or, as is claimed, at less cost than it can be hauled to destination directly without compressing. The rate sheet in such case fixes a rate of charges from the shorter and longer distance points on flat or uncompressed cotton only, "with option of compression en route." In some cases the carrier avails itself of this option and has the shorter distance cotton compressed, hauling it to the longer distance point for that purpose; at other times it is carried directly to destination without compressing, the charge to the shipper being the same in either case. HELD, That when under this option system of rate-making the carrier causes cotton to be compressed at its own cost and for its own benefit, any dissimilarity of circumstances resulting therefrom is of the carrier's own making, and does not take the traffic out of the general rule of the statute which forbids a greater charge for a shorter distance. Jerome Hill Cotton Co. v. Missouri, K. & T. R. Co., 6 I. C. C. 601.

(cc) Complainant attacked rates from New York, Providence and Boston to Lynchburg, Va., as unreasonable and unjustly discriminatory as compared with the rates to Knoxville, Tenn. Lynchburg is directly intermediate. This is a violation of the fourth section of the act without authority. HELD, rates attacked unreasonable to extent they exceed rates to Knoxville, reparation awarded. Board of Trade of Lynchburg, Va., v. Old Dominion S. S. Co. 6 I. C. C. 632.

(dd) Under the fourth section of the Act to Regulate Commerce a carrier is not justified in charging more for the shorter than for the longer distance by competition at the longer distance point of other carriers which are themselves subject to that Act, in the absence of authority from the commission under the proviso clause of said section. Trammell v. Clyde S. S. Co. (Georgia R. Commission Cases), 5 I. C. C. Rep. 324, 4 Inters. Com. Rep. 120, cited and reaffirmed. Board of Trade of Lynchburg v. Old Dominion S. S. Co. 6 I. C. C. 632.

(ee) Complainant attacked rate of 34c charged on cotton seed meal from Dyersburg, Tenn., to Philadelphia, Pa., as unjust and unreasonable as compared with a rate of 29c from Memphis, Tenn., a point beyond. One of the intermediate carriers subsequent to the filing of the complaint published the rate of 26c from both Memphis and Dyersburg. HELD, the cause of the complaint being removed, reparation made, and complaint dismissed. W. H. Boyer & Company v. C. O. & S. W. R. Co. 7 I. C. C. 55.

(ff) No disturbance of rates, secret or open, creates such dissimilarity of circumstances and conditions under section four of the Act to Regulate Commerce as will justify either of two or more competiting carriers subject to that Act in charging more for the shorter than for the long haul, without an order of the Commission. Matter of Alleged Violations of the Fourth Section, 7 I. C. C. 61.

(gg) Charging the same aggregate rates on like traffic for longer and shorter distances over the same line in the same direction does not contravene the Interstate Commerce Act, § 4. Milk Producers' Protective Asso. v. Delaware, L. & W. R. Co. 7. I. C. C. 92.

(hh) Complainant attacked rates from Cincinnati, O., and Louisville, Ky., to Griffin, Ga., as compared with the rates to Macon, Ga., Griffin being intermediate, as a violation of the fourth section and unjustly discriminatory and unreasonable. HELD, Griffin is entitled to Macon rates and charging any higher rate to Griffin is an unjust discrimination under section three of the act. Brewer & Hanleiter v. L. & N. R. Co. 7 I. C. C. 224.

(ii) Complainant attacked rates on coal from Alabama mines to points on the Alabama & Vicksburg Ry. west of Meridian, Miss., including Vicksburg, Miss., as in violation of the fourth section, unreasonable and unjustly discrim-

inatory. Defendants and other carriers, subject to the act, are engaged in the interstate transportation of coal, wholly by railroad, from various mines in Alabama and other states to Jackson, Miss., under agreed rates which are less for each line than is charged on coal for shorter distances over the same line in the same direction, the shorter being included within the longer distance. HELD, that the transportation by defendants of coal in carloads from such mines to Jackson and shorter distance localities is performed under substantially similar circumstances and conditions within the meaning of the fourth section. Rates per se. Coal transported from Corona, Birmingham or Blocton, Ala., to Vicksburg, Miss., must go by railroad, and the competition of such coal and coal from other Alabama mines in the Vicksburg market is with coal brought over long distances down the Ohio and Mississippi rivers from Pittsburg, Pa., and other points in the mining district. HELD, that this is not competition between rail and water lines for transportation from a particular locality, but the competition of markets or mines for the supply of coal at Vicksburg, the force and effect of which is determined by commercial considerations peculiar to the business of shippers and wholly disconnected from the circumstances and conditions under which transportation is conducted. Carriers are required to cease and desist from publishing higher rates to shorter distance stations on the A. & V. R. Co., than rates from the same mines for the longer distances to Jackson and Vicksburg W. & Fewell v. R. & D. R. Co. 7 I. C. C. 354.

(jj) Defendants and other carriers, all subject to the Act to Regulate Commerce, are engaged in the interstate transportation of coal, wholly by railroad, from various mines in Alabama and other States to Jackson, Miss., under agreed rates which are less for each line than is charged on coal for shorter distances over the same line in the same direction, the shorter being included within the longer distance. HELD, That the transportation by defendants of coal in carloads from such mines to Jackson and shorter-distance localities is performed "under substantially similar circumstances and conditions," within the meaning of the fourth section of the statute. Fewell v. Richmond & D. R. Co., 7 I. C. C. 354.

(kk) Rates charged over the Cincinnati, New Orleans & Texas Pacific and Southern Railways for the transportation of wheat in carloads to Morristown and other points in Tennessee, found to have been higher for the shorter distance from Nicholasville, Ky., than for the longer distance over the same line, in the same direction, from Cincinnati, Ohio; but by a joint tariff recently filed the rates from Nicholasville were made not higher than those from Cincinnati. HELD, That the former rates were in violation of the fourth section of the Act, but that the present charges are not, and that formal order in that respect should not be issued. Board of Railroad Comrs. v. Cincinnati N. O. & T. P. R. Co., 7 I. C. C. 380.

(ll) Complainant attacked rates on wheat from Nicholasville, Ken., to Tennessee and Georgia points as unreasonable and unduly discriminatory. Comparison of wheat rates charged by defendants from Nicholasville with higher rates to the same points from St. Louis, Chicago or Milwaukee, much more distant points of shipment, or with a lower wheat rate from Louisville, Ky., to Newport News, Va., while tending to support complainants case, not found to fairly establish the fact that the rates complained of were unreasonable or that they discriminated against Nicholasville. Rates charged over the C. N. O. & T. P., and Southern Ry. for the transportation of wheat in carloads to Morristown and other points in Tennessee found to have been higher for the shorter distance from Nicholasville, than for the longer distance over the same line, in the same direction, from Cincinnati, O., but by a joint tariff recently filed the rates from Nicholasville were made not higher than those from Cincinnati. HELD, that the former rates were in violation of the fourth section, but that the present charges are not, and that formal order in that respect should not now be issued. Board of Railroad Commissioners of Kentucky v. C. N. O. & T. P. R. Co. 7 I. C. C. 380.

(mm) Freight rates over the Louisville & N. R. Co., higher from New Orleans for the shorter distance to La Grange, Georgia, than for the longer distance to Hogansville, Newman, Palmetto, or Fairburn, in the same state, violates the Interstate Commerce Act § 4, as they are under substantially similar circum-

stances and conditions. Calloway v. Louisville & N. R. Co. 7 I. C. C. 431.

(nn) The transportation of freights by defendants from New Orleans to La Grange and Fairburn, Ga., is "under substantially similar circumstances and conditions," the conditions and circumstances affecting transportation by them from New Oorleans to La Grange and Hogansville, La Grange and Newman, and La Grange and Palmetto, all in Georgia, are also substantially similar; and freight rates over defendants' line which are higher from New Orleans for the shorter distance to La Grange than for the longer distance to either Hogansville, Newman, Palmetto, or Fairburn, violate section 4 of the statute. Calloway v. Louisville & Nashville R. Co. 7 I. C. C. 431.

(oo) Complainant attacked rates from New Orleans, La., to La Grange and Fairburn, Ga., as unreasonable and unjustly discriminatory as compared with the rates to Hogansville, Newnan and Palmetto, the first mentioned points being intermediate. HELD, rates attacked in violation of the fourth section and unduly discriminatory which the defendants are ordered to remove. Calloway v. L. & N. R. Co. 7 I. C. C. 431.

(pp) The exaction of higher rates for a shorter than for a longer haul over the same line in the same direction, the shorter haul being included within the longer, renders a carrier amenable, not only under § 4, but also under §§ 1 and 3 of the Act to Regulate Commerce, Philips, Bailey, & Co. v. Louisville & N. R. Co. 8 I. C. C. 93.

(qq) The exaction of as high rates for a shorter haul as for a longer haul over the same line in the same direction, the shorter being included within the longer, is in itself a discrimination; and if not justified by a substantial dissimilarity of circumstances and conditions, is an unjust discrimination. Philips, Bailey, & Co. v. Louisville & N. R. Co. 8 I. C. C., 93.

(rr) While it may be in this case that as high rates on sugar and molasses for the shorter haul from New Orleans to Nashville than for the longer hauls to Louisville are justified, the evidence does not show such a substantial dissimilarity of circumstances and conditions as will authorize higher rates on such transportation to Nashville than are charged to Louisville. Phillips Bailey & Co. v. Louisville & Nashville R. Co. 8 I. C. C. 93.

(ss) Complaint attacked rates on sugar and molasses, carloads, from New Orleans, La., to Nashville, Tenn., as in violation of section 4, unreasonable and unjustly discriminatory as compared with the rates from said points of origin to Louisville. Nashville is directly intermediate to Louisville and the evidence does not show such a substantial dissimilarity of circumstances and conditions as will authorize higher rates on such transportation to Nashville than are charged to Louisville. HELD, carrier ordered to cease and desist maintaining higher rates to Nashville than to Louisville. Phillips Bailey & Company v. L. & N. R. Co. 8. I. C. C. 93.

(tt) The rates enforced by the respondent company on live poultry in carloads to Chicago are higher from Marshfield than for the longer distance from Springfield and other more distant stations on its line, to and including Columbus, Kans. It meets the competition of other roads at Springfield and various junctions to the west of Springfield, yet nowhere west of Springfield does the respondent or any of its competitors make the greater charge for a shorter than for a longer distance on this traffic. Such rates on live poultry from Springfield and points west thereof are not unreasonably low. The respondent makes as low a rate to St. Louis from Marshfield as from Springfield. The circumstances and conditions applying from the points involved on the traffic in question are not substantially dissimilar. The investigation covered freight articles generally, but the testimony was confined to live poultry. HELD (1), That the respondent has failed to justify such higher rate from Marshfield than from Springfield and other more westerly stations for the carriage of live poultry to Chicago, and that by keeping such higher rates in force it is acting in violation of the fourth and third sections of the Act. (2), That the respondent should not insist upon making higher charges to Chicago from Marshfield than from more distant points of shipment upon other kinds of traffic, unless it is prepared to justify such action by showing an essentially different state of facts than appears in this proceeding. Violations of Act to Reg. Comm. By St. L. & S. F. Ry. Co. 8 I. C. C. 290.

(uu) The circumstances and conditions are not substantially dissimilar, so as to justify higher rates on live poultry for a shorter than for a longer distance, where the intermediate station is a non-competitive point, and higher rates for nearer than more distant points of shipment are not charged by the road in territory subject to competition. Re Alleged Violations of Act to Regulate Commerce, 8 I. C. C., 290.

(vv) The greater charge enforced by the respondent company for the shorter distance from Marshfield, Mo., than for the longer distance from Springfield and other more westerly stations, in the transportation of live poultry in carloads to Chicago, constitutes a departure from the general rule of the fourth section, which the carrier was bound to justify in this proceeding. Violations of Act to Reg. Com. By St. L. & S. F. Ry. Co. 8 I. C. C. 290.

(ww) The higher rate from an intermediate locality to a common destination also constitutes a prejudice to that locality and shippers and traffic therefrom, and a preference to the more distant localities and shippers and traffic therefrom, which, if found to be without sufficient excuse, must be held unreasonable and undue, and therefore in contravention of the third section. Violations of Act to Reg. Com. By St. L. & S. F. Ry. Co. 8 I. C. C. 290.

(xx) Higher less than carload rates on asbestos articles from Summerdale, a station within the city limits of Chicago, than from points north of Chicago, to and including Milwaukee, are in violation of the Act to Regulate Commerce, §§ 3, 4, where through rates were not denied before Summerdale became a part of the city of Chicago by extension of the city limits, and the circumstances and conditions governing the transportation are not dissimilar. Chicago Fire Proof Covering Co. v. Chicago & N. W. R. Co. 8 I. C. C. 316.

(yy) Defendants offer to carry asbestos material at established through joint rates to eastern points from stations north of Chicago, including Milwaukee; and by denying such rates on like shipments from Summerdale, an intermediate station, and exacting higher rates thereon, they subject complainant to undue prejudice in its competition with other dealers for the sale of asbestos articles and shipment thereof to eastern localities. Chicago F. P. Covering Co. v. C. & N. W. R. Co., 8 I C. C. 316.

(zz) Upon complaint that defendants charge unlawful rates on asbestos articles from Summerdale, Ill., to Lima, O., and other eastern points, it appeared that Summerdale, although within the city limits of Chicago, is a station on the C. N. W. Ry., which for purposes of shipment and carriage is independent of the main depots of that company in Chicago; that it is a shorter-distance point, and Milwaukee and other places on the Milwaukee division of the C. & N. W. north of Summerdale are longer-distance points over defendants' established through line with reference to L. C. L. shipments to eastern destinations; that defendants have through rates in effect from stations north of Chicago, but on traffic from Summerdale the Penn. Co. insists upon a higher charge made by adding rates to and from the point of connection in Chicago; that these through rates were not denied to Summerdale before it became part of Chicago by extension of the city limits; and that the circumstances and conditions governing the transportation are not dissimilar. HELD, that defendants' higher less than carload rates on asbestos articles from Summerdale than from points north of Chicago to and including Milwaukee, on shipments destined to Lima, O., and other eastern points, are in violation of sections 3 and 4 of the statute. Chicago F. P. Covering Co. v. C. & N. W. R. Co., 8 I. C. C. 316.

(3a) Lower rates are in effect by the defendant and other lines on flour and other traffic from St. Paul, Minneapolis, Anoka, Elk River, Princeton and Milaca, Minn., than from St. Cloud, Minn., to eastern points; and on coal and other westbound freight the rates from eastern points are higher to St. Cloud than to the other points specified. The disparity in rates against St. Cloud greatly prejudices that city, millers, merchants and consumers in that locality, and producers of grain in the section surrounding St. Cloud in comparison with the other places mentioned and competing millers and dealers therein. The defendant competes over a long line with three other rail lines between Duluth and other Lake Superior points and St. Paul and Minneapolis for traffic to and from the the east, and St. Cloud is an intermedi-

ate point on its line; but it carries only an insignificant amount of such competitive traffic. In entering upon such competition it accepted the rates of its competitors, but being engaged in the traffic it is able to control the through rates equally with the other competing lines, and of all these lines only the defendant makes a higher charge to or from any intermediate point. HELD, upon consideration of the whole situation, that defendant carries this business from and to St. Paul, Minneapolis, Anoka and Elk River "under substantially similar circumstances and conditions" with those existing in case of business to and from St. Cloud, and that the higher rates to and from St. Cloud, the intermediate point, are in violation of the fourth section. Geo. Tileston Mill Co. v. Northern P. R. Co. 8 I. C. C. 346.

(3b) A carrier competing over a long line is not justified in charging more for the short than the long haul to the prejudice of an intermediate point where such discrimination brings it but a small amount of competitive traffic, and it is able to control the through rate equally with its competitors who observe the rule of the 4th section of the Act to Regulate Commerce. George Tileston Milling Co. v. Northern P. R. Co. 8 I. C. C. 346.

(3c) Under all the circumstances and conditions, freight rates from northern and eastern cities, from western points of shipment, and from New Orleans to Lynchburg, Va., may properly be somewhat lower than the rates to Danville, Va.; but the present rates to Danville as compared with those in force to Lynchburg, are excessive under the 4th as well as the 3d section of the statute. The rates from northern and eastern cities and from New Orleans to Danville on sugar, molasses, rice and coffee should not exceed those to Lynchburg by more than 10 per cent. The rates between Danville and the west, including the rate on tobacco to Louisville, Ky., should not exceed those between Lynchburg and the west by more than fifteen per cent. Danville v. Southern R. Co., 8 I. C. C. 409.

(3d) Complainant attacked as unreasonable and unjustly discriminatory rates to Danville, Va. The system of rate making into Southern territory under which, on traffic from St. Louis, Chicago, and other points, the rates to Danville are the sums of the locals to and from the Ohio river, and the rates to Lynchburg, Va., are made on a much lower joint rate basis, is utterably unreasonable. No opinion is expressed as to the system as a general scheme, but if the carriers desire to make rates in that manner they must so adjust their charges as not to annihilate the city of Danville. Rates to Danville must be adjusted with relation to rates to competitive localities, like Lynchburg, and the carriers from the point of origin to destination should prorate in these rates if they participate in either Lynchburg or Danville business. In determining the Danville rate from New Orleans and western points of shipment, the Southern Railway, which dominates the situation should instead of adding to the rate to Lynchburg the local back from Lynchburg, recognize that the business is through business upon which Lynchburg, a competitor of Danville, enjoys a low through rate, and upon which Danville itself is entitled to a through rate. Freight rates from northern and eastern cities, from western points of shipment, and from New Orleans to Lynchburg may properly be somewhat lower than the rates to Danville, but the present rates to Danville as compared with those in force to Lynchburg are excessive under the fourth as well as the third section of the act. The rates from northern and eastern cities to Danville and the rates from New Orleans to Danville on sugar, molasses, rice and coffee should not exceed those to Lynchburg by more than 10%. The rates between Danville and the west, including the rate on tobacco to Louisville, Ky., should not exceed those between Lynchburg and the west by more than 15%. City of Danville, Va. v. Southern Ry. Co. 8. I. C. C. 409.

(3e) The Commission has held in complaints under the fourth section, that a case for the complainant was made out by the mere showing of the higher rate to the intermediate point, and that the defendants was thereupon required to justify those rates. City of Danville v. Southern Ry. Co. 8 I. C. C. 409, 426.

(3f) The rule of section 4 of the law, forbidding the greater charge for the shorter than the longer haul, has no application to this case. That rule is based on distance and relates to the actual transportation charges and not to demurrage charges, which are in the na-

ture of charges for storage in the cars of the carrier. (Interstate Commerce Commission v. Detroit, G. H. & M. R. Co. 167 U. S. 644, 42 L. ed. 309, 17 Sup. Ct. Rep 986.) If, however, such demurrage charges when added to transportation rates result in greater aggregate charges in certain cases than in other cases involving longer hauls, this may constitute undue preference as between different localities under section 3. Pa. Millers' State Asso. v. Phila. & R. Ry. Co., 8 I. C. C. 531.

(3g) This proceeding involves the legality of greater freight charges to Denver than to San Francisco from Missouri River and points east; greater freight charges from Denver than from Missouri River and points east to San Francisco; greater freight charges to Denver than to Missouri River and points east from San Francisco; greater freight charges from Denver than from San Francisco to Missouri River and points east. Pending the controversy, numerous concessions in rates in favor of Denver were made by the carriers, among which are charges making west-bound rates apparently no higher to or from Denver than those in effect from Missouri River or points east. The circumstances and conditions affecting the transportation, including the effect of water competition in both directions between the Pacific Coast and the Atlantic Seaboard, the competition of markets, the physical condition of the lines, and the condition of the carrires themselves, considered, and upon the whole situation,—HELD, That the rates complained of are in violation of the 4th and 3d sections of the Act to Regulate Commerce, and that, as matter of general application, rates at Denver to or from the east, or to or from the Pacific Coast, ought not to be higher than those between San Francisco or other Pacific Coast terminals and the Missouri River or points east. While there are perhaps instances in both directions where higher intermediate rates may properly be maintained, no exception has been claimed as to any article west-bound. In case of east-bound traffic, defendants' contention that the rate on sugar might be higher to Denver than to Missouri River is sustained, it being found that the circumstances and conditions governing the traffic are different when it is carried to Missouri River points than when it stops at Denver. Kendel et al. v. Atchison, T. & S. F. R. Co. 8 I. C. C. 608.

(3h) Section 4 declares that the carrier shall not make the higher charge to the nearer point under substantially similar circumstances and conditions. If the circumstances and conditions are not substantially similar, then the section does not apply, and the carrier is not bound to regard it in the making of its tariffs. Interstate Commerce Commission v. Western & Atlantic R. R. Co. 8 I. C. C. App. XIII.

(3i) Where the circumstances and conditions at the longer-distance point are substantially dissimilar, the carrier may judge of this for itself, in the first instance, and fix the rates for the longer-distance point without violating § 4 of the act; but this does not preclude the courts or the commission from inquiring as to whether the rates to the shorter-distance points are unjust or unreasonable, or whether they constitute undue preference for, or unjust prejudice against any locality. Citing: Interstate Commerce Commission v. Alabama Midland R. Co. 41 U. S. App. 453, 74 Fed Rep. 723, 5 Inters. Com. Rep. 685, 168 U. S. 173, 42 L. ed. 425. Interstate Commerce Commission v. Western & Atlantic R. R. Co. 8 I. C. C. App XIII.

(3j) That dissimilarity exists in conditions does not of itself justify a departure from the long and short haul provision of the Interstate Commerce Act, but the dissimilarity must be so great as to justify the discrimination made. I. C. C. v. E. Tenn. Vir., & Georgia R. R. Co. 8 I. C. C. App. XLIII.

(3k) Authority from the Interstate Commerce Commission is not necessary to entitle carriers to depart from the rule against charging more for a short than for a long haul because of a different condition arising from competition by other carriers. The court says: "If railway carriers engage in a competitive struggle for business at a place where they meet, and underbid each other or other carriers to a point which is not in itself remunerative, can they turn back on the line, and, taking advantage of the conditions existing in other localities, arising either from the fact that there is no opportunity for competition or from the fact that by concert of the carriers there is none, charge such rates for the shorter haul as shall make good their lack

of profits on their whole business to the point they set before themselves as reasonable? To the proposition thus roundly stated no doubt counsel for the carriers would say that they could not contend for it. And yet this is the result reached by the not very indirect steps of the argument. And the proposition itself cannot be admitted without tearing up by the roots the whole scheme of the commerce act." I. C. C. v., E. Tenn., Vir., & Georgia R. R. Co. 8 I. C. C. App. XLIII.

(31) Freight rates on goods shipped from Cincinnati, Louisville, Evansville, and Nashville to Tifton, which are higher than rates on goods shipped to Valdosta, Ga., the longer distance point, via Tifton, violate the Act to Regulate Commerce. Mayor and Council of Tifton, Ga. v. Louisville & Nashville R. Co. 9 I. C. C. 160.

(31a) Rates on shipments which pass from New York and other eastern cities over water and rail lines to Tifton, Ga., and through Tifton to Albany, which are higher to Tifton than those to Albany, the longer distance point, violate the Act to Regulate Commerce. Mayor and Council of Tifton, Ga. v. Louisville & Nashville R. Co. 9 I. C. C. 160.

(3m) Freight passes from New York and other eastern cities over water and rail lines via. Savannah to Tifton, Ga., and through Tifton to Albany, Ga. Freight also passes by all rail routes from Cincinnati, Louisville, Evansville and Nashville to Tifton and through Tifton to Valdosta, Ga. The circumstances and conditions at Tifton are substantially similar to those at Albany on traffic from the east, and the circumstances and conditions at Tifton are substantially similar to those at Valdosta on traffic from the north and west. HELD, That freight rates from New York and other eastern cities over such water and rail lines to Tifton which are higher than those to Albany, the longer distance point, are in violation of the Act to Regulate Commerce; that freight rates from Cincinnati, Louisville, Evansville and Nashville which are higher to Tifton than those to Valdosta, the longer distance point, are in violation of the Act to regulate commerce; that freight rates to Tifton which are less than those to Albany or Valdosta from the points named are not authorized to be increased by this decision; that the present rates enforced for the transportation of sugar from New Orleans to Tifton are unjust and unduly prejudicial to Tifton, and such rates to be lawful should not exceed the rates on the same commodity from New Orleans to Valdosta. Mayor and Council of Tifton v. L. & N. R. R. Co. et al 9 I. C. C. 160.

(3n) Complainant attacks class and commodity rates as unreasonable and unjustly discriminatory from Nashville, Tenn., Cincinnati, O. Louisville, Ky., and Evansville, Ind., to Tifton, Ga., than from the same points to Albany, Americus, Dawson, Cordele and Macon, Ga.; also rates form New York to Tifton are higher than to points beyond to which Tifton is intermediate. Freight passes from New York and other eastern cities over water and rail lines via Savannah to Tifton and through Tifton to Albany, Ga. Freight also passes by all rail routes from Cincinnati, Louisville, Nashville and Evansville to Tifton and through Tifton to Valdosta, Ga. The circumstances and conditions at Tifton are substantially similar to those at Albany on traffic from the east, and the same as to Valdosta on traffic from the north and west. HELD, rates attacked unreasonable to extent they exceeded rates in effect to points beyond such as Albany and Valdosta. Mayor and Council of Tifton, Ga., v. L. & N. R. R. 9 I. C. C. 160.

(3o) Freight rates on goods shipped from Cincinnati, Louisville, Evansville, and Nashville to Tifton which are higher than rates on goods shipped to Valdosta, Ga., the longer distance point, via Tifton violate the Act to Regulate Commerce. Business Men's League of St. Louis v. Atchison T. & S. F. R. 9 I. C. C., 318.

(3p) Complainant attacked as unreasonable, commodity rates on lumber from points west of the Mississippi River in Louisiana, Arkansas and Texas to Wichita, Kans., as compared with rates on like traffic from the same points to Kansas City, Mo., Omaha and Lincoln, Neb., and Topeka, Kans., and that such rates are higher via the Santa Fe and Rock Island for the shorter distance to Wichita than for the longer distance through Wichita to the destinations named. It appeared that competitive conditions existing in Kansas City, Omaha and Lincoln produce rates lower to those points from the lumber territory and that such competitive conditions do not exist at Wichita; that there is no substantial dissimilarity in the conditions

governing the transportation of lumber from such territory to Wichita and through Wichita to Topeka by the Santa Fe and Rock Island; that the rate from such lumber producing territory to Wichita is excessive to the extent of 1c per 100 pounds. HELD, rates to Wichita compared to those to Kansas City, Omaha and Lincoln are not in violation of the third and fourth sections, that all the defendants violate the third section by maintaining lower rates to Topeka than Wichita, that the Santa Fe and Rock Island violate section 4 by maintaining higher lumber rates to Wichita than to Topeka, and that the rates to Wichita is unreasonable and should be reduced 1c per 100 pounds. Mayor and Council of Wichita, Kans. v. C. R. I. & P. Ry. 9 I. C. C. 569.

(3q) A charge of a higher rate on lumber from western points to Wichita, Kansas, than for the longer distance through Wichita to Topeka, Kan., violates the Interstate Commerce Act, where the circumstances and conditions at Topeka do not differ from those at Wichita. Mayor and City Council of Wichita, Kansas v. Chicago, Rock Island & Pacific R. Co. 9 I. C. C. 569.

(3r) Except as to 140 commodities, defendant complied with order of the Commission directing that rates from the Pacific Coast should not be higher to Denver than to the Missouri River, and later, pending further investigation, the number of articles insisted upon as constituting exceptions was reduced to 32. In this case it was held by the Commission in its previous report that defendants were warranted in charging a higher rate to Denver than to the Missouri River on sugar carried from the Pacific Coast, and it is now further held that defendants are justified in maintaining rates from the Pacific Coast which are lower to Missouri River points than to Denver upon rice, hemp, baking powder, blankets, books, boots and shoe heels, chocolate, cocoa and extracts, but that as to all of the other commodities mentioned in this report the rate from Pacific Coast points should not be higher to Denver than to points on the Missouri River. Kindel et al. v. Atchison, T. & S. F. Ry. Co. et. al. 9 I. C. C. 606.

(3s) As to traffic other than the excepted commodities herein mentioned the general rule which has been laid down in this case is that in the making of these trans-continental rates Denver must receive the same treatment that is accorded to cities in the Middle West and Missouri River territory. It has not been held that rates between New York and San Francisco in either direction must not be lower than at Denver, nor has the inherent reasonableness of the rates to Denver from any direction been considered. Kindel et al. v. Atchison, T. & S. F. Ry. Co. et al. 9 I. C. C. 606.

(3t) Complainant attacked as unreasonable rates on freight articles from St. Louis, Mo., East St. Louis and Cairo, Ill., to Mobile, Ala., Meridian, Miss., lower than for the shorter distances to Tupelo, Aberdeen, Columbus, West Point and Starkville, Miss. The principal commodity involved is that of grain on which rates were reduced prior to April 1, 1901 due to a crop failure in that region, but they were subsequently advanced on Dec. 9, 1901. The rates from St. Louis, Mo., to Mobile and Meridian were affected by water competition which created substantial dissimilarity in the conditions affecting transportation, which condition was not present at intermediate points. HELD, rates attacked not unreasonable but rates on grain should be reduced. Aberdeen Commercial Asso. v. M. & O. R. R. 10 I. C. C. 289.

(3u) Prior to April 25, 1903, defendant had in effect rates per 100 lbs. on bananas in carloads from Charleston, which were 43 cents to Danville and 20 cents to Lynchburg. The rate of 20 cents to Lynchburg was 13 cents below the rate which was justified by competition from Baltimore or elsewhere. Such relation of rates was in violation of section four of the Act to Regulate Commerce. Gardner & Clark v. Southern R. Co. 10 I. C. C. 342.

(3v) Complainant attacked as unreasonable and unduly prejudicial commodity rates on hay, carloads, from Pataskala, O., to Wilmington, N. C., and Greenville, N. C. Rate charged 23c to Wilmington and 36c to Greenville. The rate from Columbus, a point beyond to which Pataskala is intermediate was 17c and 25c respectively. Correct tariff rate was 22c to Wilmington and 30c to Greenville, shipments overcharged. The number of roads centering at Columbus, and the initial reduction by a rival line at that point make such a competitive condition as creates a situation which does not necessarily demand like

rates. HELD, shipments overcharged, refund ordered, no unjust discrimination found. Dewey Bros Co. v. B. & O. R. R. 11 I. C. C. 475.

(3w) Complainant attacked as unreasonable and unjustly discriminatory rates from Dalton, Ga., on lumber, carloads., to points in Virginia. Destination points are on the N. & W., between Bristol, Va., and Roanoke, Va., and rates to these destinations are higher than to Roanoke and Lynchburg, Va., to which they are intermediate. HELD, the facts do not, in view of the judicial interpretation of the act, furnish basis for a conclusion that the rates in question violate the socalled long and short haul clause. Prior to the complaint rates were advanced making them higher than the rate to Lynchburg a point beyond, the N. & W., being willing to apply the Lynchburg rate at intermediate points. HELD, rates attacked unreasonable to extent they exceeded rates to Lynchburg. Farrar v. Southern Ry 11 I. C. C. 640.

(3x) Complaint that rate on sugar in carloads from New Orleans, La., to McAlester, Ind. Terr., of 38 cents per 100 pounds, was unreasonable and unduly discriminatory, defendant's rate to Muskogee, Ind. Terr., a more distant point over the same line, being 35 cents, —dismissed, defendants having reduced their rate. Hale-Halsell Grocery Co. v. M. K. & T. Ry. Co., 12 I. C. C. 136.

(3y) Complainant attacked through commodity rate charged on petroleum and its products from Oil City, Pa., to Freeport, Ill., as unreasonable. Rate charged was 25 1-3, rate to Chicago being 16c and 7c beyond, or combination of 23c. Subsequently rate charged was reduced to the combination on Chicago. HELD, complaint dismissed. National Petroleum Association v. Pennsylvania R. R. 12 I. C. C. 153.

(3z) Complainant attacked as unreasonable commodity through rate charged on silos, carloads from Kalamazoo, Mich., to Elkhorn, Wis. The through rate was 28c whereas the rate to Chicago was 11c and 6c beyond, or total of 17c. Defendant expressed willingness to publish the combination as a through rate and award reparation. HELD, rate attacked unreasonable to extent it exceeded 17c, reparation awarded. Kalamazoo Tank & Silo Co. v. M. C. R. R. 12 I. C. C. 155.

(4a) Complainant attacked as unreasonable commodity rates charged on coke from Kentucky and Virginia to Terre Haute, Ind. The rates to Chicago were on a lower basis although Terre Haute was intermediate. Subsequently the defendants published the same rate to Terre Haute as to Chicago. HELD, complaint dismissed. Manufacturers Club of Terre Haute v. L. & N. R. R. 12 I. C. C. 157.

(4b) Complainant attacked commodity rate charged of $1.05 per ton of coal, carload, from Mineral, Kans., to Freeman, Mo., while it had in force a rate of 80c per ton from Mineral to Harrisonville, Mo., a longer distance point by its line, as unreasonable and unjust. At the hearing it was agreed that defendant should make the 80c rate effective to Freeman and that complaint should withdraw its claim for reparation. HELD, complaint dismissed. George D. Hope Lumber Co. v. M. K. & T. Ry. 12 I. C. C. 191.

(4c) Complainant attacked as unreasonable commodity rate of 22c charged on salt, carloads, from New Orleans, La., to Cullman, Ala. Cullman is 54 miles north of Birmingham and 33 miles south of Decatur on the North & South Alabama Ry. which is controlled by the L. & N. The 22c rate is made up of the 12c rate to Birmingham and 10c beyond. Prior to 1905 the rate to Decatur was 16c and increased to 18c. Salt from New Orleans Cullman being 471 and Decatur 504 miles from New Orleans via this line. There is no competition at Cullman either by rail or water but there is water competition at Decatur, also there is carrier competition at that point. HELD, rate attacked unreasonable to extent it exceeded 20c, reparation awarded on shipments moving since the filing of the complaint. Farmers Warehouse Co. v. L. & N. R. R. 12 I. C. C. 457.

(4d) Complainant attacked as unreasonable commodity rates charged on coal, carloads, from Rockvale and Trinidad districts in Colorado to Coolidge, Lakin, Garden City, Cimarron and Dodge City, Kans., and unduly discriminatory as compared with rates from said mines to Hutchison, Kans., and Ardmore, Okla. Rates to the latter points were lower than to the intermediate territory as defendant claimed they were necessary to meet competition from the Pittsburg mining district in Kansas. HELD,

rates attacked unreasonable to extent they exceeded from Rockvale $2.55 to Coolidge, and from Trinidad $2.30. Southwestern Kansas Farmers & Business Mens League v. A. T. & S. F. Ry. 12 I. C. C. 530.

IMPORTANT CASES SINCE 1908

(4e) A less charge for a longer haul than for a shorter one, where the latter is included within the former, is not unlawful under section 4 of the Act, if there is substantial dissimilarity of circumstance and conditions. Competition between carriers at the more distant point may create substantial dissimilarity of circumstance. A commodity may be produced at two points widely distant from each other and different carriers may serve the different points. The commodity from one point of production may meet that from the other in competition in a common territory between the two points. If the carriers serving the one point of production make a reasonable and remunerative rate therefrom to the common field of consumption, the other producing point may be given equality of rates to the common competing territory by the carriers serving such point of production, if such equalizing in rates is reasonable and remunerative. Bovaird Supply Co. v. A. T. & S. F. Ry. Co., 13 I. C. C. 56, 62.

(4f) The long-and-short-haul clause of the Act prohibits the charging of a higher rate to a less distant point only where the carrier responsible for both rates occupies a like relation to the more distant point to which the lower rate applies. Railroad Commission of Kentucky v. L. & N. Ry. Co., 13 I. C. C. 300, 309.

(4g) A movement of traffic may be affected by water competition at a more distant point and yet a rate made up of the combination of the rate by water plus the rate back be unreasonable and unjust. Nevada, Utah, Arizona and Idaho are nearer to the Pacific coast than to the Atlantic, but this does not of itself justify charging them overland rail rates which will give them none of the advantages arising out of their shorter distance to an eastern base of supplies, nor does it follow that a rate to a point on the seaboard is lower than would be justified if that point were not so situated. In short it is not sufficient to state that the terminal points are situated on the water to excuse the imposition of higher rates at intermediate points. Railroad Commission of Nevada v. S. P. Co., 19 I. C. C. 238, 250.

(4h) Under the fourth section as amended in 1910 a carrier is not permitted to charge more for a short than for a long haul unless permission to do so is given by the Commission. City of Spokane v. N. P. Ry. Co., 21 I. C. C. 400, 411; Railroad Commission of Nevada v. S. P. Co., 21 I. C. C. 329, 335.

(4i) A carrier should not unduly discriminate between its nearer and farther points. It is justified in discriminating in favor of one city as against another if they are so differently circumstanced that at one point transportation forces are brought into play which are not or cannot be exercised at another point. But a carrier is not justified in deliberately adopting a policy of preference toward one city as against another. In Re Application of the S. P. Co., 22 I. C. C. 366, 375.

(4j) Where, under a complaint attacking a rate to an intermediate point higher than that to a more distant point, the Commission determines that the rate to the intermediate point is unreasonable and prescribes a reasonable rate, this form of order does not establish a relation between the long distance and the intermediate rate. If for reasons over which the carrier has no control the rate to the more distant point should be reduced, the carrier might meet this reduction without any corresponding reduction at the nearer point, and, conversely, if the rate to the more distant point were advanced, the carrier could not at the same time advance the rate to the nearer point. Bluefield Shippers' Ass'n. v. N. & W. Ry. Co., 22 I. C. C. 519, 531.

(4k) The intermediate rate should not exceed the long-distance rate plus a reasonable local charge from the more remote back to the intermediate point, and should perhaps, in some cases, be even less. Bluefield Shippers' Ass'n v. N. & W. Ry. Co., 22 I. C. C. 519, 531.

(4l) The fact that a carrier, being estopped by the order of a state commission from increasing the rates to certain terminal points, the denial of its application for relief from the fourth section would leave it no alternative but to reduce rates to intermediate points to the terminal basis with consequent loss of revenue which it is no position to sustain, is not of controlling force. Rates on

Grain and Grain Products, 33 I. C. C. 613, 620.

(4m) The incorporation of rule 77, Tariff Circular 18-A, in a tariff is a recognition of the rights of intermediate points under the long-and-short-haul rule and a published guaranty that those rights will be recognized and protected upon demand. Drake Marble & Tile Co. v. C. G. W. R. R. Co. 39 I. C. C. 422, 423.

(4n) Same minimum but lower rate applied from a farther distance point thereby creating a departure from the fourth section which defendant apparently removed by reducing the rate and increasing the minimum from the intermediate point. Departure, however, still exists when the minima are considered in connection with the rates and no justification therefor shown. Karchmer Iron & Metal Co. v. Director General, 55 I. C. C. 730, 731.

(4o) Where a shipper made request for application of lower rate to an intermediate point under Rule 77 of Tariff Circular 18-A, as provided in tariff failure of carrier to comply found in violation of tariff provision; but, since shipment was billed and moved to the farther distant point and then reconsigned to the intermediate point, combination rate legally applicable found not unreasonable or unlawful. Red Star Yeast & Products Co. v. Director General, as Agent, 61 I. C. C. 107.

(4p) Under the amended fourth section the Commission has no authority to authorize a lower charge from farther distant competitive points than from intermediate points where the haul from the intermediate points is not longer than that of the direct line or route from the farther distant competitive points. Buckeye Veneer Co. v. Director General, as Agent, 61 I. C. C. 673, 675.

(4q) In cases where Rule 77 of Tariff Circular 18-A or a similar rule is involved, the fact that there may have been no movement of a particular description of traffic to the intermediate point in the past affords no basis for refusal to publish thereto a rate not higher than that to the farther distant point. Macon Chamber of Commerce v. N. Y. N. H. & H. 63 I. C. C. 327, 331.

(4r) Applicable tariff provided for the application to intermediate points of rates from or to the next more distant station when rates are not specifically published, subject to the general proviso, "Except as may be otherwise specifically provided in the tariff." A commodity rate basis was provided to the points in question but no rates were shown thereunder for gasoline or wrought iron pipe. That clause was applicable when "rates" were not specifically published to or from stations less distant than those to or from which rates were provided, and the publication of a rate basis without corresponding rates did not operate to make inapplicable the intermediate clause. Standard Oil Co. v. Director General 66 I. C. C. 472, 473.

(4s) Except unusual conditions, the Commission has uniformly awarded reparation on shipments moving from intermediate points under rates were higher than from a more distant point, where the rates from the latter point was established subject to rule 77. New York & New Jersey Lubricant Co. v. Director General 68 I. C. C. 477, 478.

(4t) A lower rate to a farther distant than to an intermediate point, applicable via route other than route of movement, does not constitute a violation of the fourth section of the act. Schultz & Co. v. Director General, as Agent, 73 I. C. C., 647.

(4u) Frequently when a class basis of rate is displaced and commodity rates established between certain points, the higher class basis obtaining at intermediate points must be adjusted to meet the requirements of the fourth section. Certain-Teed Products Corp. v. A. T. & S. F. Ry. 77 I. C. C. 444, 446.

(4v) Contention that there is no departure from long-and-short-haul provision of fourth section of the act where carrier is prohibited, by trackage agreement from transporting to or from intermediate local points, being required to turn over such freight to carrier owning line while reaching lower rated farther distant point with its own power, not sustained. Compensation received under joint rate for shorter distance is greater than that under single-line rate for longer distance over the same route in same direction, the shorter being included within the longer distance. Axton Case, 37 I. C. C. 389; Boldt Glass Co., 60 I. C. C. 495. Hartburg Lumber Co., v. B., S. L. & W. Ry. Co., 81 I. C. C. 497 498, 499.

(4w) Contention that charging proportional rate lower than local rate to

defendant's terminal, or charging a proportional rate to a terminal lower than local rate to an intermediate point, are departures from fourth section of the act, rejected as untenable. Southern Illinois Millers' Asso., 23 I. C. C. 672; Rates on Grain and Grain Products to Texarkana, Ark., 29 I. C. C. 35. Ohio Refining Co. v. L. & N. R. R. Co., 81 I. C. C. 688, 690.

ALL OTHER CITATIONS

Sunderland Bros. Co. v. C. & N. W. Ry., Co., 16 I. C. C. 433, 434; Cedar Hill Coal & Coke Co. v. A. T. & S. F. Ry. Co., 16 I. C. C. 402, 403, 404; Heilman Brewing Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 396, 397; American Beet Sugar Co. v. C. R. I. & P. R. R. Co., 16 I. C. C. 288; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 16 I. C. C. 254, 271, 272; Milwaukee Falls Chair Co., v. C. M. & St. P. Ry. Co., 16 I. C. C. 217; Davenport Commercial Club v. Y. & M. V. R. R. Co, 16 I. C. C. 209, 210; Valley Flour Mills v. A. T. & S. F. Ry. Co. 16 I. C. C. 73, 78; Neufeld v. C. M. & St. P. Ry. Co., 16 I. C. C. 26, 27; Carstens Packing Co. v. O. S. L. R. R. Co., 17 I. C. C., 324, 327; Kindelon v. S. P. Co. 17 I. C. C. 251, 253; League of Southern Idaho Commercial Club v. Oregon Short Line R. R. Co., 18 I. C. C. 562, 565; Wheeling Corrugating Co. v. B. O. & R. R. Co., 18 I. C. C. 125, 126; City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 174, 177; Commercial Club, Salt Lake City v. A. T. & S. F. Ry. Co., 19 I. C. C. 218; Scheuring v. L. & N. R. R. Co., 20 I. C. C. 550, 551; Henry v. Eastern Ry. Co., 20 I. C. C. 171; Scott v. T. & N. O. R. R. Co., 20 I. C. C. 167, 168; Kenworthy & Son v. U. P. R. R. Co., 21 I. C. C. 515; In Re Suspension of Rates on Packing House Products, 21 I. C. C. 68, 70; Bluefield Shippers' Ass'n v. N. & W. Ry. Co., 22 I. C. C. 519, 530, 531, 539; Switizer Lumber Co. v. A. & M. R R. Co., 22 I. C. C. 471, 474, In Re Application of the S. P. Co., for Relief under the Provisions of the 4th Section, 22 I. C. C. 366, 374, 375, 376; R. R. Comm. of Nev. v. N. C. O. Ry. Co., 22 I. C. C. 205, 215; Southern Illinois Millers' Ass'n v. L. & N. R. R. Co., 23 I. C. C. 672, 674; Huntingdon Lumber Co. v. I. C. R. R. Co., 23 I. C. C. 507, 509; Grand Junction Chamber of Commerce v. D. & R. G. R. R. Co., 23 I. C. C. 115, 119; Burlington Lumber Co. v. C. & A. R. R. Co., Unrep. Op. 577. Greer-Wilkinson Lumber Co. v. St. L. F. R. R. Co. Unrep. Op. 541; Standard Oil Co. v. C. C. C. & St. L. Ry. Co., Unrep. Op. 513; Anheuser-Busch Brewing Ass'n v. M. P. Ry. Co. Unrep. Op. 497; Burno v. M. K. T. Ry. Co., Unrep. Op. 488; Fort Scott Sorghum Syrup Co. v. St. L. & S. F. R. R. Co., Unrep. Op. 339 Standard Oil Co. v. I. S. R. R. Co., Unrep. Op. 319; Mason City Brick & Tile Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 287; Isbell-Brown Co. v. L. S. & M. S. Ry. Co, Unrep. Op 231; Wisconsin Pulp & Paper Mfrs. v. D. & I. R. R. R. Co. Unrep. Op. 225; Holverscheid & Co. v. L. & N. R. R. Co., Unrep. Op. 158; Partridge Lumber v. M. St. P. & S. Ste M. Ry. Co., Unrep. Op. 138; Sunderland Bros. Co. v. M. K. & T. Ry. Co., Unrep. Op. 128; Superior Charcoal Iron Co., v. P. M. R. R. Co., Unrep. Op. 86; Stacy & Sons v. E. & T. H. R. R. Co. Unrep. Op. 69; Foster Lumber Co. v. K. C. S. Ry. Co., Unrep. Op. 68; Northwestern Iron Co. v. C. M. St. P. Ry. Co. Unrep. Op. 9; Langenberg Bros. v. Wabash R. R. Co. Unrep. Op. 6; Acme Cement Plaster Co. v. C. R. I. & P. Ry. Co., Unrep. Op. 4; Bovaird Supply Co. v. A. T. & S F. Ry. Co., 13 I. C. C. 56, 62, 66, 64; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 15 I. C. C. 504; Duluth Log Co. v. M. & I. Ry. Co., 15 I. C. C. 192, 194; Moise Brothers Co. v. C. R. I. & P. Ry. Co., 16 I. C. C. 550, 557; Fort Dodge Commercial Club v. Ill. Cent R. R. Co., 61 I. C. C. 572, 575; Lesinsky Co. v. A. T. & S. F. Ry. Co., 24 I. C. C. 620; Kellogg Toasted Corn Flake Co. v. C. R. R. Co., 24 I. C. C. 604, 605, 606; Board of Trade of Morristown v. A. C. L. R. R. Co., 24 I. C. C. 372; Granada Oil Mill v. I. C. R. R. Co., 24 I. C. C. 318; French Paper Co. v. M. C. R. R. Co., 25 I. C. C. 364; Janesville Clothing Co. v. C. & N. W. Ry. Co., 26 I. C. C. 628; Commodity Rates, Westbound, 26 I. C. C. 456; Gills & Son v. P. B. & W. R. R. Co., 26 I. C. C. 61; Blakely Southern R. R. Co. v. A. C. L. R. R. Co., 26 I. C. C. 344, 348; Rock Springs Distilling Co. v. I. C. R. R. Co., 29 I. C. C. 18; Maier & Co. v. Southern Pacific Co., 29 I. C. C. 103; Stewart-Greer Lumber Co. v. St. L. I. M. & S. Ry. Co., 29 I. C. C. 120; Standard Oil Co. v. Pennsylvania Co., 29 I. C. C. 524; Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co., 28 I. C. C. 193, 201, 563, 568; Alton Board of Trade v. C. & A. R. R. Co., 28 I. C. C. 589, 593; Williamson Veneer Co. v. T. C. R. R. Co., Unrep. Op. A-108; Clemons Produce Co. v. C. & A. R. R. Co., Unrep. Op. A-324; Thornhill Wagon Co. v. N. & W. Ry. Co.,

Unrep. Op. A-383; Moore Hardware & Iron Co. v. D. & R. G. R. R. Co., Unrep. Op. A-392; Sulzerberger & Sons Co. v. S. P. Co., Unrep. Op A-400 Fourth Section Violations in the Southeast, 30 I. C. C. 153, 253, 317, 335; Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., 29 I. C. C. 28, 29; Hartzell v. C. H. & D. Ry. Co., Unrep. Op A-415; Mahaffey Co. v. G. N. Ry. Co., Unrep. Op. A-433; Wells Lumber Co., v. G. & S. I. R. R. Co., Unrep. Op. A-434; Tusten Seed and Produce Co. v. S. & P. Ry. Co., Unrep. Op. A-442; Western Stores Co., v. W. F. & Co., Unrep. Op. A-530; Helmers Mfg. Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-542; Beatrice Commercial Club v. C. B. & Q. R. R. Co., 31 I. C. C. 173; Lam-Davis Lumber Co. v. G. N. Ry. Co., 31 I. C. C. 341; Daves & Daves Grain Co. v. M. V. R. R. Co., Unrep. Op. A-569; Corning Glass Works v. E. R. R. Co., Unrep. Op. A-571; Nickey & Sons Co., Inc., v. M. & N. A. R. R. Co., Unrep. Op. A-600; Kalamazoo Tank & Silo Co. v. M. C. R. R. Co., Unrep. Op. A-601; Sheffield-King Milling Co. v. Iowa Central Ry. Co., Unrep. Op. A-630; Fourth Section Violations in the Southeast, 32 I. C. C. 61, 67, 68, 69; Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 595; Sugar Rates from New Orleans, 32 I. C. C. 606, 610; Class Rates between Stations in Louisiana, 33 I. C. C. 302, 305, 306; Daly Coal Co. v. C. & A. R. R. Co. 33 I. C. C. 467, 469; White v. Western Union Teleg. Co. 33 I. C. C. 500, 501; Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 625, 631, 632; Schoenhofen Brewing Co. v. P. M. R. R. Co., Unrep. Op. A-826; K. B. R. Milling Co. v. M. P. Ry. Co., Unrep. Op. A-874; Ellis & Meyers Lumber Co. v. V. Ry. Co., Unrep. Op. A-904; Valley Planing Mill Co. v. St. L. L. M. & S. Ry. Co., Unrep. Op. A-906; Lipscomb-Russell Co. v. S. Ry. Co., Unrep. Op. A-911; Harmon & Co. v. N. P. Ry. Co., Unrep. Op. A-918; Nanson Commission Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-926; United States Glue Co. v. C. & N. W. Ry. Co., Unrep. Op. A-930; Lumber Rates from Chattanooga, Tenn., to Nashville, Tenn., Unrep. Op. A-949; Millers Grain Co. v. A. T. & S. F. Ry Co., Unrep. Op. A-958; Commodity rates to Pacific Coast Terminals, 34 I. C. C. 13; Railroad Comm'rs of Iowa v. A. T. & S. F. Ry., 34 I. C. C. 111; Dewey Bros. Co. v. P. C. C. & St. L. Ry., 34 I. C. C. 135; Class Rates between Stations in Louisiana, 33 I. C. C., 302, 306; Tampa Board of Trade v. A. & V. Ry. Co., 33 I. C. C., 457, 461; Rates on Asphaltum, Barley, Beans and Canned Goods, 33 I. C. C., 480, 486; Commodity Rates to Pacific Coast Terminals, 34 I. C. C., 13, 17; City of Charlotte, N. C. v. S. Ry. Co., 34 I. C. C. 128, 134; Dewey Bros. Co., v. P. C. C. & St. L. Ry. Co., 34 I. C. C., 135, 138, 139; Coal and Coke Rates in the Southeast, 35 I. C. C. 187, 188; Eisle v. A. T. & S. F. Ry., 36 I. C. C. 17; Rates on Bituminous Coal, 36 I. C. C. 401, 419; Milliken Refining Co. v. M. K. & T. Ry. 37 I. C. C. 295; Axton v. K. M. Ry., 37 I. C. C. 389; Brown & Sons Lum. Co. v. L. & N. R. R., 37 I. C. C. 507; Cape Girardeau Portland Cement Co. v. St. L. & S. F. R. R., 37 I. C. C. 538; Taffe v. Am. Express Co., 37 I. C. C. 544; Arizona Stores Co. v. A. T. & S. F. Ry., 37 I. C. C. 669; Natl. Rolling Mill Co. v. C. & E. I. R. R., 38 I. C. C. 108; Merchants' Produce Co. v. O. W. R. R. & Nav. Co., 38 I. C. C. 209; McCaull-Dinsmore Co. v. G. N. Ry., 38 I. C. C. 297; Coffeyville Vitrified Brick & Tile Co. v. St. L. & S. F. R. R. Co., 38 I. C. C. 355; Star Clothing Co. v. M. K. & T. Ry., 38 I. C. C. 537; Darragh Co. v. C. R. I. & P. Ry., 38 I. C. C. 549; Chamber of Commerce of Washington, D. C. v. Penn. R. R. 38 I. C. C. 593; Shippers of Eastman, Ga. v. S. Ry., 38 I. C. C. 672; Great Western Smelting & Mfg. Co. v. O. S. L. R. R. Co., Unrep. Op. 2182; May & Co. v. C. M. & St. P. Ry. Co., Unrep. Op 2185; Kirby & Co. v. P. R. R. Co., Unrep. Op. 2187; Kellogg Toasted Corn Flakes Co. v. M. C. R. R. Co., Unrep. Op. 2209; Sturges Bros. v. A. T. & S. F. Ry. Co., Unrep. Op. 2226; Moore v. St. L. & S. F. R. R. Co., Unrep. Op. 2228; Standard Oil Co. v. L. S. & M. S. Ry. Co., Unrep. Op. 2231; Knoxville Overall Co. v. L. & N. R. R., 39 I. C. C., 330; Peabody Coal Co. v. C. & E. I. R. R., 39 I. C. C., 415; Drake Marble & Tile Co. v. C. G. W. R. R., 39 I. C. C. 422, 423; Hessig-Ellis Drug Co. v. L. & N. R. R. 39 I. C. C. 459; Spaulding Elev. Co. v. C. P. Ry., 40 I. C. C. 22; American Refining Co. v., T. & P. Ry. Co., 39 I. C. C. 559, 560, Reopening Fourth Section Applications, 40 I. C. C. 35, 39; Sheldon Bottling Works v. C. R. I. & P. Ry. Co., 40 I. C. C. 527, 528; Prey Bros. & Cooper L. S. C. Co. v. T. & P. Ry., Co., 40 I. C. C., 658; Union Saw Mill Co. v. St. L. I. M. & S. Ry., 40 I. C. C., 661; Havana Metal Wheel Co. v. C. P. & St. L. Ry. Co., 40 I. C. C.

677, 678; Advance Lumber Co. v. S. A. L. Ry., 41 I. C. C., 384; City of Springfield, Tenn. v. L. & N. R. R., 41 I. C. C. 453; Beebe & Runyan Furniture Co. v. C. B. & Q. R. R., 41 I. C. C., 464; Carrier Lumber & Mfg. Co. v. I. C. R. R. Co., 41 I. C. C. 382, 383; Bell-Rogers Produce Co. v. A. C. L. R. R., 41 I. C. C. 387; Walsh & Weidner Boiler Co. v. C. H. & D. Ry., 41 I. C. C. 457; United Lumber Co. v. B. & O. R. R. 41 I. C. C. 460; Kosse, Shoe & Schleyer Co. v. C. C. C. & St. L. Ry., 41 I. C. C. 602; Pierce v. C. & N. W. Ry., 41 I. C. C. 605; Stimson v. B. & O. S. W. R. R., 41 I. C. C. 640; Mesker & Co. v. L. & N. R. R. Co., 41 I. C. C. 675, 676; Oklahoma Portland Cement Co. v. L. W. R. R. Co., 42 I. C. C. 159; Inman-Poulson Lum. Co. v. S. P. Co., 42 I. C. C. 275, 279; King Elevator Co. v. C. B. & Q. R. R. Co., 42 I. C. C. 301; Independent Brewing Asso. v. C. M. & St. P. Ry. Co., 42 I. C. C. 129, 132; Blackwell Lumber Co. v. M. P. Ry. Co., 42 I. C. C. 756, 758; Zelnicker Supply Co. v. St. L. & S. F. R. R. 43 I. C. C. 73, 74; National Pickle & Canning Co. v. P. M. R. R., 44 I. C. C. 502; Rates from New Orleans and Galveston, 44 I. C. C. 727, 737; Public Utilities Comm. of Kansas v. A. & V. Ry., 44 I. C. C. 743; Procter & Gamble v. S. Ry., 45 I. C. C. 177; Wyoming Shovel Works v. D. & H. Co., 45 I. C. C. 197; Webster v. T. & P. Ry., 45 I. C. C. 364; Stanton Co. v. N. P. Ry., 45 I. C. C. 583, 584; Dewey Bros. Co. v. P. C. C. & St. L. Ry., 46 I. C. C. 388; Price Bros. & Co. v. C. N. Ry., 46 I. C. C. 397; Stimson v. S. Ry., 46 I. C. C. 429; Blodgett Milling Co. v. C. & N. W. Ry. 46 I. C. C. 442; Advance Lumber Co. v. S. Ry., 47 I. C. C. 237; North Carolina Pine Asso. v. N. & W. Ry., 47 I. C. C. 460, 466; Tuscaloosa Board of Trade v. A. G. S. R. R. 47 I. C. C. 483, 497; Conquest & Son v. S. A. L. Ry., 47 I. C. C. 517; Rates between C. F. A. Territory and Points on the C. & O. Ry., 47 I. C. C. 576, 580; Kansas Buff Brick & Mfg. Co. v. M. P. Ry., 48 I. C. C. 473; Butte Wholesale Grocery Co. v. B. A. & P. Ry., 48 I. C. C. 657; Western Cement Rates, 48 I. C. C. 201, 237, 259; Rankin & Co. v. C., R. I. & P. Ry. Co. 48 I. C. C. 421, 422; Mosby v. Y. & M. V. R. R. 48 I. C. C. 499; American Refining Co. v. A. T. & S. F. Ry., 49 I. C. C. 491; Kalamazoo Tank & Silo Co. v. C. C. C. & St. L. Ry., 49 I. C. C. 709; Western Trunk Line Potatoes 50 I. C. C. 407, 415; Aetna Explosives Co. v. C. & E. I. R. R., 50 I. C. C. 106; American Cast Iron P. Co. v. L. & N. R. R. 50 I. C. C. 168; Mesilla Valley Produce Exch. v. A. T. & S. F. Ry., 50 I. C. C. 483; Iten Biscuit Co. v. C. B. & Q. R. R., 50 I. C. C. 724; International Paper Co. v. D. & H. Co., 50 I. C. C. 75; Clearfield Lumber Co. v. C. & O. Ry., 50 I. C. C. 93; American Cast Iron Pipe Co. v. L. & N. R. R., 50 I. C. C. 168; Grain Reshipped from Peoria, 50 I. C. C. 185, 190; Gamble-Robinson Fruit Co. v. F. E. C. Ry., 50 I. C. C. 301; New Jersey Zinc Co. v. B. & O. R. R. 50 I. C. C. 429, 431; Oregon Fruit Co. v. S. P. R. R., 50 I. C. C. 719, 721, 722; Potlatch Lumber Co. v. C. M. & St. P. Ry., 51 I. C. C. 31, 33; Kentucky Lumber Co., (Inc.) v. St. L. & S. F. Ry., 51 I. C. C. 203; Smith Conner Hay & Grain Co. v. A. C. L. R. R., 52 I. C. C. 331, 332; Chattanooga River Brick Co. v. Ala. G. S. R. R., 52 I. C. C. 337; N. L. Curry Grocery Co. Inc. v. So. Ry., 52 I. C. C. 373; Henery King & Co. v. N. C. & St. L. Ry., 52 I. C. C. 481; Weed Lumber Co. v. S. P. Co., 53 I. C. C. 17, 18; Red River Lumber Co. v. S. P. Co., 53 I. C. C. 321, 325; Aetna Explosives Co. v. Director General, 53 I. C. C. 426; United Paperboard Co. v. Director General, 53 I. C. C. 569; Texas Cottonseed Crushers' Asso. v. G., C. & S. F. Ry. Co., 53 I. C. C. 627; Ryan & Newton Co. v. F. E. C. Ry., 53 I. C. C. 232; Earle Cooperage Co. v. St. L. I. M. & S. Ry., 53 I. C. C. 295, 303; Walter A. Zelnicker Supply Co. v. Director General, 53 I. C. C. 367; Holt v. Director General, 53 I. C. C. 426; Freight Adjustment Steering Committee of Charleston, S. C. v. A. C. L., 53 I. C. C. 506, 508; Fort Smith Spelter Co. v. A. C. R. R., 53 I. C. C. 694, 695; Equitable Powder Mfg. Co. v. Director General, 55 I. C. C. 24; The Sonken-Galamba Iron & Metal Co. v. Director General, 55 I. C. C. 339, 340; Curtis Booth & Bentley Co. v. Director General, 55 I. C. C. 511; Jos. Schlitz Brewing Co. v Director General, 55 I. C. C. 610; Model Mill Co. v. Director General 56 I. C. C. 227; Du Pont De Nemours & Co. v. Director General, 55 I. C. C. 247; Aetna Explosives Co. v. Director General, 55 I. C. C. 350, 351; Diamond Match Co. v. Director General, 55 I. C. C. 431, 432; Curtis, Booth & Bentley Co. v. Director General, 55 I. C. C. 511 512, 513; Roxana Petroleum Co. of Okla. v. Director General, 55 I. C. C. 607, 608; Lehigh-Portland Cement Co.

v. Director General, 55 I. C. C. 615; Sulzberger & Sons Co. v. C. R. I. & P. Ry., 55 I. C. C. 691, 696; Kansas Oil Refining Co. v. Director General, 56 I. C. C. 269, 270, 271; Union Training Co. v. Director General, 57 I. C. C. 354; Mobile Chamber of Commerce v. Director General, 57 I. C. C. 605, 609; Montgomery Chamber of Commerce v. Director General, 57 I. C. 610, 619; Geo. E. Rice Potato Co. v. C. B. & Q., 58 I. C. C. 757; Frank Samuel v. Director General, 59 I. C. C. 190; Cohen-Schwartz Rail & Steel Co. v. Director General, 59 I. C. C. 533, 534; Mexican Petroleum Corporation of La. v. Director General, 59 I. C. C. 545; Cleveland Cliffs Iron Co. v. Director General, 59 I. C. C. 611; John Lee Hardware Co. v. A. T. & S. F., 59 I. C. C. 728, 729; Bretney Co. v. Director General, 58 I. C. C. 217; The Ohio Cities Gas v. Director General, 58 I. C. C. 437; Atlantic Refining Co. v. Director General, as Agent, 59 I. C. C. 109; Du Pont de Nemours & Co. v. Director General, as Agent, 59 I. C. C. 199; Cohen-Schwartz Rail & Steel Co. v. M. L. & T. R. R. & S. S. Co., 59 I. C. C. 202; Perry County Coal Corporation v. Director General, 60 I. C. C. 52; Everybody's Merchantile Co. v. C. & N. W. 60 I. C. C. 143; Swift & Co. v. Director General, 60 I. C. C. 201; The Charles Boldt Glass Co. v. Director General, 60 I. C. C. 495, 498; Intermediate Rate Association v. Director General, 61 I. C. C. 226; Samuel D. West v. Director General, 62 I. C. C. 45; Weir Smelting Co. v. Director General, 62 I. C. C. 113; Proctor & Gamble Mfr. Co. v. Director General, as Agent, 60 I. C. C. 447, 448; Standard Oil Co. (Ky.) Director General, as Agent 60 I. C. C. 449, 450; Electric Coal Co. v. Director General, as Agent, 60 I. C. C. 683, 685; Capital Ice & Storage Co. v. St. L. & S. F., 62 I. C. C. 677; Davis Mfg. Co. v. Director General as Agent 61 I. C. C. 607; Proctor & Gamble Distributing Co v. A. C. Ry., 61 I. C. C. 700, 706; West v. St. L. S. F. Ry. Co. 62 I. C. C. 45; DeJean v. Director General, as Agent, 62 I. C. C. 495; Selma Chamber of Commerce v. Director General 63 I. C. C. 157; Clinchfield Coal Corporation v. Director General, as Agent, 64 I. C. C. 143; Cannon Mfg. Co. v. Director General, 64 I. C. C. 183; Anaconda Copper Mining Co. v Director General, as Agent, 64 I. C. C. 136; Hazelhurst Oil Mills & Fertilizer Co. v. Director General, as Agent, 64 I. C. C. 203; Boldt Paper Mills Co. v. Director General, as Agent, 64 I. C. C. 223; Asphalt from Gulf Ports, 64 I. C. C. 395; Morris & Co. v. Director General, as Agent, 64 I. C. C. 435; Lumber from Southeast to N. & W. Points, 64 I. C. C. 561; Atlantic Refining Co. v. Director General, as Agent, 64 I. C. C. 702; Coral Ridge City Products Co. v. Director General, as Agent, 66 I. C. C. 172; Parkersburg Rig & Reel Co. v. T. & P. Ry., 66 I. C. C. 327; Standard Asphalt & Refining Co. v. Director General, 66 I. C. C. 611; Central Wisconsin Supply Co. v. Director General, 68 I. C. C. 409; Humble Pipe Line Co. v. Director General, as Agent, 68 I. C. C. 651, 652; Auto Gas & Oil Co. v. Director General, 73 I. C. C. 268; Warren Oil Co. v. C. & A. R. R. Co., 73 I. C. C. 519; Arizona Packing Co. v. Director General, 73 I. C. C. 713; Walter A. Zelnicker Supply Co. v. Director General, 74 I. C. C. 543; Williamson Halsell Frazier Co. v. Director General, 74 I. C. C., 549; Armour & Co. v. Director General, 74 I. C. C. 709; Alpha Portland Cement Co. v. P. R. R. Co., 74 I. C. C. 697; Mississippi Valley Iron Co. v. Director General as Agent, 74 I. C. C. 715; United Paperboard Co. v. C. C. Rys., 74 I. C. 733; Application of Class Rates from Lexington, Ky. 77 I. C. C. 427; Henry Knight & Sons v. Director General, 78 I. C. C. 187; Milwaukee Chamber of Commerce v. C., B. & Q. R. R. Co., 78 I. C. C. 110; Coke from Chicago and St. Louis 78 I. C. C. 248; Maine Spinning Co. v. Director General, as Agent, 78 I. C. C. 279; Sunderland Bros. Co. v. C. B. & Q. R. R. Co., 78 I. C. C. 295; Sunlight Milling Co. v. L. & N. R. R. Co. 78 I. C. C. 305; Chicago Fire Brick Co. v. C. & E. I. R. R. Co., 78 I. C. C. 371; Montrose Oil Refining Co., v. St. L. S. Ry. Co., 78 I. C. C. 572; Hendrie & Bolthoff Mfg. & Supply Co. v. C. B. & Q. R. R. Co., 78 I. C. C. 609. Armour & Co. v. Director General, 78 I. C. C. 373; Pleasant Valley Farms Co. v. Director General 78 I. C. C. 671; Armour & Company v. Director General, 80 I. C. C. 59; L. W. Roper v. Director General 80 I. C. C. 125; Lake Charles Naval Stores Co. v. Director General, as Agent, 80 I. C. C. 51; Kempner v. Director General, as Agent, 80 I. C. C. 347; Fletcher & Wilcon Coffee Co. v. Director General, as Agent, 81 I. C. C. 348; Hartburg Lumber Co. v. B., S. L. & W. Ry. Co., 81 C. C. 497; Memphis Freight Bureau v. C. G. W. R. R. Co., 81 I. C. C. 626, 627; Warfield-Pratt-Howell Co. v. T. & P. Ry.

Co., 81 I. C. C. 733. Tulsa Paper Co. v. C. M. St. P. Ry Co., 81 I. C. C. 293; Mid-Continent Equipment & Machinery Co. v. M. & O. R. Co., 81 I. C. C. 510; Pittsburg Crucible Steel Co. v. Director General, 81 I. C. C. 659, 661. Boren-Stewart Co. v. B. & O. R. R. Co., 83 I. C. C. 215; 217; Tuffli Bros. Pig Iron & Coke Co. v. P. C. C. & St. L. R. R. Co., 83 I. C. C. 341; Trojan Powder Co. v. P. & R. Ry. Co., 83 I. C. C. 481; Arnold Hoffman & Co. v. N. Y., N. H & H. R. Co., 87 I. C C. 417; Marshall Tie Co. v. Southern Ry., 87 I. C. C. 681; Fairbanks Co. v. B. & A. R. R., 87 I. C. C. 725; Prairie Pipe Line Co. v. Director General, 88 I. C. C. 167, 171; Friend & Company v. C. B. Q. R. R., 88 I. C. C. 288; Texas Farm Ranch Publishing Co. v. A. & W. Ry., 88 I. C. C. 417; Doniphan Brick Works v. Director General 88 I. C. C. 438; Great Western Paper Co. v. M. S. St. P. & S. S. M. Ry., 88 I. C. C. 582; Standard Oil Co. v. Director General, 89 I. C. C. 7; Standard Oil Co. v. Y. & M. V. Ry., 89 I. C. C. 157. Nestles Food Company v. Director General, 89 I. C. C. 340.

§6 Intermediate Points Off Line.

CASES 1887-1908

(a) A reduced rate to the terminus of a through route, under the compulsion of competition, is not unjust discrimination against a nearer town not located on the line of the through route but, reached over a lateral connecting road. Lehman v. Southern P. R. Co. (Com.) 3 I. C. R. 80.

(b) Where a reduced rate is made at the terminus of a through route, under the compulsion of competition, a town not located on the line of the through route, but reached over a lateral connecting road, has a disadvantage of situation entailing some additional expense, and a reasonably higher rate to such town than the forced competitive rate to the more distant terminus of the through route is not unjust discrimination. Lehman Higginson & Co. v. S. P. Co., 3. I. C. C. 80, 92.

(c) Defendant Chicago, Milwaukee and St. Paul Railway Company's rate on butter and eggs from Granite Falls, Minn., to Chicago, Ill., is 59 cents per 100 pounds in carload lots. Defendant's rate from Pipestone, Minn., to Chicago, Ill., is 47 cents per 100 pounds in carload lots, although Granite Falls is 41 miles nearer Chicago, but on a different branch of the road. The same rates are in force over defendant Great Northern Railway Company, although Granite Falls is an intermediate point between Pipestone and Chicago on the line made by the Great Northern Railway and its connections. Held, defendant Chicago, Milwaukee and St. Paul Railway Company's rate of 59 cents per 100 pounds on butter and eggs in carload lots from Granite Falls to Chicago is unreasonable and unjust, and should not exceed 47 cents per 100 pounds. Morse Produce Co. v. C. M. & St. P. Ry. Co. et al. 12 I. C. C. 485.

IMPORTANT CASES SINCE 1908

(d) It has been held that all the coal mines are on lateral roads they must be regarded as intermediate for all practical rate-making purposes and their rates are governed by the 4th section American Coal Co. v. B. & O. R. R. Co., 17 I. C. C. 149, 156.

(e) As the lower rate in effect from the farther distant point did not apply over the route of movement, the rate charged did not involve any departure from or violation of the fourth section. Sunderland Bros. Co. v. M. P. Ry., 45 I. C. C. 193, 194.

(f) A lower rate to a farther distant than to an intermediate point, applicable via a route other than route of movement does not constitute a violation of the fourth section of the act. Schultz & Co. v. Director General, as Agent, 73 I. C. C., 647.

ALL OTHER CITATIONS

Topeka Banana Dealers' Ass'n. v. St. L. & S. F. R. R. Co., 13 I. C. C. 620, 627; Baer Bros. Merchantile Co. v. M. P. Ry., 13 I. C. C. 329, 336, 337, 340; George's Creek Basin Coal Co. v. B. & O. R. R. Co., 14 I. C. C. 127, 130; Milwaukee Electric Ry. etc. Co. v. C. M. & St. P. Ry. Co., 15 I. C. C. 468, 469; Planters Gin & Compress Co. v. Y. & M. V. R. R. Co., 16 I. C. C. 131, 132, 133; Stone Ordean-Wells Co. v. N. P. Ry. Co., 16 I. C. C. 313, 314; Merchants' Freight Bureau v. M. P. Ry. Co., 21 I. C. C. 573, 576; Board of Trade of Cheraw, S. C., v. S. A. L. Ry., 26 I. C. C. 364, 369; National Refrigerator & Butchers' Supply Co. v. St. L. I. M. & S. Ry. Co., 26 I. C. C. 524; Dood v. T. & P. Ry. Co., Unrep. Op. A-223; Oden-Elliott Lum. Co. v. A. B. & A. R. R., 37 I. C. C. 717; Cambridge Tile Mfg. Co. v. A. C. L. R. R., 39 I.

C. C. 663; Berry Coal & Coke Co. v. C. R. I. & P. Ry., 40 I. C. C. 175, 176; Herrmann & Co. v. N. Y. N. H. & H. Ry., 51 I. C. C. 118; Elizabethton Flooring Co. v. E. T. & W. N. C. R. R., 50 I. C. C. 137; Boldt Co. v. C. B. & Q. R. R., 51 I. C. C. 491; Beaumont Chamber of Commerce v. Director General, 55 I. C. C. 110, 111; Thomas Fruit Co. v. Director General, 55 I. C. C. 605; Washington Steel & Ordinance Co. v. Director General, 64 I. C. C. 191; Fox Co. v. Director General, 68 I. C. C. 479; Freeman Grain Co. v. Director General, 68 I. C. C. 559; Empire Refineries, Inc., v. Director General, 73 I. C. C. 221; Standard Pencil Co. Director General 73 I. C. C. 473; Bristol Brass Corporation v. Director General, 78 I. C. C. 301; Sunlight Milling Co. v. L. & N. R. R., 78 I. C. C. 305; Montrose Oil Refining Co. v. St. L. S. F. Ry., 78 I. C. C. 572; Walter A. Zelnicker Supply Co. v. C. & O. Ry., 80 I. C. C. 651; Fletcher & Wilson Coffee Co. v. Director General, 81 I. C. C. 348; Memphis Freight Bureau v. C., G. W. R. R., 81 I. C. C. 626; Hickman Williams & Company v. Director General, 88 I. C. C. 501.

§6¼ Comparison of Rates.

See Comparative Rates.

IMPORTANT CASES SINCE 1908

(a) The charging of a local rate for a shorter distance higher than a proportional rate for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, is not a violation of the fourth section. Iowa Railroad Commissioners v. Director General, 63 I. C. C. 405, 406.

(b) It is well settled that in applying the provisions of the fourth section rates and fares of the same kind should be compared with one another. Passenger Fares Between New York, N. Y., and Points West of Newark, N. J., 74 I. C. C., 516, 519.

ALL OTHER CITATIONS

Wenger-Armstrong Petroleum Co. v. Director General, as Agent, 64 I. C. C. 175, 176; R. R. Comm. of La. v. A. H. T. Ry. Co., 64 I. C. C. 197.

§6½ Participation in route.

IMPORTANT CASES SINCE 1908

(a) The inhibition of the long-and-short-haul clause of the fourth section is not restricted to movements over the line or lines of one carrier only, but embraces hauls over the lines of any number of carriers. Bennett & Son v. C. & O. Ry., 38 I. C. C. 310, 314.

(b) Carriers will be expected to correct a fourth section departure occurring in connection with a route not used by carriers but which is available under their joint tariffs. Galion Iron Works & Mfg. Co. v. B. & O. R. R., 47 I. C. C. 136, 140.

ALL OTHER CITATIONS

Hayden Bros. Coal Corp. v. D. & S. L. R. R. Co., 39 I. C. C. 94, 100, 104, 112; Alton Mercantile Co. v. I. C. C. R. R. Co., 48 I. C. C. 668, 669.

§6¾ Exceeding Combination of Intermediates.

See Advanced Rates, §5 (2½); Through Routes and Joint Rates, §15.

CASES 1887-1908

(a) Defendants ordered to cease and desist from making higher aggregate charges on hay, and other commodities carried under similar circumstances and conditions, over their connected roads from Memphis, Tenn., to Summerville, S. C., than they charge for carrying said commodities for the longer distance from Memphis over said connecting line through Summerville to Charleston, S. C., without prejudice to defendants' right to apply to the Commission for relief under the proviso clause of the fourth section. Behlmer v. Memphis & C. R. Co., 4 I. C. R. 520.

(b) Charging the same aggregate rates on like traffic for longer and shorter distances over the same line, in the same direction, does not contravene the provisions of section four of the act. Milk Producers' Protective Asso. v. D. L. & W. R. Co., 7 I. C. C. 92, 163.

IMPORTANT CASES SINCE 1908

(c) The fourth section of the Act is obviously violated whenever a combination of rates governed by like rules and regulations is lower than the through rate. It may, however, also be violated in cases where the regulations or commodity descriptions in the classification territories vary. If a shipment is offered for transportation in such a manner as to comply with the requirements of both classifications, there can be no question as to the application of the intermediate rates, and the Act is violated by a refusal to revise the through rate to the basis of the intermediate rate. Mem-

phis Freight Bureau v. St. L. I. M. & S. Ry., 39 I. C. C. 224, 240.

(d) The effect of a rule that where the aggregate of the intermediate rates made less than the joint through rate the former should be applied as the lawful rate is to relieve the tariff from objection on account of the provision of the fourth section which declares that any through charge greater than the aggregate of the intermediate rates subject to the Act shall be unlawful. Graham & Gila County Traffic Assn. v. A. E. R. R. Co., 40 I. C. C., 573, 583.

(e) If both intermediates are subject to the Act, through rates which exceed the aggregate of the intermediate rates are in violation of the fourth section. Railroad Commission of Louisiana v. A. H. T. Ry. Co., 41 I. C. C. 83, 124.

(f) A joint rate in excess of the combination, not protected by an appropriate fourth section application, is illegal. Heckel v. C. B. & Q. R. R., 46 I. C. C. 513, 514.

(g) The Commission's jurisdiction over switching charges attaches only by reason of the fact that they are applicable in connection with interstate shipments, and in determining whether or not a fourth section departure exists, the aggregate charges for the transportation from point of origin must be considered and not merely the switching charges. Sheldon Axle & Spring Co. v. L. V. R. R. Co., 53 I. C. C. 43.

(h) The Commission has repeatedly found that a through rate which exceeds the aggregate of the intermediates over the route of movement is prima facie unreasonable. Alabama Georgia Syrup Co. v. Director General 68 I. C. C. 618, 621.

(i) The Commission has repeatedly found that no presumption of unreasonableness attaches to a joint rate applicable over a particular route because the aggregate of the intermediate rates over another route would make a lower charge. Humble Pipe Line Co. v. Director General 68 I. C. C. 651, 652.

(j) When assessment of a switching charge in connection with transit results in greater aggregate compensation to carrier than sum of intermediate rates, it can not be considered that section 4 has thereby been violated, for services performed are not the same in the two instances. Transit involves an additional service on part of carrier for which separate charges may be made; the switching charge is an additional expense incident to the transit service. Detroit Board of Trade v. W. Ry. Co., 80 I. C. C. 717, 720, 721.

(k) Section four of the act provides that it shall be unlawful for any common carrier to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of the act. There is no violation of this clause unless the carrier maintains a specific through rate which is higher than the lowest aggregate of intermediate rates over the same route. The product of intermediate rates treated by a rule which results in something less than the aggregate is not the aggregate within the meaning of the section. McLeod v. T. & P. Ry., 89 I. C. C. 356, 357.

ALL OTHER CITATIONS

Through Rates to Points in Louisiana and Texas, 38 I. C. C. 153, 160, 164; McKee & Bliven Button Co. v. I. C. R. R., 39 I. C. C. 627; Slane Glass Co., v. V. & S. W. Co., 39 I. C. C. 586; Rice from Texas and Louisiana, 40 I. C. C. 285, 290; North Dakota Metal Culvert Co. v. G. N. Ry. Co., 40 I. C. C. 537, 538; Christy & Huggins Co. v. N. C. & St. L. Ry., 40 I. C. C. 745; Sanford-Day Iron Works v. L. & N. R. R. Co., 41 I. C. C. 10; McCaull-Dinsmore Co. v. S. D. C. Ry., 41 I. C. C. 663; Mesker & Co. v. L. & N. R. R., 41 I. C. C. 675; Chicago House Wrecking Co. v. I. C. R. R., 41 I. C. C. 720; Bagdad Land & Lumber Co. v. N. Y. C. R. R. Co., 41 I. C. C. 729; Denver Live Stock Commission Co. v. St. L. I. M. & P. Ry. Co., 42 I. C. C. 127; Sweet Provision Co. v. St. L. I. M. & S. Ry., 43 I. C. C. 78; Northern Potato Traffic Asso. v. B. & O. R. R. 43 I. C. C. 545, 547; Prairie Oil & Gas Co. v. A. T. & S. F. Ry., 44 I C. C. 493; Nye Schneider Fowler Co. v. C. & N. W. Ry., 45 I. C. C. 115; Aberdeen Wholesale Groc. Co. v. C. M. & St. P. Ry., 45 I. C. C. 23; Riverside Portland Cement Co. v. A. T. & S. F. Ry., 45 I. C. C. 139, 140; Commercial Club of Mitchell S. Dak. v. A. & W. Ry., 46 I. C. C. 1, 16; State of Iowa v. B. & O. R. R. 46 I. C. C. 595, 600; Alabama Packing Co. v. L. & N. R. R., 47 I. C. C. 524, 531; Arkansas Rice Shippers Traffic Bureau v. A. A. R. R., 47 I. C. C. 566, 573, 575; Reconsignment Case, 47

I. C. C. 590, 633; Butters Lumber Co. v. A. C. L. L. Co., 48 I. C. C. 475, 478; Penrod Jurden & McCowen v. M. & O. R. R. Co., 48 I. C. C. 496; Key-James Brick Co. v. C. of G. Ry., 49 I. C. C. 16; Dawson Produce Co. v. A. C. L. R. R. 49 I. C. C. 291, 300, 301; Hartzell v. C. B. & Q. R. R. 49 I. C. C. 357; Gamble Robinson Fruit Co. v. F. E. C. R. R. 50 I. C. C. 301; Carolina Portland Cement Co. v. L. & N. R. R. 50 I. C. C. 98; Johnston v. A. F. & S. F. Ry., 51 I. C. C. 356; Oregon Fruit Co. v. S. P. Co., 50 I. C. C. 719; Bruer & Son v. N. C. & St. L. Ry., 51 I. C. C. 25; Davis Sewing Machine Co. v. P. C. C. & St. L. Ry., 51 I. C. C. 441; Sunderland Bros. Co. v. C. B. & Q. R. R. 51 I. C. C. 185; Michel Brewing Co. v. C. B. & Q. R. R., 51 I. C. C. 729; Portland Traffic & Transportation Assn. et al. v. C. P. Ry. Co., et. al., 52 I. C. C. 167; W. Va. Rail Co. v. Sou. Ry., 52 I. C. C. 419; Zelnicker Supply Co. v. Director General, 53 I. C. C. 367, 342; Cairo Truman & Southern Ry. v. Director General, 53 I. C. C. 189; Partridge Lumber Co. v. Director General, 55 I. C. C. 29; Chevrolet Motor Co. of Texas v. Director General, 55 I. C. C. 601; Key James Brick Co. v. Director General, 57 I. C. C. 296; Cohen-Schwartz Rail & Steel Co. v. Director General, 57 I. C. C. 298; Burnham-Munger-Root Dry Goods Co. v. Director General, 58 I. C. C. 73; Page Hersey Iron Tube & Lead Co. v. Director General, 57 I. C. C. 1; Chamber of Commerce, Moss Point, Miss. v. L. & N. R. R. Co., 57 I. C. C. 112, 118; United verde Extension Mining Co. v. Director General, 57 I. C. C. 181; Bretney Co. v. Director General, as Agent, 58 I. C. C. 217; American Cement Plaster Co. v. C. & A., 59 I. C. C. 165; The Choctaw Cotton Oil Co. v. Director General, 59 I. C. C. 725; Nebraska Bridge Supply & Lumber Co. v. Director General, 58 I. C. C. 129; Alabama Georgia Syrup Co. v. L. & N. 58 I. C. C. 521; Chapin-Sacks Mfg. Co. v. Director General, 60 I. C. C. 145; Indiana Refining Co. v. Director General, 60 I. C. C. 438; Universal Portland Cement Co. v. B. & L. E., 60 I. C. C. 489; Russell Bros. v. Director General, 61 I. C. C. 671; Car tar Oil from Chattanooga, Tennessee 61 I. C. C. 729; Odell Daly Material Co. v. Director General, 62 I. C. C. 12; United Paperboard Co. v. Southern Ry., 62 I. C. C. 60; Du Pont de Nemours & Co. v. Director General, 62 I. C. C. 151; Quinton Spelter Co. v. Ft. S. & W., 61 I. C. C. 43; Hudson Mule Co. v. L. & N. 63 I. C. C. 6, 15; Board of R. R. Comm'rs. of Iowa v. Director General, 63 I. C. C. 405, 406; Empire Cotton Oil Co. v. Director General, 64 I. C. C. 64, 65; Clarke K. Burkle & Co. v. Director General, 66 I. C. C. 265; Tallulah Cotton Oil Co. v. A. & V. Ry. Co. 66 I. C. C. 755; Standard Rail & Steel Co. v. L. & N. R. R. 68 I. C. C. 9; M. L. Davis and W. D. Davis v. G. C. & S. F. Ry., 68 I. C. C. 303; Wisconsin Dairy Products Co. v. C. & M. St. P. Ry., 68 I. C. C. 307; Magnolia Petroleum Co. v. Director General, 68 I. C. C. 321; Birmingham Packing Co. v. Director General, 69 I. C. C. 44; Swift & Co. v. Director General, 69 I. C. C. 532; Midland Linseed Products Co. v. Director General, 69 I. C. C. 753; Wilson & Co. v. Director General, 73 I. C. C. 1; Russell Bros. v. Director General, 73 I. C. C. 125; Standard Rail & Steel Co. v. M. P. R. R. 73 I. C. C. 219; Rates on Bunker Coal, 73 I. C. C. 62, 77; Kissel Motor Car Co. v. G. T. Ry., 74 I. C. C., 45; Buckeye Cotton Oil Co. v. Director General, 74 I. C. C. 467; Burns & Knapp v. B. S. & K. R. Ry., 74 I. C. C. 111, 112; King Ryder Lumber Co. v. Director General, 74 I. C. C., 529; Paggi Bros. Oil Co. v. G. C. S. F., 80 I. C. C. 63.

§6¾a Combinations Subject to Section 4.

IMPORTANT CASES SINCE 1908

(a) When assessment of a switching charge in connection with transit results in greater aggregate compensation to carrier than sum of intermediate rates, it can not be considered that section 4 has thereby been violated, for services performed are not the same in the two instances. Transit involves an additional service on part of carrier for which separate charge may be made; the switching charge is an additional expense incident to transit service. Detroit Board of Trade v. W. Ry. Co. 80 I. C. C. 717, 720, 721.

(b) Complainant contended that charging a proportional rate lower than the local rate to defendants terminal, or charging a proportional rate to one point lower than the local rate to another, are departures from the fourth Section. This contention is untenable. Ohio Refining Co. v. L. & N. R. R. Co. 81 I. C. C. 688, 690.

ALL OTHER CITATIONS

Montrose Oil Refining Co. v. St. L. S. F. Ry. Co., 78 I. C. C. 572, 573; Ryegate Paper Co. v. B. & M. R. R., 87 I.

C. C. 673; Midland Coal Co. v. M. P. R. R. 89 I. C. C. 101.

§6⅞ Discrimination and Reasonableness. See Discrimination; Reasonableness of Rates

CASES 1887-1908

(a) The provisions of section 1, requiring charges to be reasonable and just, and of section 2, forbidding unjust discrimination, apply when exceptional charges are made under section 4, as they do in other cases. Re Southern Ry. & S. S. Asso. v. 1. I. C. R. 278.

(b) Complainant attacked as unreasonable rates on lumber from Johnson City, Tenn., to Boston, Mass. Rate charged 36c, distance 911 miles, while rate from Atlanta was 34c distance 1240 miles which is alleged to be in violation of the fourth section. From Macon, Ga., to Boston the rate is the same as from Johnson City, 417 miles the shorter distance over the same line. HELD, rates attacked are considerably higher than from contiguous territory and a reasonable rate from Johnson City would be 33c. James & Abbott v. E. T. V. & G. R. R. 2 I. C. C. 609.

(c) Reduced rates at points where competition influences are controlling must not fall below some revenue from the traffic in excess of cost; and higher rates at other points, required for the necessary revenue of a carrier, must be reasonable in themselves, and also relatively reasonable in comparison with the competitive rate. Lehman v. Southern P. R. Co. (Com.) 3 I. C. R. 80.

(d) Complainant attacked rates to Kramer, Ga., from New York, Boston and Providence and from Louisville, Evansville and Nashville as discriminatory and unjust. The rates from interstate points to Kramer, Ga., via the C. R. & C. R. R., are made by taking the through rate to recognized basing points and adding thereto that local rate which will give the lowest combination. HELD, this operates as an unjust discrimination against Kramer. Hamilton & Brown v. C. R. & C. R. Co. 3 I. C. C. 482.

(e) Same rate for longer and shorter distance. Ordinarily longer distances warrant higher charges, but carriers may lawfully accept the same aggregate, though less profitable, rate for longer distances, provided such carriers do not "subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage." James & Mayer Buggy Co. v. Cincinnati N. O. & T. P. R. Co. 3 I. C. R. 682, 685.

(f) Section 2 of the "Act to Regulate Commerce," forbidding unjust discrimination, applies even in cases where a departure from the "long and short haul rule" of the statute is shown to be authorized, and the right, if established, of making the greater charge for the shorter haul, does not justify a disparity in rates so great as to result in unjust discrimination. Raworth v. Northern Pacific R. Co. 3 I. C. R. 857.

(g) The "long and short haul rule" of the statute was intended to maintain and promote, and not to destroy or neutralize, natural commercial advantages resulting from location. Raworth v. Northern P. R. Co. (Com.) 3 I. C. R. 857.

(h) The facts that the rates to the longer distance point cannot be raised without a loss of the traffic involved, and that the rate to both the longer-distance point and the shorter distance point are not unreasonable in themselves, do not justify a disparity in such rates resulting in unjust discrimination as against the shorter-distance point. Raworth v. Northern P. R. Co. (Com.) 3 I. C. R., 857, 863.

(i) The Act to Regulate Commerce, § 2, forbidding unjust discriminations, applies even in cases where a departure from the "long and short haul rule" of the statute is shown to be authorized, and the right, if established, of making the greater charge for the shorter haul, does not justify a disparity in rates so great as to result in unjust discrimination. Raworth v. Northern P. R. Co. (Com.) 3 I. C. R., 857.

(j) When rates from any cause are made greater for shorter than for longer distances, the difference between such rates must in no instance be unreasonable. Gerke Brew. Co. v. Louisville & N. R. Co. (Com.) 4 I. C. R. 267.

(k) The law forbidding unjust discrimination applies even in cases where a departure from the long and short haul rule of the statute is shown to be authorized, and the right, if established, of making the greater charge for the shorter haul, does not justify a disparity in rates so great as to result in unjust dis-

crimination. Freight Bureau v. C. N. O. & T. P. R. Co. 4 I. C. C. 592, 612.

(l) While carriers operating shorter lines have the advantage, both in making rates and in carrying under them, they cannot dictate a system of charges which the operators of longer lines may not charge as to their own roads, though it may be true as a rule, and as claimed by defendants, that, to get business, longer lines must take it as low as rates at the time in force over more direct routes. Cordele Machine Shop v. Louisville & N. R. Co. et al. 6 I. C. C. 361.

(m) Complainant attacked rates on pig iron of $3.84 and on coal $2.30 per ton from Birmingham, Ala., to Cordele, Ga., as compared with rate of $2.00 per ton on pig iron and $1.60 per ton on coal to Macon, Ga., 65 miles beyond Cordele, Ga., as unjust and unreasonable as well as unjustly discriminatory. HELD, the defendants may lawfully accept less for their haul to Cordele as a part of the through rate to Macon than they might lawfully charge for the haul to Cordele for local delivery; but when the defendants carry a ton of pig iron to Cordele destined to Macon, and receive for their share of the through tariff $1.45 and when they carry it to Cordele for complainant they charge $3.69, this charge is exorbitant and unduly prejudicial to complainant to extent the rate to Cordele exceeds $1.60 on coal and $1.80 on pig iron. Cordele Machine Shop v. L. & N. R. Co. 6 I. C. C. 361.

(n) The fourth section of the act cuts off any presumption in favor of as great compensation for short as for long distances, and is based on the assumption that ordinarily a higher charge for a shorter distance is discriminating and excessive. Cordele Machine Shop v. L. &. N. R. Co. 6 I. C. C. 361, 372.

(o) Complainant attacked rates on iron and steel and steel rails from Pueblo, Colo., to San Francisco, of $1.60 per 100 pounds as compared with rates from Chicago, Ill., Mississippi River points and Missouri River points of 60, 58, and 54c per 100 pounds and from Atlantic Seaboard lower than from Chicago as unreasonable and unjustly discriminatory. The shipment of iron and steel from foreign countries to San Francisco at low rates by water affects the iron and steel industry at Pueblo as well as at eastern points in respect to participation in supplying that market. Rates in force from Pueblo to San Francisco prohibits the movement of iron and steel articles from the former place to the latter, while greatly lower rates from other and far more distant points prevail on such traffic to San Francisco, and the carriers cost of transportation is much less from Pueblo than from such more distant points of shipment. HELD, such rates from Pueblo are unreasonable and unjust and unduly prejudicial to the extent they exceed from Pueblo 45c on steel rails and railway fastenings and 37½c on bar iron, cast iron water pipe, pig iron, billets, blooms. rivets. nails and spikes, and rates on other iron and steel articles should not be greater than 75% of the rates from Chicago. Colorado Fuel & Iron Co. v. S. P. Co. 6 I. C. C. 488.

(p) Complainant attacked rates on coal from Cumberland, Md., to North Garden, Va., and Lynchburg, Va., as unreasonable and unjustly discriminatory in that the rate to North Garden is higher than to Lynchburg, North Garden being intermediate. The carriers subsequent to filing of the complaint removed this violation of the fourth section which obviated the infractions of the law complained of. HELD, the rates to North Garden are excessive in comparison with rates charged by defendants and other carriers to various points; but the Commission is not authorized to fix a reduced or lower rate of charges which carriers can be required to respect for the future, even if the ascertained facts warranted a finding as to the extent of the reduction which should be made, complaint dismissed. Montell v. B. & O. R. Co. 7 I. C C. 412.

(q) In respect to competition as justifying discrimination, the Supreme Court of the United States has only gone to the extent of holding that it "may in some cases" be such as, "having due regard to the interests of the public and of the carrier, ought justly to have effect upon rates," and that "the mere fact of competition, no matter what its character or extent," does not "necessarily relieve carriers from the restraints of the 3d and 4th sections" of the Act to Regulate Commerce. Interstate Commerce Commission v. Alabama Midland R. Co. 168 U. S. 164, 167, 42 L. ed. 422, 423. Phillips, Bailey & Co. v. Louisville & Nashville R. Co. 8 I. C. C. 93.

(r) The exaction of as high rates for a shorter haul as for a longer haul over the same line in the same direction, the shorter haul being included within the longer, is itself a discrimination, and, if not justified by a substantial dissimilarity of circumstances and conditions, is an unjust discrimination. Phillips, Bailey & Co. v. Louisville & Nashville R. Co. 8 I. C. C. 93, 106.

(s) Where carriers exact higher rates for a shorter than a longer haul over the same line in the same direction the shorter haul being included within the longer, they are amenable, not only under section 4, but also under section 1 and 3, of the Act to Regulate Commerce. Phillips, Bailey & Co. v. Louisville Nashville R. Co. 8 I. C. C. 93, 104.

(t) The higher rate from an intermediate locality to a common destination constitutes a prejudice to that locality and shippers and traffic therefrom, and preference to the more distant localities and shippers and traffic therefrom, which, if found to be without sufficient excuse, must be held unreasonable and undue, and therefore in contravention of the thir section. In the matter of alleged violations of the act by the St. L. & S. F. R. Co. 8 I. C. C. 290, 301.

(u) Upon complaint that defendants charge unlawful rates on asbestos articles from Summerdale, Ill., to Lima, O., and other eastern points, it appeared that Summerdale, although within the city limits of Chicago, is a station on the C. & N. W. R. Co., which for purposes of shipment and carriage is independent of the main depots of that company in Chicago; that it is a shorter distance point, and Milwaukee and other places on the Milwaukee division of the C. &. N. W., north of Summerdale are longer distance points, over defendants established through line with reference to L. C. L shipments to eastern destinations; that defendants have through rates in effect from stations north of Chicago, but on traffic from Summerdale the Pennsylvania Company insists upon a higher charge made by adding rates to and from the point of connection in Chicago; that these through rates were not denied to Summerdale before it became part of Chicago by extension of the city limits and that the circumstances and conditions governing the transportation are not dissimilar. HELD, that defendants higher less than carload rates on asbestos articles from Summerdale than from points north of Chicago to and including Milwaukee, on shipments destined to Lima, O., and other eastern points, are in violation of section 3 and 4 of the Act. Chicago Fire Proof Covering Co. v. C. & N. W. R. Co. 8 I. C. C. 316.

(v) There is no evidence of any improper desire on the part of these officials to give Atlanta a lower rate or the local shorter-distance point a higher rate. The matter is controlled by existing competitive conditions. Unless the rates complained of, as compared with each other, violate § 4 of the Act, there seems to be very little ground for claiming that they violate the undue preference provision of § 3 Citing. Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co. 56 Fed Rep. 947, 4 Inters. Com. Rep. 332. Interstate Commerce Commission v. Western & Atlantic R. R. Co. 8 I. C. C. App. XIII.

(w) Two railroad lines serve both Los Angeles and San Bernardino, and if Los Angeles has means at its command by which it may force a rate from such lines or either of them which San Bernardino does not possess, that is an element which must be considered in determining the legality of a lower rate from the east to Los Angeles, the longer distance point; but the fact that it is a larger town with more business, and therefore that competition between the lines is fiercer there than at San Bernardino, does not justify the disparity in charges in favor of Los Angeles. The two roads cannot agree to compete here and not compete there. In their capacity of public servants ministering to the wants of these communities they must not favor one above the other simply because it is stronger to begin with. One of the underlying principles of the Act to regulate commerce is equality between great and small. Holdzkom v. Michigan Central Ry. Co. et al. 9 I. C. C. 42.

(x) To hold that, after substantial dissimilarity of circumstances and conditions has been shown, the longer distance rate can not in any case or to any extent be considered by way of comparison in determining whether or not the shorter distance rate is unreasonable or unduly prejudicial, particularly when competition and other compulsory conditions are found not to justify the whole disparity between the shorter and longer distance

rates would be to reject a most appropriate and necessary test of the reasonableness and justice of railway charges. In a case involving shorter distance charges higher than those to or from longer distance points the carrier cannot rightfully maintain justification for greater dissimilarity in the rates than may be the ascertained dissimilarity in conditions Marten v. L. & N. R. R. 9 I. C. C. 581, 597.

(y) The rates from New York and other eastern points to Chattanooga are not shown to be unreasonable within the meaning of section one of the Act, although they are higher than the rates from the same points through Chattanooga to Nashville, the longer distance, as the traffic from New York and other eastern points is carried to Nashville and Chattanooga under substantially different circumstances and conditions. Chamber of Commerce of Chattanooga v. Southern R. Co. 10 I. C. C. 111.

(z) Complaint attacked class rates from Chicago, St. Louis, Louisville, and other Ohio and Mississippi river points to Charleston, S. C., as unreasonable and unduly discriminatory. In a similar case 9 I. C. C. 118, the Commission required correction of rates from the same points to Wilmington, N. C., but such order the United States Circuit Court declined to enforce. During the present year the rates from Chicago to Ohio river crossings have been materially reduced on shipments destined to southeastern points, resulting in reduction of through rates from Chicago to Charleston and Wilmington. HELD, in view of the decision of the Circuit Court in the Wilmington case, no enforcable order of relief can be predicated upon the facts shown in this case, complaint dismissed. Bureau of Freight of Charleston, S. C. v. N. & W. R. R. 11 I. C. C. 235.

(aa) On complaint that defendants' rates on oak lumber in carloads to Philadelphia are unlawfully higher from Afton, Va., and points east thereof, to and including Gordonsville, Va., than those for the longer distances over the same line from Staunton and Basic City, Va., it appeared that a rate of 14 cents per 100 pounds applied over the whole territory for a period of about nine years between November 1, 1892, and August 1, 1901. Effective competition was shown by defendants' witnesses at Basic City and Staunton, and complainants failed to offer any testimony. Upon the record as made in this case, HELD: That the higher rate from the Afton-Gordonsville group does not constitute unlawful discrimination. Spiegle & Co. v. Chesapeake & O. R. Co. 11 I. C. C. 367.

(bb) Complainant attacked as unjust higher freight rates from Chicago and St. Louis to Griffin, Ga., than to Macon, Americus, Albany or Dawson, Ga. The three last named cities are situated at considerable distance from Griffin; while Griffin pays higher rates than those in force to such cities, there is no competition, between them and Griffin for trade in common territory, and Griffins real difficulty is in the relation of rates to that point and Macon and Atlanta, between which points Griffin is located and which enjoy much lower rates than either Americus, Albany or Dawson. The rates from New Orleans are for a longer distance to Griffin than to Americus, Albany or Dawson. Competition creates dissimilarity of circumstances and conditions affecting the transportation of traffic from the point of shipment mentioned to Macon and Griffin. HELD, under the construction of the law as announced by the courts, no undue prejudice against Griffin, or violation of the long and short haul clause, is shown in this case; and while the practice of making rates to Griffin by combining rates to Atlanta with local rates therefrom to Griffin may result in unreasonable charges, the evidence in this case is insufficient upon which to base a conclusion in that respect. Griffin Grocery Company v. Southern Ry. 11 I. C. C. 522.

(ccdd) Rates on flour from Louisville and Evansville by the Southern Ry. to Berry, Ala., on the line of the Southern, and by the Southern and Mobile & Ohio to Gordo, Ala., on the line of the Mobile & Ohio, are less than those of the Mobile & Ohio from Ava and Cairo, Ill., to Gordo. The rate by the Southern from St. Louis to Gordo is the same as that of the Mobile & Ohio from St. Louis and Ava, although the distance by the former is about twice that from Ava by the latter, and much greater than that from St. Louis by the Mobile & Ohio. HELD: that these facts do not warrant a conclusion that the flour rates from St. Louis, Ava and Cairo to Gordo are unreasonable. Cannon v. Mobile & O. R. Co. 11 I. C. C. 537.

(ee) Complainant attacked as unreasonable commodity rates on flour in carloads from St. Louis, Mo., Ava and Cairo, Ill., to Gordo, Ala. 27c and 22c respectively, as compared with the rates on the same article by other lines from Evansville, Ind., and Louisville, Ky., to Gordo and other points in Alabama on the defendant and Southern Ry, Berry being a point in issue. Rates on flour from Louisville and Evansville by the Southern to Berry, Ala., on the Southern and by the Southern and M. & O., to Gordo, on the M. & O., are less than those of the M. & O., from Ava and Cairo to Gordo. The rate by the Southern from St. Louis to Gordo is the same as that of the M. & O., from St. Louis and Ava, although the distance by the former is about twice that from Ava by the latter, and much greater than that from St. Louis by the M. & O. HELD, these facts do not warrant a conclusion that the flour rates from St. Louis, Ava, and Cairo to Gordo are unreasonable. Complaint dismissed. Cannon v. M. & O. R. R. 11 I. C. C. 537.

(ff) Complainant attacked as unreasonable and unduly discriminatory rates charged on lumber from southern Georgia to Dalton, Ga., and Chattanooga, Tenn., when destined to Cincinnati. The rates on pine lumber from southern Georgia points to Chattanooga are 2c higher than to Dalton, but on shipments to Cincinnati, Chattanooga takes 2c lower than Dalton, There is also a dressing in transit privilege at Dalton, for which 2c additional is charged. The lumber shipped out of Chattanooga is mostly hardwood, the southern pine lumber brought to that point being practically consumed there. HELD, rate from Dalton to Cincinnati not discriminatory. The reasons existing for lower lumber rates from the southern pineries do not apply to the reshipment of dressed lumber from Dalton. Farrar v. Southern Ry. 11 I. C. C. 632.

(gg) Upon complaint that lumber rates from Dalton, Ga., to points in Virginia on the Norfolk and Western lines between Bristol, Tenn., and Roanoke, Va., and between Bluefield, W. Va., and Kenova, W. Va., which were advanced in 1901 and 1903, are unreasonable and unduly discriminating, and also in violation of the long and short haul clause because the rates to such intermediate points are higher than the longer distances to Roanoke or Lynchburg. HELD: That in view of judicial interpretations of the act, the facts in this case furnish no basis for a conclusion that the rates in question violate the fourth section of the law; but the rates to such intermediate points, of which complaint is made, are excessive, unreasonable, and unjust, and should not exceed those in force before the advances were made effective. Farrar v. Southern R. Co. et al. 11 I. C. C. 640.

(hh) Complainant attacked as unreasonable and unduly discriminatory rates on canned goods, grain, flour, hay and packing house products from Cincinnati, O., and Memphis, Tenn., to Helena and McRae, Ga., higher than to Cordele and Fitzgerald, Ga., towns in the section of country surrounding Helena and McRae. The Southern operates from Cincinnati and Memphis to Helena and McRae but does not reach Cordele and Fitzgerald. The Seaboard does not extend to Memphis or Cincinnati but Helna, Cordele and Fitzgerald are on its line, but not McRae. HELD, after giving consideration to the circumstances and conditions, including situation of localities, railway competition, competition of markets, and the basing point system of rate making as practiced in the south, that, the situation of Helena and McRae is not so similar to that of Cordele as to require the application of Cordele rates to the first named places, but that the rates to Helena and McRae are unreasonable and unjust and should not exceed those now in effect to Fitzgerald from such points of origin. Davenport v. Southern Ry. 11 I. C. C. 650.

(ii) Complainant attacked rates charged on beer, carloads from Milwaukee, Wis., to Woodward, Okla., as unreasonable and unjustly discriminatory as compared with the rates in effect to Oklahoma City, Okla., a point beyond. Prior to the time of movement the rate in effect to both points was 53c and subsequently this rate was established. HELD, rate attacked unreasonable to extent it exceeded 53c, reparation awarded. Cutter v. A. T. & S. F. Ry. 11 I. C. C. 689.

(jj) Complainant attacked as unreasonable rates on butter and eggs, carloads, from Granite Falls, Minn., to Chicago, Ill. Rate charged 59c while rate from Pipestone, Minn., is 47c although Granite Falls is 47 miles nearer Chicago, but on a different branch of the road. The same rates are in force via

the G. N., although Granite Falls is an intermediate point between Pipestone and Chicago on the line of the G. N., and its connections. HELD, C. M. & St. P. rate of 59c unreasonable to extent it exceeded 47c. Morse Produce Co. v. C. M. & St. P. Ry. 12 I. C. C. 485.

IMPORTANT CASES SINCE 1908

(kk) To continue rates to the coast points that are lower than are necessitated by the actual water competition and higher rates to intermediate points and to other points over similar distances under like circumstances, is to perpetuate a discrimination that is unjust. The second and third sections of the Act forbid all unduly preferential or unjustly discriminatory rates and practices. The portion of the fourth section above quoted does not repeal or annul any part of the second and third sections of the Act to regulate commerce. If a coast point is receiving a lower rate than that to which it is lawfully entitled by the conditions there existing it is a preference at that point that results in prejudice against higher rated points whether intermediate thereto or not. Furthermore, the primary purpose of this portion of the fourth section being to preserve and promote competition by the water carriers, it must be so construed as to give effect to that purpose. Reopening Fourth Section Applications, 40 I. C. C. 35, 41.

(ll) A carrier may not cite its literal observance of the long-and-short haul clause of the fourth section of the Act as excusing it from its legal obligation to maintain from points on connecting lines to destinations on its own lines rates which in the light of all relevant considerations are nonprejudical to the traffic so originating on its connections. Weis-Peterson Box Co. v. M. & O. R. R., 46 I. C. C. 693, 696.

(mm) The fixing of maximum rates at intermediate points in fourth section proceedings can not be considered as a finding that such rates are maximum reasonable rates when considered apart from the depressed rate to the competitive points. While rates prescribed in such proceedings should be given due weight they are not controlling. Mobile Chamber of Commerce v. Director General, as Agent, 57 I. C. C. 605, 609; Montgomery Chamber of Commerce v. Director General, 57 I. C. C. 610, 619.

(nn) The fact that rates contravene the long-and-short-haul provision of the fourth section of the Act does not of itself establish that the higher rates to the intermediate points are unreasonable. Nivision-Weiskopf Co. v. Director General, as Agent, 77 I. C. C. 107, 108.

(oo) When the assessment of a switching charge in connection with transit results in greater aggregate compensation to the carrier than the sum of the intermediate rates, it cannot be considered that section 4 has thereby been violated, for the services performed are not the same in the two instances. Transit involves an additional service on the part of the carrier for which a separate charge may be made; the switching charge is an additional expense incident to the transit service. Detroit Board of Trade v. W. Ry. Co. 80 I. C. C. 717, 720.

(pp) When rate from more distant point has been established under rule 77 of Tariff Circular 18-A thus bringing rate structure into substantial compliance with fourth section requirements and in conformity with law, shippers at intermediate points have lawful right to a rate no higher than from next more distant point. By very language of the rule, carriers hold themselves out to grant same rate at intermediate points as is in effect from or to more distant point. Rates voluntarily established under the rule from more distant points are prima facie reasonable, and if reasonable from or to more distant points they must be deemed reasonable from or to intermediate points. Pittsburgh Crucible Steel Co. v. Director General as Agent, 81 I. C. C. 659, 660, 661.

(qq) All of the shipments were intrastate and the fourth section of the interstate commerce act does not apply to them. But the maintenance of a lower rate on the same commodity for a longer than for a shorter distance over the same route and in the same direction is a circumstance which has some value as evidence on an issue of unreasonableness. Jeremy Fuel & Grain Co. v. Director General, 88 I. C. C. 397, 399.

ALL OTHER CITATIONS

Wheat Rates from Oklahoma Points, 41 I. C. C., 389; Fruits and Vegetables 43 I. C. C. 291, 332, 333; La Crosse Shippers' Association v. C. I. & L. Ry., 43 I. C. C. 520; Northern Potato Traffic Asso. v. B. & O. R. R. Co., 43 I. C. C. 545, 549; Thropp v. B. & L. E. R. R.

49 I. C. C. 43, 53; McDonald Bros. v. M. L. T. R. R. & S. S. Co. 49 I. C. C. 133; American Refining Co. v. A. T. & S. F. Ry. 49 I. C. C. 491; Kansas Flour Mills Co. v. M. V. R. R. 49 I. C. C. 602; Earle Cooperage Co. v. St. L. I. M. & S. Ry., 53 I. C. C. 295; J. W. Summerhays & Sons Co. and Utah Hite & Livestock Co. A. T. & S. F. Ry. 53 I. C. C. 753; National Refining Co. v. M. P. R. R., 55 I. C. C. 35; Fort Smith Spelter Co. v. Walker D. Hines, 55 I. C. C. 133; Murfreesboro Board of Trade v. L. & N. Ry., 55 I. C. C. 648, 655; Illinois Brick Co. v. Director General, 57 I. C. C. 320; Union Tanning Co. v. Director General, 57 I. C. C. 354; Birmington Packing Co. v. Director General, 59 I. C. C. 81; Cohen-Schwartz Rail & Steel Co. v. M. L. & T. S. S. Co., 50 I. C. C. 202; Indian Refining Co. v. Director General, 59 I. C. C. 246; Proctor & Gamble Mfg. Co. v. Director General, 60 I. C. C. 447; Seaboard Oil & Refining Co. of Texas v. Director General, 60 I. C. C. 451; Daugherty & Son Refining Co. v. Director General, 61 I. C. C. 197; Davis Mfg. Co. v. Director General, 61 I. C. C. 607; Ansaldo & Nichols v. Director General, 61 I. C. C. 665; Hudson Mule Co. v. L. & N. 63 I. C. C. 6; Brick from Danville, 64 I. C. C. 624; West Kentucky Coal Bureau v. I. C. R. R. Co., 66 I. C. C. 228; Salt from Louisiana Mines to Chicago, 69 I. C. C. 312; Silica and Producers' Asso. v. C., B. & Q. R. R. Co., 73 I. C. C. 588, 589; Paper and Paper Articles from Canada and New England to Nashville, Tenn., 78 I. C. C. 258; Northwestern Marble & Tile Co. v. Director General 81 I. C. C. 167; Memphis Freight Bureau v. C. G. W. R. R. Co., 81 I. C. C. 626, 627; Warfield Pratt Howell Co. v. T. & P. Ry., 81 I. C. C. 733; Sandusky Cooperage & Lumber Co. v. N. C. & St. L. Ry., 83 I. C. C. 271; Simmerns Co. v. B. S. L. & W. Ry., 87 I. C. C. 537; Central Pennsylvania Lumber Co. v. T. V. Ry., 88 I. C. C. 303. 304; Brick and Clay Products in the South, 88 I. C. C. 543; Peycke Bros. Com. Co. v. Director General, 88 I. C. C. 617; Lynchburg Traffic Bureau v. Pennsylvania R. R., 88 I. C. C. 619; Coal to Iowa, Minnesota and Dakota, 89 I. C. C. 105; Pinson Brokerage Co. v. C. & G. Ry., 89 I. C. C. 125; Duluth Iron & Metal Company v. Director General, 89 I. C. C. 343.

IV. COMPETITION AS JUSTIFICATION

§7. In General.

See Competition.

CASES 1887-1908

(a) The existence of actual competition, which is of controlling force in respect to traffic important in amount, may make out the dissimilar circumstances and conditions, entitling the carrier to charge less for the longer than for the shorter haul over the same line in the same direction, the shorter being included in the longer, in the following cases: (a) When the competition is with carriers by water which are not subject to the provisions of the statute; (b) When the competition is with foreign or other railroads which are not subject to the provisions of the statute; (c) In rare and peculiar cases of competition between railroads which are subject to the statute, when a strict application of the general rule of the statute would be destructive of legitimate competition. Re Southern Ry. & S. S. Asso. 1 I. C. C. R. 278.

(b) When a greater charge in the aggregate is made for the transportation of passengers or the like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance, it is not sufficient justification therefor that the traffic which is subjected to such greater charge is way or local traffic, and that which is given the more favorable rates is not. (a) Nor is it sufficient justification for such greater, charge that the short haul traffic is more expensive to the carrier, unless when the circumstances are such as to make it exceptionally expensive, or the long haul traffic exceptionally inexpensive, the difference being extraordinary and susceptible of definite proof; (b) Nor that the lesser charge on the longer haul has for its motive the encouragement of manufacturers or some other branch of industry; (c) Nor that it is designed to build up business or trade centers; (d) Nor that the lesser charge on the longer haul is merely a continuation of the favorable rates under which trade centers or industrial establishments have been built up; (e) The fact that long haul traffic will only bear certain rates is no reason for carrying it for less than cost at the expense of other traffic. Re Southern Ry. & S. S. Asso. 1 I. C. C. R. 278.

(c) That there is competition in carriage of persons or property to or from a particular place, is a circumstance that justifies a carrier, under section 4, to

charge less for a long haul to or from such place, than a short one included therein. Ex parte Koehler (U. S. C. Ct. Or.) I. C. R. 317; ReSouthern R. & S. Asso. 1. I. C. R. 278.

(d) The existence of actual competition which is of controlling force may, in certain cases, make out the dissimilar conditions entitling the carrier to charge less for longer than for shorter haul. Re Southern R. & S. Asso. 1. I. C. R. 278; Exparte Koehler, (U. S. C. Ct. Or.) 1 I. C. C. 317; Harwell v. Columbus & W. R. Co. 1 I. C. C. 631.

(da) Dissimiliar circumstances and conditions may be made out by the existence of actual competition which is of controlling force in respect to traffic important in amount; and the limitations suggested by this rule are applicable, when the controlling force of water competition is invoked in respect to the second and third sections of the Act, as well as in respect to the fourth. The exceptional circumstance to be proved is actual competition, not possible competition likely to arise if rates are raised "of controlling force" not when the rail line is the controlling force, but when the competing water line is able to dictate rates which will control the traffic, unless met by the railroad "in respect to traffic important in amount" not when competition in a single direction or for the transportation of a single article or class of articles exists, but general competition of the character stated, controlling the carriage of the traffic on which the discrimination is made. Harwell v. Columbus & Western R. R. 1. I. C. C. 631, 636.

(e) Complainant attacked rates to Danville, Va., as unjust and unreasonable and unduly discriminatory. Prior to the passage of the fourth section, rates to competitive points were lower than to noncompetitive points which amount to the advantage of Danville. Upon the passage of the law, rates were published to noncompetitive points intermediate to Danville on the same or a lower basis and enabling small retail concerns to spring up at these noncompetitive towns thus to a certain extent eliminate the movement of freight from Danville. HELD, rates published in conformity with the law not unreasonable or unduly discriminatory, complaint dismissed. Crews v. R. & D. R. R. Co 1 I. C. C. 703.

(f) The competition of two roads does not alone make out the dissimilar circumstances and conditions which will authorize the making of greater charge upon the shorter haul. Re Chicago St. Paul & Kansas City R. Co. 2 I. C. C. 137, 148.

(g) Greater charge for a shorter distance,—when combined competition by rail and water do not justify it. The presence of combined rail and water competition at a longer-distance point does not justify a greater charge for a shorter distance while the carrier maintains the shorter-distance rate, where such competition is of greater force and more controlling than at the longer-distance point. James & Abbott v. East Tenn., Va. & Ga. R. Co., 2 I. C. R. 609.

(h) The presence of combined rail and water competition at a longer distance point does not justify a greater charge for a shorter distance while the carrier maintains the shorter distance rate, where such competition is of greater force and more controlling than at the longer distance point. James & Abbott v. E. T. V. & G. R. R. 2 I. C. C. 609, 611.

(i) Complainant at Mankato, Minn., attacked rates from Chicago to Mankato in that they should be no higher than to Waterville, Minneapolis and points allowed like rates. HELD, that in view of the circumstances and conditions existing, a somewhat higher charge to Mankato is not unlawful, but that a difference of 20% or more on the respective classes, charged when the complaint was filed, is excessive, and that a difference of 10% on the several classes is reasonable and should not be exceeded. Mfrs. & Jobbers Union of Mankato, Minn., v. M. & St. L. R. Co. 3 I. C. C. 115

(j) Complainant attacked class rates charged from New York to Readville, Mass., as unreasonable and unjustly discriminatory as compared with the all rail rates from New York to Boston, Mass. The rates from New York to Boston were forced upon the all rail lines by the action of a competing all water line not having rates on file with the Commission. HELD, the circumstances and conditions in the carriage of flour are substantially dissimilar at Boston to what they are at Readville, interior town 8 miles from Boston, where no competition exists between all rail and water lines, and justifies all rail lines in meeting the rate by the water line at Boston

by charging 9c per 100 pounds on flour, while the combined local rates of the two rail carriers are higher on shipments from New York to Readville than they are upon the joint through rate from New York to Boston, complaint dismissed. King & Co. v. N. Y. N. H. & H. R. R. 3 I. C. C. 272.

(k) The circumstances and conditions are not substantially the same, so as to require the same rates per ton per mile to be charged to an intermediate point as for a longer haul to a distributing point, where at the latter point there are competing roads. Interstate Commerce Commission v. Alabama M. R. Co. (C. C. M. D. Ala.) 3 I. C. R. 308.

(l) Besides terminal expenses and other aggregate charges not dependent upon the distance freight is moved, there are other conditions which justify a lower proportionate charge for longer distances . Coxe Bros. & Co. v. L. V. R. Co. 3 I. C. C. 460, 471.

(m) The circumstances and conditions which make a greater charge for a shorter distance lawful relate to the nature and character of the transportation service rendered by the carrier over the same line to the longer and shorter distance points. James & Mayer Buggy Co. v. C. N. O. & T. P. R. Co. 3 I. C. C. 682, 686.

(n) There is no competition by rail over the Canadian Pacific Railway, or by water around Cape Horn, that justifies a departure from the "long and short haul" rule of the statute in the transportation of refined sugar from San Francisco to Fargo and through Fargo to St. Paul. Raworth v. Northern P. R. Co. (Com.) 3 I. C. R. 857.

(o) Complaint attacked rates on sugar from San Francisco, Calif., to Fargo, N. D., as compared with the rate to St. Paul Minn., as unreasonable and in violation of the fourth section. HELD, there is no competition by rail over the C. P. R., or by water around Cape Horn, that justifies a departure from the long and short haul rule of the statute in the transportation of refined sugar from San Francisco to Fargo and through Fargo to St. Paul, and carries ordered to maintain to Fargo the same rates as in effect to St. Paul. Raworth v. N. P. R. Co. 3 I. C. C. 857.

(p) The carrier has the right to judge in the first instance whether it is justified in making a greater charge for a shorter distance, under the Act to Regulate Commerce, § 4, in all cases where the circumstances and conditions arise wholly upon its own line or through competition for the same traffic with carriers not subject to regulation under the Act. In other cases under § 4 the circumstances and conditions are not presumptively dissimilar, and carriers must not charge less for the longer distance except upon the order of the Commission. Trammell v. Clyde Steamship Co. (Com.) 4 I. C. R. 120, 121, 147.

(q) The competition of carriers subject to the Act to Regulate Commerce does not create circumstances and conditions which the carriers can take into account in determining for themselves in the first instance whether they are justified under the fourth section in charging more for shorter than for longer distances over their lines. Trammell v. Clyde S. S. Co. et. al. 4 I. C. R. 121.

(r) Transportation by rail from eastern points to the Pacific coast terminals, Portland, Tacoma and Seattle, Wash., is affected by the competition of controlling force and in respect to traffic important in amount, of water carriers reaching the same terminals, but such competition does not affect like transportation from said points to Spokane, Wash. HELD, defendants are justified, by reason of such dissimilarity of conditions and circumstances, in maintaining higher rates on shipments of like property from said points for the shorter distance to Spokane than for the longer distance to said Pacific terminals. The only justification for a through rate less than an intermediate rate on the same article is the compulsion of rail carriers to accept the reduced compensation or suffer ocean rivals to perform the service, and where the pressure of this alternative is not felt there is no ground upon which the lower through charge can be excused. No article should be carried to terminal points on commodity rates which, if the class rates were imposed would still seek rail rather than water transportation, and any violation of this rule is unjust discrimination against the intermediate town compelled to pay the higher class rate on the same article. Blanket class rates applying upon the N. P., for a distance of over 580 miles found relatively unreasonable; also HELD, that rates to Spokane, the principal distribut-

ing center to which such blanket rates apply, are unreasonable in themselves. Defendants ordered to cease and desist from charging rates on property from eastern points to Spokane which materially exceed 82% of class rates now in effect both to Spokane and Pacific coast terminals. Merchants' Union of Spokane Falls v. N. P. R. Co. 4 I. C. C. 183.

(s) Transportation by rail from eastern points to the "Pacific Coast Terminals," Portland, Tacoma and Seattle, is affected by the competition, of controlling force and in respect to traffic important in amount, of water carriers reaching the same terminals, but such competition does not affect like transportation from said points to the city of Spokane, Washington: HELD, therefore, that defendants are justified, by reason of such dissimilarity in circumstances and conditions, in maintaining higher rates on shipments of like property from said points for the shorter distance to Spokane than for the longer distance to said Pacific terminals The competitive position and attitude of the Canadian Pacific Railway, a foreign carrier, considered in connection with existing water competition, but the separate effect of competition by the Canadian route not found or determined. Merchants' Union v. Northern Pacific R. Co., 4 I. C. R. 183.

(t) The carrier has the right in the first instance to judge whether it is justified in making the greater charge for the shorter distance under the fourth section in all cases where the circumstances and conditions arise wholly upon its own lines or through competition for the same traffic with carriers not subject to the Act. In other cases under the fourth section, the circumstances and conditions are not presumptively dissimilar, and carriers must not charge less for the longer distance except upon order of the Commission. Board of Trade of Chattanooga v. E. T. V. & G. R. Co., 4 I. C. C. 213, 221.

(u) One transportation line can not be said to meet the competition of another transportation line for the carrying trade of any particular locality, unless the latter line could and would perform the service alone if the former did not undertake it. Board of Trade of Chattanooga v. E. T. V. & G. R. Co., 4 I. C. C. 213, 221.

(v) When great disparity exists between charges which are lower to competitive points than to intermediate points much less remote, the inference is irresistible that the lower rate must be unremunerative upon any theory, or else the larger rate gives an unwarranted return for the service rendered. Board of Trade of Chattanooga v. E. T. V. & G. R. Co., 4 I. C. C. 213, 222.

(w) "Freight carried to, or from, a competitive point, is always carried under substantially dissimilar circumstances, and conditions, from that carried to, or from, non-competitive points. In the latter case, the railway makes its own rates, and there is no good reason why it should be allowed to charge less for a long haul than a short one. When each haul is made to, or from, a non-competitive point, the effect of such discrimination is to build up one place, at the expense of the other. Such action is willfully unjust, and has no justification, or excuse, in the exigencies, or conditions of the business of the corporation. In the former case, the circumstances are altogether different. The power of a corporation to make a rate is limited by the necessities of the situation. Competition controls the charge. It must take what it can get, or abandon the field, and let its road go to rust." "Competition may not be the only circumstance that makes the condition under which a long and short haul are performed substantially dissimilar, but certainly it is the most obvious and effective one, and must have been in contemplation of Congress in the passage of the Act to Regulate Commerce." CASE QUOTED: 1 Inters. Com. Rep. 317, 31 Fed. Rep. 315, 319, Ex parte Koehler. Interstate Commerce Commission v. Cincinnati N. O. & T. P. R. Co. 4 I. C. R. 332.

(x) Competition may constitute a circumstance or condition of dissimilarity which will prevent the operation of the long and short haul clause of the Interstate Commerce Act, § 4. Missouri P. R. Co. v. Texas & P. R. Co. (C. C. E. D. La.) 4 I. C. R. 434.

(y) One transportation line can not be said to meet the competition of another transportation line for the carrying trade of any particular locality, unless the latter line could and would perform the service alone if the former did not undertake it. Behlmer v. M. & C. R. Co., 4 I. C. C. 520, 523.

(z) The circumstances and conditions are not substantially the same so as to require the same rates per ton per mile to be charged to an intermediate point as for a longer haul to a distributing point, where at the latter point there are competing roads. Interstate Commerce Commission v. Alabama M. R. Co., 5 I. C. R. 308.

(aa) That a less amount is charged for shipments to a given place than for shipments to an intermediate point does not violate the Act to Regulate Commerce where the former place is many times larger than the latter, has more railway lines running through it, and is situated on a river open the entire year, upon which shipments would be made unless the railroad rates should be kept below the mark of profitable water carriage, as the circumstances and conditions of the two points are substantially dissimilar. Interstate Commerce Commission v. Alabama Midland R. Co. (C. C. App. 5th C.) 5 I. C. R. 685.

(bb) While carriers operating shorter lines have the advantage, both in making rates and in carrying under them, they cannot dictate a system of charges which the operators of longer lines may not charge as to their own roads, though it may be true as a rule, that, to get business, longer lines must take it as low as rates at the time in force over more direct routes. Cordele Machine Shop v. L. N. R. Co., 6 I. C. C. 361, 371.

(cc) Any dissimilarity of circumstances resulting from a carrier which has fixed rates of charges from two designated points on uncompressed cotton only with "option of compression en route," availing itself of such option and carrying cotton from the shorter-distance point to the longer-distance point for compression, does not take the traffic out of the general rule of the Act to Regulate Commerce forbidding a greater charge for a shorter distance, Jerome Hill Cotton Co. v. Missouri K. & T. R. Co., 6 I. C. C. 601.

(dd) A carrier is not justified, under the Act to Regulate Commerce, § 4, in charging more for a shorter than for a longer distance by competition at the longer-distance point of other carriers which are themselves subject to such Act, in the absence of authority from the Interstate Commerce Commission under the proviso of such section. Lynchburg Bd. of Trade v. Old Dominion S. S. Co. 6 I. C. C. 632.

(ee) Defendants are engaged in competition with other carriers by railroad in the transportation of freight to both Griffin and Macon, Ga., but the defendants and their competitors make greatly lower rates from Louisville and Cincinnati for the longer distance to Macon than for the shorter distance to Griffin an intermediate point between Atlanta and Macon. While the rates at Atlanta and Macon are substantially the same such rates to Griffin are the rates to Atlanta to Griffin. Rates for the transportation of freight from New York and other eastern points to Griffin and Macon are practically the same. Although there is railroad competition for traffic to Griffin as well as to Macon, the carriers from Louisville and Cincinnati, while making low rates on account of such competition to Macon, refuse to establish like rates for Griffin. HELD, That if there can be exceptional instances in which competition between carriers subject to the Act may create the dissimilarity of circumstances and conditions under the 4th section, this case, where such competition is shown at both the shorter and longer distance points, is not one of them. Brewer & Hanleiter v. Louisville & N. R. Co., 7 I. C. C. 224

(ff) Competition at a given point between carriers which have agreed upon rates to the competing points does not constitute a substantial dissimilarity in circumstances and conditions, within the Act to Regulate Commerce, § 4, making it unlawful for a carrier subject to the Act. under substantially similar circumstances and conditions, to charge more for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance; though such competition may afford a basis for relief by the Commission under the subsequent provision of the section Fewell v. Richmond & D. R. Co., 7 I. C. C. 354.

(gg) Freely engaging in competition at one point, while wholly or largely suppressing it at a shorter distance locality, will not entitle carriers to make higher charges for shorter than for longer hauls over the same line in the same direction. Calloway v. Louisville & N. R. Co. 7 I. C. C. 431.

(hh) It being settled that competition must be considered and may justify deviation from the rule of the fourth section, it follows that wherever competition of

controlling force by existing lines is practicable it must be given effect; and that freely engaging in competition at one point, while wholly or largely suppressing it at a shorter distance locality, cannot entitle carriers to make higher charges for shorter than for longer hauls over the same line in the same direction. Calloway v. Louisville & Nashville R. Co., 7 I. C. C. 431.

(ii) The "Plant System" of railways carries fertilizer from Savannah, Ga., to Valdosta, and also over the longer distance from Charleston to Valdosta, at no higher rate than it charges from Savannah. The Charleston rate is fixed by the competition of another and more circuitous line from that city to Valdosta, and the Plant System must meet that rate or get no fertilizer business from Charleston. HELD, That under such circumstances the Plant System may properly make the same rate from Charleston as is made by the longer line, and in so doing it does not unjustly discriminate against Savannah, though if the rate from Charleston to Valdosta were in any way subject to control, the conclusion might be otherwise. Savannah Bureau of Ft. & Trans. v. Charleston & S. R. Co., 7 I. C. C. 458.

(jj) The circumstances and conditions governing the transportation of fertilizer from Charleston to Valdosta and various other stations are rendered substantially dissimilar from those applying in the transportation of fertilizer from Charleston over the same line to shorter-distance localities by railway competition at Valdosta and said other stations, which controls and affects the rate, and higher charges on fertilizer to such shorter-distance points are not in violation of the fourth section as interpreted by the United Ctates Supreme Court in Interstate Commerce Commission v. Alabama M. R. Co. 168 U. S. 144, 42 L. ed.—Savannah Bureau of Ft. & Trans. v. Charleston S. R. Co., 7 I. C. C. 458.

(kk) A railway system may properly make the same rate between certain points as is made by a longer and more circuitous line, and in so doing does not unjustly discriminate against a city located nearer to the point of destination because it charges no higher rate over the longer distance than it does from such city. Savannah Bureau of F & T. v. Charleston & S. R. 7 I. C. C. 458.

(ll) Competition between rival routes, which affects rates, is a fact to be considered in determining whether property transported to a competitive point for less rates than are charged for property to an intermediate point on the same line is carried under "substantially similar circumstances and conditions," as that phrase is found in § 4 of the Act to Regulate Commerce; but such competition is not applicable to § 2 of the Act. Interstate Commerce Commission v. Alabama Midland Ry. Co., 7 I. C. C. App. CIX.

(mm) Circumstances and conditions governing the transportation of freight articles from New Orleans to Kansas City, and to Dallas, Texas, an intermediate point on the same line, are rendered substantially dissimilar by the competition of carriers by water and rail from New Orleans to Kansas City, which controls and affects the rates, so that higher charges for the shorter distance to Dallas, which are reasonable in themselves, are not in violation of § 4 of the Act to Regulate Commerce. Dallas Freight Bureau v. Texas & P. R. Co. 8 I. C. C. 33, 40.

(nn) In determining under the fourth section whether the circumstances and conditions were substantially similar, competition between railways subject to the Act, as well as competition not subject to the Act, should be considered it being a question of fact to be determined in each case by the Commission or court upon the evidence in that particular case. Dallas Freight Bureau v. T. & P. R. Co. 8 I. C. C. 33, 45.

(oo) While as high rates on sugar and molasses for the shorter haul from New Orleans to Nashville as for the longer haul to Louisville will be justified, there is not such a substantial dissimilarity of circumstances and conditions shown as will authorize higher rates on such transportation to Nashville than are charged to Louisville.. Phillips, Bailey, & Co. v. Louisville & N. R. Co. 8 I. C. C. 93.

(ppqq) There may be instances where a carrier should be permitted to meet railroad competition without reference to its intermediate territory, but when the very existence of an important industry depends upon the carrier being required to treat intermediate territory as it does the more distant territory, the rule of no greater charge for the shorter distance clearly applies. Re Export and Domestic Rates on Grain, 8 I. C. C. 214.

(rr) Competition between railways does not of itself create dissimilarity in the circumstances and conditions, but it is a factor which may be taken into account in cases arising under the 4th section of the statute. George Tileston Milling Co. v. Northern P. R. Co. 8 I. C. C. 346.

(ss) The fact that one competing carrier has the long line does not create a dissimilarity in circumstances and conditions, which justifies it in disregarding the rule of the 4th section of the Act, while competing short lines are bound by that rule. George Tileston Milling Co. v. Northern P. R. Co. 8 I. C. C. 346.

(tt) To allow one carrier to meet the rates of its competitors until it is found to have done something more than meet such rates does not constitute a workable basis, for the cause which lead to rate fluctuations are so intangible, often resting upon mere suspicion, that any attempt in an individual case to determine what those causes were would ordinarily be futile; and to enforce such a rule would stifle that competition which the act was intended to secure. George Tileston Mill. Co. v. N. P. R. Co. 8 I. C. C. 346, 358.

(uu) If a carrier could only reduce its rates to a competitive point at the expense of its intermediate territory, while the competitors of that carrier might meet the reduction without corresponding reductions at intermediate points, no carrier would ever openly reduce such rates. Geo. Tilleston Mill Co. v. N. P. R. Co., 8 I. C. C. 346, 358.

(vv) Competition which does not reduce the rates to the longer distance point below what are reasonable can not justify higher rates to shorter distance points, and such higher rates are presumptively excessive. Board of Trade of Hampton, Fla., v. N. C. & St. L. Ry. 8 I. C. C. 503, 527.

(ww) Competition is one of the most obvious and effective circumstances that make the conditions under which a long and short haul is performed dissimilar, and as such must have been in the contemplation of Congress in the passage of the Act to Regulate Commerce. Citing: Interstate Commerce Commission v. Alabama Midland R. Co., 168 U. S. 144, 42 L. ed. 414. Interstate Commerce Commission v. Western & Atlanta R. R. Co. 8 I. C. C. App. XIII.

(xx) If the lesser charge to the longer-distance point results from dissimilar circumstances and conditions brought about by competition, it cannot be said to be a preference which is undue or unreasonable. Interstate Commerce Commission v. Western & Atlantic R. R. Co. 8 I. C. C. App. XIII.

(yy) All the evidence shows that the rate to Atlanta, the longer-distance point in this case, is forced on the railroad officials by competition. Interstate Commerce Commission v. Western & Atlantic R. R. Co. 8 I. C. C. App. XIII.

(zz) In order to constitute dissimilarity under § 4 of the Act, the competition must be real, and not imaginary or trifling. Interstate Commerce Commission v. Western & Atlantic R. R. Co. 8 I. C. C. App. XIII.

(3a) Competition will not justify the imposition, for a shorter haul, of charges so much higher than those for a longer haul that goods can be shipped to the further place and reshipped to the nearer place at less than the rate direct to the latter place, where a reasonable profit is obtained upon the longer haul. I. C. C. v. E. Tenn., Vir., & Georgia R. R. Co., 8 I. C. C. App. XLIII.

(3b) In cases involving lower charges for longer than for shorter distances over the same line in the same direction, the shorter being included within the longer distance, all forms of competition must be taken into account, but the mere fact of competition at the more distant point does not of necessity justify the lower longer distance charge. In this case the construction of the third section, or undue preference clause of the statute, is also involved, and under that section at least the question is not merely does some form of competition exist at the more favored point which is not found at the other, but rather do all the circumstances and conditions, giving due regard to the interests of all parties, excuse the preference. Holdzkom v. Michigan Central Ry. Co. et. al. 9 I. C. C. 42.

(3c) The conditions affecting traffic, including carriages and buggies, from eastern points are rendered substantially different at Los Angeles than at San Bernardino, a shorter distance point on the same line, by the competition of carriers wholly by water from the Atlantic Seaboard to Port Los Angeles, a point on the Pacific Coast near Los Angeles,

and the effect of such competition by water direct to San Francisco is, upon all the circumstances, properly recognized at Los Angeles by giving that city all rail rates from the east as low as those in effect to San Francisco. Holdzkom v. Michigan Central Ry. Co. et. al 9. I. C. C. 42.

(3d) Traffic brought from the east by the U. P. N. P., G. N. and C. P. Rys. to various Northern Pacific seaports can be carried from thence to Los Angeles without passing over the routes of either the S. P. or S. F. Systems, but it must pass over one of such roads to reach San Bernardino. Merchandise by these rail and water routes to Los Angeles must be transported by rail across the continent, transshipped and carried 1,200 miles by ocean, and again transshipped for another 20 mile rail haul before it reaches Los Angeles in competition with the S. P. or S. F. Ry. HELD, That while traffic may be and at times actually is carried by such circuitous rail and water routes, it is questionable whether it ought to be, and the Commission does not hold in this case that such competition in itself constitutes justification for a higher rate at an intermediate point like San Bernardino than is enforced on traffic from the east to Los Angeles. Holdzkom v. Michigan Central Ry. Co. et. al. 9 I. C. C. 42.

(3da) The Commission refused to hold that the charging of a higher rate for the transportation of goods from the east to San Bernadino than is enforced on similar traffic to Los Angeles, a more distant point, is justified by the fact that goods so transported can be brought from the east by several railroads to various northern Pacific seaports, and then carried from thence to Los Angeles without passing over the routes of the S. P. or S. F. systems, but must pass over one of such routes to reach San Bernardino, as it is questionable whether traffic ought to be carried by such circuitous railroads and water routes as is necessary to reach Los Angeles. Holdzkom v. Michigan Central R. Co. 9. I. C. C., 42.

(3ef) In consideration of fourth section violations, all forms of competition must be taken into account; but the mere fact that there is competition at the more distant point does not of necessity justify the lower rate. Holdzkom v. M. C. R. Co. 9 I. C. C. 42, 51.

(3g) Complainants alleged that higher rates in force from northern and eastern markets to Dallas and Fort Worth than those in effect over lines through those Texas cities to Galveston and Houston violate section four of the statute, but the case was tried upon an erroneous theory that market and railroad competition could not work dissimilarity in the circumstances and conditions within the meaning of the statute. The testimony, which bears solely upon complainants' contention that the statute forbids higher rates on any and all freights for the shorter distance to Dallas or Fort Worth than for the longer distance to Galveston or Houston, was not sufficient to enable the Commission to determine whether the circumstances and conditions governing the transportation in question are or are not substantially similar in respect of all kinds and classes of freight traffic. HELD, That the complaint must be dismissed, but with leave to complainants to challenge the existing difference in rates as to particular articles or any class of freights by supplemental complaint or in new proceeding. Dallas Freight Bureau et. al. v. A. & N. R. R. Co. et al., 9 I. C. C. 68.

(3h) Competition, whether it be water competition, railroad competition, or market competition, provided it produces a substantial and material effect upon traffic and rate-making, may create dissimilarity of circumstances and conditions, and such competition must be taken into consideration in cases arising upon complaint under the fourth section. Decisions of U. S. Supreme Court in Interstate Commerce Commission v. Alabama Midland R. Co. 168 U. S. 144, 42 L. ed. 414, 18 Sup. Ct. Rep. 45, and subsequent cases cited and applied. Dallas Freight Bureau et. al. v. A. & N. W. R. R. Co. et. al., 9 I. C. C. 68. 71.

(3i) Complainant attacked rates charged to Dallas and Fort Worth, Tex., higher than those to Galveston and Houston, Tex., as unreasonable and unjustly discriminatory. The case was tried upon the erroneous theory that market and railroad competition could not work discriminatory. The case was tried upon conditions within the meaning of the statute. The testimony was not sufficient to enable the Commission to determine whether the circumstances and conditions governing the transportation in question are or are not substantially similar in re-

spect of all kinds and classes of freight traffic. HELD, complaint dismissed, but with leave to reinstate by supplemental complaint. Dallas Freight Bureau v. A. & N. W. R. R. 9 I. C. C. 68.

(3ia) Where actual competition exists at the more distant point, which does not obtain at the nearer point, and which has actually produced a lower rate at the more distant point which the carrier cannot control and must meet to obtain a share of the business, the Act to Regulate Commerce does not prohibit the disparity in rates at the shorter and longer distance points, provided the longer distance competitive rate is remunerative, and the shorter distance rate reasonable. Mayor and City of Wichita v. Atchison, T. & S. F. R. Co. 9 I. C. C. 534.

(3j) Where actual competition exists at the more distant point which does not obtain at the intermediate or nearer point, and where such competition has actually produced a lower rate at the more distant point which the carrier cannot control and must meet to obtain a share of the business, neither the third nor the fourth section of the Act to Regulate Commerce prohibits the disparity in rates at the shorter and longer distance points, provided the longer distance competitive rate is remunerative and the shorter distance point rate is reasonable. Decisions of the United States Supreme Court in Interstate Commerce Commission v. Alabama Midland R. Co. 168 U. S. 144, 42 L. ed. 414, 18. Sup. Ct. Rep. 45; Louisville & N. R. Co. v. Behlmer, 175 U. S. 648, 44 L. ed. 309, 20 Sup. Ct. Rep. 209; East Tennessee, V. & G. R. Co. v. Interstate Commerce Commission, 181 U. S. 1, 45 L. ed. 719, 21 Sup. Ct. Rep. 516; Interstate Commerce Commission v. Louisville & N. R. Co. 190 U. S. 273, 47 L. ed. 1047, 23 Sup. Ct. Rep. 687, cited and applied. Mayor, Etc., of Wichita V. A.. T., & S. F. Ry. Co. et al. 9 I. C. C. 534, 555.

(3k) Complainant attacked commodity rates on coal from Minden, Mo., McAlester, I. T., and Russellville, Ark., to Wichita, Kans., as unlawful compared with rates from the same points to Kansas City. It appeared that the rates to Kansas City are controlled and actually forced by competitive conditions governing the transportation of coal to that city, but that such rates are remunerative and that the rates to Wichita cannot be found excessive upon the record. HELD, complaint dismissed. Mayor and City Council of Wichita, Kas. v. A. T. & S. F. Ry. 9 I. C. C. 558.

(3l) The fact that lumber rates from western points to Wichita, Kansas, are higher than for the longer distance through Wichita to Kansas City, Omaha, and Lincoln, Neb., does not constitute a violation of the Interstate Commerce Act, where competitive conditions exist in Kansas City, Omaha, and Lincoln which do not exist at Wichita, and which produce low rates to those points from the lumber territory in question. Mayor and City Council of Wichita, Kansas v. Chicago, Rock Island & Pacific R. Co. 9 I. C. C. 569.

(3m) The fact that a substantial dissimilarity of circumstances and conditions between the longer and shorter distance points has been shown which justfies a lower rate to the longer distance point, does not prevent the longer distance rate from being considered by way of comparison in determining whether or not the shorter distance rate is unreasonable or unduly prejudicial, where the competition and other compulsory conditions are found not to justify the whole disparity between the shorter and the longer distance rate. S. Marten v. Louisville & Nashville R. Co. 9 I. C. C. 581.

(3n) Complainant attacked rates on lumber from Fountain Head, Gallatin, St. Blaise, Pilot Knob and Nashville, Tenn., to Detroit, Mich., as unreasonable and unjustly discriminatory. Rates from these points are based on the Louisville combination, rates from Nashville, the longer distance point 8c, and from the other points 10c. Rates from Nashville are affected by rates in effect on the Cumberland River to Burnside, Ky., plus rail rates beyond, which situation does not hold true from the other points of origin. HELD, there is a substantial dissimilarity in the conditions as between Nashville and the intermediate points, and the fourth section does not apply, but the dissimilarity would be offset by a difference of 1c per 100 pounds in the rates. Marten v. L. & N. R. R. 9 I. C. C. 581.

(3o) Rates on lumber from Fountain Head, Gallatin, St. Blaise, Pilot Knob and Nashville, Tenn., to Detroit, Mich., are made by adding defendant's rates to Louisville, Ky., to rates in force from

Louisville to Detroit. Defendant's rates to Louisville are 10 cents per 100 pounds for the shorter distance from Fountain Head, Gallatin, St. Blaise and Pilot Knob, and 8 cents for the longer distance over the same line from Nashville. HELD, that there is a substantial dissimilarity of circumstances and conditions as between Nashville and the intermediate points mentioned and that, therefore, the 4th section of the Act to Regulate Commerce does not apply; that a difference of one cent in the rates fully offset the difference in circumstances and conditions; and that any greater difference renders the rate from the intermediate points relatively unreasonable, in violation of section 1, and unduly discriminatory, in violation of section 3, of the statute. Marten v. Louisville & N. R. Co. 9 I. C. C. 581.

(3p) The defendant does not violate the 4th section of the Act to Regulate Commerce by charging a higher rate from Fountain Head, Gallatin, St. Blaise, and Pilot Knob to Louisville than from the longer distance over the same line from Nashville to Louisville, as there exists a substantial dissimilarity of circumstances and conditions as between Nashville and the intermediate points mentioned. S. Marten v. Louisville & Nashville R. Co. 9 I. C. C. 581.

(3q) Although the dissimilarity of circumstances and conditions justifies the defendant in charging a higher rate on lumber from Fountain Head, Gallatin, St. Blaise, and Pilot Knob to Louisville than for the longer distance over the same line from Nashville, a difference of 1 cent in the rates is sufficient to offset the difference in circumstances and conditions, and any greater difference in the rates renders the rate from the intermediate points relatively unreasonable S. Marten v. Louisville & Nashville R. Co. 9 I. C. C. 581.

(3qa) No undue discrimination results to Sheridan by reason of the fact that the rate from that place to Boston is 2 cents per 100 lbs. more than from Indianapolis to Boston, although the latter is the longer distance point by the defendant's line, which runs north from Indianapolis through Sheridan, connecting at various points with lines to Boston; as Indianapolis is a competitive point, and the short lines from Sheridan to the east are through Indianapolis, and by those lines Sheridan is a longer distance point. G. C. Pratt Lumber Co. v. Chicago I. & L. R. Co. 10 I. C. C. 29.

(3r) Applying the law as construed by the United States Supreme Court, the traffic from New York and other eastern points is carried to Nashville through Chattanooga under substantially different circumstances and conditions from those pertaining to traffic from the same points to Chattanooga, the shorter distance; and consequently a higher rate to Chattanooga is not unlawful under section four of the statute. Chamber of Commerce of Chattanooga v. Southern R. Co. 10 I. C. C. 111.

(3s) Complainant attacked class rates from New York and other eastern points to Chattanooga, Tenn., as unreasonable and unjustly discriminatory as compared with the rates to Nashville, Tenn., a point beyond. In 5 I. C. C. 546, the Commission found rates charged unreasonable. The decision was appealed and the Supreme Court in 181 U. S. 29, reversed the order without prejudice to the right of the Commission to proceed further and hear and determine the matter in controversy according to law. HELD, applying the principles as laid down by the Court the traffic from New York and other eastern points is carried to Nashville and Chattanooga under substantially different circumstances and conditions, and the higher rate to Chattanooga is not unlawful under section four and can not be otherwise condemned merely because a lower rate is granted to Nashville, and the rates to Chattanooga are not unreasonable. Chamber of Commerce of Chattanooga v. Southern Ry 10 I. C. C. 111.

(3t) Competition which is real and substantial and exercises a potential influence on rates to a particular point, brings into play the dissimilarity of circumstances and conditions prescribed by the statute, and justifies the lesser charge to the more distant and competitive point, and this right is not destroyed by the mere fact that incidentally the lesser charge to the competitive point may seemingly give a preference to that point and the greater rate to the non-competitive point may apparently engender a discrimination against it. Chamber of Commerce of Chattanooga v. Southern Ry. 10 I. C. C. 111, 134.

(3u) The Mobile & Ohio Railroad Company is justified in making a lower rate of charges from St. Louis, Mo., East

St. Louis, and Cairo, Ill., to Mobile, Ala., and Meridian, Miss., than for the shorter distance to Tupelo, Aberdeen, Columbus, West Point, and Starkville, Miss., by actual and controlling competition which creates substantial dissimilarity in the circumstances and conditions affecting transportation. Aberdeen Group Commercial Asso. v. Mobile & O. R. Co. 10 I. C. C. 289.

(3vw) Defendant has had in force since April 25, 1903, rates per 100 lbs. on bananas in carloads from Charleston, S. C., which are 43 cents to Danville, Va., and 35½ cents to Lynchburg, Va., the transportation to the latter point by defendant's line being through Danville. The lower rate to Lynchburg is forced upon defendant by the competition of bananas coming from Baltimore. The 43 cent rate to Danville is not found to be unreasonable, and upon these facts the higher rate to Danville is not in violation of the Act to Regulate Commerce. Gardner & Clark v. Southern R. Co. 10 I. C. C. 342.

(3x) Freight rates to Charlotte, N. C., from New York and other northern and eastern points, and from Louisville, Chicago, and other western points are complained of as unjust, and those from the west as greater for the shorter distance to Charlotte than for longer distances through Charlotte to more distant localities. The freight rates to Charlotte are made by combining rates to Lynchburg and other Virginia cities with the local rates from these cities to Charlotte. Competition forces low rates to the Virginia cities, and also compels the low rates in force from the west to certain points east of Charlotte. If through rates to Charlotte lower than the combination of charges to and from the Virginia cities were established, the disadvantage now resulting to Charlotte dealers in their competition with dealers at Virginia cities would to that extent be removed, and the carriers are recommended to consider taking such action, but in the absence of a showing that the present through charges are unreasonable the Commission is without authority to require discontinuance of the charges now exacted. HELD: After citing decisions of the courts, that the facts presented do not constitute a basis for an order of relief which could be enforced and therefore the complaints must be dismissed. Charlotte Shippers' Asso. v. Southern R. Co. et. al. 11 I. C. C. 108, 109.

(3y) Defendants' rate of $1.30 per hundred pounds on buggies in carloads from Rock Hill, S. C., to Tallahassee, Fla., is not shown to be unreasonable, and under the construction placed upon section 4, or the long and short haul clause of the statute, by the United States Supreme Court, competition by the A. C. L. R. Co., justifies defendants' lower rate of $1.10 for the longer distance to Quincy, Fla. Rock Hill Buggy Co. v. Southern R. Co. 11 I. C. C. 229.

(3z) Complainant attacked rates on buggies, commodity, carloads from Rock Hill, S. C., to Tallahassee, Fla., as unreasonable and unjustly discriminatory as compared with the rate beyond to Quincy, Fla. Defendants rate to Tallahassee is $1.30, rate to Quincy $1.10. The rate to Quincy via defendant, Southern Ry., is forced by competition of the A. C. L., which competition is not present at Tallahassee. HELD, rate attacked not unreasonable, complaint dismissed. Rock Hill Buggy Co. v. Southern Ry. 11 I. C. C. 229.

(4a) On complaint that defendants' rate on oak lumber in carloads to Philadelphia are unlawfully higher from Afton, Va., and points east thereof, to and including Gordonsville, Va., than those for the longer distances over the same line from Staunton and Basic City, Va., it appeared that a rate of 14 cents per hundred pounds applied over the whole territory for a period of about nine years between November 1, 1892, and August 1, 1901. Effective competition was shown by defendants' witnesses at Basic City and Staunton, and complainants failed to offer any testimony. Upon the record as made in the case, HELD, that the higher rate from the Afton-Gordonsville group does not constitute unlawful discrimination. George M. Spiegle & Co. v. Chesapeake & O. R. Co. 11 I. C. C. 367.

(4b) Complainant attacked commodity rates as unreasonable on oak lumber, carloads, to Philadelphia, Pa., from Afton, Va., and points east thereof, to and including Gordonsville, Va., higher than those for the longer distances over the same line from Staunton and Basic City, Va. Between Nov. 1, 1892 and August 1, 1901, a rate of 14c applied over the whole territory. Effective competition was shown by defendants witnesses at

Basic City and Staunton, and complainants failed to offer any testimony. HELD, the higher rates from the Afton-Gordonsville group does not constitute unjust discrimination. Complaint dismissed. Spiegle & Co. v. C. & O. Ry. 11 I. C. C. 367.

(4c) The competitive conditions existing at Afton, Minn., prevent the maintenance of higher coal rates than those now in effect, and consequently there is no unjust discrimination between places by reason of the fact that defendant's rate on coal is 35 cents per ton less from Superior, Wis., to Afton than from Superior to Hastings, although the traffic to Afton passes through Hastings. Hastings Malting Co. v. Chicago, M. & St. P. R. Co. 11 I. C. C. 675.

(4d) Defendant's rate on anthracite coal from Superior, Wis., to Hastings, Minn., is $1.75 per net ton; on bituminous coal, $1.40 per net ton; whereas its rates from Superior to Afton, Minn., the traffic passing through Hastings, are $1.40 per net ton on anthracite and $1.05 on bituminous coal. HELD, (a) That the third and fourth sections of the Act are not violated, because competitive conditions exist at Afton which prevent the maintenance of higher coal rates than those now in effect; (b) that such coal rates to Hastings are unreasonably high and should not exceed $1.50 per net ton on anthracite and $1.25 per net ton on bituminous coal; (c) that as the Commission has not now authority to fix rates of defendant, no order will be made. Hastings Malting Co. v. Chicago, M. & S. P. R. Co. 11 I. C. C. 675.

(4e) Complainant attacked commodity rates charged on hard coal from Superior, Wis., to Hastings, Minn. Rate was $1.75 per ton, on soft coal $1.40 per ton, whereas its rates from Superior, to Afton, Minn., the traffic passing through Hastings, are $1.40 per ton on hard coal and $1.05 on soft coal. HELD, the third and fourth sections not violated, because competitive conditions exist at Afton which prevent the maintenance of higher coal rates than those now in effect; rates attacked unreasonably high to extent they exceed $1.50 on hard coal and $1.25 on soft coal. Duluth, Minn., has the same coal rates to Hastings as Superior and the Minnesota Commission has ample authority to control the situation. Hastings Malting Co. v. C. M. & St. P. Ry. 11 I. C. C. 675.

(4f) Substantial dissimilarity of circumstances and conditions exists between Goodhue and Red Wing, Minn., and consequently the 4th section of the Act to Regulate Commerce is not violated by the defendant in charging a rate on grain of 15 cents per one hundred pounds from Goodhue, Minn., to Chicago, Ill., while it charges only 12½ cents per one hundred pounds from Red Wing, Minn., to Chicago, 14 miles farther off. Goodhue v. Chicago Great Western R. Co. 11 I. C. C. 683.

(4g) Defendant by charging a rate on grain of 15 cents per 100 pounds from Goodhue, Minn., to Chicago, Ill., while it charges only 12½ cents per 100 pounds from Red Wing, Minn., to Chicago, 14 miles farther off, the traffic passing through Goodhue, does not in this case violate the fourth section of the Act, because substantial dissimilarity of circumstances and conditions exist between Goodhue and Red Wing. Neither does such rate adjustment violate the third section, as the discrimination was not shown to be undue. Decision of the United States Supreme Court in E. T. V. & G. Ry. Co. v. I. C. C., 181 U. S. 1, 45 L. ed. 719, 21 Sup. Ct. Rep. 516, cited. Goodhue v. Chicago G. W. R. Co. 11 I. C. C. 683.

(4h) Complainant attacked commodity rates charged on grain of 15c from Goodhue, Minn., to Chicago, Ill., as unreasonable and unjustly discriminatory as compared with a rate of 12½c from Red Wing, Minn., 14 miles farther distant, Goodhue being intermediate. The C. M. & St. P., main line runs through Red Wing while defendant, C. G. W., line runs west of that point but has a branch extending through Red Wing and Goodhue. This created a competitive situation at Red Wing which is not felt at Goodhue. HELD, In view of the substantial dissimilarity of conditions and circumstances, discrimination not undue, fourth section not violated according to decision of the Supreme Court in 181 U. S. 1. Village of Goodhue, Minn. v. C. G. W. Ry. 11 I. C. C. 683.

(4i) Complainant attacked rates on grain from Pine Island, Minn., to Chicago, Ill., as unreasonable compared with rates from Red Wing and Claybrook, Minn. The rates from Red Wing are fixed by competition with the C. M. & St. P., this line having the short line to Chicago and also making Red Wing in-

termediate to St. Paul. HELD, competitive conditions at Red Wing not prevaling at Pine Island, the latter rates caused no fourth section violation. Pine Island Farmers Elevator Co. v. C. G. W. Ry. 11 I. C. C. 687.

(4j) Rates of 21 cents from Lochland, Ky., to East St. Louis, Ill., compared with the rate of 15 cents from Louisville, 8 miles further distant, held not unlawfully discriminatory, it appearing that the rate from Louisville is fixed under competition. Durham v. Illinois C. R. Co. 12 I. C. C. 37.

(4k) Complainant attacked as unreasonable commodity rate of 21c charged on brick machinery, carloads, from Lochland, Ky., to East St. Louis, Ill. The rate in effect at time of movement from Louisville, Ky., 8 miles beyond Lockland was 15c, not applicable at intermediate points. The rate from Louisville was fixed by competition by rail and water which did not exist at Lochland. HELD, The defendant may meet the rate at Louisville without reducing its intermediate rates to the same level, and it is not in violation of either the third or fourth sections in charging the high rate from Lochland, and rate attacked not unreasonable complaint dismissed. D. W. Durham v. Illinois Central R. R. 12 I. C. C. 38.

(4l) On complaint alleging that a rate of 21 cents per 100 pounds on brick machinery, carloads, from Lochland, Ky., to East St. Louis, Ill., compared with a rate of 15 cents for the longer distance over the same line from Louisville, Ky., to East St. Louis, was unreasonable, Lochland being 8 miles nearer the point of destination, it appeared that the rate from Louisville is fixed under competition by rail and by water, and following decisions of the court: HELD, That the higher rate from Lochland does not violate section 3 or section 4 of the statute, and, further, that the rate from Lochland is not, upon the evidence presented, unreasonable under the first section of the law. Durham v. Illinois C. R. Co. 12 I. C. C. 38.

(4m) Difference in rates from New York points via water and rail through Galveston, Tex., to Wichita, Kan., and in rates to Topeka, Kan., through Wichita, HELD justified by competition for traffic to Topeka. Johnston- Larimer Dry Goods Co. v. New York & T. S. S. Co. 12 I. C. C. 58.

(4n) Competition which is real and substantial and exercises a potential influence on rates to a particular point brings into play the dissimilarity of circumstances and condition provided by the statute and justifies the lesser charge to the more distant and competitive point than to the nearer and noncompetitive place, and this right is not destroyed by the mere fact that incidentally the lesser charge to the competitive point may seemingly give a preference to that point and the greater rate to the noncompetitive point may apparently engender a discrimination against it. Tomlin Harris Machine Co. v. L. & N. R. R. 12 I. C. C. 134, 136.

(4o) The Supreme Court has held that carriers in meeting competitive rates are not justified in carrying traffic for less than cost, since they would thereby impose upon noncompetitive traffic the burden of the loss. Farmers Merchants & Shippers Club of Kansas v. A. T. & S. F. Ry. 12 I. C. C. 352, 360.

(4p) The Commission must in the adjustment of rates give due consideration to competition whether by rail or water or of markets, and greater charges for shorter distances than for longer ones, even over the same line in the same direction, the shorter being included within the longer, made with due regard to the existence of competition at the longer distance point and the lack of it at the shorter, or having regard to the degree and potency of such competition at the respective points, is not unreasonably discriminatory and therefore not forbidden by law. Commercial and Industrial Asso. of Union Springs, Ala., v. L. & N. R. R., 12 I. C. C. 372, 374.

(4q) Complainant attacked as unreasonable commodity rate charged on coal, carloads, from Centerville district, Iowa to Albany, Mo. Rate attacked $1.25 per ton, the rate to St. Joseph, Mo., being $1.00. and subsequently the rate to Albany being reduced to $1.00 Distance to Albany 120 miles, and through Albany to St. Joseph 169 miles. There is practically no evidence concerning the reasonableness of the $1.25 rate per se. There is active competition at St. Joseph, both of markets and carriers, for the sale and transportation of coal to this point which is not present at Albany. HELD, rate attacked not unreasonable per se, complaint dismissed. Al-

bany Produce Co. v. C. B. & Q. Ry. 12 I. C. C. 434.

(4r) Complaint attacked class rates from the east to Santa Barbara, Calif., as unreasonable and unduly discriminatory in that they exceed the rates to Pacific coast terminal cities. There is no real, potential compelling competition between the transcontinental rail carriers and those carrying similar traffic by water which affects directly the rail rates obtaining at Santa Barbara. Complaint dismissed. Commercial Club of Santa Barbara, Calif., v. S. P. Co. 12 I. C. C. 495.

(4s) Such competition as will justify under the long and short haul clause of the Act a preferential or discriminatory rate must be potential. Commercial Club of Santa Barbara, Calif., v. S. P. Co. 12 I. C. C. 495, 497.

(4t) A carrier may, because of commercial conditions or competition, establish at a given point an especially low rate, but it does not necessarily follow that all like traffic that moves through that point in the same direction must be given the benefit of that low rate, and while a through rate that is higher than the sum of the local rates between the same point is prima facie unreasonable, it can not be reduced to equal sums of locals except through lawful change in tariff. D. Morgan v. M. K. & T. Ry. 12 I. C. C. 525, 527.

IMPORTANT CASES SINCE 1908

(4u) Irrespective of the fourth section there is no unjust discrimination because of a lower rate to a more distant point on the same line if such rate is forced through competition. Nebraska Material Co. v. C. B. & Q. R. R. Co., 20 I. C. C. 89.

(4v) While market competition must be considered as one of the circumstances affecting a rate situation, to allow market competition as a sole and controlling factor under section 4 would render it nugatory Railroad Commission of Nevada v. S. P. Co., 21 I. C. C. 329, 367.

(4w) The purpose of Congress seems to have been to keep alive competition between carriers at competitive points upon the theory, probably, that while injustice might in some instances result, the general effect would be for the public good. Bluefield Shippers' Asso. v. N. & W. Ry. Co., 22 I. C. C. 519, 536.

(4x) Water or rail competition may relieve a carrier from the operation of section 4. National Refrigerator & Butchers' Supply Co. v. St. L. I. M. & S. Ry. Co., 26 I. C. C. 524, 527.

(4y) A fourth-section violation should not extend beyond the real necessities of competitive or other controlling influences. Emlenton Petroleum Rates, 29 I. C. C. 519, 521.

(4z) Though the Commission, in passing on a fourth section application finds the rates to the more distant point justified by the competition there existing, and the rates to intermediate points bearing reasonable comparison with other rates made for like distances in the same territory under fairly similar conditions, grants the application, its action is not to be construed as a finding that the rates to the intermediate points are just and reasonable. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 157.

(5a) There is no warrant in law for the contention that while under the law the carriers are required to recognize the aggregate of intermediate rates as maxima this is required only where the factors entering into such aggregate have been voluntarily established. If this construction were put upon this rates higher than the aggregates of the intermediate rates where one factor of the aggregates was depressed by competition at a point, the rate so made becomes the lawful factor in making up the aggregate of the intermediate rates. Spartansburg Chamber of Commerce v. S. Ry. 34 I. C. C. 484, 494.

(5b) The statement in the Intermountain Rate cases, 234 U. S. 476, that "Power in the carriers primarily to meet competitive conditions in any point of view by charging a lesser rate for a longer than for a shorter haul has ceased to exist, because to do so, in the absence of some authority, would not only be inimical to the provision of the fourth section, but would be in conflict with the preference and discrimination clauses of the second and third sections," can be construed only as meaning that the amendment to the fourth section states no new rule or principle with regard to the conditions that must exist in order to entitle carriers to relief from the provisions of the fourth section, but simply deprives them of the right to determine for themselves in the first instance whether or not the circumstances and conditions are similar, and vests this power

in the Commission for the purpose of enforcing this section of the law. Import & Domestic Rates, 36 I. C. C. 389, 399.

(5c) While it is obviously unfair to adopt the rate made to a competitive point reduced below a reasonable basis by necessity as the standard by which to measure rates to points where such necessity does not exist, it is not unfair to regard both rates to intermediate and depressed points together as parts of one system of rates. Transcontinental Rates, 46 I. C. C. 236, 246.

(5d) The esential justification for lower rates to a more distant point than to an intermediate point is the existence a the more distant point of depressed rates, which the carrier is powerless to affect, and failure to meet which would prevent the carrier from participating in the traffic to the more distant point. Transcontinental Rates, 46 I. C. C. 236, 270.

(5e) It is fundamental that if relief from the fourth section is to be granted as to any traffic there must exist at the competitive point an actual necessity for the maintenance of the lower rate at that point. This necessity should be so controlling as to prevent the carrier from securing the traffic at higher rates, Transcontinental Rates, 46 I. C. C. 236, 276.

(5f) The fourth section was intended to restrain carriers from continuing rates to more distant points except in special cases where relief from the long-and-short haul requirement is afforded by the Commission. This relief has been accorded in cases where the carriers operated rail lines in competition with strong water lines, and also where carriers operated circuitous routes in competition with more direct lines. The fundamental reason for granting relief, however, to any line at a given point is the meeting at that point of the competition of other carriers against which competition the petitioner is at a disadvantage. Dewey Bros. Co. v. P. C. C. & St. L. Ry., 46 I. C. C. 388, 395.

(5g) In section four of the original act the prohibition of a greater charge for a shorter than for a longer distance over the same line was qualified by the words "under substantially similar circumstances and conditions." The Supreme Court in construing this language held that where there was a dissimilarity of circumstances and conditions the rule of the fourth section did not apply, and that it was for the carriers themselves to determine in the first instance whether that dissimilarity existed. It also held that all forms of competition must be considered in deciding whether circumstances and conditions were similar at the two points. Administration of Fourth Section, 87 I. C. C. 564, 566.

ALL OTHER CITATIONS

Hardenberg, Dolson & Gray v. N. P. Ry. Co. 14 I. C. C. 579, 580; Monroe Progressive League v. St. L. I. M. & S. Ry. Co., 15 I. C. C. 534, 536; City of Spokane v. N. P. Ry. Co. 15 I. C. C. 376, 387; Keich Mfg. Co. v. St. L. & S. F. R. R. Co., 15 I. C. C. 230, 231; Paragon Plaster Co. v. N. Y. C. & H. R. R. R. Co., 19 I. C. C. 480; Colorado Coal Traffic Ass'n. v. C. & S. Ry. Co., 19 I. C. C. 478, 479; Bluefield Shippers' Ass'n. v. N. & W. Ry. Co., 22 I. C. C. 519, 526; Shippers' Ass'n. v. N. & W. Ry. Co. 22 I. C. C. 519, 536; Gile & Co. v. S. P. Co., 22 I. C. C. 298, 302; Southern Illinois Millers' Ass'n v. L. & N. R. R. Co., 23 I. C. C. 672, 673; Grand Chamber of Commerce v. D. & R. G. R. R. Co., 23 I. C. C. 115, 119; In re Lumber Rates, 25 I. C. C. 50, 60; Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 660; Rates to North Carolina Points, 29 I. C. C. 550; Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569; Seavey, Trustee, v. G. N. Ry. Co., Unrep. Op. A-210; Fourth Section Violations in the Southeast, 30 I. C. C. 153, 178, 188, 197, 214, 241, 253, 254, 274, 283, 297, 304, 314, 319, 333; Railroad Commrs. of Montana v. A. T. & S. F. Ry. Co., 32 I. C. C. 316, 318; Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 629; Corp. Comm. of New Mexico v. A. T. & S. F. Ry., 34 I. C. C. 292; Coal and Coke Rates in the Southeast, 35 I. C. C. 187, 188; Grand Rapids Plaster Co. v. L. S. & M. S. Ry. Co., 41 I. C. C. 1, 8.

§7½ Cross-Country Competition.

See Evidence § 14 (1½).

CASES 1887-1908

(a) Where a reduced rate is made to the terminus of a through route under the compulsion of competition, a town not located on the line of the through route, but reached over a lateral connecting road, has a disadvantage of situation entailing some additional expense, and a reasonably higher rate to such town that the forced competitive rate to the more distant terminus of the through rate is

not unjust discrimination. Johnson v. C. St. P. M. & O. R. Co. 9 I. C. C. 221, 239.

IMPORTANT CASES SINCE 1908

(b) When it is necessary, in order to avoid violations of the fourth section of the Act, or to properly meet cross-country competition, junction points of origin may consistently be placed in small groups. Superior Commercial Club v. G. N. Ry. Co., 25 I. C. C. 342, 346.

§8 Markets.

See Evidence, §32; Market Competition.

CASES 1887-1908

(a) Complainant alleged that defendants unjustly discriminate against it by refusing to carry grain and flour from Schenectady, N. Y., to Boston and other New England points, at the proportion of all rail rates from Chicago to Boston allowed from Schenectady by the joint tariffs for such through shipments. HELD, the complaint in effect asks from the Commission an order that shall require the defendants to receive freights at Schenectady for transportation to Boston, at rates less than are now charged by the same roads for the transportation of like freights to Boston from stations nearer Boston, under substantially similar circumstances and conditions. Such order, if issued, would require the roads to depart from the general rule laid down in the fourth section. While the Act authorizes the Commission to permit exceptions, it does not authorize it to require exceptions. The Commission has not the power to make rates generally, but only to determine whether rates imposed by the railroads are in conflict with the statute. The question whether the rates now charged complainant are excessive is not raised by the complaint. Complaint dismissed. Thatcher v. Fitchburg R. R. Co. 1. I. C. C. 356.

(b) The competition of markets on different lines for the sale of commodities at a given point served by both lines does not create circumstances and conditions which the carriers can take into account in determining for themselves in the first instance whether they are justified under the fourth section in charging more for shorter than for longer distances over their lines. To determine the force and effect of such competition involves consideration of commercial questions peculiar to the business of shippers, such as advantage of business location, comparative economy or production, comparative quality and market value of commodities, all of which are entirely disconnected from circumstances and conditions under which transportation is conducted. Carriers cannot create abnormal situations by making rates which equalize advantages and disadvantages of localities and thereupon claim justification for greater charges on shorter hauls on the ground that the lesser long haul charges which accomplish such equalization are necessary to secure increase in traffic over their lines. Trammell v. Clyde S. S. Co. et. al., 4 I. C. R. 120, 121 149.

(c) The competition of markets or the competition of carrying lines subject to regulation under the Act to Regulate Commerce does not justify carriers in making greater short-haul or lower long-haul charges over the same line in the same direction (the shorter being included within the longer distance), in the absence of an order of relief issued by the Commission upon application therefor and after investigation. Behlmer v. Memphis & C. R. Co. (Com.) 4 I. C. R. 520, 523.

(d) The competition of markets or the competition of carrying lines subject to regulation under the Act to Regulate Commerce does not justify carriers in making greater short-haul or lower long-haul charges over the same line in the same direction (the shorter being included within the longer distance) in the absence of an order of relief issued by the Commission upon application therefor and after investigation. Behlmer v Memphis & C. R. Co. 6 I. C. C. 257.

(e) Competition between markets, or between carriers subject to the regulating statute, does not create such dissimilarity of circumstances and conditions as will justify carriers in charging more for the short than for the long haul, under the 4th section, without an order of the Commission. Brewer & Hanleiter v. Louisville & N. R. Co., 7 I. C. C. 224, 237.

(f) That there is a greater market for the commodity at the longer than at the shorter distance point does not create a substantial dissimilarity in circumstances and conditions, within the Act to Regulate Commerce, § 4, forbidding any common carrier subject to the Act to make a greater charge for a shorter than

for a longer distance over the same line in the same direction, the shorter being included within the longer distance. Fewell v. Richmond & D. R. Co. 7 I. C. C. 354.

(g) The market competition of Macon, Georgia, with Augusta, Savannah, Brunswick, and Columbus, which have water competition, and the traffic competition between railroads centering at Macon exceeding those passing Griffin, Georgia, constitute a dissimilarity of circumstances which will justify a greater charge on the shorter haul from western points to Griffin than on the longer distance to Macon so long as neither rate is unreasonable. Brewer & Hanleiter v. Central of Georgia Ry. Co. 7. I. C. C. App. III.

IMPORTANT CASES SINCE 1908

(h) Ocean competition, says the carriers, brings about the lower rates from coast to coast; market competition produces the lower rates from the interior to the coast. "Market competition" is a phrase with which the railroad traffic manager too often conjures. When no other force can be found which brings about a discrimination market competition is advanced. It is both a sword and a shield; it is used to protect the carrier against attack because of undue discrimination as between communities; and it is a weapon of offense as well, by which one carrier invades the territory of another upon a different basis from that which it grants to its own immediately dependent community and forces concession from its rival carriers. Market competition is a euphemism for railroad policy. The history of the fourth section makes clear that it was born out of a desire and has been amended out of the purpose to restrict the force and effect of market competition. The examples cited before Congress by those who have advocated an absolute long- and short-haul section have largely been such as arose out of railroad policy, not such as were developed by transportation competition. Congress, however, has not seen fit to say (and perhaps most wisely so) that this economic force shall not be allowed to have its play in the making of rates. Market competition must be considered as one of those circumstances affecting a rate situation with which the Commission is called upon to deal. But may it not be said that while the language of the statute does not say that market competition shall not be allowed to justify the charging of the higher rate to the nearer point, the very spirit of the section makes against the free application of any such justifying principle? A national policy may veto a railroad policy, just as a public need may overcome and set aside a private desire. Experience has demonstrated to the national legislature that it is not safe to leave to the carriers the determination of the question what markets should be brought into competition with one another. The policy of Congress seems to be that a railroad may be compelled by transportation competition to make its rates lower than it otherwise would between two competitive points, and that this will justify a breach of the prohibition of the fourth section ; but the desire of a number of shippers to reach a market is a force to which the carrier may not yield unless it can establish clearly that the adoption of such policy will not unfairly discriminate against one community and in favor of another, and will not produce those results which the law was intended to destroy. Clearly to allow for market competition as a sole and controlling factor under the fourth section is to render it nugatory, for this would be tantamount to saying that a railroad could justify every discrimination as between communities by the assertion of nothing more than its own determination of policy. Railroad Commission of Nevada v. S. P. Co., 21 I. C. C. 329, 367.

(i) While market competition is to be considered, it may constitute no justification for a deviation from the fourth section. In re Rates on Salt, 24 I. C. C. 192, 194; Kellogg Toasted Corn Flake Co. v. M. C. R. R. Co., 24 I. C. C. 604, 606.

(j) Competition between markets of distribution does not constitute a justification for the maintenance of lower rates to a more distant than to an intermediate point. The competition of carriers serving other markets of supply does not in some instances justify the making of lower rates to more distant than to intermediate points, when it is found: (1) that one market is under a material disadvantage as against that from another, and (2) that the line seeking relief is meeting consistently at all points the competition against which relief is sought. Fourth Section

Violations in the Southeast, 30 I. C. C. 153, 279.

(k) It is well established that the Commission, in passing upon applications under the fourth section, may consider market competition. Grand Rapids Plaster Co. v. L. S. & M. S. Ry. Co., 41 I. C. C. 1, 8.

(l) While the Commission has granted relief from the operation of the long-and-short-haul provision of the amended fourth section of the Act because of market competition, this is true as to points of destination only, and in no case has the Commission granted fourth section relief because of market competition as to points of origin where the petitioning carrier has not been shown to be at some substantial disadvantage by reason of having a circuitous route. Proportional Rates to Ohio River Crossings, 43 I. C. C. 458, 468, 469.

(m) The Supreme Court has defined "competition" as a striving "for something which another is actively seeking and wishes to gain." Application of United States Steel Products Co., 77 I. C. C. 685, 687.

ALL OTHER CITATIONS

In re Rates on Salt, 24 I. C. C. 192, 194; In re Lumber Rates, 25 I. C. C. 50, 52, 59; Cullman Commercial Club v. L. & N. R. R.., 33 I. C. C. 634, 637; Corp. Comm. of New Mexico v. A. T. & S. F. Ry., 34 I. C. C. 292, 301; Coffee from Galveston and other Gulf Ports, 64 I. C. C. 26, 29, 30; Memphis-Southwestern Investigation, 77 I. C. C. 473, 520.

§8½. Motor Truck Competition.

See Motor Truck Competition.

IMPORTANT CASES SINCE 1908

(a) Upon further hearing, certain carriers authorized to reduce rates on gasoline from Somerset to San Antonio, Tex., and on gasoline and fuel oil from Grand Prairie to Dallas, Tex., to a basis lower than prescribed in the Shreveport Case, 48 I. C. C. 312, in order to meet motor truck competition and keep the traffic to their rails. Railroad Commission of Louisiana v. A. H. T. Ry. Co., 64 I. C. C. 197.

§9. Railroad Competition.

See Railroad Competition; Through Routes and Joint Rates § 6.

CASES 1887-1908

(a) In the absence of competition from Canadian Railways (which are not subject to the Act), the circumstances and conditions of the traffic from San Francisco to Denver are not so materially different from those of the traffic from San Francisco to the Missouri River as to justify the transcontinental roads subject to the Act, in charging a greater sum for the shorter distance. Martin v. Southern Pacific Co., 2. I. C. R. 1.

(b) Rates having been established from St. Louis to Omaha in view of the distance over the Wabash Line, the action of the Missouri Pacific in meeting the Wabash rates, although too low to be greatly desirable for its longer line, and involving loss of former revenue at intermediate points on the main line south of Omaha, by the application to the situation of the long and short haul clause of the Interstate Commerce Act, cannot be properly criticised. Lincoln Board of Trade v. Missouri P. R. Co. (Com.) 2 I. C. R. 98.

(c) The competition of the two roads does not alone make out the dissimilar circumstances and conditions which will authorize the making of such greater charge upon the shorter haul. Re Chicago, St. Paul, & Kansas City R. Co., 2 I. C. R. 137.

(d) The competition between two roads does not of itself justify the greater charge upon the shorter haul, nor does the fact that one company makes the charges unreasonably low between two points. Re Chicago, St. P. & K. C. R. Co. (Com.) 2. I. C. R. 137.

(e) The competition of carriers subject to the Act to Regulate Commerce does not create circumstances and conditions which the carriers can take into account in determining for themselves in the first instance whether they are justified under § 4 in charging more for shorter than for longer distances over their lines. Trammell v. Clyde Steamship Co. (Com.) 4 I. C. R. 120.

(f) The Interstate Commerce Commission holds that where railroads, which are subject to the Act to Regulate Commerce, compete with Canadian, or other railroads, which are not subject to the Act, such competition constitutes dissimilar circumstances and conditions; but that competition between two railroads, both of which are subject to the Act, does not constitute dissimilar circumstances and conditions. The Commission, however, also holds that it has

no authority to raise railroad rates. If a railroad which is subject to the Act, is met with competition from other railroads, which are also subject to the Act, and the Commission has no authority to require such other railroads to increase their rates, even when the competition is ruinous, there is no practical difference between such a case, and the case of competition with railroads, not subject to the Act. If the general conclusion is correct, that competition will constitute dissimilar circumstances, and conditions, in the sense in which that term is used in the Act, there is no good reason for drawing the line where it has been drawn by the Commission; on the contrary, competition of carrier with carrier both subject to the Act, is as much within the terms of section 4, as competition with a carrier not subject to the Act. Interstate Commerce Commission v. Cincinnati N. O. & T. P. R. Co., 4 I. C. R. 332.

(g) The fact that a competing railroad subject to the Act made a rate which was below the actual cost of transportation did not create such a dissimilarity of circumstances as would justify defendant in meeting this rate without reducing its rates at intermediate points. Matter of alleged violation of the fourth section of the act by the Santa Fe. 7 I. C. C. 61, 63.

(h) Competition between roads subject to the Act would under no circumstances afford such a dissimilarity of conditions as would justify the carrier in charging more for the shorter than for the longer haul without an application to the Commission for relief. Matter of alleged violations of the fourth section of the act by the Santa Fe. 7 I. C. C. 61, 63.

(i) If there can be exceptional instances in which competition between carriers subject to the Interstate Commerce Act may create such dissimilarity of circumstances and conditions as to justify a greater charge for a short than a long haul, it is not justified where competition exists at both the shorter and the longer distance points. Brewer v. Louisville & N. R. Co. 7 I. C. C. 224.

(j) Competition of carriers subject to regulations under the Act does not create such dissimilarity in circumstances and conditions under which transportation is performed as to justify such a carrier in making greater charges for the shorter than for the longer distance under the fourth section without an order of relief granted by the Commission upon application and showing by the carrier as required in the proviso to that section. Fewell v. R. & D. R. Co., 7 I. C. C. 354, 374.

(k) Competition between railways subject to the act can not create the necessary dissimilarity under the fourth section. Board of Railroad Commissioners of Kentucky v. C. N. O. & T. P. R. Co., 7 I. C. C. 380, 384.

(l) It being settled that competition must be considered and may justify deviation from the rule of the fourth section, it follows that wherever competition of controlling force by existing lines is practicable it must be given effect; and that freely engaging in competition at one point, while wholly or largely suppressing it at a shorter distance locally, can not entitle carriers to make a higher charge for shorter than for longer hauls over the same line in the same direction. Calloway v. L. & N. R. Co., 7 I. C. C. 431, 438.

(m) Complainant attacked rates on commercial fertilizers from Savannah, Ga., as compared with Charleston, S. C., and Wilmington, N. C., to points in North Carolina South Carolina, Georgia, Florida and Alabama, as unreasonable and unjustly discriminatory. Defendant carries fertilizers from Savannah to Valdosta and also over the longer distance from Charleston to Valdosta, at no higher rate than it charges from Savannah. The Charleston rate is fixed by the competition of another and more circuitous line from that city to Valdosta, and defendant must meet that rate or get no fertilizer business from Charleston. HELD, that under the circumstances defendant may properly make the same rate from Charleston as is made by the longer line, and in so doing it is not unjustly discriminating against Savannah ,though if the rate from Charleston to Valdosta were in any way under control, the conclusion might be otherwise. Water competition between Charleston and Savannah compels a rate of 80c per ton on fertilizer carried by rail between those cities. Rates from Savannah to points in Georgia are fixed by the Georgia Railroad Commission. Water competition also exists between Savannah and Charleston and Jacksonville, Fla. By that mode of carriage the rate from both cities to Jacksonville are the same, and consequently

also the same to points reached by rail from Jacksonville, as against the all rail lines to those points. Circumstances over which a defendant all rail line to Montgomery and other points in Alabama has no control also affect fertilizer rates from Savannah and Charleston to such Alabama points in some degree. HELD, defendants present differential of 50c more per ton from Charleston than from Savannah to points in Georgia other than common points is not unreasonable or prejudicial to Savannah. Charging the same rate from Savannah and Charleston over the defendant all rail lines to points in Florida in competition with ocean and rail competition from Savannah and Charleston not unlawful. Savannah Bureau of Freight & Transportation v. C. & S. R. Co., 7 I. C. C. 458.

(n) Railway competition may create such dissimilar circumstances and conditions as exempt the carrier from an observance of the long and short haul provision. If the conditions and circumstances are not substantially, then the fourth section does not apply and the carrier is not bound to regard it in the making of its tariffs. If railway competition does actually control the rate at the more distant point that rate is not made under the same circumstances and conditions as is the rate at the intermediate point and the higher rate is not prohibited by the fourth section. Savannah Bureau of Freight & Transportation v. C. & S. R. Co., 7 I. C. C. 458, 479.

(na) Competition between carriers subject to the requirement of the Interstate Commerce Act does not produce such dissimilarity in circumstances and conditions under which transportation is performed as will justify such carriers in making a greater charge for the shorter than for the longer haul without an order to that effect from the Interstate Commerce Commission granted as provided for in § 4 of the Interstate Commerce Act. Behlmer v. Louisville & Nashville R. R. Co. 8. I. C. C. App. XXXIV.

(o) There may be instances where a carrier should be permitted to meet railroad competition without reference to its intermediate territory, but when the very existence of an important industry depends upon the carrier being required to treat intermediate territory as it does the more distant territory, the rule of no greater charge for the shorter distance clearly applies. Export & Domestic Rates 8 I. C. C. 214, 268.

(p) Rates enforced by respondent company on live poultry in car loads to Chicago are higher from Marshfield, Mo. than for the longer distances from Springfield, Mo., and other more distant stations on its line, to and including Columbia, Kas. It meets the competition of other roads at Springfield and various junctions to the west of Springfield, yet nowhere west of Springfield does the respondent or any of its competitors make the greater charge for a shorter than for a longer distance on this traffic. Such rates on live poultry from Springfield and points west thereof are not unreasonably low. The respondent makes as low a rate to St. Louis from Marshfield as from Springfield. The circumstances and conditions applying from the points involved on the traffic in question are not substantially dissimilar. HELD, respondent has failed to justify such higher rate from Marshfield than from Springfield and other more westerly stations for the carriage of live poultry to Chicago, and that by keeping such higher rate in force it is acting in violation of the fourth and third sections of the Act. Respondent should not insist upon making higher charges to Chicago from Marshfield than from more distant points of shipment upon other kinds of traffic, unless it is prepared to justify such action by showing an essentially different state of facts than appears in this proceeding. In the matter of alleged violations of the act by the St. L. & S. F. R Co., 8 I. C. C. 290.

(q) Competition between railways does not, in and of itself, create dissimilarity in "circumstances and conditions," but it is a factor which may and perhaps ought to be taken into account in cases arising under the fourth section of the statute. The question is largely one of fact, and is in each particular instance whether, in view of all the facts surrounding that individual instance, the circumstances and conditions are so dissimilar as to justify the greater charge for the shorter distance; and in deciding this question the interests of all parties, the carrier as well as the public, must be considered. Citing Interstate Commerce Commission v. Alabama Midland R. Co. 168 U. S. 144, 42 L. ed. 414, 18 Sup. Ct. Rep. 45. Geo.

Tileston Mill Co. v. Northern P. R. Co., 8 I. C. C. 346.

(r) Allowing railway competition, such as is shown in this case, to constitute an exception to the rule of the fourth section, would permit throughout the whole country the making of higher rates to or from intermediate points, thereby disarranging business conditions and producing endless discriminations which do not now exist. Such application of the long and short haul clause was not intended by the Act, and it should not be permitted in due consideration of the interests of all parties concerned. Geo. Tileston Mill Co. v. Northern P. R. Co., 8 I. C. C. 346.

(s) No reason can be assigned for permitting the defendant to disregard the fourth section in the handling of competitive traffic which is not equally applicable to each of its competitors. If the fourth section may be disregarded in case of railway competition, it is difficult to imagine a competitive condition in which it might not be equally disregarded. Geo. Tileston Mill Co. v. N. P. R. Co., 8 I. C. C. 346, 358.

(t) Railway competition may create such dissimilar circumstances and conditions as exempt the carrier from an observance of the long and short haul provision. Interstate Commerce Commission v. Western & Atlanta R. R. Co., 8 I. C. C. App. XIII.

(u) If railway competition does actually control the rate at the more distant point, that rate is not made under the same circumstances and conditions as is the rate at the intermediate point, and the higher rate is not prohibited by § 4. Citing: Savannah Bureau of Freight & Transp. v. Charleston & S. R. Co., 7 Inters. Com. Rep. 479, 11 Ann Rep. I. C. C. pp. 37-43. Interstate Commerce Commission v. Western & Atlanta R. R. Co., 8 I. C. C. App. XIII.

(v) Complainant attacked rates on ice from Hillsdale and other points in Michigan to Springfield, Ohio, compared with rates to Columbus, Ohio, as unreasonable. Prior to Sept. 3, 1901, the rates were higher over the line formed by defendant roads for the shorter distance to Springfield than for the longer distance to Columbus, the rates to both points having been made the same on that date; but it appeared that other and shorter delivering lines compete for the traffic to Columbus and that the short line distance to Columbus is less than the short line distance to Springfield. HELD, complaint should be dismissed. Ulrick & Williams v. L. S. & M. S. Ry., 9 I. C. C. 495.

(va) There is no unjust discrimination in charging higher rates for the transportation of ice from points in Michigan to Springfield than for the longer distance to Columbus, where other and shorter delivering lines compete for traffic to columbus, and the short line distance to Columbus is less than the short line distance to Springfield. Ulric & Williams v. Lake Shore & Michigan S. R. Co. 9 I. C. C. 495.

(w) Complainant attacked rates charged on coal and pig iron from Birmingham, Ala., to Cordele, Ga., as compared with rates to Macon, Ga., a point beyond, as unreasonable and unduly discriminatory. Rates charged $1.70 to Cordele per short ton and $2.75 per long ton and to Macon, $1.60 per short ton and $1.65 per long ton. The distance from Birmingham to Macon via the shortest rail route is 254 miles and to Cordele by the shortest rail route 252 miles. Defendants meet the rates of the short lines to Macon, carrying them through Cordele. Macon has an advantage over Cordele in lying some distance nearer to the coal fields and the iron furnaces of northern Georgia and Tennessee. HELD, rate on coal not unjust or unreasonable, but rate on pig iron unreasonable to extent it exceeded $2.15. Tomlin Harris Machine Co. v. L. & N. R. R., 12 I. C. C. 134.

IMPORTANT CASES SINCE 1908

(x) The competition of carriers subject to the Act is a factor to be considered in passing upon an application for relief from the fourth section as amended in 1910. City of Spokane v. N. P. Ry. Co., 21 I. C. C. 400, 414.

(y) Carriers with long lines permitted to deviate from section 4 to meet rate of direct route. Interior Iowa Cities Case, 29 I. C. C. 536, 538.

(z) Circuitous routes which are meeting competition of direct lines from same mines to same destinations will be permitted to meet rates of shorter lines in cases where they are not less than 15 per cent longer and to maintain higher rates to intermediate points. Rates on Bituminous Coal, 36 I. C. C. 401, 420.

(aa) It seems clear that ordinarily the Commission should not, by relief

from the fourth section, authorize the carrier to go any further in meeting water competition than is necessary to meet the competition afforded by water routes, because to do so would give a permanent advantage to some localities to the disadvantage of competing localities. Rates on Iron and Steel Articles, 38 I. C. C. 237, 240.

(bb) It cannot be maintained that because a carrier has once chosen to make a low rate to meet water competition, it is estopped from thereafter increasing that rate, provided the new rate is just, reasonable, and nondiscriminatory, and the requirements of section 4 are observed. Lumber between Points in Western Trunk Line Territory, 38 I. C. C. 370, 376.

(cc) The mere fact of railroad competition does not justify a direct line in violating the fourth section at intermediate points. Coal to Red Wing, Minn., 41 I. C. C. 309, 313.

(dd) Fourth section violation did not arise until after the general applications had been filed; and the Commission's holding that no damages can be awarded for violations protected by application up to the time when the applications are adjudicated, is inapplicable. Reynolds Tobacco Co v. N. & W. Ry. Co., Unrep. Op. 2181.

ALL OTHER CITATIONS

Phillips-Trawick-James Co. v. S. P. Co., 13 I. C. C. 644, 647, 648; Johnson & Larimer Dry Goods Co. v. A. T. & S. F. Ry. Co., 13 I. C. C. 388, 396, 400; Railroad Commission of Kentucky v. L. & N. R. R. Co., 13 I. C. C. 300, 307, 309; Pecos Mercantile Co. v. A. T. & S. F. Ry. Co., 13 I. C. C. 173, 177; Gump v. B. & O. R. R. Co., 14 I. C. C. 98, 104, 106; Pilant v. A. T. & S. F. Ry. Co., 15 I. C. C. 178, 179; Paola Refining Co. v. M. K. & T. Ry. Co., 15 I. C. C. 29, 31, 32; Moise Bros. Co. v. C. R. I. & P. Ry. Co., 16 I. C. C. 550, 552, 553, 555; Hunton Fruit & Produce Co v. C. & O. Ry. Co., 17 I. C. C. 578; Foster Lumber Co. v. G. C. & S. F. Ry. Co., 17 I. C. C. 385, 386; Kimberly v. C. & O. Ry. Co., 17 I. C. C. 335, 336; Bayon City Rice Mills v. T. & N. O. R. R. Co., 18 I. C. C. 490, 492, 493; Preston v. C. & O. Ry. Co., 19 I. C. C. 406; Fisk & Son v. B. & M. R. R., 19 I. C. C. 299, 301; Gamble-Robinson Commission Co. v. St. L. & S. F. R. R. Co., 19 I. C. C. 114, 115; Nebraska Material Co. v. C. B. & Q. R. R. Co., 20 I. C. C. 89, 90; Wright Wire Co. v. P. & L. E. R. R. Co., 21 I. C. C. 64; Kellogg Toasted Corn Flakes Co. v. M. C. R. R. Co., 24 I. C. C. 604; Bowling Green Business Men v. L. & N. R. R. Co., 24 I. C. C. 228, 239; In re Application Under Fourth Section as to Rates on Salt, 24 I. C. C. 192, 195; In re Suspension of Rates on Lime, 24 I. C. C. 170, 172; Lebanon Commercial Club v. L. & N. R. R. Co., 25 I. C. C. 277, 279; In re Southern Ry. Co., 25 I. C. C. 407, 410; Edwards & Bradford Lumber Co. v. C. B. & Q. R. R. Co., 25 I. C. C. 93, 94, 95; In re Lumber Rates, 25 I. C. C. 50, 51, 56. 59; McCullough v. L. & N. R. R. Co., 25 I. C. C. 48, 49; National Refrigerator & Butchers' Supply Co. v. St. L. I. M. & S. Ry. Co., 26 I. C. C. 524, 527; Standard Oil Co. v. Pennsylvania Co., 29 I. C. C. 524, 525; Springfield Traffic Bureau v. St. L. & S. F. R. R. Co., 29 I. C. C. 600; Fort Scott Industrial Assn. v. St. L. & S. F. R. R. Co., 29 I. C. C. 629; Thomas Iron Co. v. P. Ry. Co., 28 I. C. C. 608. 609; Rock Spring Distilling Co. v. I. C. R. R. Co., 29 I. C. C. 18, 25; Stewart-Greer Lumber Co. v. St. L. I. M. & S. Ry. Co., 29 I. C. C. 120, 122; Interior Iowa Cities Case, 29 I. C. C. 536, 538; Cullman Commercial Club v. L. & N. R. R., 33 I. C. C. 634, 636; Atha Tool Co. v. N. C. & St. L. Ry., Unrep. Op. A-919; Ennis Milling Co. v. C. R. I. & P. Ry. 34 I. C. C. 197; Montrose & Delta Counties Freight Asso. v. D. & R. G. R. R. 34 I. C. C. 393; Spartanburg Chamber of Commerce v. S. Ry., 34 I. C. C. 484, 494; Proportional Class Rates to Iowa Points, 34 I. C. C. 278, 280; Rates on Bituminous Coal, 36 I. C. C. 401, 415, 416.

§10. Water Competition.

See Water Competition.

CASES 1887-1908

(a) That railroads have water competition and are compelled to meet it is not sufficient to justify the lesser charge for the greater distance, much less to justify the making of such tariffs as the petitioners seek relief from. Harwell v. Columbus & Western R. R. 1. I. C. C. 631, 637.

(b) A lower charge for a longer distance for transportation of like traffic may be justified by actual water competition of controlling force, relating to traffic important in amount; and among the circumstances and conditions that may be considered in estimating the dis-

similarity created by water competition are the character of the roads, the character of the traffic, the preponderance of empty cars moving in a direction to which the traffic must be taken, and the legitimacy of the competition by the rail carrier. Lehmann Higginson v. S. P. Co., 3 I. C. C. 80, 89.

(c) The water competition which will justify a greater charge for a shorter distance by railroads must be actual. Possible competition will not justify such greater charge under the provisions of the fourth section of the Act to Regulate Commerce. San Bernardino Board of Trade v. Atchison, T. & S. F. R. Co., 3 I. C. R. 138, 142.

(d) The competition between all-water lines and the rail lines in the carriage of petroleum and its products from the port of New York to San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, and San Diego, in the state of California, is actual, and involves the transportation of traffic important in amount, and warrants the all-rail lines in making such just and reasonable rates as will enable them to meet the low rates nad competition of the competing all-water lines and of the competing part-water and part-rail lines at said points; and in doing so they are not obliged to make their rates at intermediate points as low as the rates forced upon them by the competition. Rice v. Atchison, T. & S. F. R. Co. (Com.) 3 I. C. R. 263

(e) Complainant attacked rates on petroleum and its products from Eastern Seaboard points to California, as unjust, unreasonable, and discriminatory. The competition between all water lines and the all rail lines in the carriage of petroleum and its products from New York to San Francisco, Oakland, Stockton, Marysville, San Jose, and San Diego, Calif., is actual and involves the transportation of traffic important in amount. The competition between the part rail and part water lines, and the part pipe and part water lines from Pennsylvania and Ohio via New York to these points of destination on the one hand and the competition of the all rail lines on the other is a competition that is actual and involves the transportation of traffic important in amount. HELD, a dissimilarity of circumstances is shown to exist at the California points named as compared to those which exist in the carriage of this traffic by the all rail lines at intermediate points along such rail lines, and it is such a dissimilarity of circumstances as is recognized by the act and warrants the all rail lines in making such just and reasonable rates as will enable them to meet the low rates and competition of the all water lines and of the competing part water and part rail lines at said California points above named, and that in doing so the said all rail lines are not obliged to make their rates at intermediate points as low as the rates forced upon them by competitors at the points above named. Complain dismissed. Rice v. A. T. & S. F. R. Co., 3 I. C C. 263.

(f) The Commission has repeatedly held that where the competition of an independent water line, not subject to the Act, is actual with that of a rail carrier for traffic at a point reached by it, and for traffic important in amount, that then the rail carrier if necessary to meet such competition may lower its rates at that point without doing so at other points on its line at which no such competition exists and at which other points the rail carrier could not so reduce its rates without a large loss of revenue. King & Company v. N. Y. N. H. & H. R. Co., 3 I. C. C. 272, 276

(g) Water competition to justify the greater charge for the shorter distance must be competition in transportation to the longer distance point, and as to freight which, if not carried over the line on which it is located, would reach such destination by water transportation. James & Mayer Buggy Co. v. C. N. O. & T. P. R. Co., 3 I. C. C. 682, 686.

(h) The possible influence of water competition upon rates for the transportation of oranges and the nonexistence of such competition in the carriage of berries, because the latter cannot be carried by water in any considerable quantities, does not authorize defendants to take advantage of the situation and charge unreasonable rates on berries. Perry v. F. C. & P. R. Co., 3 I. C. C. 740, 745.

(i) Water competition cannot justify charges three times as great for shorter distances as those for longer distances. Rice v. Cincinnati, W. & B. R. Co. (Com.) 3 I. C. R. 841.

(j) Water competition to justify the greater charge for the shorter dis-

tance must be competition in transportation to the longer distant point, and as to freight which, if not carried over the line on which located, would reach such destination by water transportation. Trammell v. Clyde Steamship Co., 4 I. C. C. 121, 152.

(k) Upon complaint alleging that rates on traffic from New York and other Atlantic seaboard points to Chattanooga are unreasonable and greater for the shorter distance to Chattanooga than for the longer distance over the same line in the same direction to Memphis and Nashville: HELD, That defendants are justified by the existence of water competition of controlling force in charging less on such traffic for the longer distance to Memphis, but that no such competition exists for such traffic to Nashville, and any greater charge for the transportation of like kind of property from said seaboard points for the shorter distance through Chattanooga than for the longer distance through Chattanooga to Nashville is in violation of the fourth section of the Act to Regulate Commerce. Defendants ordered to cease and desist from making such greater charge to Chattanooga with leave to file application for relief under the proviso clause of the fourth section within a specified time. Trammell v. Clyde S. S. Co., 4 Inters Com. Rep. 120; 5. I. C. C. Rep. 324, cited and affirmed. One transportation line cannot be said to meet the competition of another transportation line for the carrying trade of any particular locality, unless the latter line could and would perform the service alone if the former did not undertake it. When great disparity exists between charges which are lower to competitive than to intermediate points much less remote, the inference is irresistible that the lower rate must be unremunerative upon any theory, or else the larger rate gives an unwarranted return for the service rendered. Board of Trade of Chattanooga v. East Tenn. Va. & Ga. I. Co., 4 I. C. R. 213.

(l) Complainant attacked rates on traffic from New York and other Atlantic seaboard points to Chattanooga, Tenn., as unreasonable and greater for the shorter distance to Chattanooga than for the longer distance over the same line in the same direction to Memphis and Nashville, Tenn. HELD, defendants are justified by the existence of water competition of controlling force in charging less on such traffic for the longer distance to Memphis, but that no such competition exists for such traffic to Nashville, and no greater charge for the transportation of like kind of property from said seaboard points for the shorter distance to Chattanooga than for the longer distance through Chattanooga to Nashville is in violation of the fourth section. Defendants ordered to eliminate the fourth section violation. Board of Trade of Chattanooga v. E. T. V. & G. R. Co., 4 I. C. C. 213.

(m) Active competition by water and other railroads at a terminal point, for the transportation of certain goods, renders the circumstances and conditions substantially dissimilar from those affecting an intermediate noncompeting point, and justifies a railroad company in charging a less rate to the former than to the latter point when necessary to meet such competition. Interstate Commerce Commission v. Atchison, T. & S. F. R. Co. (C. C. S. D. Cal.) 4. I. C. R. 323.

(no) Water competition in favor of the more distant point does not make the circumstances and conditions substantially dissimilar, within the implied permission of the Interstate Commerce Act to charge less under such circumstances for a longer than for a shorter haul, where the competition is not with a carrier by a parallel water route between the point of shipment and destination, but between routes from different points of shipment, and the lower rate is made for the purpose of giving the shipping point the advantage in the markets at the destination point. Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co. (C. C. App. 5th C.) 4 I. C. R. 582, Rev'g. 332.

(pq) Water competition, to justify higher shorter distance charges under the fourth section, must be actual competition for the transportation involved, and such as to dictate the rate by rail. A railroad rate so low as to drive water transportation out of existence cannot be justified by showing the possibility of water competition; the law permits railroads to meet, not to extinguish, such competition. Brewer & Hanleiter v. L. & N. R. Co., 7 I. C. C. 224, 236.

(r) Water competition to justify a greater charge by a railroad company for transportation for a shorter dis-

tance than for a longer distance, in the same direction and including the shorter distance, under the Act to Regulate Commerce, § 4, making such a charge unlawful unless the circumstances and conditions are substantially dissimilar, must be competition in transportation to the longer distance point as to freight which, if not carried to such longer distance point by the railroad, could reach such destination by water transportation. Fewell v. Richmond & D. R. Co., 7 I. C. C. 354.

(s) Higher rates charged by defendants on fertilizer from Charleston or Savannah to intermediate points between those cities than they charge over the entire distance between Charleston and Savannah are justified by the existence of water competition. Savannah Bureau of Ft. and Trans. v. Charleston & S. R. Co., 7 I. C. C. 458.

(t) Complainant attacked rates on sugar from Pacific coast common points to Kearney, Neb., as unreasonable and unjustly discriminatory as compared with the rates to Omaha, Neb., longer by 196 miles, over the same line in the same direction. Rate to Omaha was 65c to Kearney 99c. The competition of carriers by water from San Francisco to Gulf of Mexico and Atlantic seaports, and the competition of refineries on the eastern seaboard with refineries on the Pacific coast, operate, in connection with transportation rates in effect from the east and south to Omaha, to render the circumstances and conditions governing the carriage of sugar by defendants from San Francisco to Omaha, substantially dissimilar in comparison with those applying on the transportation for the shorter distance over the same line from San Francisco to Kearney, Neb., and to justify a rate of 65c to Kearney while a rate of 50c in force to Omaha; but such circumstances and conditions do not justify the present rate of 77c as compared with the rate of 50c in force to Omaha. Gustin v. B. & M. R. Co., 8 I. C. C. 481.

(u) Complainant attacked through commodity rates on lumber from Wilmington, Del., to Philadelphia, Pa., Jersey City, N. J., and Boston, Mass., as unreasonable and in violation of the fourth section to the extent they exceed the rates from Wilmington to Norfolk or Portsmouth, Va., added to the rates from these points to the points of destination named. The rates to Philadelphia, Jersey City, and Boston from Norfolk or Portsmouth are made to meet water competition, and such competition also exists for traffic from Wilmington to these cities. Lumber manufacturers in Wilmington and Norfolk and vicinity compete actively with each other for the sale and shipment of lumber to the northern markets. The circumstances and conditions are substantially similar. HELD, rates attacked unreasonable to extent they exceeded Norfolk or Portsmouth combination. Hilton Lumber Co. v. Wilmington & W. R. R., 9 I. C. C. 17.

(v) Complaints attacked rates charged on buggies and carriages from Jackson, Mich., to San Barnardino, Calif., as unreasonable and unjustly discriminatory to the extent they exceeded the rates in effect to Los Angeles, Calif., a farther distant point, San Bernardino being intermediate. Traffic brought from the east by the U. P., N. P., G. N., and C. P., to various Northern Pacific coast points can be carried from thence to Los Angeles by water without passing over the routes of either the S. P. or the Santa Fe, but it must pass over one of such roads to reach San Bernardino. Merchandise by these rail and water routes to Los Angeles must be transported by rail across the continent, transshipped and carried 1,200 miles by sea, and again transshipped for another 20 miles rail haul before it reaches Los Angeles in competition with the S. P. or Santa Fe. The conditions affecting traffic including carriages and buggies, from eastern points are rendered substantially different at Los Angeles than at San Bernardino, a shorter distance point on the same line, by the competition of carriers wholly by water from the Atlantic Seaboard to Port Los Angeles, a point on the Pacific coast near Los Angeles, and the effect of such competition by water direct to San Francisco is, upon all the circumstances, properly recognized at Los Angeles by giving that city all rail rates from the east as low as those in effect to San Francisco. HELD, carriers, justified in maintaining rates to Los Angeles lower than to San Bernardino. Complaint dismissed. Holdzkom v. Michigan Central Ry., 9 I. C. C. 42.

(w) Complainant attacked class rates from Chicago, Ill., and New York, N. Y., to Phoenix, Ariz., as unreasonable and unjustly discriminatory as compared with rates to Los Angeles,

Calif., a point beyond. The Santa Fe and Southern Pacific reach Los Angeles, Calif., a point to which rates from the east are affected by water competition, while Phoenix, Ariz., is not upon either of these through lines, but is connected therewith by two lateral lines, one on the north connecting with the Santa Fe at Ash Fork, and one on the south connecting with the Southern Pacific at Maricopa. HELD, the evidence in this case is insufficient to constitute the basis of a decision requiring defendant carriers to modify their long standing system of rate making, which also applies over other transcontinental lines throughout a great belt of territory and affects numerous localities and interests which have not been heard, and this being so the relief sought by complainant is for the present denied, but the case is retained for further consideration pending the investigation and disposition of other cases involving the same general question. Shippers' Union of Phoenix, Ariz. v. A. T. & S. F. Ry., 9 I. C. C. 250.

(x) When water competition permits the establishment of classifications and rates below the rates to noncompetitive points, such lower rates, while possessing value as standards of comparison, are not always conclusive in fixing rates to shorter distant points not affected by such competition. Shippers' Union of Phoenix v. A. T. & S. F. Ry., 9 I. C. C. 250, 262.

(y) Complainant alleged defendants unjustly discriminate against St. Louis, Mo., and other jobbing houses in the Middle West by making a lower rate to Pacific coast terminals than to points upon the coast which are farther east, and through which traffic must pass in reaching the terminal points; by making a blanket rate from all territory east of the Missouri river to Pacific coast destinations; by undue and unreasonable differences between carload and less carload rates, by an unjust system of varied commodity rates, and by unreasonably refusing to permit shipment of mixed carloads. With water competition compelling low freight rates all rail from New York to San Francisco and other Pacific coast terminals, a showing that the distance is less and that graded rates were formerly in force is not sufficient to warrant an order requiring lower rates from St. Louis, Chicago, and other interior points than from New York on traffic carried by rail to Pacific coast destinations. While on traffic from the Middle West to the Pacific coast many differentials in the rates named for carloads and less carloads are too great, while varied commodity rates in the hardware schedule and perhaps in some others should be readjusted, and while in some instances greater latitude should be given in the shipment of practically the same articles in mixed carloads, the present record, which pertains almost wholly to the general aspects of the controversy, furnishes no facts from which it can be intelligently determined what ought to be done in specific instances, further hearing is ordered. HELD, complaint dismissed with complainant having the privilege of proceeding further if desired. Business Men's League of St. Louis, Mo. v. A. T. & S. F. Ry., 9 I. C. C. 318.

(z) Complainant attacked class rates from St. Louis, Nashville and Memphis, to Union Springs, Ala., as unreasonable as compared with rates to Columbus, Opelika, and Eufaula, Ala., although the traffic moves through Union Springs, the rates to the latter point are higher. Distances are practically the same. Rates are based on Louisville, and rates from this point are made in competition with water routes via the Ohio River, Gulf and Alabama Rivers, to Columbus, which condition does not prevail at Union Springs. HELD, rates attacked not unreasonable or discriminatory, complaint dismissed. Commercial and Industrial Asso. of Union Springs, Ala. v. L. & N. R. R. 12 I. C. C. 372.

(aa) It has frequently been found by the Commission that terminal rates when made by railroads in the face of ocean competition are justifiable under the long and short haul clause of the Act, and that the extension of such rates to a community so situated as to be in a position to move its traffic by water or by rail is not such discrimination, as against other communities not so situated, as falls within the condemnation of the law. Commercial Club of Santa Barbara, Calif. v. S. P. Co., 12 I. C. C. 495, 497.

IMPORTANT CASES SINCE 1908

(bb) Where rates are fixed at certain terminal points by water competition a general custom has obtained of making rates to intermediate points upon the combination of the competitive rates to the terminal rate plus the local rate back. The reasonableness of a rate so

constructed necessarily depends largely upon the reasonableness of the local rate, which is added to the terminal rate and, obviously, no rate to an intermediate point constructed under those conditions and on that principle, can reasonably be higher than the sum of the terminal rate plus the local rate back. Monroe Progressive League v. St. L. I. M. & S. Ry. Co., 15 I. C. C. 534, 536.

(cc) Water competition creates prima facie dissimilarity of conditions justifying a violation of the fourth section. Bayou City Rice Mills v. T. & N. O. R. R. Co., 18 I. C. C. 490, 492.

(dd) It is no reflection upon the traffic manager of a railroad to say that he bases his rates upon some line of policy. He deals directly and in most cases exclusively with the producer or jobber. His concern is to keep these patrons satisfied and at the same time bring to his railroad the greatest possible revenue. This is what he means by saying that he charges what the traffic will bear. He regards as reasonable whatever rate will make for the best interest for his road, and in determining this he adopts a line of policy which affects either favorably or unfavorably the industrial growth of the communities which the carrier serves. The restrictions of the Act are governmental limitations placed upon the unlimited and arbitrary discretion of traffic officials. While the latter may adopt policies which they regard as most favorable to their roads, such policies must be restricted by the inhibitions of the law which this Commission must enforce. The policy of making Reno rates base upon those extended to the more distant Pacific terminal points may not be justified upon the ground that Reno traffic will bear that imposition, but may be justified by conditions obtaining at the more distant point, which the carrier may meet without offence to any provision of the Act. It is not sufficient to state that the terminal points are situated on the water to excuse the impositions of high rates at intermediate points. Railroad Commission of Nevada v. S. P. Co., 19 I. C. C. 238, 249. 250.

(ee) Where a higher rate to an intermediate point is justified upon the ground of water competition, the Commission has certain rules for its guidance: 1. Is it true that the long-distance rate is forced by water competition? 2. Is the long-distance rate which has been established in view of water competition less than would otherwise be reasonable? 3. Are the rates at intermediate points reasonable? 4. Do the rates unduly prefer one locality to another? And relief from the fourth section may be granted because of water competition. In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 178.

(ff) Ordinarily the Commission should not, by relief from the fourth section, authorize carriers to go any further in meeting water competition than is necessary to meet the competition afforded by water routes, because to do so would give a permanent advantage to some localities to the disadvantage of competing localities. Rates on Iron and Steel Articles, 38 I. C. C. 237, 240.

(gg) That portion of the mourth section which begins, "Whenever a carrier by rail shall be in competition with a water route" was intended to act as a restraint against rail carriers reducing their rates between competitive points to such a level as to render the water service between such points unremunerative and unattractive. Should a rail carrier operating a route between competitive points in competition with a water route depress its rates ,without authority of the Commission, to a level so low as to drive the water carrier from the field, the rail carrier is prohibited from therafter increasing its rates except by permission of the Commission, and such permission can not be extended unless reasons for the proposed increases are shown other than the elimination of the water competition. Reopening Fourth Section Applications, 40 I. C. C. 35, 40.

(hh) A water service which for one cause or another has been abandoned may have been effective at some period in the past in reducing rail rates to a level lower than they otherwise would have been, but there may not be at present any likelihood of the restoration of that service although some of the facilities for the service are still in existence. The maintenance of lower rates under these circumstances to the more distant than to intermediate points may not be justified, although the lower rate when established was necessitated by the competition then existing and the higher rates to intermediate points are not unreasonable. Transcontinental Rates, 46 I. C. C. 236, 246.

(ii) Even if the elimination of competition by canal were considered as complete for the time being, it is not certain that the statutory provision prohibiting the increase of rates reduced to meet water competition, unless after hearing it is found that the proposed increase rests upon changed conditions other than the elimination of water competition, is applicable. Transcontinental Rates, 46 I. C. C. 236, 253.

(jj) The possibility or probability of a recurrence of water competition does not justify the continuance of depressed rates at Pacific coast terminals. When the water competition again becomes sufficiently controlling in the judgment of the carriers to necessitate the reduction of the rates to the coast cities to a lower level than can reasonably be applied at intermediate points, the carriers may bring the matter to the Commission's attention for such relief as the circumstances may justify. Competent proof must be submitted in connection with such applications of a fairly regular water service between the two coasts; the adaptability of the traffic to water competition; principal points of origin of the traffic; range of rates afforded by the water lines; principal points of consumption; and the ports upon the two seaboards at which the water carriers receive and deliver freight. Transcontinental Rates, 46 I. C. C. 236, 276, 277.

(kk) These proceedings comprise fourth section applications of the transcontinental lines proposing to establish from and to the Pacific coast terminals lower rates than are in effect to and from intermediate points on traffic having origin and destination in the so-called defined territories, lying roughly speaking, east of the Rocky Mountains. The proposed reduced rates are grounded on the low rates by steamship lines between the Atlantic and Gulf ports and the Pacific ports, and the movement of a substantial volume of traffic thereunder. Except as otherwise noted, the rates of the applicant carriers are the same over all routes and apply not only all rail, but so far as New York is concerned, also in connection with the S. P., steamship line operating between that point and New Orleans, La., and Galveston, Tex. Previous decisions involving this same question are found in 21 I. C. C. 329, 21 I. C. C. 400, 32 I. C. C. 611, 34 I. C. C. 13 and 40 I. C. C. 35. In 46 I. C. C. 236, the Commission found that due to the withdrawal of ships for use in the trans-Atlantic service water competition between the Atlantic and Pacific ports was no longer a compelling force; and the Commission found that the maintenance of lower rates to the coast than to intermediate points unduly preferred the coast. Statements show that considerably more than half the traffic in most all of the commodities involved was shipped by water. As to some commodities the movement was nearly all by water. All but a small portion of the water borne traffic originated in and east of Buffalo-Pittsburgh territory, indicating that the Pacific coast interests are making their purchases in that part of the east which is tributary to the water lines and from which they can secure low rates. At the time the application was filed all traffic from interior points that was shipped by the water lines was charged local rates to the ports. Subsequently the lines from Chicago proposed proportional rates to the Gulf for transshipment equal to the rates from Chicago to New York City. It was the declared purpose of the carriers to be conservative, and not to meet water competition except where it is a matter of serious concern, and then only within reasonable limits. If the competition further develops the rail lines plan from time to time to seek relief on additional commodities. The present application covers only carload traffic, but later applications may be filed to include some that is less than carload. None of the proposed rates meet even approximately the coast to coast rates of the water lines. They are not generally intended or expected to draw or to hold any large amount of the port to port traffic to the rail lines. They did, however, approximate the charges available from certain interior points to the Pacific coast terminals by rail to the Atlantic and Gulf ports and thence by water, plus such incidental charges as marine insurance, and unloading and transfer charges at Pacific coast terminals. The rate arrived at was to be blanketed to apply from all points east of the rate fixing point in order to accommodate those who preferred to pay a substantially higher all rate than is available in connection with the water lines. It was blanketed to apply from points west of the rate fixing point in order to keep all parties in position to do business in competition with those

who could use the water routes to advantage. While on traffic to the Pacific coast it is proposed to keep the Middle West on a parity with seaboard territory, the latter would be required to pay more than the Middle West on traffic to inter-mountain territory. It is of course not necessary to have the same rate by water as by rail to afford the two sets of carriers equality of oportunity from any given point of shipment. The slower service, the necessity for making arrangements for transshipment at the ports, the irregularity of ship movements, special requirements as to marketing, and other considerations operate to the disadvantage of the water lines. Due to the transfers at ports, difficulties incident to stowage of mixed cargoes, the rolling of the ships, atmospheric conditions, and changes in temperature en route, the shipment of goods by water often damage them more than shipment by rail in carloads. Many of the same disadvantages are experienced in shipping by water in carloads as when the goods are shipped in less carloads by rail. On perhaps most of the commodities considered shippers as a rule prefer rail to water movement unless there is a differential of from 10 to 25c per 100 pounds, dependent upon the commodity in favor of the latter. A few articles, like iron and steel, require nearly as low rate by rail as by water. EASTBOUND RAIL AND WATER APPLICATION. The S. P., sought authority to establish reduced rates from California terminals to New York City only, via its rail and water line through Galveston. The commodities involved are asphalt, barley, beans, canned goods, dried fruits and rice. Most of the production of these commodities is at points not very far inland from the ports. The present rate on each of the commodities applies as a blanket from all California producing points to eastern defined territories via all routes. Apparently they are the highest rates that apply from, to, or between intermediate points. No reductions are proposed from, to, or between intermediate points, except that as the production of the commodities in question is largely near the coast the locals to the terminals plus the proposed rates beyond will automatically reduce the rail rates from any important intermediate points. The service of the S. P., is superior to that of the water lines, and the business would be confined very largely to traffic destined to New York and points to which the rates from New York are lower than from other Atlantic ports. The average rail distance from California shipping points to Galveston is less than 2,000 miles, and the distance by water between Galveston and New York is about 2,160 miles, so that more than half of the route is by water. MINOR APPLICATIONS. In addition to the general westbound application and the S. P., eastbound application, there are embraced in the present report minor applications, each confined to a single commodity. No. 11957 covers an application to apply on sisal and ixtle, carloads, from El Paso, Tex., and Gulf Ports to Pacific terminals, rates less than are applicable to or from intermediate points. Minimum weight proposed 30,000 pounds. No. 11940 covers rates on crude sulphur from Louisiana and Texas producing points to California and north Pacific coast terminals. Nos. 11948, 12094 and 12118 cover import rates on green coffee, originating in South America, of 80c to California terminals and 90c to the north Pacific coast terminals from New York, New Orleans, and Galveston, only, without reducing the rates from and to intermediate points. THE GENERAL WESTBOUND APPLICATION. So far as revenue is concerned the Commission is satisfied that, taking the additional business by itself, the proposed rates generally and easily cover the extra out of pocket cost involved. Were the rate level alone to be considered, it would be difficult to condemn the proposed terminal rates in the general westbound application. The rail lines, by hauling the business overland, would deprive themselves of revenue they are now receiving for the haul from point of production to the ports, based largely on local rates presumed to be reasonable and fully compensatory. HELD, the carriers have failed to make the necessary affirmative showing as to the collateral losses of revenue which would result from the proposed terminal rates. The intermountain country will continue under the handicap that in purchasing in the same region it must pay more freight on articles purchased in Pittsburgh than in Chicago and more on articles purchased in Chicago than in Kansas City. Their markets are restricted whereas the Pacific coast purchasers may disregard distance in their choice of an eastern market. HELD, the general westbound application of these

transcontinental carriers for authority to depart from the long and short haul provision of the fourth section should be denied. EASTBOUND RAIL AND WATER APPLICATION. The indications are that a granting of the application would be a benefit rather than a detriment to the intermediate points, for it would afford them, like the terminals, a rail route at only slightly higher rates than those applying by water. If there should be a reduction in the port to port factors, the intermediate points, like the terminals, could use them just as they use the present factors. HELD, this application has been justified, rates proposed and resulting charges will be reasonably compensatory. SISAL AND IXTLE. The Commission can not believe that the 2c excess in the rates from the Gulf over the rate requested will prove material. HELD, application denied. SULPHUR. It would appear that the terminal rates proposed full offset the advantages of carriage by rail. HELD, proposed rates reasonably compensatory, application approved. GREEN COFFEE. It is conceded that the rates would apply only upon ocasional or even sporadic movements, when the necessity arose for drawing upon stocks at the ports for immediate use rather than awaiting the normal deliveries from Brazil by water. They do not contemplate the meeting of water competition generally. This green coffee traffic does not constitute a special case within the meaning of section 4. HELD, applications denied. Transcontinental Cases of 1922, 74 I. C. C. 48.

(ll) To meet competition of the intercoastal steamship lines the transcontinental rail lines here seek authority to maintain lower rates on wool from the Pacific coast terminals than from intermediate points to eastern defined territories. The rail rates from interior western points to interior eastern points, for instance from Boise, Idaho, to Detroit, Mich., are slightly less than to Boston. To points east of Chicago, Ill., they are based on the Chicago or Mississippi River combination, except where the combination of rates to and from the Pacific coast terminals results in lower through rates. The rates from intermountain territory are made very largely on the latter basis. The rail lines move empties westbound in large numbers to the Pacific northwest to handle the eastbound lumber, canned salmon, etc. To California the traffic eastbound and westbound is more evenly balanced. It is apparent, therefore, that any additional traffic that would be developed by the proposed rates would require the haulage of more empties from the east and it is extremely doubtful whether, in view of this additional empty haul and the comparatively light loading, there could be much, if any, profit over and above the out of pocket costs in the proposed rates. The westbound empty car movement is given by the rail lines as a reason why their westbound applications should be granted; it may constitute a reason for not granting the eastbound applications. Wool is the only article now moving in transcontinental traffic on which the rates do not conform to the long and short haul rule under an order granting relief from the fourth section. Even during the war, when the intercoastal competition had practically ceased, the lower rates from the terminals than from intermediate points were continued. HELD, carriers have failed to justify the present or proposed departures from the long and short haul rule and the fourth sections will be denied. Transcontinental Wool Cases of 1922, 74 I. C. C. 99.

(mm) Wherever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points it shall not be permitted to increase such rates unless after hearing by the Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition. Administration of Fourth Section, 87 I. C. C. 564, 605.

(nn) The specific purpose of the last paragraph of section four is to insure and preserve water competition; to prevent competition that kills. A reduction made under the authority of a fourth section order after full hearing must have been found by the Commission to have been reasonably necessary in order to preserve competition between the rail and the water carrier. A reduction so made is not within the prohibition declared by the last paragraph. Transportation conditions are not static; the oppressor of today may tomorrow be the oppressed. And in order to preserve competition between rail and water carriers it is necessary that the Commission's power to approve a modification of rates be as broad as it is to approve a modification in order to pre-

vent unjust discrimination. Even a liberal reading of section four would not require that the prohibition contained in the last paragraph be extended to reductions made with the approval of the Commission. Administration of Fourth Section, 87 I. C. C. 564, 606.

(oo) In the absence of proof of damare, an unauthorized departure from the long and short haul rule of the fourth section does not warrant an award of reparation. National Hay & Milling Co. v. C. B. & Q. R. R. 89 I. C. C 1, 2.

ALL OTHER CITATIONS

Flint & Walling Mfg. Co. v. G. R. & I. Ry. Co., 14 I. C. C. 520, 521; Rice v. Georgia R. R. Co., 14 I. C. C. 75, 77, 78; Monroe Progressive League v. St. L. I. M. & S. Ry. Co., 15 I. C. 534, 536, 539, 537, 538, 541, 542; Spokane v. N. P. Ry. Co., 15 I. C. C., 376, 389, 421, 425, 388; MaGibbs Co. v. C. M. & St. P. Ry. Co., 15 I. C. C. 329, 330; Darling & Co. v B. & O. R. R. Co., 15 I. C. C. 79, 87; Rogers v. O. R. R. & N. Co., 16 I. C. C. 424, 425; Spokane v. N. P. Ry. Co., 16 I. C. C. 179; Valley Flour Mills v. A. T. & S. F. Ry. Co., 16 I. C. C. 73, 78; Southern Timber & Land Co. v. S. P. Co., 18 I. C. C. 232; Bayron City Rice Mills v. T. & N. O. R. R. Co., 18 I. C. C. 490, 492; Harbor City Wholesale Co., v. S. P. Co., 19 I. C. C. 323, 331; R. R. Commission of Nev. v. S. P. Co., 19 I. C. C. 238, 249, 250; City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 174, 169; City of Spokane v. N. P. Ry. Co., 21 I. C. C. 400, 423, 424; Bowling Green Business Men v. L. & N. R. R. Co., 24 I. C. C. 228, 239, 240; In re Lumber Rates, 25 I. C. C. 50, 59, 61; American Insulated Wire & Cable Co. v. C. & N. W. Ry. Co., 26 I. C. C. 415, 416; Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 583; Southern States Supply Co. v. S. Ry. Co., 31 I. C. C. 30, 31; Rates on Sugar, 31 I. C. C. 495, 503; Rates on Asphaltum, Barley, Beans, and Canned Goods, 33 I. C. C. 480; Wilson Produce Co. v. N. & W. Ry. Co., Unrep. Op. A-905; Commodity Rates to Pacific Coast Terminals, 34 I. C. C. 13, 17; Proportional Class Rates to Iowa Points, 34 I. C. C. 279, 280; Class and Commodity Rates between St. Louis, East St. Louis, and Ohio River Points, 38 I. C. C. 411, 423, 426, 428, 431; Eastern Shore of Virginia Produce Exchange v. N. Y. P. & N. R. R., 40. I. C. C. 428; Bituminous Coal to Mississippi Valley Territory, 39 I. C. C. 378, 391; Export Grain Products from Missouri River Points, 40 I. C. C. 195, 200; Sewer Pipe from Jacksonville, Fla., 40 I. C. C. 568, 571, 572; Fruits from Florida, 43 I. C. C. 595, 604; Chamber of Commerce, Houston, Tex., v. M. L. & T. R. R. & S. S. Co., 51 I. C. C. 653, 657; Marshall Wells Hardware Co. v. S. P. & S. Ry. Co., 53 I. C. C. 684; Murfreesboro Board of Trade v. L. & N. R. R., 55 I. C. C. 648, 655; Chamber of Commerce, Moss Point Miss., v. L. & N. R. R. Co., 57 I. C. C. 112, 116, 117.

V. PROCEDURE

§10½. In general.

See Procedure Before Commission.

CASES 1887-1908

(a) Application for exceptions under Act will only be granted after investigation upon verified petition. Re Southern Pac. R. R. Co., 1 I. C. R. 16.

(b) Notice must be published by petitioner in not less than two newspapers along the line for at least ten days prior to presentation of petition, stating nature of relief applied for and time of presentation of application; proof of each publication must be filed with petition. Re Southern Pac. R. R. Co., 1 I. C. R. 16. Rule 2, Appendix I., 1 I. C. R. 841.

(c) Where in a proceeding against several connecting roads for violation of section 4, one claims that its only participation consisted in sharing in low charges on long haul, complaint should not be dismissed as against it. Boston & A. R. R. Co. v. Boston & L. R. R. Co., 1 I. C. R. 571.

(d) The desire to have the Act construed will not support proceedings under the 4th section. Boston & A. R. Co. v. Boston & L. R. R. Co., 1 I. C. R. 571.

(e) The sole grievance of petitioning road for a 4th section exception being that defendant company accepted through traffic at lower rates than itself, the petitioner has no standing to maintain the proceeding. Boston & A. R. R. Co. v. Boston & L. R. R. Co., 1 I. C. R. 571.

(fg) Complainant must not necessarily have pecuniary interest to be entitled to be heard. Boston & A. R. Co. v. Boston & L. R. R. Co., 1 I. C. R. 571.

(h) Complainant attacked rates from Boston, Mass., to Detroit, Mich., as in violation of the fourth section in that the rates to the long haul points are lower than to the short haul points. HELD, where in a proceeding against several connecting railroads for charging more for a short than for the long haul, one of the companies claims that its only participation in the alleged offense consisted in its sharing in the low charges on the long haul, which were not in themselves alleged to be illegal, the complaint should not be dismissed as against such company, where its interest and the liability of the low rates on long haul traffic to be affected by changes made in the higher rates on short haul traffic is so great that in case such company had not been made a party, and should ask to be made a party, it would be proper to so order. Where, in a proceeding by one rail road company against other companies, for charging more for a short haul than for the long haul, it appears that the rates alleged to be illegal are local rates; that the petitioner does not pay or participate in paying them; that they are not competitive rates to those imposed on the petitioners road; and there is not any allegation that such rates are excessive or unjust, and the sole grievance of the petitioner is that the defendant companies accept through traffic at lower rates than are made by the petitioner and its connections, such petitioner has no standing to maintain in the proceeding. A desire to obtain a construction of the Act is not sufficient to support such proceeding. The right to make greater charges for short than for long hauls is exceptional and depends in every case upon the peculiar circumstances and conditions; and a ruling in reference thereto in the case of one carrier would not be applicable to another carrier differently circumstanced. If several railroad companies join in making the joint tariff which constitutes the lesser charge on the longer haul, while one or more of this number makes the greater charge on the shorter haul, the case is within the fourth section; and those who make such greater charge are called upon to justify it. By the word "line" in the Act, a physical line is meant, not a business arrangement, and one piece of road may be part of several lines. HELD, further, that such peculiar facts are not found to exist as will justify the greater charge over the shorter line. **Boston & Albany R. R. v. Boston & L. R. R., 1 I. C. C. 571.**

(i) Complainant alleged defendant violated the fourth section by charging more for a shorter haul than for a longer distance over the same line in the same direction. Defendant has a line of railroad extending from New Albany, Ind., to Michigan City, passing through Indianapolis and Frankfort. At Indianapolis the road is crossed by east and west lines which give a rate on wheat to New York of 23c. At Frankfort it is crossed by another road which makes a rate to New York of 25c. At South Wanatah it is crossed by the N. Y. C. & St. L., and at Michigan City it intersects the M. C. Defendant wishes to participate in the grain carrying trade to New York, and the M. C. will receive from it at Michigan City grain taken up at Indianapolis and prorate it with the 23c rate on a mileage basis. The N. Y. C. & St. L., will receive from it at South Wanatah the grain taken up at Frankfort and prorate with it the 25c rate on a mileage basis. Defendant has been in the practice of taking wheat at Indianapolis on these terms; and it received a carload from complainants at Frankfort and charged the 25c rate. The Indianapolis shipments are carried through Frankfort on their way to Michigan City, and the whole distance from Indianapolis to New York by Michigan City is greater than from Frankfort to New York by South Wanatah. It appeared that by the direct line Indianapolis is nearer to New York than Frankfort is by its direct line ,and is given lower rates for that reason. Defendant receives a greater compensation for its haul from Indianapolis to Michigan City than it does for its haul from Frankfort to South Wanatah and consequently does not on its own line charge more for the shorter haul. Defendant does not, and can not, control the fixing of rates by the crossing and intersecting lines, and has no option but to accept those rates which are fixed and prorate upon them, or to cease to take grain altogether. HELD, these facts show no violation by defendant of the long and short haul clause. Its own charges are the greater for the longer distance; and if the whole charge to New York is the greater for the shorter distance, it is only because the M. C. charges less on its own line than does the N. Y. C. & St. L.—defendant having no control over either. If it is desired

to test the reasonableness of the through rate from Frankfort to New York, all the roads responsible for it should be made defendants. It is not enough to make the initial road defendant, unless that road has authority to make the rate for them all. Complaint not sustained. Allen and Allen v. L. N. A. & C. R. R. 1 I. C. C. 621.

(j) Applications under section 4 (Long and Short Haul section) to be made by verified petition, stating extent of relief desired and points between which authority is asked to charge less. Rule 2, Appendix 1, 1 I. C. R. 841.

(k) Carriers alleging justification of a departure from the "long and short haul rule" of the statute must, in their answers to complaints, clearly advise complainants of the facts and circumstances relied on as constituting such justification. Raworth v. Northern P. R. Co. (Com.), 3 I. C. R. 857.

(l) In a case of alleged violation of the 4th section, or long and short haul clause of the Act to Regulate Commerce it is for the tribunal appointed to enforce the provisions of the statute, whether the Commission or the court, to consider whether the traffic was or was not transported over the longer and shorter distances "under substantially similar circumstances and conditions;" and in this case the question, which is one of fact, was peculiarly within the province of the Commission. C., N. O. & T. P. R. Co. v. Inters. Com. Commission, 5 I. C. R. 391.

(m) Under § 4 of the Act the question for the Commission is one of fact, and the interests of the producing market, the consuming market and the carriers are to be considered in determining whether upon the whole situation there is such dissimilarity of circumstances and conditions as justifies the rates in question. Danville v. Southern R. Co., 8 I. C. C. 409

§11. Complaints and orders.

See Procedure Before Commission § 11.

CASES 1887-1908

(a) Where, in a proceeding against several connecting railroad companies for charging more for a short than for the long haul, one of the companies claims that its only participation in the alleged offense consisted in its sharing in the low charges on the long haul, which were not in themselves alleged to be illegal, the complaint should not be dismissed as against such company, where its interest and liability of the low rates on long haul traffic to be affected by changes made in the higher rates on short haul traffic is so great that in case such company had not been made a party, and should ask to be made a party, it would be proper to so order. Boston & A. R. R. Co. v. Boston & L. R. R. Co., 1 I. C. R. 571.

(b) Where complaint alleges that a greater charge, in the aggregate, for the transportation of a like kind of property, is made for a shorter than for a longer distance, over the same line in the same direction, the shorter being included in the longer, and that an unlawful preference is thereby given one locality over another. HELD, Complaint is sufficient to put the carriers on proof that the services were rendered under such dissimilar circumstances as to justify the greater charge. San Bernardino Board of Trade v. Atchison, T. & S. F. R. Co., 3 I. C. R. 138.

(c) When a carrier on complaint under the Act to Regulate Commerce, § 4, avers substantial dissimilarity in circumstances and conditions as justifying its greater charge for shorter hauls, it is concluded by its pleading, and must affirmatively show that the circumstances and conditions, of which it is entitled to judge in the first instance, are in fact substantially dissimilar; but upon an application for relief under the § 4 proviso the carrier is not limited by such a rule of evidence, and may present to the Commission every material reason for an order in its favor. Trammell v. Clyde Steamship Co. (Com.), 4 I. C. R. 120.

(d) When a carrier on complaint under the fourth section avers substantial dissimilarity in circumstances and conditions as justifying its greater charge for shorter hauls, it is concluded by its pleading and must affirmatively show that the circumstances and conditions of which it is entitled to judge in the first instance are in fact substantially dissimilar; but upon an application for relief under the fourth section proviso the carrier is not limited by such a rule of evidence, and may present to the Commission every material reason for an order in its favor. There seems to be no limitation upon the power of the Commission to grant relief under that proviso when, after investigation, the Commission is satisfied that the inter-

ests of commerce and common fairness to the carrier requires that an exception should be made. Trammell v. Clyde S. S. Co. et al, 4 I. C. R. 121.

(e) When a carrier on complaint under the fourth section avers substantial dissimilarity in circumstances and conditions as justifying its greater charge for a shorter haul, it is concluded by its pleading and must affirmatively show that the circumstances and conditions of which it is entitled to judge in the first instance are in fact substantially dissimilar; but upon an application for relief under the fourth section proviso the carrier is not limited by such rule of evidence, and may present to the Commission every material reason for an order in its favor. Behlmer v. Memphis & C. R. Co., 4 I. C. R. 520.

(f) When a carrier on complaint under the fourth section avers substantial dissimilarity in circumstances and conditions as justifying its greater charge for a shorter haul, it is concluded by its pleading and must affirmatively show that the circumstances and conditions of which it is entitled to judge in the first instance are in fact substantially dissimilar; but upon an application for relief under the fourth section proviso the carrier is not limited by such a rule of evidence, and may present to the Commission every material reason for an order in its favor. H. W. Behlmer v. Memphis & Charleston R. Co., et al, 6 I. C. C. 257.

IMPORTANT CASES SINCE 1908

(g) Where the rates of carriers are not in unlawful violation of the provisions of section 4 of the Act, it is not the practice of the Commission to enter an order fixing an absolute rate for the shorter haul, but only to require the carriers guilty of the violation to cease and desist from charging a higher rate for the shorter than for the longer haul, and it is, therefore, necessary that connecting carriers joining in the rates attacked should be made parties. Moise Brothers Co. v. C. R. I. & P. Ry. Co., 16 I. C C. 550, 551.

(h) A carrier which is party to a through rate to a longer distance point should be made a party to a complaint alleging a violation of section 4. Moise Bros. Co. v. C. R. I. & P. Co., 16 I. C. C. 550, 552.

(i) The statute does not in terms define the proceeding in which the Commission may inquire into alleged violations of the fourth section of the Act and grant relief as specified in the proviso, but it is clear that any order which the Commission makes in that respect must be at all times subject to modification by it, and it seems equally clear that when complaint is made of a violation of the fourth section the Commission may, by order in that proceeding, grant appropriate relief against any violation of the Act which is found to exist, including a violation of the fourth section, nor is it significant that the complaint was pending at the time of the amendment of the section. It should be noted that this is not a new and additional authority, but is simply the exercise of the jurisdiction provided for in the fifteenth section for the correction of unjust discrimination. There is no essential difference between this order and an order which the Commission might make under the third section. City of Spokane v. N. P. Ry. Co., 21 I. C. C. 400, 426.

(j) The Chamber of Commerce of a city is a proper party to be heard upon the application of carriers to be relieved from the operation of the fourth section in fixing rates to such city. Grand Junction Chamber of Commerce v. D. & R. G. R. R. Co., 23 I. C. C. 115, 117.

(k) The filing by a carrier of an application for relief from section 4, does not preclude the determination of a complaint, under section 3, involving the same general territory. Mayor & Council of Boston v. A. C. L. R R. Co., 24 I. C. C. 50.

(l) In an order prescribing the maintenance of certain interstate rates it is not appropriate to incorporate an injunction to observe the fourth section as carriers are presumed to obey the law. Greater Des Moines Committee v. C. St. P. M. & O. Ry. Co., 42 I. C. C. 65, 75.

(m) The correction of fourth section departure renders any finding with respect to it unnecessary. Scott Paper Co. v. A. C. R. R., 44 I. C. C. 503, 504.

(n) Complaints allege that rates "are unjust and unreasonable in violation of section 4 of the Interstate Commerce Act, in violation of the aggregate of intermediate rates." Contention that since this presents an issue under the fourth section it is incumbent upon complainant to prove damage in order to entitle it to reparation. HELD, the commission

must look to the substance of a complaint rather than to its form. The fourth section makes it unlawful "to charge any greater compensation as a through rate than the aggregate of the intermediate rates," although such a through rate might otherwise be reasonable per se. By its averment that these rates were unreasonable complainant alleges a violation of section 1 of the Act. Standard Rail & Steel Co v. M. P. R. R. Co., 73 I. C. C. 219, 220.

ALL OTHER CITATIONS

Texas Common Point Case, 26 I. C. C. 528, 535; Mansfield Hardwood Lumber Co. v. T. & P. Ry. Co., Unrep. Op. A-193; Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 422; Sunderland Bros. Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-705; Corporation Commission of N. C. v. S. Ky., 33 I. C. C. 487, 496; Board of Trade of Kansas City v. C. M. & St. P. Ry., 34 I. C. C. 209.

§12. Evidence.

See Evidence.

IMPORTANT CASES SINCE 1908

(a) Having explained and excused a violation of section 4, the issue as to the reasonableness of the intermediate rate must take same course as any other issue involving reasonableness of rates. Moise Bros. Co. v. C. R. I. & P. Ry. Co., 16 I. C. C. 550, 553.

(b) In deciding questions under the fourth section, each case must stand upon its own facts, and no situation can furnish an exact precedent for another. Bluefield Shippers' Ass'n v. N. & W. Ry. Co., 22 I. C. C. 519, 526.

(c) Rates over, for the most part, identical routes and for almost exactly the same distance, which differ by one-eighth, require explanation. Bluefield Shippers' Ass'n v. N. & W. Ry. Co., 22 I. C. C. 519, 528.

(d) The amendment to section 4 of the Act of 1910 placed the burden of justifying a higher rate to an intermediate point included within a longer haul, upon the carriers. Transcontinental Rates, Westbound, 26 I. C. C. 456, 460.

(e) A rate otherwise reasonable is not shown to be unduly low by the presence in the carrier's tariffs of a higher rate for a shorter distance involving a fourth section violation. Adjustment should be made with respect to the latter rate. Iowa-Minnesota Cement Rates, 28 I. C. C. 477, 482.

(f) In determining fourth section violations rates of the same character should be compared with one another; proportional rates should not be compared with local rates. Rates on Grain and Grain Products to Texarkana, 29 I. C. C. 35, 36.

(g) The reasonableness of proposed increased rates cannot be established simply by pointing to fourth section violations which are thereby obviated. Rates between Shreveport and Texarkana, 32 I. C. C. 180, 182.

(h) The burden of showing that an adjustment in violation of the fourth section results in reasonable and nondiscriminatory rates is upon the carriers. Drewes Sugar Co. v. S. P. Co., 44 I. C. C. 533, 541.

(i) An application on behalf of railroads for relief from the provisions of the fourth section must be supported by competent proof as to the then existing competition by water alleged to make necessary the relief sought. Transcontinental Rates, 46 I. C. C. 236, 244.

(j) A carrier, to obtain relief from the fourth section must make a showing with respect to the depressed character of the lower rates which it desires to maintain for longer than for shorter hauls, nor was it shown that the rates which it proposes to continue to intermediate points are not unreasonable relatively or per se. Where a carrier's entire justification consists of a comparison of the distance over its line with that of the short line, such a comparison is not of itself sufficient to establish a special case warranting relief from the provisions of the fourth section. Standard Oil Company (Ky.) v. Y. & M. V. R. R. Co., 48 I. C. C. 493, 495.

(k) Doubtless there are many subnormal rates in the country as to which the Commission has never been petitioned for fourth section relief, so that the mere fact that no such relief has been granted as to a particular rate does not prove that that rate is normal. Procter & Gamble Co. v. A. C., 61 I. C. C. 700, 706.

ALL OTHER CITATIONS

Fares between New York and Points West of Newark., 74 I. C. C. 516, 619.

§12. (1) Burden of Proof.

See Burden of Proof I.

CASES 1887-1908

(a) The judgment of carriers in respect to the circumstances and conditions

is not final, but is subject to the authority of the Commission and of the courts to decide whether error has been committed, or whether the statute has been violated. And in case of complaint for violating the fourth section of the Act, the burden of proof is on the carrier to justify any departure from the general rule prescribed by the statute by showing that the circumstances and conditions are substantially dissimilar. Re Southern Ry. & S. S. Asso. v. 1 I. C. R. 278, 291.

(aa) Where substantial dissimilarity of circumstances and conditions is set up by defendant carriers in justification of departures from the long and short haul rule of the statute, the burden is upon them to establish such dissimilarity. Board of Trade of Tory, A. A. v. A. M. R. Co. 4 I. C. C. 348, 354.

(b) If several railroad companies join in making the joint tariff which constitutes the lesser charge on the longer haul, while one or more of their number makes the greater charge on the shorter haul, the case is within the fourth section of the Act; and those who make such greater charge are called upon to justify it. Boston & A. R. R. Co. v. Boston & L. R. R. Co., 1 I. C. R. 571.

(c) In this case the complaint is that the defendant violates the fourth section of the Interstate Commerce Law by charging more for a shorter than for a longer distance over the same line in the same direction. The facts are that defendant has a line of railroad extending from New Albany, Indiana, to Michigan City, passing through Indianapolis and Frankfort. At Indianapolis the road is crossed by east and west lines which give a rate on wheat to New York of twenty-three cents a hundred pounds. At Frankfort it is crossed by another road which makes a rate to New York of twenty-five cents. At South Wanatah defendant's road is crossed by the New York, Chicago & St. Louis; and at Michigan City it intersects the Michigan Central. Defendant wishes to participate in the grain carrying trade to New York; and the Michigan Central wil receive from it at Michigan City grain taken up at Indianapolis, and prorate with it the twenty-three cent rate on a mileage basis. The New York, Chicago & St. Louis will receive from it at South Wanatah the grain taken up at Frankfort and prorate with it the twenty-five cent rate on a mileage basis. Defendant has been in the practice of taking wheat at Indianapolis on these terms; and it received a car load from complainants at Frankfort and charged the twenty-five cent rate. The Indianapolis shipments are carried through Frankfort on their way to Michigan City, and the whole distance from Indianapolis to New York by Michigan City is greater than from Frankfort to New York by South Wanatah. It appeared by the evidence, however, I. That by the direct line Indianapolis is nearer to New York than Frankfort is by its direct line, and is given lower rates for that reason; II. That defendant receives a greater compensation for its haul from Indianapolis to Michigan City than it does for its haul from Frankfort to South Wanatah, and consequently does not on its own line charge more for the shorter haul; III. That defendant does not, and cannot, control the fixing of rates by the crossing and intersecting lines, and has no option but to accept those rates which are fixed and prorate upon them, or to cease to take grain altogether. HELD, (a) These facts show no violation by defendant of the long and short haul clause of the Act. Its own charges are the greater for the longer distance; and if the whole charge to New York is the greater for the shorter distance, it is only because the Michigan Central charges less on its own line than does the New York, Chicago & St. Louis—defendant having no control of either. (b) If it is desired to test the reasonableness of the through rate from Frankfort to New York, all the roads responsible for it should be made defendants. It is not enough to make the initial road defendant, unless that road has authority to make the rate for them all. (c) The conclusion is that the complaint is not sustained. Allen v. Louisville, N. Albany & Chicago R. Co., 1 I. C. R. 621.

(d) A carrier making higher rates upon shorter hauls upon the same line in the same direction has the burden of proving their reasonableness. Spartanburg Board of Trade v. Richmond & D. R. Co. (Com.) 2. I. C. R. 193; Re Chicago, St. P. & K. C. R. Co (Com.) 2 I. C. R. 137.

(e) The same section of the Act which forbids the making of a greater charge for the shorter haul expressly declares that it is not to be construed as authorizing the carrier to charge as much for such shorter haul; and when the charge is challenged the carrier must support

it by proof that it is reasonable. It assumes the responsibility of doing this in every instance when it makes charges which are alike for distances which greatly vary. Re Chicago, St. Paul & Kansas City R. R. Co., 2 I. C. C. 137, 147.

(f) Where on a question of rates it appears that higher rates are made upon the shorter hauls on the same line and in the same direction, the carrier making them must take the burden of proof to show their reasonableness. Spartanburg Board of Trade v. Richmond & Danville R. R. Co., 2 I. C. R. 193.

(g) Where complaint alleges that a greater charge, in the aggregate, for the transportation of a like kind of property is made for a shorter than for a longer distance, over the same line in the same direction, the shorter being included in the longer, and that an unlawful preference is thereby given one locality over another. HELD, complaint is sufficient to put the carriers on proof that the services were rendered under such dissimilar circumstances as to justify the greater charge. San Bernardino Board of Trade v. A. T. & S. F. R. Co., 3 I. C. C. 138, 141.

(h) In cases of complaints for violation of the fourth section of the Act the burden of proof is on the carrier to justify any departure from the general rule prescribed by the statute by showing that the circumstances and conditions attending the long and short hauls respectively are substantially dissimilar. Raworth v. N. P. R. Co., 3 I. C. C. 857, 859.

(i) When a carrier on complaint under the fourth section avers substantial dissimilarity in circumstances and conditions as justifying its greater charge for shorter hauls, it is concluded by its pleading and must affirmatively show that the circumstances and conditions of which it is entitled to judge in the first instance are in fact substantially dissimilar; but upon an application for relief under the fourth section proviso the carrier is not limited by such a rule of evidence, and may present to the commission every material reason for an order in its favor. Behlmer v. M. & C. R. Co., 4 I. C. C. 520, 524.

(j) The greater charge enforced by a railroad company for a shorter distance than for longer distances, in the transportation of live poultry in carloads, constitutes a departure from the general rule of the 4th section, which the carrier is bound to justify. Re Alleged Violations of Act to Regulate Commerce, 8 I. C. C. 290.

(k) Under section four of the Act the question for the Commission is one of fact, and the interests of the producing market, the consuming market and the carriers are to be considered in determining whether upon the whole situation there is such dissimilarity of circumstances and conditions as justifies the rates in question. City of Danville v. Southern Ry. Co., 8 I. C. C. 409, 426.

IMPORTANT CASES SINCE 1908

(l) In a case wherein a violation of the long-and-short-haul provision of the fourth section was alleged, it was not shown that any traffic moved to the lower rated points during the time when the rate to the intermediate point was higher; and the circumstance of an experimental shipment made by complainant fails, of itself, to prove undue discrimination against the intermediate point. Kenner Truck Farmers' Ass'n v. I. C. R. R. Co., 32 I. C. C. 1, 4.

(m) The reasonableness of proposed increased rates cannot be established simply by pointing to fourth section violations which are thereby obviated. Rates between Shreveport and Texarkana, 32 I. C. C. 180, 182.

(n) The burden of showing that an adjustment in violation of the fourth section results in reasonable and nondiscriminatory rate is upon the carriers. Drewes Sugar Co. v. S. P. Co., 44 I. C. C. 533, 541.

(o) An application on behalf of railroads for relief from the provisions of the fourth section must be supported by competent proof as to the then existing competition by water alleged to make necessary the relief sought. Transcontinental Rates, 46 I. C. C. 236, 244.

(p) A carrier, to obtain relief from the fourth section must make a showing with respect to the depressed character of the lower rates which it desires to maintain for longer than for shorter hauls, nor was it shown that the rates which it proposes to continue to intermediate points are not unreasonable relatively per se. Where a carrier's entire justification consists of a comparison of the distance over its line with that of the short line, such a comparison is not of itself sufficient to establish a special

case warranting relief from the provisions of the fourth section. Standard Oil Company (Ky.) v. Y. & M. V. R. R. Co., 48 I. C. C. C. 493, 495.

(q) While petitioner seemingly needs some relief from the requirements of the fourth section, the burden is on it to make an affirmative showing, as a condition precedent, that the proposed rates are reasonably compensatory. Rates may not be so low to a particular point as to place a burden on other traffic; nor may fourth section relief be granted unless the rate structure is reasonable and non-prejudicial. Commodity Rates from Jacksonville to Miami, 83 I. C. C. 207, 210.

ALL OTHER CITATIONS

Moise Bros. Co. v. C. R. I. & P. Ry. Co., 16 I. C. C. 550, 553; Carstens Packing Co. v. O. S. L. R. R. Co., 17 I. C. C. 324, 326; R. R. Commissioners of Kansas v. A. T. & S. F. Ry. Co., 22 I. C. C. 407, 419; Transcontinental Rates, Westbound, 26 I. C. C. 456, 460; United States Cast Iron Pipe & Foundry Co. v. N. C. & St. L. Ry. Co., A-314.

§12. (2) Circumstances of Probative Force.

See Evidence II.

CASES 1887-1908

(a) The "circumstances and conditions" touching transportation to and from Mexico through El Paso, Texas, by Texas & Pacific R. Co., are so substantially different from those surrounding transportation to other points as to justify the establishment of lower rates than charged at points where the distance and haul are shorter. Re Texas etc. R. Co. (U. S. C. Ct. La.) 1 I. C. R. 30.

(b) Carriers are required to judge in the first instance with regard to the similarity or dissimilarity of the circumstances or conditions that forbid or permit a greater charge for a shorter distance. Re Southern R. & S. Asso. 1 I. C. R. 278.

(c) The fact that long haul traffic will only bear certain rates is not reason for carrying it for less than cost at expense of other traffic. Re Southern R. & Steamship Asso. 1 I. C. R. 278.

(d) It is not a justification for charging more for a shorter than for a longer distance that the traffic which is subjected to such greater charge is way or local traffic; nor that the shorter haul traffic is more expensive to the carrier; nor that the lesser charge has for its motive the encouragement of manufacturers or some other branch of industry; nor that it is designed to build up trade centers; nor that the lesser charge for the longer haul is merely a continuation of favorable rates under which trade centers or industries have been built up. Re Southern R. & Steamship Asso., 1 I. C. R. 278.

(e) The right to make greater charges for short than for long hauls depends upon peculiar circumstances and conditions in each case. Boston & A. R. Co. v. Boston & L. R. R. Co., 1 I. C. R. 571.

(fg) The question of a greater charge in the aggregate for a shorter than for a longer distance over the same line in the same direction is not to be determined by the proportions allotted to different roads on the line, but by the rate as an entirety. Imperial Coal Co. v. P. & L. E. R., 2 I. C. C. 436, 445.

(hi) Nor is such greater charge justified by the fact that the lumber business of the roads of a connecting line or any of them was done in cars which carried machinery to the longer distance point, when profitable return loads were not always to be had. James & Abbott v. East Tenn., Va. & Ga. R. Co., 2 I. C. R. 609.

(jk) Nor does the fact that the freight is lumber which has paid a local rate over the roads of the defendants or of other railroad companies to the longer-distance point justify such greater charge for a shorter distance. James & Abbott v. East Tenn., Va. & Ga. R. Co., 2 I. C. R. 609.

(l) A difference in the bulk and value of lumber does not justify a greater charge for a shorter distance, when the carriers in their published rate sheets put the lumber in the same class and at the same rate. James v. East Tennessee, V. & G. R. Co., (Com.) 2 I. C. R. 609.

(m) Besides terminals expenses and other aggregate charges not dependent upon the distance freight is moved, there are other conditions which justify a lower proportionate charge for longer distances. Cope Brothers & Co. v. Lehigh Valley R. Co., 3 I. C. R. 460.

(n) The circumstances and conditions which make a greater charge for a shorter distance lawful relate to the nature and character of the transportation service rendered by the carrier over the same line to the longer and shorter distance points. The James & Mayer Bug-

gy Co. v. Cincinnati, N. O. & T. P. R. Co., 3 I. C. R. 682.

(na) That a shipper was not informed of the through tariff rates when making shipments between local points will not avail him as a basis for an action for violation of the long and short haul clause of the Interstate Commerce Act of 1887 where he made no inquiry and no false statements were made to him, and the shipping point was a non-competing one where no publication of the joint rate was required, under the order of the Commission made June 21, 1887. Chicago & N. R. Co. v. Osborne 4 I. C. R. 257.

(o) The charges accepted for a longer haul may be referred to for the purpose of considering the reasonableness of charges made for the shorter haul. I. C. C. v. E. Tenn., Va. & Ga. R. Co., 8 I. C. C. app. XLIII.

(p) In a case involving shorter distance charged thigher than those to or from longer distance points, the carrier cannot rightfully claim justification for greater dissimilarity in the rates than may be indicated by the ascertained dissimilarity in circumstances and conditions. S. Marten v. Louisville & Nashville R. Co., 9 I. C. C. 581.

(q) The fact that a substantial dissimilarity of circumstances and conditions between the longer and the shorter distance points has been shown, which justifies a lower rate to the longer distance point, does not prevent the longer distance rate from being considered by way of comparison in determining whether or not the shorter distance rate is unreasonable or unduly prejudicial, where the competition and other compulsory conditions are found not to justify the whole disparity between the shorter and the longer distance rate. S. Marten v. Louisville & Nashville R. Co., 9 I. C. C. 581.

(r) To hold that, after substantial dissimilarity of circumstances and conditions has been shown, the longer-distance rate cannot in any case or to any extent be considered by way of comparison in determining whether or not the shorter-distance rate is unreasonable or unduly prejudicial, particularly when, as in this case, competition and other compulsory conditions are found not to justify the whole disparity between the shorter and longer-distance rates, would be to reject a most appropriate and necessary test of the reasonableness and justice of railway charges. In a case involving shorter-distance charges higher than those to or from longer-distance points the carrier cannot rightfully claim justification for greater dissimilarity in the rates than may be indicated by the ascertained dissimilarity in circumstances and conditions. Martin v. Louisville & N. R. Co., 9 I. C. C. 581.

(s) In a proceeding based on an infraction of section 4 of the Act, a merely theoretical or paper rate that has not been used and was unknown to the defendant until casually discovered will not be accepted as affording a just basis for an order for reparation on shipments made to an intermediate point at a slightly higher rate. Mo. & Kan. Shippers' Association v. M. K. & T. Ry. Co., 12 I. C. C. 483.

IMPORTANT CASES SINCE 1908

(t) A rate otherwise reasonable is not shown to be unduly low by the presence in the carrier's tariffs of a higher rate for a shorter distance involving a fourth section violation. Adjustment should be made with respect to the latter rate. Iowa-Minnesota Cement Rates, 28 I. C. C. 477, 482.

(u) In determining fourth section violations rates of the same character should be compared with one another; proportional rates should not be compared with local rates. Rates on Grain and Grain Products to Texarkana, 29 I. C. C. 35, 36.

(v) In making readjustments same rule or principle should govern as to circuitous versus short routes as apply in like cases to named routes. Fourth Section Violations in the Southeast, 32 I. C. C. 61, 67.

(w) Relief afforded from fourth section should be sufficient to permit carriers to continue to compete for terminal traffic so long as it may be secured at rates that will yield a revenue in excess of operating cost. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 629.

(x) Departure from the long-and short-haul rule does not prove a higher rate to an intermediate point unreasonable and the subsequent reduction of the rate also is insufficient. American Refining Co. v. T. & P. Ry., 39 I. C. C. 559, 560.

(y) In determining whether a departure from the fourth section exists like rates should be compared with one an-

other. This means that the mere fact that a local rate to an intermediate point is higher than the proportional rate to a more distant point does not of itself constitute a departure from the fourth section. The underlying reason for this conclusion is that the movement on the local rate is an independent movement from the local point of origin to the local destination, while the movement on the proportional rate is a part of a through movement and the total rate applied for the through movement is greater than the rate applied to the shorter local movement included within the longer. However, the fourth section is violated if the through movement is greater than the rate applied to the shorter local movement included within the longer. However the fourth section is violated if the application of a local rate on a shipment from the same point of origin as that on which a proportional rate would apply results in a higher through charge to an intermediate point than to a more distant point. Royal Milling Co. v. G. N. Ry., 49 I. C. C. 263, 269, 270.

(z) In applying the provisions of the fourth section of the Act, rates and fares of the same kind should be compared. Conf. Ruling 304. Fares between New York and Points West of Newark. 74 I. C. C. 516, 519.

ALL OTHER CITATIONS

Freight Bureau v. C. C. C. & St. L. Ry. Co., 15 I. C. C. 504, 513; Mountain Ice Co. v. D. L. & W. R. R. Co., 21 I. C. C. 45; Baltimore Chamber of Commerce v. B. & O. R. R. Co., 22 I. C. C. 596, 601; Bluefield Shippers' Ass'n v. N. & W. Ry. Co., 22 I. C. C. 519, 528, 526; Leggett & Platt Spring Bed & Mfg. Co., 22 I. C. C. 513; Southern Illinois Millers Ass'n v. L. & N. R. R. Co., 23 I. C. C. 672, 674; Wenger Armstrong Petroleum Co. v. Director General, 64 I. C. C. 175, 176.

§13. Reparation.

See Reparation.

CASES 1887-1908

(a) Complainant asks reparation on account of rates on ice from Hillsdale and other points in Michigan which, prior to September 3, 1901, were higher over the line formed by defendant roads for the shorter distance to Springfield than for the longer distance to Columbus, the rates to both points having been made the same on that date; but it appeared that other and shorter delivering lines compete for the traffic to Columbus and that the short line distance to Columbus is less than the short line distance to Springfield. Upon all the facts and circumstances, HELD, that complaint should be dismissed. Ulrick & Williams v. L. S. & M. S. Ry. Co., et al, 9 I. C. C. 495.

(b) Defendant's rate on horses and mules in less than carloads from Bayou Sara, La., to St. Louis, Mo., is double first class rate of $1.80 per 100 lbs. upon an estimated weight of 2,000 lbs. for the first animal, 1,500 lbs. for the second, and 1,000 lbs. for each additional animal. The distance covered is 667 miles. This rate when applied to the transportation of a single animal is not unreasonable, but it is unreasonable for a shipment of four animals, amounting in that case to $99, while the charge upon a carload of 25 animals is only $100. Defendant's less than carload tariff would be rendered more just by reducing the charge to 90 cents per 100 lbs., the first class rate increasing the estimated weight of the first animal to 4,000 lbs., and leaving the weights for the additional animals as they now are, at 1,500 lbs. for the second and 1,000 lbs. each for all others included in the shipment. No order issued, but complainant may apply to Commission for reparation if compelled to pay rates in excess of those indicated. Barlow v. Yazoo & M. V. R. Co., et al, 10 I. C. C. 333.

(c) Complainant attacked as unreasonable and unduly discriminatory rates charged on bananas, carloads, from Charleston, S. C., to Danville, Va., as compared with the rate to Lynchburg, Va. Defendant has had in force since April 25, 1903, rates per 100 pounds on bananas in carloads from Charleston 43c to Danville 35½c to Lynchburg the transportation to the latter point by defendants line being through Danville. The lower rate to Lynchburg is forced upon defendant by the competition of bananas coming from Baltimore. The 43c rate to Danville is not found unreasonable. HELD, rate attacked to Danville not in violation of the Act. Prior to April 25, 1903, rates from Charleston to Danville were 43c and to Lynchburg, 20c. The rate to Lynchburg was 13c below the rate which was justified by competition from Baltimore or elsewhere. HELD, this was in violation of Act, reparation awarded to extent of 13c. Gardner and Clark v. Southern Ry., 10 I. C. C. 342.

(d) Prior to April 25, 1903, defendant had in effect rates per 100 lbs. on bananas in carloads from Charleston which were 43 cents to Danville and 20 cents to Lynchburg. The rate of 20 cents to Lynchburg was 13 cents below the rate which was justified by competition from Baltimore or elsewhere. Such relation of rates was in violation of sections three and four of the Act to Regulate Commerce, and complainants upon the shipments made at the 43-cent rate to Danville are entitled to recover reparation to the extent of 13 cents per 100 lbs., such excess amounting upon complainants' shipments to $130. Gardner & Clark v. Southern R. Co., 10 I. C. C. 342.

(e) Complainant attacked as unreasonable class C rate on hay from Piqua, Neosha Falls, Hartford, Burlington and Bristol, Kan., to Kansas City, Mo., in that it exceeded the rate to a point beyond, St. Joseph, Mo. The Commission is unable to accept a paper rate, for the longer haul, that has not been used and was unknown to either the defendant or the complainant until casually discovered after it had been the published rate for some years, as affording a just basis for an order of reparation on shipments made to an intermediate point at a slightly higher rate. This view of the matter is supported by the uncontradicted evidence of the defendant, tending to show that the class C rate of 10c to St. Joseph was not a compensatory rate and by the complete failure of complainant to show that the rate to Kansas City was itself excessive. HELD, rate attacked not unreasonable, complaint dismissed. Missouri & Kansas Shippers' Asso. v. M. K. & T. Ry., 12 I. C. C. 483.

(f) In a proceeding based on an infraction of section 4 of the Act, a merely theoretical or paper rate that has not been used and was unknown to the defendant until casually discovered will not be accepted as affording a just basis for an order for reparation on shipments made to an intermediate point at a slightly higher rate. Missouri & Kansas Shippers' Asso. v. M. K. & T. Ry., 12 I. C. C. 483, 484.

IMPORTANT CASES SINCE 1908

(g) A departure from the provisions of the fourth section of the Act, protected by appropriate application, does not of itself afford a basis for an award of damages. Schlitz Brewing Co. v. Director General, 55 I. C. C. 610, 611.

(h) Where a departure from the requirements of the long and short haul provisions of the fourth section of the Act exists it is well settled that whether the higher rate from the intermediate point is protected by an appropriate fourth section application filed with us or whether it is unprotected in order to support an award of reparation the complainant must show that the higher rate charged from the intermediate point and paid and borne by complainant was unreasonable or that it was damaged as a result of a violation of section 3. Park v. L. & N. Ry., 55 I. C. C. 703, 705.

(i) Where a departure from the long-and-short haul provision of the Act exists, whether the higher rate from the intermediate point is protected by an application filed with the Commission or not, to support an award of reparation complainant must show that the higher rate charged from the intermediate point and paid and borne by complainant was unreasonable or that it was damaged as a result of a violation of section 3. Park v. L. & N. R. R., 55 I. C. C. 703, 705.

(j) Where rate from an intermediate point was increased, resulting in a departure from the fourth section and carrier endeavored to increase rates from farther distant points to maintain parity formerly existing but increases were suspended and subsequently sanctioned, reparation will be denied on shipments moving during interim if shipper does not make such "reasonable request" for the lower rate as contemplated by rule 77 of Tariff Circular 18-A. Du Pont de Nemours & Co. v. Director General, as Agent, 59 I. C. C. 199.

(k) In the absence of proof of damage to the shipper, the fact that carriers have charged rates which contravene the long-and-short-haul rule of the fourth section is not of itself a sufficient basis for an award of reparation. Indian Refining Co. v. Director General, 59 I. C. C. 246, 247.

(l) When a fourth section departure is protected by an appropriate application no damages can be awarded up to the time when the Commission passes upon the fourth section application unless a case of undue prejudice is made out which might carry with it an award of damages or unless the rate charged from the intermediate point is found unreasonable. Buckeye Veneer Co. v. Director General, 61 I. C. C. 673, 676.

(m) The Commission found that when a rate to a farther distant point,

lower than to an intermediate point was published subject to the provisions of Rule 77 of Tariff Circular 18-A, which provides for the publication of rates to intermediate points on one day's notice, substantial compliance with the long-and-short-haul provision of the fourth section of the Act was thus affected and reparation awarded on shipments which had moved, even though there had been no previous request for the establishment of the lower rate to the intermediate point. Macon Chamber of Commerce v. N. Y., N. H. & H. R. R. Co., 63 I. C. C. 327, 331.

(n) The Commission has found that when a rate to farther distant point, lower than to an intermediate point, was published subject to the provisions of rule 77 of Tariff Circular 18-A, a substantial compliance with the long-and-short-haul clause of the fourth section is thus effected, and reparation has been awarded on shipments which had moved even though there had been no previous request for the establishment of the lower rate to the intermediate point Maine Spinning Co. v. Director General, 78 I. C. C. 279, 281.

(o) The fact that a carrier has charged rates in violation of the long and short haul provision of section 4 is not of itself a sufficient basis for an award of reparation. Oregon Fruit Co., 50 I. C. C. 719. Milwaukee Western Fuel Co. v. Director General, 78 I. C. C. 597, 598.

(p) The notation on a tariff in accordance with rule 77, is a substantial compliance with the fourth section requirements, and that a request for the publication of a rate under that rule prior to the movement of shipments is not essential in order that the shipper may have the advantage of such provision. Therefore, damages such as required in a violation of the fourth section do not have to be shown in such cases. Pittsburgh Crucible Steel Co. v. Director General, 81 I. C. C. 659, 660.

(pa) Notation on tariff in accordance with rule 77 of Tariff Circular 18-A is substantial compliance with fourth section requirements, and request for publication of a rate under that rule prior to movement is not essential in order that shipper may have advantage of such provision. Producers Refining Co., 69 I. C. C. 403. Therefore, damage such as required in violation of fourth section does not have to be shown in such cases. The commission has also awarded reparation on such shipments moving from intermediate points under rates that were higher than from more distant point, where rate from latter point was established subject to rule 77. N. Y. & N. J. Lubricant Co., 68 I. C. 477. Pittsburgh Crucible Steel Co. v. Director General, as Agent, 81 I. C. C. 659, 660.

(q) The Commission has awarded reparation on shipments moving from intermediate points under rates that were higher than from a more distant point, where the rate from the latter point was established subject to rule 77. Pittsburgh Crucible Steel Co. v. Director General, 81 I. C. C. 659, 660.

(qa) In the absence of proof of damage to the shipper the fact that the carriers have charged or received rates which violate the long and short haul rule of the fourth section is not of itself a sufficient basis for an award of reparation. Lynchburg Traffic Bureau v. Pennsylvania R. R., 88 I. C. C. 619, 620.

(r) The collection by a carrier of a rate in excess of the rate charged by it for a longer haul over the same route without permission of the Commission first having been obtained, is the collection of an illegal rate, and the excess of such rate over the longer haul may be recovered by an action in the court without resorting first to proceedings before the Interstate Commerce Commission, since the question is clearly not administrative, and the remedy by action in court exists under Interstate Commerce Act, § 9. Davis v. Parrington, 281 Fed. 10.

(s) In actions by shippers to recover excessive freight rates collected in violation of the long and short haul clause of Interstate Commerce Act, sec. 4, it was proper to measure the damages by the difference between the rate collected for the shorter haul and the tariff rate for the longer haul. Davis v. Parrington, 281 Fed. 10.

(t) In an action to recover damages for violation of Section 4 damages need not be proven except that the charges collected by the carrier exceeded the published tariff for the longer haul. McCaull-Dinsmore Co. v. Great Northern Ry. Co., (Minn., 1922), 191 N. W. 42.

(u) No reparation can be awarded on account of violation of the fourth section protected by applications unless damages proved by reason of violations of the first or third section. Cumberland

Grocery Co. v. L. & N. R. R. Co., Unrep. Op. 1826. Harward-Yancey-Young Co. v. L. & N. R. R. Co., Unrep. Op. 1827.

ALL OTHER CITATIONS

Janesville Clothing Co. v. C. & N. W. Ry. Co., 26 I. C. C. 628, 630; Appalachia Lumber Co. v. L. & N. R. R. Co., 25 I. C. C. 193, 197; Kellogg Toasted Corn Flake Co. v. M. C. R. R. Co., 24 I. C. C. 604, 606; Milwaukee Western Fuel Co. v. C. & N. W. Ry. Co., Unrep. Op. A-92; Maier & Co. v. Southern Pacific Co., 29 I. C. C. 103, 105; Tuttle Paint & Glass Co. v. S. P. Co., Unrep. Op. A-169; United States Cast Iron Pipe & Foundry Co. v. N. C. & St. L. Ry., Unrep. Op. A-314; Stewart-Greer Lumber Co. v. St. L. I. M. & S. Ry. Co., 29 I. C. C. 120, 122; Godwin v. Y. & M. V. R. R. Co., 31 I. C. C. 25, 29; Chamber of Commerce of Washington v. B. & O. R. R. Co., 30 I. C. C. 446, 453; Colorado Chemical & Spray Mfg. Co., v. Indiana Harbor Belt R. R. Co., Unrep. Op. A-613; Nix & Co. v. S. Ry. Co., 31 I. C. C. 145, 150; Shaffer & Co. v. I. C. R. R. Co., Unrep. Op. A-735; Chattanooga Imp. & Mfg. Co. v. L. & N. R. R., 40 I. C. C. 146, 149; Stimson v. S. Ry. Co., 40 I. C. C. 169, 170; Prey Bros. & Cooper Live Stock Comm. Co. v. T. & P. Ry. Co., 40 I. C. C. 658; Beebe & Runyan Furniture Co. v. C. B. & Q. R. R. Co., 41 I. C. C. 464; Pierce v. C. & N. W. Ry. Co., 41 I. C. C. 605, 607; LaCrosse Shippers' Asso. v. C. I. & L. Ry., 43 I. C. C. 520; City of Clarksdale v. I. C. R. R., 45 I. C. C. 108, 110; Aetna Explosives Co. v. Director General, 53 I. C. C. 140, 142, 426, 427; Iten Biscuit Co. v. C. B. & Q. R. R. Co., 53 I. C. C. 729, 733; Holt v. Director General, 53 I. C. C. 426; Union Tanning Co. v. Director General, 57 I. C. C. 354; National Refining Co. v. M. P. R. R., 55 I. C. C. 35; Illinois Brick Co. v. Director General, 57 I. C. C. 320, 323; Union Tanning Co. v. Director General, 57 I. C. C. 354, 358; Home Packing & Ice Co. v. Director General, 57 I. C. C. 691, 697; Empire Refineries v. Director General, 58 I. C. C. 713, 715; Mexican Petroleum Corp. of La. v. Director General, as Agent, 59 I. C. C. 545; Federal Oil & Supply Co. v. Director General, 60 I. C. C. 185; Cedar Rapids Gas Co. v. Director General, 62 I. C. C. 636, 642; Anaconda Copper Mining Co. v. Director General, as Agent, 64 I. C. C. 136, 139; New York and New Jersey Lubricant Co. v. Director General, as Agent, 68 I. C. C. 478; Cape Girardeau Portland Cement Co. v. Director General, as Agent, 68, I. C. C. 635; Producers Refining Co. v. Director General, as Agent, 69 I. C. C. 403; Maine Spining Co., v. Director General, 78 I. C. C. 278, 281; Monroe Hardware Company v. A. & V. R. Co., 81 I. C. C. 187. Utah-Idaho Sugar Co. v. Director General as Agent, 83 I. C. C. 566, 568.

§14. Form and effect of fourth section application.

See Infra § 16.

CASES 1887-1908

(a) Applications to the Commission for special exception under the Act will be granted only after investigation of the facts, upon a verified petition formally presenting the case. Re Southern Pac. R. R. Co., 1 I. C. R. 16.

(b) Where, in a proceeding by one railroad company (here, the Boston & Albany R. R. Co.) against other companies, for charging more for a short than for the long haul, it appears that the rates alleged to be illegal are local rates; that the petitioner does not pay or participate in paying them; that they are not competitive rates to those imposed on the petitioner's road; and there is no allegation that such rates are excessive or unjust, and the sole grievance of the petitioner is that the defendant companies accept through traffic at lower rates than are made by the petitioner and its connections,—such petitioner has no standing to maintain in the proceeding. Boston & A. R. R. Co. v. Boston & L. R. R. Co., 1 I. C. R. 571.

(c) An offer of defendant carriers, made during the pendency of a case, to reduce the rates complained of, provided the Commission would relieve such carriers from the operation of the fourth section by granting an order permitting such reduced rates to be less than the charges of such carriers to intermediate points, is not an application for an order of relief under the fourth section. Such an order can only be granted upon the application and investigation required by law. Colorado Fuel & Iron Co. v. Southern Pacific Co., 6 I. C. C. 488.

(d) An application to the Interstate Commerce Commission for relief from the operation of § 4 of the Act to Regulate Commerce is not necessary in order to entitle the carrier to adjust its rates with reference to the dissimilarity of circumstances and conditions, in-

cluding the existence of competition, and to justify such rates in the courts when complained of. Interstate Commerce Commission v. Alabama Midland Ry. Co., 7 I. C. C. App. CIX.

IMPORTANT CASES SINCE 1908

(e) The factor of $1.85 assessed from Enola to Carney's Point is alleged to violate the long and short haul clause of the fourth section in that it exceeded the rate of $1.80 applied from more distant points. The latter rate was published under authority of rule 77 of our Tariff Circular 18-A, and was thus in substantial compliance with the requirements of the fourth section. E. I. Du Pont de Nemours & Co. v. Director General, 57 I. C. C. 461, 462.

ALL OTHER CITATIONS

In re Lumber Rates from the South, 25 I. C. C. 50, 62; Southern Furniture Mfrs. Assn. v. S. Ry. Co., 25 I. C. C. 379, 381.

§15. Suspension of new tariffs.

See Suspended Rates

IMPORTANT CASES SINCE 1908

(a) Where a new tariff is filed, and is protested on the ground that the tariff carries rates forbidden by the fourth section or any other section of the Act, the averment, if confirmed by tariff check, is good ground for suspending the tariff. But where a system of rates is in vogue which in general make-up the Commission does not find ground to disturb, particular rates violative of the fourth section are to be treated as any other infraction of the Act. Greater Des Moines Committee v. C. St. P. M. & O. Ry. Co., 42 I. C. C. 65, 75.

§16. Tariffs and construction.

See Tariffs.

CASES 1887-1908

(a) Tariffs not conforming to fourth section criticised. Re Tariffs of the Columbus & Western Railway, 2 I. C. R. 11.

(b) Complainant attacked certain class and commodity rates from Cincinnati, O., and Louisville, Ky., to Gallatin, Tenn., the shorter distance, which were higher than those in effect over the same line to Nashville, Tenn., the longer distance, the shorter being included within the longer distance, as unreasonable and unduly discriminatory. Defendant instructed its agents to disregard the regular published tariff rates to Gallatin and to charge the lower combination of rates to and from Nashville. It also had this rule of applying combination rates when less than tariff rates in force at other stations on its line. Instructions to that effect were issued in a separate printed circular, and did not appear, nor were they referred to in any way, upon its regular published tariffs. HELD, that this practice is unlawful, and that, to be in compliance with the act, any rule which operates to alter, modify, or change established rates must be fully and clearly set forth upon the published tariffs of rates and charges to be affected thereby. Spillers & Company v. L. & N. R. Co., 8 I. C. C. 364.

IMPORTANT CASES SINCE 1908

(c) Where a tariff provides for the publication, upon reasonable request, of rates from an intermediate point not exceeding those from more distant points, there is a substantial compliance with the requirements of the fourth section. National Pickle & Canning Co. v. P. M. R. R., 44 I. C. C. 502.

(d) Contention that the maintenance of higher rates from intermediate than from farther distant points were unlawful at the time of passage of the amended fourth section and could not be protected by applications filed with the Commission, not sustained, as the higher rates were the lawful rates notwithstanding the fact that through inadvertance lower rates were maintained from the farther distant points. Park v. L. & N. R. R., 55 I. C. C. 703, 705.

(e) Rates in a tariff published in accordance with rule 77 of Tariff Circular 18 A are in substantial compliance with the fourth section of the Act. Morris & Co. v. Director General, 64 I. C. C. 435, 436.

(f) Tariff providing that upon reasonable request therefor rates would be established from intermediate points not exceeding those from more distant points on one day notice is a substantial compliance with the requirements of the fourth section. Cincinnati Abattoir Co. v. Director General, 66 I. C. C. 65, 66.

(g) The notation on a tariff in accordance with rule 77 of Tariff Circular 18-A, providing for the publication of rates from intermediate points on one day's notice, is a substantial compliance with the fourth section requirements, and that a request for the publication of a rate under that rule prior to the

movement of shipments is not essential in order that the shipper may take advantage of such provision. Armour & Co. v. Director General, 78 I. C. C. 373.

(h) Tariff carried rule providing that "rates * * * will, in absence of specific commodity rates, apply from or to directly intermediate points." Shipments moved from certain branch line points in California to San Francisco, Calif., during Federal control, and commodity rate from next more distant point applied. Lower commodity rate from point farther distant available. HELD: Since points of origin were "directly intermediate" to point taking lower commodity rate, and language of tariff did not limit application of intermediate rule to "next more distant point," such lower rate was applicable. Rate charged found illegal and reparation awarded. Pacific Rice Mills Co. v. Director General, as Agent, 78 I. C. C. 459.

(i) Notation in tariff that upon reasonable request therefor rates will be established from intermediate points not to exceed those from more distant points on one day's notice, in accordance with rule 77 of Tariff Circular 18-A, is substantial compliance with requirements of long-and-short-haul provision of fourth section of the act. Kosse, Shoe & Schleyer Co., 41 I. C. C. 602. Fletcher & Wilson Coffee Co. v. Director General, as Agent, 81 I. C. C. 348, 349.

ALL OTHER CITATIONS

Price Bros. & Co. v. C. N. Ry., 46 I. C. C. 397, 398; Du Pont de Nemours & Co. v. Director General, 55 I. C. C. 247, 248; Empire Refineries v. Director General, 58 I. C. C. 713; Macon Chamber of Commerce v. N. Y., N. H. & H. R. R. Co., 63 I. C. C. 327, 331; Douglas Chamber of Commerce v. A. T. & S. F. Ry., 64 I. C. C. 405, 413; Standard Asphalt & Refining Co. v. Director General, as Agent, 66 I. C. C. 611; N. Y. & N. J. Lubricant Co., 68 I. C. C. 477; Producers Refining Co. v. Director General, 69 I. C. C. 403, 405; Armour & Co. v. Director General, as Agent, 78 I. C. C. 373, 374; Pittsburgh Cruicible Steel Co. v. Director General, as Agent, 81 I. C. C. 659, 660, 661.

§17. Actions at Law.

See Actions at Law.

IMPORTANT CASES SINCE 1908

(a) In an action to recover damages under Section 4 of the Interstate Commerce Act it is not necessary to show shipments over the longer haul upon which charges were paid as per the published tariff. McCaull-Dinsmore Co. v. Great Northern Ry. Co., (Minn. 1922), 191 N. W. 42.

(b) Section 4 of the Interstate Commerce Act declares a published tariff of a carrier unlawful which charges more for a shorter haul than for a longer, the shorter haul being a part of the line of route of the longer, therefore the maximum rate that can be collected by the carrier for the shorter haul would be the established tariff for the longer haul, and what is received in excess thereof may be recovered in an action as for money had and received for the shipper's use. McCaull-Dinsmore Co. v. Great Northern Ry. Co., (Minn. 1922), 191 N. W. 42.

(c) A state court has jurisdiction of an action to recover damages for violation of Section 4 of the Interstate Commerce Act. McCaull-Dinsmore Co. v. Great Northern Ry. Co., (Minn. 1922), 191 N. W. 42.

LOSS AND DAMAGE

I. THE CARMACK AND CUMMINS AMENDMENTS.
- §1. Constitutionality.
- §2. Construction in general.
- §2¼. Construction of bill of lading.
- §2¼a. Bill of Lading Act.
- §2½. The Cummins Amendment.
- §3. Effect of state legislation.
- §4. Jurisdiction of Commission.
- §5. Jurisdiction of state courts.

II. CARRIER'S LIABILITY.
- §5½. In general.
- §5¾. Assignments.
- §6. Initial carrier.
- §7. Intermediate carrier.
- §7½. Inspection.
- §8. Delivering carrier.
- §8½. Act of God or other exception.
- §8¾. Act of shipper.
- §9. Agreed or restricted valuation.
- §10. Common law liability in general.
  - (1) Liability for negligence.
  - (2) Limitation of liability.
- §10¼. Damages in general.
- §10½. Damages for delay.
- §10¾. Damages for mental anguish.

§10⅞. Forwarders authority.
§11. Notice of loss.
§11¼. Payment of claims after time limit.
§11½. Presumptions.
§11¾. Partial loss.
§11⅞. Punitive damages.
§12. Settlements and rights inter se.
§12½. Sale of shipment.
§13. Special damages.
§13a. Strikes.
§13½. Time to bring suit.
§13⅝. Waiver of provisions.
III. EVIDENCE.
§13¾. In general.
§14. Acts of connecting carrier.
§15. Burden of proof.
§15a. Election of remedies.
§16. Judicial notice.
§17. Parties and pleadings.
§17½. Counter claims.
§18. Filing of tariffs.
IV. CRIMINAL LIABILITY.
§19. In general.

CROSS REFERENCE

See Bills of Lading; Cars and Car Supply VI; Claims; Contracts; Export Rates and Facilities §4; Express Companies; Evidence §52; Interstate Commerce Commission VI; Inspection; Passenger Fares and Facilities §10; Perishable Freight; Refrigeration §9; Released Rates; Telephone and Telegraph Companies IV; Water CarriersVI.

I. THE CARMACK AND CUMMINS AMENDMENTS.

See Act to Regulate Commerce.

§1. Constitutionality.

See Constitutional Law; Interstate Commerce §5.

IMPORTANT CASES SINCE 1908

(a) Cummins Amendment makes it unlawful for a carrier to fix a period for giving notice of claims shorter than 90 days, for filing of claims shorter than four months, and for institution of suits shorter than two years. The Cummins Amendment, 33 I. C. C. 682, 691.

(b) The Commission has no power to order the payment of loss and damage claims without litigation if the carriers choose to require consignees to sue on their claims. New York Merchantile Exchange v. B. & O. R. R. Co., 36 I. C. C. 156, 160.

(c) The Carmack amendment, making the initial carrier liable for the loss of goods occuring on the lines of connecting carriers, is not unconstitutional as denying the right of contract, since the right to freedom of contract is not unlimited and the regulation imposed is not an unwarranted abridgement thereof but is merely a denial of such right to the extent of forbidding or regulating every contract which is reasonably calculated to injuriously affect the public interect. A. C. L. R. R. Co. v. Riverside Mills, 219 U. S. 186, 202, 31 Sup. Ct. 164, 55 L. ed. 167.

(d) The Carmack amendment requiring carriers in interstate commerce as a condition of continuing in that traffic to obligate themselves to carry to the point of destination, using the lines of the connecting carriers as their own agencies, is not beyond the scope of the power of regulation. A. C. L. R. R. Co. v. Riverside Mills, 219 U. S. 186, 203, 31 Sup. Ct. 164, 55 L. ed. 167.

(e) The Carmack amendment is not in violation of the third amendment of the constitution in taking the property of the initial carrier to pay the debt of an independent connecting carrier whose negligence may have been the sole cause of the loss, since the resulting liability of the initial carrier is that of a principal for the negligence of its own agent. A. C. L. R. R. Co. v. Riverside Mills, 219 U. S. 186, 206, 31 Sup. Ct., 164, 55 L. ed. 167.

(f) The Carmack amendment of the Hepburn Act of 1906 (Sec. 20 of the Interstate Commerce Act) is constitutional. Galveston H. & S. A. Ry. Co. v. Wallace, 223 U. S. 481, 491, 32 Sup. Ct. 205, 56 L. ed. 516.

(g) The constitutional power of Congress to regulate commerce among the states and with foreign nations comprehends power to regulate contracts between the shipper and the carrier of an interstate shipment by defining the liability of the carrier for loss, delay, injury or damage to such property. Adams Express Co. v. Croninger, 33 Sup. Ct. 148, 149, 226 U. S. 491.

ALL OTHER CITATIONS

Riverside Mills v. A. C. L. R. R. Co., 168 Fed. 987, 989; Smeltzer v. St. L. & S. F. R. R. Co., 158 Fed. 649, 655, 659; Central of Ga. Ry. Co. v. Sims, 169 Ala. 295, 301, 53 So. 826; St. L. & S. F. R. R. Co. v. Heyser (Ark. 1910), 130 S W. 562, 566; Pittsburgh etc. Ry.

Co. v. Mitchell (Ind. 1910), 91 N. E. 735, 740; Sturges v. D. G. H. & M. Ry. Co. (Mich. 1911), 131 N. W. 706, 708; Dodge v. C. St. P. M. & O. Ry. Co. (Minn. 1910), 126 N. W. 627, 629; Greenwald v. Weir, 59 Misc. 431, 434, 111 N. Y. Sup. 235; Galveston H. & S. A. Ry. Co. v. Johnson (Tex. 1911), 133 S. W. 725, 731; Houston & T. C. R. R. Co. v. Lewis (Tex. 1910), 129 S. W. 594, 595; L. & N. R. R. Co. v. Scott 133 Ky. 724, 730, 118 S. W. 990; Galveston H. & S. A. Ry. Co. v. Crow, (Tex. 1909), 117 S. W. 170; Galveston H. & S. A. Ry. Co. v. Wallace (Tex. 1909), 117 S. W. 169; Galveston H. & S. A. Ry. Co. v. Piper Co., 52 Tex. Civ. App. 568, 573, 115 S. W. 107; Old Dominion S. S. Co. v. Flanary & Co. (Va. 1911), 69 S. E. 1107, 1108; N. & W. Ry. Co. v. Dixie Tobacco Co., 33 Sup. Ct. 609, 610, 228 U. S. 593; C. C. C. & St. L. Ry. Co. v. Hayes (Ind. 1913), 102 N. E. 34, 39; Aton Piano Co. v. C. M. & St. P. Ry. Co. (Wis. 1913), 139 N. W. 743, 745; C. C. C. & St. L. Ry. Co. v. Hayes (Ind. 1914), 104 N. E. 581, 585, 586; Black & White River Transp. Co. v. M. P. Ry., 37 I. C. C. 244, 247; Nabors v. Colorado & S. Ry. Co. (Tex. 1919), 210 S. W. 276.

§2. Construction in general.

See Act to Regulate Commerce II; Released Rates.

IMPORTANT CASES SINCE 1908

(a) Neither the first nor the second Cummins amendment invalided rates based on actual differences in value. The plain and unmistakable purpose of both amendments was to make unlawful and void, except as otherwise provided therein, all attempted limitations of liability for loss, damage, or injury to property transported, without respect to the manner or form in which they are sought to be made. U. S. Industrial Alcohol Co. v. Director General, 68 I. C. C. 389, 391.

(aa) The Cummins Amendment leaves date from which the several periods of time for giving notice and filing of claims and institution of suits for carriers to determine. The Cummins Amendment, 33 I. C. C. 682, 691.

(b) Provisions of Cummins Amendment are confined to instances of loss, damage, or injury caused by carriers or its agents. The Cummins Amendment 33 I. C. C. 682, 691, 697.

(c) When goods are not hidden from view, and the carrier is advised as to their character, all contracts or agreements purporting to limit the liability of carrier for loss and damage are made void. The Cummins Amendment, 33 I. C. C. 682, 695.

(d) As to goods concealed from view, etc., the statute clearly prescribes right of carriers under direction or approval of Commission to provide for a graduation of rates in accordance with declared value of property. The Cummins Amendment, 33 I. C. C. 682, 696.

(e) A rule relieving carrier from responsibility for loss due to frost or overheating when protective service is furnished by shipper does not violate the Cummins Amendment. Miller & Co. v. N. P. Ry. Co., 34 I. C. C. 154, 157.

(f) Carmack Amendment operated to render void to extent stated any attempted limitation of initial carrier's liability. Louisiana State Rice Milling Co. v. M. L. & T. R. R. & S. S. Co., 34 I. C. C. 511, 512.

(g) The prime, if not the only purpose of the Carmack Amendment was to make the initial carrier receiving property for interstate transportation liable to the lawful holder of a receipt or bill of lading issued therefor on account of any loss, damage, or injury to such property caused by it or by any other common carrier over whose lines the same might pass. Prior to that time the shipper or consignee was put to the trouble and expense of attempting to locate among those composing the through line of movement the particular carrier responsible for any loss or damage occurring to the shipment and of endeavoring to collect from it. It was generally difficult and often impossible to definitely ascertain the particular carrier in the through line which had caused the loss or damage, and it was the adequate opportunity afforded under these conditions for enforcing justice that led to the enactment of this amendment of the law. It did not undertake directly to prescribe or limit the conditions or provisions of the bill of lading but operated to render void to the extent stated any attempted limitation of the liability of the initial carrier to the shipper. Louisiana State Rice Milling Co. v. M. L. & T. R. R. & S. S. Co., 34 I. C. C. 511, 512.

(h) The Cummins Amendment, has in effect abolished in interstate commerce the whole system of released rates

based on agreed valuations as distinguished from actual value. Iowa Railroad Com'rs. v. A. T. & S. F. Ry., 36 I. C. C. 79, 81.

(i) Where the actual value is less than the contract limit the shipper, of course, is protected, but the carrier has never been liable for more than the actual value. Iowa Railroad Commissioners v. A. T. & S. F. Ry. Co., 36 I. C. C. 79, 82.

(j) A carrier is, strictly speaking, not an insurer at all, but a bailee for hire which, in that capacity, has statutory as well as common-law obligations for the safety of property committed to its charge. Cases may arise where elements other than the amount of damages which might be recovered, as, for example the degree of care required and the value of the service to the shipper, would have a substantial bearing upon the reasonableness of rates graded according to value as well as of other rates. Iowa Railroad Commissioners v. A. T. & S. F. Ry. Co., 36 I. C. C. 79, 84.

(k) Under the Carmack Amendment, the initial carrier would have been liable, not only for the negligent acts and omissions of its employes, but for those of connecting carriers resulting in any loss or damage to the goods en route and also for any loss or damage resulting from the failure of the final carrier to notify the consignee of the arrival of the goods at destination, and for its failure, on the consignee's refusing to accept them, to store the goods for the account of the shipper or to execise proper care in holding them for him. Adam's Express Co. v. Croninger, 226 U. S. 491, 33 Sup. Ct., 148, 57 L. Ed., 314, 44 L. R. A. (N. S.) 257; Kansas City Southern Ry. Co. v. Carl, 227 U. S. 639, 33 Sup. Ct. 391, 57 L. Ed. 683; Galveston, H. & S. Ry. Co. v. Wallace, 223 U. S. 481, 32 Sup. Ct. 205, 56 L. Ed. 516; Atlantic Coast Line Ry. v. Riverside Mills, 219 U. S. 186, 31 Sup. Ct. 164, 55 L. Ed. 167, 31 L. R. A. (N. S.) 7; Earnest v. D. L. & W. R. Co., 149 App. Div. 330, 134 N. Y. Supp., 323; Coovert v. Spokane, P. & S. Ry. Co., 80 Wash. 87, 141 Pac. 324; Norfolk & W. R. Co.. v. Stuart Draft Co. 109 Va. 184, 63 S. E. 415; Wien v. N. Y. C. & H. R. R. Co., 152 N. Y. Supp. 154, 156.

(l) Contention that the deduction of an arbitrary amount for natural shrinkage and unavoidable waste in transit is illegal and deprives the shipper of his property without due process of law was fully considered and rejected in the Brouch Grain Co. Case, 41 I. C. C. 717. Claims for Loss and Damage of Grain, 48 I. C. C. 530, 573.

(m) By the second Cummins Amendment, the provisions of the first Cummins Amendment, which invalidated all limitations of the carrier's liability for loss, damage or injury to property transported, were made inapplicable to baggage and to property except ordinary live stock, as to which "the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property." In connection with the quoted exception, the Commission was empowered "to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion be just and reasonable under the circumstances and conditions surrounding the transportation." It is thus seen that the second Cummins Amendment placed rates and ratings dependent upon the value "declared in writing by the shipper" and those predicated on the value "agreed upon in writing as the released value of the property" in the same category. Both are unlawful until expressly authorized or required by the Commission. Silk Assn. of America v. Penn. R. R., 50 I. C. C. 50, 51.

(n) The law does not require common carriers to define their liability for general damages by tariff publication. Deposit of $10 for each live poultry car ordered, Deposit for Live Poultry Car Ordered, 66 I. C. C. 653, 656.

(na) The second Cummins amendment, approved August 9, 1916. did not invalidate rates based on actual difference in value. It permitted the establishment and maintenance of rates dependent upon the value declared or agreed upon in writing as the released value, in respect of all property except ordinary live stock, and provided that such declaration or agreement should have no other effect than to limit liability or recovery to an amount not exceeding the value so declared or released. The establishment and maintenance of rates on ordinary live stock based on declared or released value were prohibited. North Packing and Provision Co. v. C. M. & St. P. Ry. Co., 69 I. C. C. 237.

(o) The Carmack Amendment superseded all regulations and policies of the different states relative to the responsibility of a carrier issuing a bill of lading for loss of or damage to freight delivered by it to a connecting carrier. Gamble-Robinson Commission Co. v. Union Pac. Ry. Co. (Ill., 1914), 104 N. E. 666, 668.

(p) Section 6 of the Interstate Commerce Act requires interstate carriers to publish the rates between points on its own route and points on the route of other carriers when a through route and rate have been established; and if no joint rate over the through routes has been established, the several carriers are required to publish the separately established rates, fares and charges applied to the through transportation. Section 15 of the Act provides that where there are two or more through routes and through rates established, the person making the shipment shall have the right to designate which of the through routes his property shall be carried over, and that the shipper shall have the right, where competing lines of railway constitute portions of a through line or route, to determine over which of the competing lines his freight shall be transported. The Carmack amendment makes the initial carrier liable for loss or damage on the lines of the connecting carrier. HELD, the right of routing so conferred, together with the liability imposed on the initial carrier, did not violate the constitutional rights of contract of the carrier; for if it has not contracted with a connecting carrier it cannot be required to accept for through carriage, and if it does not accept for through carrier it does so under contract with the connecting carrier. C. C. C. & St. L. Ry. Co. v. Hayes, (Ind., 1913), 102 N. E. 34, 38.

(q) By the proviso in the Carmack Amendment that "nothing in this section shall deprive any holder of such * * * bill of lading of any remedy or right of action which he has under existing law," the remedy and right of action thereunder are made concurrent with the remedy and right of action under the general law then existing. Any other construction will wholly destroy and nullify this proviso. But for the existence of this proviso it might, with some reason, be contended that the shipper's remedy and right of action was also exclusively controlled by the Interstate Commerce Act as amended; but the proviso is as much a part of the Interstate Commerce Act as any other part thereof. By this proviso the distinction between what is purely abstract liability, or substantive cause of action, and what is purely remedy and right of action is clearly recognized. Right of action and substantive liability, or cause of action, may erroneously be confounded. The meaning of the expression "right of action" as used in this proviso must be determined in the light of the company in which it is found, viz., "remedy or right of action." The maxim, "Noscitur a sociis," is applicable 36 Cyc. 1118. "Right of action" is one thing; "cause of action" is another. Right of action pertains to remedy and relief through judicial procedure. Cause of action is based on the substantive law of legal liability. 1 Am. & Eng. Ency. of Law & Prac. 1038; 1 R. C. L. 313; Pomeroy's Remedies, §§346-353; 1 Cyc. 642. Elliott v. C. M. & St. P. Ry. Co., (So. Dak., 1915), 150 N. W. 777, 779.

(r) Where a shipment is an interstate shipment, the validity of the contract made between the shipper and the carrier in case of loss is therefore, under the decisions of the Supreme Court of the United States, a federal question, to be determined under the general common law, and is not within the field of state law or regulation. American Brake Shoe & F. Co. v. Pere Marquette R. Co., 223 Fed. 1018, 1020.

(s) It is contended for defendant that the liability of the initial carrier for loss occurring while the shipment is in charge of the connecting carrier is not the same as the liability of the initial carrier for loss while the shipment is in its charge and is not the common-law liability of a carrier. In support thereof counsel refers to that portion of section 20 of the Act to Regulate Commerce commonly called the Carmack amendment, which reads as follows "Any common-carrier * * * shall be liable to the lawful holder thereof for any loss, damage or injury to such property caused by it or by any common carrier, railroad or transportation company to which such property may be delivered or over whose lines such property may pass." Defendant's position is that the words "caused by it" appearing in the quotation impose upon the shipper the burden of established that the loss was in fact caused by the carrier, and reliance is placed

upon the case of Adams Express Co. v. Croninger, 226 U. S. 491, 33 Sup. Ct. 148, 57 L. ed. 314, 44 L. R. A. (N. S.) 257. The United States Supreme Court, in the case of Cincinnati, New Orleans & Tex. Pac. Ry. Co. v. Rankin, 241 U. S. 319, 36 Sup. Ct. 555, 60 L. ed. 1022, decided May 22, 1916, after referring to the case of Adams Express Co. v. Croninger, passing upon the words "caused by it," as they appear in section 20 of the Interstate Commerce Act, says: "Properly understood, neither this nor any other of our opinions holds that this amendment has changed the common-law doctrine heretofore approved by us in respect to the carrier's liability for loss occurring on its own line." The trial court properly concluded that the Carmack amendment to the twentieth section of the Act to Regulate Commerce did not change the common-law rule or restrict the liability of the carrier. The amendment merely imposed a liability upon the initial carrier for a loss occurring on the line of the connecting carrier. It was not intended to restrict, nor did it limit, the liability of any carrier. Chicago & E. I. R. Co. v. Collins Produce Co., 235 Fed. 857.

(t) The Carmack Amendment, providing that a carrier receiving property for interstate transportation shall be liable for "any loss, damage or injury to such property caused by it," is not a limitation of the carrier's pre-existing common-law liability. John Lysaght v. Lehigh Valley R. R., 254 Fed. 351.

(u) By the Carmack Amendment, Congress superseded the diverse and conflicting rules of the states and prescribed one uniform rule as to the right of a carrier of an interstate shipment to limit its liability for loss or damage. Adams Express Co. v. Croninger, 33 Sup. Ct. 148, 152; 226 U. S. 491.

(v) The provisions of the Carmack amendment relating to the exemption of liability manifests the purpose of Congress to bring contracts for interstate shipments under one uniform rule or law, and therefore withdraws them from the influence of state regulation. Kansas City S. R. Co. v. Carl, 33 Sup. Ct. 391, 394; 227 U. S. 639.

(w) The Carmack amendment, making the initial carrier liable for loss or damage occurring on the line of the connecting carrier, applies where the shipper routes the shipment over a connecting line which the initial carrier would not have selected and with which it has no arrangement for through rates and joint rates. N. & W. Ry. Co. v. Dixie Tobacco Co., 33 Sup. Ct. 609, 610; 228 U. S. 593.

(x) Since the Act to Regulate Commerce and its amendments have gone into effect, cases for loss or damage must be decided in view of the provisions of the commerce act and its requirement that the carrier shall file its tariffs and rates, which shall be open to inspection, and shall prescribe rates applicable to all shippers alike, thus to effect one of the main purposes of the law often declared by this court, to require like treatment of all shippers and the charging of uniform rates equally applicable to all under like circumstances. Pierce Co. v. Wells, Fargo & Co., 35 Sup. Ct. Rep. 351, 353, 236 U. S. 278, 59 L. ed.

(y) Interstate shipments come under the domain of congressional legislation. As a matter of fact, Congress has now legislated on so many phases of the law of interstate shipments that it may be said that, generally speaking, the power of the state with respect to such shipments is totally at an end. Where, therefore, a bill of lading is issued it must be interpreted in the light of the federal legislation. Northern Pacific Ry. Co. v. Wall, 36 Sup. Ct. 493, 495, 241 U. S. 87, 60 L. ed. 905. Cleveland C. P. & St. L. Ry. Co. v. Dettlebach, 239 U. S. 588, 593, 36 Sup. Ct. 177, 60 L. ed. 453.

(z) Damages for the loss of the market because of unreasonable delay in transportation occurring anywhere en route are comprehended by the provision of the Carmack amendment. New York, P. & N. R. Co. v. Peninsula Produce Exch., 36 Sup. Ct. 230; 240 U. S. 34, 60 L. ed. 511.

(aabb) The measure of the carrier's liability as warehouseman under a bill of lading for an interstate shipment, pursuant to the Interstate Commerce Act, which, in accordance with the carrier's published regulations, provided that every service to be performed under it should be subject to the conditions specified, among which was an express condition governing the carriers responsibility as warehouseman for property not removed within forty-eight hours after notice of arrival—is not to be tested by the exceptional rule of the local law, placing the burden upon a warehouseman, in case of loss by fire, to

show that it was not negligent. Southern R. C. v. Prescott, 36 Sup. Ct. 469, 470; 240 U. S. 632, 60 L. ed. 836.

(cc) The liability of a carrier which holds goods as a warehouseman for loss by fire is not governed by the state law but by federal law. Southern R. Co. v. Prescott, 36 Sup. Ct. 469, 473; 240 U. S. 632, 60 L. ed. 836.

(ddee) The arrival of an interstate shipment at destination, the payment of the freight by the consignee, his signature to a receipt for the shipment, and his removal of a part thereof, leaving the rest, with the carrier's permissioin, to await his convenience in removal, did not discharge the carrier's liability under the bill of lading issued pursuant to the Act, nor create a new obligation as warehouseman, governed by the local law, which casts upon the warehouseman, in case of loss by fire, the burden of showing that it was not negligent, where a bill of lading in accordance with the published regulations, provided that every service to be performed under it should be subject to the conditions specified, among which was an express condition governing the carrier's responsibility as warehouseman for property not removed within forty-eight hours after notice of arrival. Southern R. Co. v. Prescott, 36 Sup. Ct. 569, 470; 240 L. ed. 836.

(ff) The laws in force at the time and place of the making of a contract, and which affect its validity, performance, and enforcement, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. Van Hoffman v. Quincy, 4 Wall. 535, 550, 18 L. ed. 408, 409; Walker v. Whitehead, 16 Wall. 314, 317, 21 L. ed. 357, 358; Edwards v. Kearzey, 96 U. S. 595, 601, 24 L. ed. 793, 796. A bill of lading is a contract and within this rule. The Carmack amendment to the Interstate Commerce Act, directs a carrier receiving property for interstate transportation to issue a through bill of lading therefor, although the place of destination is on the line of another carrier; subjects the receiving carrier to liability for any injury to the property caused by it or any other carrier in the course of the transportation and requires a connecting carrier on whose line the property is injured to reimburse the receiving carrier where the latter is made to pay for such injury. Thus under the operation of the amendment, the connecting carrier becomes the agent of the receiving carrier for the purpose of completing the transportation and delivering the property Atlantic Coast Line R. Co. v. Riverside Mills, 219 U. S. 186, 196, 206, 55 L. ed. 167, 178, 182, 31 L. R. A. (N. S.) 7, 31 Sup. Ct. Rep. 164; Galveston, H. & S. A. R. Co. v. Wallace, 223 U. S. 481, 491, 56 L. ed. 516, 523 32 Sup. Ct. Rep. 205. This bill of lading was issued under that statute and should be interpreted in the light of it. Cleveland, C. C. & St. L. R. Co. v. Dettlebach, 239 U. S. 588, 593, ante, 177, 36 Sup. Ct. Rep. 177. Northern Pac. Ry. Co. v. Wall., 36 Sup. Ct. 493, 495, 241 U. S. 87, 60 L. ed .905.

(gg) The rights and liabilities of the parties to an interstate shipment depend upon federal legislation, the bill of lading, and common-law rules as accepted and applied in federal tribunals. Cincinnati, N. O. & T. P. Ry. Co. v. Rankin 36 Sup. Ct. 555, 241 U. S. 319, 60 L. ed. 1022.

(hh) The Carmack amendment does not apply to any cause of action arising long before its passage. Missouri, K. & T. Ry. v. Sealy, 39 Sup. Ct. 97.

(ii) The value of a hog expressed to Alabama from an adjoining state having been agreed on and rate fixed according to value, the Second Cummins Amendment specifically provides that a special contract may not be made releasing the carrier from any common-law duties or restricting the valuation, and this leaves the carrier as an insurer, charged in a suit for its death from overheat and lack of water, with the burden of showing that it properly fed, watered and cared for the hog while in its custody, though it was in transit less than the time limit fixed by the Federal law at which a penalty is fixed for failure to water. American Ry. Express Co. v. Duunaway & Lambert, (Ala., 1921), 88 Sou. 60.

(jj) And this Amendment does not apply to a shipment to a foreign country and the Cummins Act, extending the liability, does not apply to such a shipment before its enactment. McCaslin v. Southern Pac. Co., (Calif. 1922), 203 Pac. 742.

(kk) Under the first Cummins Amendment to the Interstate Commerce Act making carriers liable for the full actual loss or damage notwithstanding any limitation or liability or of the amount of recovery or agreement as to value, and the second Cummins Amend-

ment providing that the foregoing provision shall not apply to property concerning which the carrier shall be expressly authorized or required by the interstate commerce commission to maintain rates dependent on declared value in which case the declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the declared value, a provision in the bill of lading that the amount of loss or damage shall be computed on the basis of the value at the place and time of shipment does not apply when the value at the time and place at which the goods should have been delivered is less than the value at the place and time of shipment. Crutchfield and Woolfolk v. Hines, Director General of Railroads, (Mass. 1921) 131 N. E. 340.

(ll) A clause in a bill of lading for an interstate shipment of hogs limiting liability for loss in transit to their value at the time and place of shipment being void as violating the Cummins Amendment. The amount of recovery is governed by the common-law rule, viz. the value of the hogs at the point of destination when they should have been delivered. Davis v. Hunter, (Ind. 1923), 138 N. E. 785.

(mm) The Cummins Amendment does not apply to a shipment from San Salvador transhipped at the Panama Canal and transported to Hoboken, N. J., where the shipment while on the pier is confused with another shipment resulting in a misdelivery. South & Central American Commercial Co. Inc. v. Panama R. Co., (New York, 1923), 142 N. E. 666.

(nn) This Law prohibits a limitation of liability except where its provisions are followed, and an express company to show valid limitation of liability must bring itself within these provisions and amendments thereof by showing that it was expressly required or authorized by the Interstate Commerce Commission to maintain rates dependent on value, and that the value of the property was declared in writing by shipper. Kristianson v. American Ry. Express Co. (S. C. 1921), 151 S. E. 899.

(oo) The express provision of the Cummins Amendment to the Interstate Commerce Act that an interstate carrier shall be liable for the full actual loss, damage or injury to property caused by it, notwithstanding any limitation of liability or limitation of the amount of recovery, and that any limitation of liability is unlawful and void, cannot be defeated by construction based on the convenience of the clause, nor on any argument based upon the history of the statute, or of the Carmack Amendment (Comp. St. §§ 8604a, 8604aa), nor on the policy of the later Cummins Amendment (Comp. St. §8604a). Adams Express Co. v. Darden, 286 Fed. 61.

ALL OTHER CITATIONS

L. & N. R. R. Co. v. Warfield, 6 Ga. App. 550, 553, 65 S. E. 308; S. P. Co. v. Crenshaw, 5 Ga. App. 675, 685, 63 S. E. 865; McElvain v. Railroad, 151 Mo. App. 126, 153 S. W. 736; Hirsch v. New England Nav. Co., 129 App. Div. 178, 181, 113 N. Y. Sup. 395; Houston E. & W. Tex. Ry. Co. v. Inman (Tex. 1911), 134 S. W. 275, 277; S. P. Co. v. Meadors & Co. (Tex. 1910), 129 S. W. 170, 173; Baltimore C. & A. Ry. Co. v. Sperber & Co. (Md. 1913), 84-A, 72, 73; St. L. & S. F. R. R. Co. v. Zickafoose (Okla. 1913), 135 P. 406; Watt v. M. K. & T. Ry. Co., 135 P. 600; St. L. & S. F. R. R. Co. v. Woodruff Mills (Miss. 1913), 62 So. 171, 172; Varnville Furniture Co. v. Charleston & N. C. Ry. Co. (S. C. 1913), 79 S. E. 700, 708; C. R. I. & P. Ry. Co. v. Scott (Tex. 1912), 156 S. W. 294, 297; C. R. I. & P. Ry. Co. v. Linger (Tex. 1913), 156 S. W. 298; A. T. & S. F. Ry. Co. v. Ward, (Tex. 1913), 159 S. W. 375, 379; Ford v. C. R. I. & P. Ry. Co. (Minn. 1913), 143 N. W. 249; A. C. L. Ry. Co. v. Thomasville Live Stock Co. (Ga. 1913), 78 S. E. 1019, 1022; McConnell v. N. Y. Cent. & H. Ry. Co. (N. C. 1913), 79 S. E. 974, 976; A. T. & S. F. Ry. Co. v. Ward (Tex. Civ. App. 1913), 159 S. W. 375, 379, 380; McElvain v. St. L. & S. F. Ry. Co. (Mo. App. 1913), 158 S. W. 464, 466; Pacific Exp. Co. v. Krower (Tex. 1914), 163 S. W. 9, 10; L. & N. Ry. Co. v. Miller (Ky. 1914), 162 S. W. 73, 74; Barstow v. N. Y., N. H. & H. R. R. Co., 143 N. Y., Sup. 983, 990; Duvall v. L. W. R. R. Co. (La. 1914), 65 So. 104, 105; C. of G. Ry. Co. v. Curtis (Ga. App. 1914), 82 S. E. 318; C. R. I. & P. Ry. Co. v. Beatty (Okla. 1914), 141 Pac. 442; Morrison Grain Co. v. M. P. Ry. Co. (Mo. 1914), 170 S. W. 404, 407; Wichita & W. Ry. Co. of Tex. v. Asher (Tex. 1915), 171 S. W. 114, 1118, 1119; Spada v. Pennsylvania R. Co. (N. J.), 92 Atl. 379, 380, 381; Hunt v. St. L. I. M. & S. Ry. Co. (Mo. 1915), 173 S. W. 61, 62; K. C. & M. Ry. Co. v. Oakley (Ark.), 170

S. W. 565, 566; A. T. & S. F. Ry. Co. v. Boyce (Tex.) 171 S. W. 1094, 1097; Burke v. Gulf, C. & S. F. Ry. Co. (Mun. Ct., N. Y.), 147 N. Y. Supp. 794; Houston, E. & W. T. Ry. Co. v. Inman et al (Tex. Civ. App.), 134 S. W. 275; Best v. Great Northern Ry. Co. (Wis. 1915), 150 N. W. 484, 485; Galveston Ry. Co. v. Piper, 52 Tex. Civ. App. 568, 115 S. W. 107; Otrich v. Ry. Co., 154 Mo. App. 420, 134 S. W. 665; McMillan v. C. R. I. & P. Ry. Co. and G. N. Ry., 147 Iowa, 596, 124 N. W. 1069; Tradewell v. C. & N. W. Ry., 150 Wis. 259, 136 N. W. 794; Storm Lake Tub & Tank F. v. M. & St. L. Ry. (D. C.) 209 Fed. 895; Uber v. C. M. & St. P. Ry., 151 Wis. 431, 138 N. W. 57; Elliott v. C. M. & St. P. Ry. Co. (So. Dak 1915), 150 N. W. 777, 779; Bichlmeir v. Minneapolis, St. P. & S. S. Ry. Co. (Wis. 1915), 150 N. W. 508, 509; W. H. Mitchell & Co. v. A. C. L. R. Co. (Ga. 1915), 84 S. E. 227; Armstrong v. I. C. R. Co. (Ky. 1915), 172 S. W. 947, 948; Adams Express Co. v. Cook (Ky. 1915), 172 S. W. 1097; Dunlap v. Chicago & A. Ry. Co. (Mo. 1915), 172 S. W. 1178, 1179; San Antonio & A. P. Ry. Co. v. Bracht (Tex. 1915), 172 S. W. 1116; Gulf C. & S. F. Ry. Co. v. Vasbinder (Tex. 1915), 172 S. W. 763, 765; Wien v. N. Y. C. & H. R. R. Co. 152 N. Y. Supp., 154, 156, 158, 159; Henry v. C. M. & St. P. Ry. Co. (Wash. 1915), 147 Pac. 425, 430; Adam's Express Co. v. Croninger, 226 U. S. 491, 33 Sup. Ct. 148, 57 L. ed. 314, 44 L. R. A. (N. S.), 257; Kansas City Southern Ry. Co. v. Carl, 227 U. S. 639, 33 Sup. Ct. 391, 57 L. ed. 683; Galveston, H. & S. Ry. Co. v. Wallace, 223 U. S. 481, 32 Sup. Ct. 205, 56 L. ed. 516; Atlantic Coast Line Ry. v. Riverside Mills, 219 U. S. 186, 31 Sup. Ct. 164, 55 L. ed. 167, 31 L. R. A. (N. S.), 7; Becker v. Pa. Ry. Co., 109 App. Div. 230, 96 N. Y. Supp., 1; Earnest v. D. I. & W. R. Co. 149 App. Div. 330, 134 N. Y. Supp., 323; Coovert v. Spokane, P. & S. Ry. Co., 80 Wash. 87, 141 Pac. 324; Norfolk & W. R. Co. v. Stuart Draft Co., 109 Va. 184, 63 S. E. 415; Lynch v. N. Y. C. & H. R. R. Co., 153 N. Y. S. 633, 636; Stevens & Russell v. St. Louis Southwestern Ry. Co., (Texas 1915), 178 S. W. 810, 813; Karr v. Baltimore & O. R. Co. (W. Va. 1915), 86 S. E. 43; The Cummins Amendment, 33 I. C. C. 682, 683, 684, 687, 688, 692, 693; Larkin Co. v. E. & W. Transp. Co., 34 I. C. C. 106, 108, 109; St. Louis & S. F. R. Co. v. Wynn (Okla 1915), 153 Pac. 1156, 1157; Missouri O. & G. Co. v. French (Okla. 1915), 152 Pac. 591, 593; Fitch, Cornell & Co. v. Atchison, T. & S. F. Ry. Co., 155 N. Y. Sup., 1079, 1081; Kent v. Chicago, B. & Q. R. Co., (Mo. 1915), 176 S. W. 1105, 1106, 1107; Standard Combed Thread Co. v. Pennsylvania R. Co., (N. J. 1915), 95 Atl. 1002; Southern R. Co. v. Bynum, (Ala. 1915), 69 Southern 820, 821; Conley v. Chicago, B. & Q. R. Co. (Mo. 1916), 183 S. W. 1111; Stubblefield v. St. Louis & S. F. R. Co. (Mo. 1916), 184 S. W. 149; Olivit Bros. v. Pennsylvania R. Co. (N. J. 1916), 96 Atl. 582; Bowles v. Quincy O. & K. C. R. Co. (Mo. 1916), 187 S. W. 131; Davis v. Norfolk & S. R. R. (N. C. 1916), 90 S. E. R. 123, 124; St. Louis & S. F. R. Co. v. Akard (Okla. 1916), 159 Pac. 344; So. Ry. Co. v. Bennett (Ga. 1915), 86 S. E. 418; Atchison T. & S. Fe Ry. Co. v. Bement (Tex. 1916), 189 S. W. 70; Betka v. Houston & T. C. R. R. (Tex. 1916), 189 S. W. 532; Aldrich v. Atlantic Coast Line R. Co. (S. C. 1916), 89 S. E. R. 315; Atchison, T. & S. F. Ry. Co. v. Smyth (Tex. 1916), 189 S. W. 70; Van Epps v. Atlantic Coast Line R. Co. (S. C. 1916), 89 S. E. 1035; Brouch Grain Co. Case, 41 I. C. C. 717; Meyers v. Cleveland C. C. & St. L. Ry. 171 N. Y. S. 71; Nashville C. & St. L. Ry. v. Camper (Ala. 1918), 78 So. 925; Charleston & W. C. Co. v. Varnville Furniture Co., 237 U. S. 597, 35 Sup. Ct. 715, 59 L. ed. 1137, Ann. Cas. 1916D, 333; Boston & M. R. R. v. Hooker, 233 U. S. 97, 34 Sup. Ct. 526, 58 L. ed. 868, L. R. A. 1915B, 540, Ann. Cas. 1915D, 593; Great Northern R. Co. v. O'Connor, 232 U. S. 508, 34 Sup. Ct. 380, 58 L. ed. 703; Missouri, K. & T. R. Co. v. Harriman, 227 U. S. 657, 33 Sup. Ct. 397, 57 L. ed. 690; Kansas City Southern R. Co. v. Carl, 227 U. S. 639, 33 Sup. Ct. 391, 57 L. ed. 683; Atlantic C. L. v. Sandlin (Fla. 1918), 78 So. 667, 669; Florida East Coast Ry. v. Chesser, (Fla. 1919), 80 So. 750; Florida East Coast Ry. v. Davis, 76 Fla. —, 79 So. 637; Babbitt v. Grand Trunck Western Ry. (Ill. 1918), 120 N. E. 803; Berry v. Chicago & A. R. Co. (Mo. 1919), 208 S. W. 622; Hadba v. Baltimore & O. R. R. 170 N. Y. S. 769; Mann v. Fairfield & E. C. Transp. Co. (N. C. 1918), 96 S. E. 731; Tribble v. Southern Express Co. (S. C. 1918), 96 S. E. 712. Clark v. Southern Ry. Co. (Ind. 1918), 119 N. E. 539; Hance

Bros. Co. v. American Ry. Express Co., 190 N. Y. S. 530; U. S. Industrial Alcohol Co. v. Director General, as Agent, 68 I. C. C. 389, 391; North Packing & Provision Co. v. C. M. & St. P. Ry. Co. 69 I. C. C. 235, 241; McCaslin v. Southern Pac. Co. (Calif. 1922), 203 Pac. 742, 744; New England Fruit & Produce Co. v. Hines, Director General, of Railroads, (Conn. 1922), 116, Atl. 243; American Ry. Express Co. v. Danial (Ga. 1923), 116, S. E. 660; Henderson v. Kansas City Southern Ry. Co., (La. 1920), 85 So. 625; American Ry Express Co. v. Galt (Miss. 1922), 90 So. 597; Bernie Mill & Gin Co. v. St. Louis Southwestern Ry. Co., et al (Mo. 1921), 228, S. W. 847; Bragg v. Payne, Agent, (Mo. 1921), 235 S. W. 148; Durnford v. Chicago, B. & Q. R. Co., (Mo. 1923), 246 S. W. 973; Letner v. Missouri Pac. R. Co., (Mo. 1923), 249 S. W. 155; M. V. Moore & Co. v. Southern Ry. Co. (N. C. 1922), 111 S. E. 166; Ostroff v. Hustis (N. H. 1921), 114, Atl. 27; Kristianson v. American Ry Express Co. (S. C. 1921), 115 S. E. 899; Cleburne K. & T. Rv. Co. of Texas, (Tex. 1920), 221 S. W. 270, 271; City National Bank of El Paso & N. E. Ry. Co. et al. (Tex. 1925), 225, S. W. 391; Mexico Northwestern Ry. Co. v. Williams (Tex. 1921), 229 S. W. 476; C. & S. Ry. Co. v. Hines, (Texas 1922), 239 S. W. 244; Fort Worth & R. G. Ry. Co. v. Burns (Tex. 1922), 242, S. W. 295; Loncaster v. McCarthy (Tex. 1923), 248 S. W. 816; Linderberg v. American Railway Express Co. (W. Va. 1921), 106 S. E. 884; Chaimson v. American Ry. Express Co. (Wisc. 1922), 189 N. W. 529; Simmons Hardware Co. v. Southern Ry. 279 Fed. 929; Adams Express Co. v. Dardon 286 Fed. 61; Grand Trunk Ry. Co., of Canada v. Satuloff et al. (Sup. Ct. 1920), 182 N. Y. S. 81; Schlitten v. Hines, Director General, 186 N. Y. C. 831; Remington v. Barrett, 188 N. Y. C. 174; Lissberger v. Bush Terminal R. Co., 197 N. Y. S. 281, 283; Bragg v. Taylor, 199 N. Y. S. 156.

§2¼. Construction of bill of lading. See Bill of Lading.

IMPORTANT CASES SINCE 1908

(a) Bills of lading act, 39 Stat L., 538, authorizes common carriers to insert in bills of lading words "shipper's weight, load and count," or other words of like import, to indicate that goods were loaded by shipper and description made by him; and if such notation be true carrier is absolved from liability for damage caused by improper loading, or by nonreceipt or misdescription of goods. San Francisco Dairy Produce Exch. v. Am. Ry. Exp. Co., 78 I. C. C. 737, 739.

(b) In view of the uniform bill of lading prescribed by the Interstate Commerce Commission, all interstate shipments are deemed to be under the rights and liabilities thereof. New England Fruit & Produce Co. v. Hines Director General of Railroads Conn. 1922) 116 Atl. 243.

(c) Where a carrier maintains two rates, one which applies when the shipment is made at unlimited liability and the other which applies when the uniform bill of lading is issued, an amendment to the bill of lading carried in the tariffs of the carrier, but which is only referred to by a rider pasted on the bill of lading actually used, becomes part of the contract of shipment when the rate paid is that which applies, if the uniform bill of lading is used. Thomas Canning Co. v. So. Pack. Co., (Mich. 1922) 189 N. W. 210, 212.

(d) Under the Federal Bills of Lading Act, where a carrier loads package freight, like cotton in bales, it is required to state in the bill of lading only the number of packages and such marks or description as will serve to identify them, and a further statement in an order bill for baled cotton of the weight of the shipment is voluntary and gratuitious, and where qualified by the words "subject to correction" does not render the carrier liable to a holder of the bill, under section 22, for a shortage in the weight. Lehigh, Ellis & Co. v. Payne Agt. 274, Fed. 443.

(e) Where an interstate carrier had on file two tariffs, one for shipments under the uniform bill of lading, and the other fixing a 10 per cent higher rate for shipments subject to the carrier's common-law and statutory liability, a shipment of imported goods on which the freight was charged at the former rate was subject to the uniform bill of lading provisions, though no bill of lading was in fact issued. New York Cent. R. Co. v. Lazarus, 278 Fed. 900.

ALL OTHER CITATIONS

Cudahy Packing Co. v. Bixby (Mo. 1918), 205 N. W. 365; Humphery-Cornell Co. v. Hines, Director General (Conn. 1921), 115 Atl. 561; England Fruit and Produce Co. v. Hines Director General of Railroads, (Conn. 1922) 116 Atl. 243; Thos. Canning Co. v. Southern

Pac. Co. (Mich. 1922) 189 N. W. 210, 212; H. Ginsberg & Sons v. Wabash R. Co. (Mich. 1922), 189 N. W. 1020; Kem-Per Mill & Elevator Co. v. Hines, (Mo. 1922), 239 S. W. 803; F. L. Shaw Co. v. Coleman (Tex. 1922), 236, S. W. 178; Del Signore v. Payne, Director General, (W. Va. 1921), 109 S. E. 232; Northern Milling Co. v. Davis, (Wisc., 1922), 190 N. W. 351; Leigh Ellis & Co. v. Payne, Agent 274 Fed. 443; New York Central R. Co. v. Lazarus, 278 Fed. 900; George F. Hinrichs, Inc. v. Standard Trust & Savings Bank, 279 Fed. 382; Cereal Products Co. v. Delaware, L. & W. R. Co. 190 N. Y. S. 698; Swift v. Davis, 193 N. Y. C. 848.

§2¼a. Bill of Lading Act.

IMPORTANT CASES SINCE 1908

(a) Under the Federal Bills of Lading Act, § 9, providing that delivery is justified to a person in possession of an order bill by the terms of which the goods are delivered to his order, or which has been indorsed to him, the act of the terminal carrier, after a shipment reached its destination, in striking out the original destination and substituting another, and delivering the shipment to another railroad for transportation to such new destination, on request of the party holding the bill of lading, constituted in legal contemplation a "delivery." Pere Marquette Ry. Co. v. J. F. French & Co., 41 Sup. Ct. 195.

(b) Under the Federal Bills of Lading Act, § 9, delivery to the person holding an order bill of lading properly indorsed is justified, regardless of the capacity in which he holds possession of the bill, or whether he holds it lawfully or unlawfully, so long as the carrier has no notice of any infirmity of title. Pere Marquette Ry. Co. v. J. F. French & Co., 41 Sup. Ct. 195.

(c) Under the Federal Bills of Lading Act, § 11, making a carrier delivering goods without taking up and canceling the order bill of lading liable to purchasers of the bill of lading in good faith, where a bank, to which a draft was sent for collection accompanied by an order bill of lading, delivered the bill without payment of the draft, and the buyers obtained delivery from the carrier without surrendering the bill, refused the goods, and returned the bill of lading, the shippers who took back the draft and bill of lading from the bank to which they had sold them, with knowledge of the facts, were not bona fide purchasers. Pere Marquette Ry. Co. v. J. F. French & Co., 41 Sup. Ct. 195

ALL OTHER CITATIONS

First National Bank of Ripley, Tenn. v. Echula Commercial Co., (Miss. 1923), 95 So. 742; Banik v. Chicago M. & St. P. Ry. Co., (Minn. 1920), 179 N. W. 899.

§2½. The Cummins amendment.

See Bills of Lading IV: Cars and Car Supply VII; Export Rates and Facilities § 4; Released Rates.

IMPORTANT CASES SINCE 1908

(a) The Cummins amendment removed the effect of the Croninger Case, 226 U. S. 491, in states where contracts of limited liability had been held void and increased the liability of carriers in states where limitations on amount of the recovery had been held valid. National Society of Record Assos. v. A. & R. R. R. Co., 40 I. C. C. 347, 352.

(b) The purpose of the amendment of August 9, 1916, as stated in the report of the Senate Committee on Interstate Commerce, was "to restore the law of full liability as it existed prior to the Carmack Amendment of 1906, so that when property is lost or damaged in the course of transportation under such circumstances as to make the carrier liable recovery is had for full value or on the basis of full value." It is clearly the purpose of the Cummins Amendment, as amended, to invalidate all limitations of liability for loss, damage or injury to ordinary live stock caused by the initial carrier to which shipment may be delivered or which may participate in transporting it, notwithstanding any representation or agreement or release as to value. Express Rates, Practices, Accounts and Revenues, 43 I. C. C. 510, 513.

(c) The Act, as amended, fixes upon the carrier liability for the full actual loss, damage, or injury caused by it to ordinary live stock and invalidates any limitation or attempted limitation of that liability, wherever or in whatever form it is found. Released Rates, 43 I. C. C. 510, 513.

(d) The Act, as amended, fixes upon the carrier liability for the full actual loss, damage, or injury caused by it to ordinary live stock and invalidates any limitation of that liability, wherever or in whatever form it is found. Ordinary

live stock is excepted from the property as to which the Commission is empowered to authorize or require the establishment of rates dependent upon declared or released value. If rates on ordinary live stock dependent upon declared value could lawfully be maintained without authorization by the Commission, there might and probably would be instances in which conflict would arise as between the liability imposed by the Act upon the carrier and the prohibitions of section 10 of the Act affecting shippers. The Commission can not, in view of the provisions of the law, authorize or sanction such rates upon ordinary live stock; neither can they lawfully be maintained upon any other character of traffic except under authorization duly granted by the Commission. Under such authority both shipper and carrier are fully protected and the full spirit of the law is observed. The shipper or lawful holder of the receipt or bill of lading for ordinary live stock should be free to press his claim for recovery in full for loss, damage, or injury caused by the carrier, and rates for the transportation of such live stock may not be stated in a manner to require a representation of the value. This is not saying that value may not be considered and duly weighed as an element in determining what reasonable rates shall be established. Express Rates, Practices, Accounts and Revenues, 43 I. C. C. 510, 513, 514.

(e) A tariff provision, which seeks to limit carriers' liability for loss or damage due to cold or heat, not the direct result of the negligence of the carrier, not found to be in violation of the Cummins Amendment to section 20 of the Act. Northern Potato Traffic Association v. C. & A. R. R., 44 I. C. C. 426, 437.

(f) While limitations in bills of lading must be strictly adhered to and may not lawfully be waived, the provisions of the Cummins amendment do not evidence any intent on the part of Congress to erect a statute of limitations barring the payment of seasonably filed claims after any given period. Decker & Sons v. Director General, 55 I. C. C. 453, 458.

(g) The Cummins Amendment does not apply to transportation from a point in the United States to a point in a nonadjacent foreign country. In the Matter of Bills of Lading, 64 I. C. C. 347, 354.

(h) Section 20 of the Act refers only to transportation from any point in the United States to a point in an adjacent foreign country. Waco Chamber of Commerce v. Director General, 73 I. C. C. 708, 709.

(i) The Cummins Amendment which abrogates the right of a carrier to limit liability does not affect causes of actions which arose prior to its enactment. Southern Ry. Co. v. Bynum, (Ala., 1915) 69 Southern, 820, 821.

(j) A live stock contract made prior to the Cummins amendment is not covered by that statute. Hudson v. Chicago St. P. M. & O. Ry. Co., 226 Fed. 38, 44.

ALL OTHER CITATIONS

The Cummins Amendment, 33 I. C. C. 682, 683, 687, 692, 693, 694, 695, 696, 697; Iowa R. R. Commrs. v. A. T. & S. F. Ry. Co., 36 I. C. C. 79; Live Stock Classification, 47 I. C. C. 333, 344; Williams Co. v. H. & N. Y. T. Co., 48 I. C. C. 269, 273; Heated Car Service Regulations, 50 I. C. C. 620, 624; Bills of Lading, 52 I. C. C. 671, 678; Northern Potato Traffic Asso. v. C. & N. W. Ry. Co., 53 I. C. C. 100, 101; Winget v. Grand Trunk Western Ry. (Mich., 1920) 177 N. W. 273; National Industrial Traffic League v. A. & R., 61 I. C. C. 120, 124.

§3. Effect of State Legislation.

See State Rates and Regulations.

CASES 1887-1908

(a) A statute forbidding common carriers within the state, on land or in boats or vessels on the waters entirely within the body of the state, to limit or restrict their liability as it exists at common law, applies to shipments, purely domestic beginning and ending in the state. Missouri P. R. Co. v. Sherwood (Tex.), 4 I. C. R. 240.

(b) A state statute prohibiting carriers from limiting their liability for loss by fire cannot be made to apply to property being transported under a bill of sale from a point in one state to a point in another state, both foreign to the state enacting the statute, although the carrier's charter was granted by such state and the point where the loss occurs is actually within its boundaries. Thomas v. Wabash St. L. & P. R. Co., (C. C. S. D. Ill.) 4 I. C. R. 802.

(c) Act March 4, 1891, making it unlawful to make any contract limiting the period in which suit may be brought to less than two years, and prescribing

that no period of less than ninety days shall be required in which to give notice of damages, is not void as an interference with interstate commerce, although it may affect contracts for interstate shipments. Armstrong v. Galveston, H. & S. A. R. Co., 5 I. C. R. 247.

(d) Neither the common-law rule nor a state statute denying validity to a contract exempting a common carrier from liability can be regarded as a regulation of commerce, although applied to an interstate shipment. Solan v. Chicago, M. & St. P. R. Co., (Iowa) 5 I. C. R. 468.

(e) The prohibition of act March 4, 1891, against the entering into a contract limiting the time in which to sue to a shorter period than two years is binding in interstate as well as domestic shipments as it is not an attempt to regulate interstate commerce. Reeves v. Texas & Pacific R. Co., 5 I. C. R. 639.

(f) A state statute prohibiting a carrier from contracting for an exemption from the negligence of a connecting carrier, when the first carrier undertakes to transport property to a point beyond its own route, is not an unconstitutional regulation of commerce among the states. The court says the act in no way operates as a regulation of trade and business among the states; no burden or restriction on transportation is imposed. Carriers are left free to make their own contracts in regard to compensation for their services for transportation between the states subject to congressional regulations. The statute merely prohibits a carrier who by contract undertakes to transport property to a point beyond its own route from relieving itself of responsibility for neglect to properly perform its duty. It only imposes the duty and liability which the law from considerations of public policy imposes upon all common carriers in the transportation of property over their own lines, though they may extend into other states. McCann & Smitzer v. Eddy, et al, Receivers of Mo., Kan., & Tex. Ry. Co., 7 I. C. C. app. XXI.

(g) Railroad companies engaged in interstate commerce are subject to a state statute making railroad companies liable for injuries to employees on account of the negligence of others having control or direction of them, so long as Congress does not deal with that subject. The court says: Undoubtedly the whole subject of the liability of interstate railroad companies for the negligence of those in their service may be covered by national legislation enacted by Congress under its power to regulate commerce among the states. But as Congress has not dealt with that subject, it was competent for the state to declare than an employee of any railroad corporation doing business there, including those engaged in commerce among the states, should be deemed, in respect to his acts within that state, the superior, not the fellow servant, of other employees placed under his control. Peirce v. Van Dusen., 7 I. C. C. app. XCVIII.

(h) A state statute prohibiting contracts to exempt a railroad company from liability as a common carrier is not a regulation of commerce, or void as to interstate business. Chicago, Milwaukee & St. Paul Ry. Co., v. Solan, 8 I. C. C. app. VI.

(i) The statute of Virginia providing that when a common carrier accepts for transportation anything directed to a point of destination beyond its own lines he shall be deemed thereby to assume an obligation for its safe carriage to such point of destination, unless at the time of such acceptance such carrier be released or exempted from such liability by a contract in writing signed by the owner,—is not a regulation of interstate commerce, and not in conflict with the Constitution of the United States. The court said: It is manifest that the statute in question does not attempt to substantially regulate or control contracts as to interstate shipments, but simply establishes a rule of evidence ordaining the character of proof by which a carrier may show that, although it received goods for transportation beyond its own lines, nevertheless, by agreement, its liability was limited to its own line. That this is the sole purpose of the statute seems too plain for anything but statement. It leaves the carrier to make such limitations as to liability on an interstate shipment beyond its own line as it may deem proper, provided only the evidence of the contract is in writing and signed by the shipper. The distinction between a law which forbids a contract to be made, and one which simply requires the contract when mad to be embodied in a particular form, is as obvious as is the

difference between the sum of the obligations of a contract and the mere instrument by which their existence may be manifested. Richmond & Alleghany R. R. Co. v. Patterson Tobacco Co., 8 I. C. C. app. VII.

(j) The state may prohibit a carrier from limiting its common-law liability. Ohio & Miss. Ry. Co., 8 I. C. C. app. XXIII.

(k) The Missouri statute of 1889, making a railroad company issuing bills of lading for the transportation of property liable for damages to the property caused by the negligence of another railroad company over whose lines the property passes, does not curtail the power of the company to restrict its liability, by contract, to its own line, by a restriction in unambiguous terms put into the portion of its agreement reciting the contract to carry and such statute is not, as affecting interstate transportation, repugnant to the Federal Constitution. The court treats the case as involving the right of the state to legislate as to the mere form of contracts for interstate carriage within a decision in Richmond & A. R. Co. v. R. A. Patterson Tobacco Company, 169 U. S. 311, 42 L. ed. 759. Miss., Kans., & Texas Ry. Co. v. McCann & Smitzer, 8 I. C. C. app. LXXIX.

IMPORTANT CASES SINCE 1908

(l) Since the Railroad Commission Act of California has been modeled upon the Interstate Commerce Act, decisions of the Supreme Court of the United States, construing the Interstate Act will have persuasive authority. Southern Pac. Co. v. Superior Court, (Cal., 1915), 150 Pac., 397, 403.

(m) The Carmack amendment does not prevent the shipper from enforcing the liability created by the law of his state against a carrier for loss of goods in an interstate shipment. Latta v. C. St. P. M. & O. Ry. Co., 172 Fed. 850, 855.

(n) Until Congress has legislated upon the subject, the liability of a carrier exercising its calling within a particular state, although engaged in the business of interstate commerce, for loss or damage to an interstate shipment, may be regulated by the law of the state. Adams Express Co. v. Croninger, 33 Sup. Ct. 148, 149; 226 U. S. 491.

(o) The effect of the Carmack Amendment was to give to the Federal jurisdiction control over interstate commerce, and to make supreme the Federal legislation regulating liability for property transported by common carriers in interstate commerce. A. T. & S. F. Ry. Co. v. Robinson, 34 Sup. Ct. 556, 558, 233 U. S. 173, 58 L. ed.—.

(p) With respect to the specific effect of the Carmack Amendment, it has been held, in a series of recent cases, that the special regulations and policies of particular states on the subject of the carrier's liability for loss or damage to interstate shipments, and the contracts of carriers with respect thereto, have been superseded. M. K. & T. Ry. Co. v. Harris, 34 Sup. Ct. 790, 793; 234 U. S. —, 58 L. ed. —.

(q) A state statute allowing a reasonable attorney's fee of not over $20 to the successful plaintiff in an action in which an attorney is actually employed, to recover upon a claim not exceeding $200 not paid within 30 days after demand, for services rendered, material furnished stock killed or injured, or for overcharges on freight or express or for lost or damaged freight, is not void as conflicting with the Carmack Amendment; since such state statute neither enlarges nor limits the responsibility of the carrier for the loss of property intrusted to it, and only incidentally affects the remedy for enforcing that responsibility, imposes not a penalty but a compensatory allowance for the expense of employing an attorney, and, in fact and effect, merely authorizes a moderate increment of the recoverable costs of suit in the large class of cases within its scope, among which are only incidentally included claims for freight lost or damaged in interstate commerce. M. K. & T. Ry. Co. v. Harris, 34 Sup. Ct. 790, 793; 234 U. S. —; 58 L. ed. —.

(r) Congress has so far occupied the field of transportation that a state statute providing for a penalty of $50 against a terminal carrier for failure to pay promptly a claim for damages to an interstate shipment unless the carrier proves that the shipment never came into its possession or succeeds in shifting the blame for the loss within a prescribed period of 40 days, is unconstitutional. C. & W. C. R. Co. v. Varnville F. Co., 35 Sup. Ct. 715; 237 U. S. 597, 59 L. ed. 1137.

ALL OTHER CITATIONS

Schwartz v. Panama R. R. Co., 155

Cal. 742, 748, 103 P. 196; L. & N. R. R. Co. v. Warfield, 6 Ga. app. 550, 552, 65 S. E. 308; S. P. Co. v. Crenshaw, 5 Ga. App. 675, 689, 63 S. E. 856; Blair & Jackson v. Wells Fargo Co. (Ia., 1912), 135, N. W. 615, 620; Cramer v. C. R. I. & P. Ry. Co., (Ia., 1911), 133 N. W. 387, 390; Betus v. C. B. & Q. R. R. Co., (Ia., 1911), 29 N. W. 962, 963; McElvain v. Railroad, 151 Mo. App. 126, 155, 131 S. W. 736; A. T. & S. F. Ry. Co. v. Rodgers (N. M., 1911), 113 P. 805, 809; Kissinger v. Fitzgerald, 152 N. C. 247, 253, 67 S. E. 588; Wright v. Adams Express Co., 230 Pa. 635, 639, 79 A. 760; Meetze v. Southern Express Co. (S. C., 1912), 74 S. E. 823, 824; M. K. & T. Ry. Co. v. Walston (Okla., 1913), 133 P. 42; Wabash R. R. Co. v. Priddy (Ind., 1913), 101 N. E. 724, 729; Farnel v. F. E. C. Ry. Co. (Fla., 1913), 61 So. 194, 196; Hall v. F. E. C. Ry. Co. (Fla., 1913) 61 So. 197; St. L. & S. F. R. R. Co. v. Woodruff Mills (Miss., 1913), 62 So. 171, 172; Elliott v. A. C. L. R. R. Co. (S. C., 1912), 75 S. E. 886, 888; Pace Mule Co. v. S. A. L. Ry. Co., (N. C., 1912), 76 S. E. 513, 521; Harring v. A. C. L. R. R. Co. (N. C., 1912), 76 S. E. 527; Varnville Furniture Co. v. Charleston & N. C. Ry. Co., (S. C., 1913), 79 S. E. 700, 707; American Silver Mfg. Co. v. Wabash R. R. Co. (Mo., 1913), 156 S. W. 830, 832; Joseph v. C. B: & Q. R. R. Co. (Mo., 1913), 157 S. W. 837, 838; T. & P. Ry. Co. v. Sargbehn, 158 S. W. 244, 247; DuPre v. C. N. & L. Ry. Co. (S. C., 1913), 79 S. E. 310; Stukes v. Southern Express Co. (S. C., 1914), 80 S. E. 612; Hudgins v. I. & G. N. Ry. Co. (Tex. Civ. App., 1914), 162 S. W. 1016; S. Ry. Co. v. North Shore Cotton Co. (Miss., 1914), 64 So. 965; Spada v. Pennsylvania R. R. Co., (N. J., 1914), 92 Atl. 379, 380; Morphis v. Southern Express Co. (N. C., 1914), 83 S. E. 1; Bailey v. M. P. Ry. Co. (Mo., 1914), 171 S. W. 44, 45; Thomas Bros. v. St. L. & S. F. R. Co. (Mo., 1915), 173 S. W., 96, 99; Adams Express Co. v. Croninger, 226 U. S. 491, 33 Sup. Ct. 148, 57 L. ed. 314; 44 L. R. A. (N. S.), 257; Chicago, R. I. & P. Ry. Co. v. Bruce, (Okla., 1915), 150 Pac., 880; Cook v. Northern Pac. Ry. Co., (N. Dak., 1915), 155 N. W. 867; St. Louis & S. F. R. Co. v. Wood (Okla., 1915), 152 Pac. 848; Farmers' Elevator Co. v. Great Northern Ry. Co. (Minn., 1915), 154 N. W. 954, 957; Missouri, K. & T. Ry. Co. of Texas v. State (Tex., 1916), 181 S. W. 721; Blalock Hardware Co. v. Seaboard Air Line Ry. Co., (N. C., 1915), 86 S. E. 1025; Betka v. Houston & T. C. R. Co., (Tex., 1916), 189 S. W. 532; Missouri, K. & T. Ry. v. Sealy, 39 Sup. Ct. 97; Hadba v. Baltimore & O. R. Co., 170 N. Y. S. 769; Clark v. Southern R. Co., (Ind., 1918), 119 N. E. 539.

§4. Jurisdiction of Commission.

Se Reparation, §3.

CASES 1887-1908

(a) While the Act to regulate commerce contains no provision which expressly or by proper implication gives this Commission jurisdiction in cases merely showing delay or negligence in the receipt, forwarding or delivery of property offered for transportation, including the furnishing of cars, the regulating statute does prohibit any unjust discrimination or wrongful prejudice in the provision of cars or other transportation facilities, as well as in the fixing and application of transportation charges. Richmond Elevator Co. v. Pere Marquette R. Co. 10 I. C. C. 629.

IMPORTANT CASES SINCE 1908

(b) Charges on damaged cotton shipped in sacks from Greenville, Tex., to Galveston, Tex., held not within jurisdiction of Commission. Kempner v. M. K. & T. R. R. Co., 37 I. C. C. 396.

(c) The liability of common carriers for loss of or damage to shipments rests upon definite legal principles, and the enforcement of such liability is not within the jurisdiction of the Commission. This liability should be kept separate from the freight charges. Lost or Damaged Freight Replacements, 43 I. C. C. 257, 258.

(d) Complainant alleged that it had been damaged 7½c per bushel on 133 bu. of corn lost in transit because the carrier paid it only 82c per bushel for the corn lost instead of 89½c. HELD, that the Commission was without jurisdiction it being a matter for the courts. Complaint dismissed. Buss Co. v. N. Y. C. R. R., 45 I. C. C. 161.

(e) But the Commission is without jurisdiction to prescribe uniform liability clauses to be contained in leases or contracts for the construction, maintenance, and use of industrial or private side tracks, limiting liability for loss and damage caused by fire from locomotives operating over such tracks. National In-

dustrial Traffic League v. A. & R. R. R. Co., 61 I. C. C. 120.

(f) Contention that the commission is without jurisdiction to award damages for loss, damage, delay, or conversion of property, HELD Where there was clearly a violation of the act, and shipper elected to prosecute its claim before the commission it may award reparation for whatever damages resulted as a consequence of such unlawful act. Danzer & Co. v. G. & S. I. R. R. Co., 69 I. C. C. 59, 60, 61.

(g) Sale lost due to misrouting and shipment was sold at auction by carrier and proceeds applied in partial satisfaction of transportation charges. Reparation awarded in difference between fair market value of shipment at destination and freight charges. Danzer & Co. v. G. & S. I. R. R. Co., 69 I. C. C. 59, 61

(h) If a carrier is shown to have been negligent in failing to place shipments in public storage, the Commission has no jurisdiction to award damages resulting therefrom. Claims for such damages are cognizable by the courts. Huffman Bros. Motor Co. v. N. Y. C. R. R. Co., 74 I. C. C. 671, 672.

(i) Jurisdiction of commission does not extend to claims arising from anticipated delay of passenger trains. Hohlfelder v. D. & R. G. W. R. R. Co., 83 I. C. C. 587, 588.

(j) A consignee's claim against a carrier for the conversion of coal, which is dependent on the validity of a rule adopted by the company affecting the reconsignment rights of the consignee, was within the exclusive jurisdiction of the Interstate Commerce Commission under the Interstate Commerce Law, and the state circuit court had no jurisdiction of a counter-claim therefor. Waters v. Becker. (Wisc. 1921). 186 N. W. 167.

(k) Both the adjustment of rates upon the class of articles, based upon differences in valuation, as well as the acceptance of stipulations in the carrier's bill of lading which affect the liability declared by the Carmack amendment, are administrative duties of the Commission. Kansas City S. R. Co. v. Carl, 33 Sup. Ct. 391, 395; 227 U. S. 639.

(l) The Commission is without jurisdiction to award tort damages. Mattison v. P. Co., 23 I. C. C. 233, 235; Ralston Townsite Co. v. M. P. Ry. Co., 22 I. C. C. 354, 355; Wood-Mosiac Flooring & Lumber Co. v. L. & N. R. R. Co., 22 I. C. C. 458, 459; Kay Co. v. D. & R. G. R. R. Co., 21 I. C. C. 239, 240; Buffalo Hardwood Lumber Co. v. B. & O. S. W. R. R. Co., 21 I. C. C. 536, 538; Hanley Milling Co. v. P. Co., 19 I. C. C. 475, 476; Ponchatoula Farmers' Ass'n v. I. C. R. R. Co. 19 I. C. C. 513, 515; Hillsdale Coal & Coke Co. v. Penn. R. R. Co., 19 I. C. C. 356, 371; Joynes v. Penn. R. R. Co., 17 I. C. C. 361, 369; Werner Saw Mill Co. v. I. C. R. R. Co., 17 I. C. C. 388, 391; Laning-Harris Coal & Grain Co. v. St. L. & S. F. R. R. Co., 15 I. C. C. 37, 38; Blume & Co. v. Wells, Fargo & Co., 15 I. C. C. 53, 55; Royal Brewing Co. v. Adams Express Co., 15 I. C. C. 255, 256; Manning v. C. & A. R. R. Co., 13 I. C. C. 125, 127; Pittsburgh C. C. & St. L. Ry. Co. v. Knox (Ind., 1912), 98 N. E. 295, 299; Fullerton Lumber Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 150; Rivers Bros. Co. v. Wells, Fargo & Co., Unrep. Op. 496.

(m) Alleged damage due to delay in reconsigning car of coal at Ludington, Mich., not within jurisdiction of Commission. Reeves Coal Co. v. P. M. R. R. Co., Unrep. Op. 2081.

ALL OTHER CITATIONS

L. & N. R. R. Co. v. Scott, 133 Ky. 724, 729, 118 S. W. 990; Pecos & N. T. Ry. Co. v. Porter (Tex., 1913), 156 S. W. 267, 270; Atlas Portland Cement Co. v. L. V. R. R. Co., 32 I. C. C. 487, 488; Red Cedar Shingles Mfrs. Asso. v. M. & St. L. R. R. Co., Unrep. Op. A-880; Norfolk & W. Ry. Co. v. A. J. Steele & Son (Virginia, 1915), 86 S. E. 124, 126; Bagdad Land & Lumber Co., v. G. R. & I. Ry., 43 I. C. C. 251; Proportional Rates to Ohio River Crossings, 43 I. C. C. 458, 466, 468; LaCrosse Shippers' Asso. v. C. M. & St. P. Ry. Co., 43 I C. C. 605, 610; Moore v. St. L. & S. F. R. R. 43 I. C. C. 749; Proportional Rates to Gulf Ports for Export, 44 I. C. C. 543, 544, 547; Wisconsin Rate Cases, 44 I. C. C. 602, 604, 643; Rates from New Orleans and Galveston 44 I. C. C. 727, 742; Transcontinential Rates 46 I. C. C. 236, 245, 246, 274, 276; Milk and Cream Rates to New York City, 45 I. C. C. 412, 431; U. S. v. Merchants' & M. Traffic Asso., 37 Sup. Ct. 24; C. F. A. Class Scale Case, 46 I. C. C. 475, 477; Barber Agency Co., v. K. & E. Ry. 46 I .C. C. 523, 526; Lake Charles Rice Milling Co.

v. S. P. Co., 46 I. C. C. 661, 664; New Orleans Cotton Exchange v. L. & N. R. R., 46 I. C. C. 712, 750; Louisville & N. R. v. United States, 38 Sup. Ct. 141; Brunswick-Balke-Collender Co. v. T. S. & M. Ry., 44 I. C. C. 598, 601; Coulbourn v. N. Y. P. & N. R. R. 47 I. C. C. 54, 57; Western Trunk Line Iron and Steel, 47 I. C. C. 109, 113; Advance Lumber Co., v. S. Ry. 47 I. C. C. 237, 238; National Petroleum Asso. v. M. K. & T. Ry., 47 I. C. C. 355, 364; Conquest & Son v. S. A. L. Ry. 47 I. C. C. 517, 121 122; Alabama Packing Co., v. L. & N. R. R. Co., 47 I. C. C. 524 531; Arkansas Rice Shippers Traffic Bureau v. A. A. R. R. Co., 47 I. C. C. 566, 575; Rates between C. F. A. Territory & Points on C. & O. Ry., 47 I. C. C. 576, 580; Oriental Textile Mills v. A. & V. Ry. Co., 48 I. C. C. 31, 38; Transcontinental Commodity Rates, 48 I. C. C. 79, 95; Mosby v. Y. M. V. R. R. Co., 48 I. C. C. 499, 500; Roth-Blum Packing Co. v. M. P. Ry. Co., 48 I. C. C. 470, 472; Kansas Bluff Brick & Mfg. Co. v. M. P. Ry. Co., 48 I. C. C. 473, 474; Brunswick-Balke-Collender Co. v. P. M. R. R., 49 I. C. C. 530, 533; Fords Porcelain Works v. L. V. R. R., 51 I. C. C. 485; Decker & Sons v. Director General, 55 I. C. C. 453, 455; Skilton v. Director General, 56 I. C. C. 251, 252; Alaska S. S. Co. v. United States, 259 Fed. 713, 714; Bills of Lading, 52 I. C. C. 671, 685; Consolidation of Express Companies, 59 I. C. C. 459, 468; Gustafson et al v. Michigan Central R. Co., (Ill., 1920), 129 N. E. 516; National Industrial Traffic League v. A. & R. R. R. Co., 61 I. C. C. 120, 125.

§5. Jurisdiction of State Courts.

See Courts §11 V.

CASES 1887-1908

(a) The remedy of a party for injury to goods shipped resulting from delay, detention, loss, breakage, rotting or other deterioration or damage, not attributable to a violation of any provision of the Act to Regulate Commerce, is by appropriate action in the courts. Duncan v. Atchison, T. & S. F. R. Co., 4 I. C. R. 385.

(b) In cases of loss, the shippers remedy is at law, and the question of the reasonableness or validity of a contract limiting the carriers liability is to be determined in the courts on the facts in each case. Duncan v. A. T. & S. F. R. Co., 4 I. C. C. 385, 393.

(c) The remedy of a party for injury to goods shipped resulting from delay, detention, loss, breakage, rotting or other deterioration or damage, not attributable to a violation of any provision of the Act to regulate commerce, is by appropriate action in the courts. Blanton Duncan v. A. T. & S. F. R. R. Co., et al, 6 I. C. C. 85.

IMPORTANT CASES SINCE 1908

(d) The loss of coal in transit may have been a breach of defendant's legal duty to complainant and also of the contract of carriage; but the only recourse that shippers have with respect to such infractions of their legal rights is in the courts, where the responsibility as well as the fact and amount of loss or damage, may be determined. S. W. Portland Cement Co. v. T. & P. Ry. Co., 41 I. C. C. 39, 41.

(e) Claims against common carriers for loss, damage, or delay to property are governed by general legal principles and are determinable by the courts. National Industrial Traffic League v. A. & R. R. R. Co., 61 I. C. C. 120, 125.

(f) In a suit against an initial carrier under the Carmack amendment to the Hepburn Act of 1906, for a failure to deliver goods at destination, a state court has jurisdiction since the Act complained of is not a violation of the original Act of 1887, and the Interstate Commerce Commission does not have, therefore, the exclusive jurisdiction under section 9 of the Act. Galveston, H. & S. A. Ry. Co. v. Wallace, 223 U. S. 481, 489; 32 Sup. Ct. 205, 56 L. ed. 516.

(g) Congress has so asserted, by the Carmack Amendment, its power over the subject of interstate shipments, the duty to issue bills of lading, and the responsibilities thereunder, as to preclude the application to an interstate commerce shipment of a local and exceptional rule of law which invests the innocent holder of a bill of lading with rights not available to the shipper, such as the right to rely on erroneous recitals in the bill of lading as to the date of the carrier's receipt of the goods. Atchison, T. & S. F. R. Co. v. Harold, 36 Sup. Ct. 665, 668, 241 U. S. 371, 60 L. ed. 1050.

(h) Congress has paramount authority over the whole subject-matter of interstate commerce and contracts and regulations regarding it, and when it acts, all local laws and policies are superseded and its action becomes controlling; but if it omits to act, local laws and policies apply. Piper v. Boston & M. R. R., 97 Atl., (Vt., 1916), 508.

(i) Congress by its acts has taken over the whole subject-matter of interstate commerce so as to supersede all special regulations, laws, and policies of particular states as to the carrier's liability for loss or damages to interstate shipments, and contracts for interstate shipments. Piper v. Boston & M. R. R., 97 Atl., (Vt., 1916), 508.

ALL OTHER CITATIONS

Central of Ga. Ry. v. Sims, 169 Ala. 295, 300, 53 So. 826; St. L. & S. F. R. R. Co., v. Heyser (Ark., 1910), 130 S. W. 562, 564, 565; L. & N. R. R. Co. v. Warheild, 6 Ga. App. 550, 551, 65 S. E. 308; S. P. Co. v. Crensh, 5 Ga. App. 675, 686, 687, 63 S. E.865; Pittsburgh, etc., Ry. Co. v. Mitchell (Ind., 1910), 91 N. E. 735, 738; L. & N. R. R. Co. v. Scott, 133 Ky. 724, 729; 118 S. W. 990; Loomis v. Lehigh Valley R. R. Co., 132 N. Y. Supp. 138, 141; Houston & T. C. R. R. Co. v. Lewis (Tex., 1910), 129 S. W. 594; Galveston H. S. A. Ry. Co. Co. v. Crow (Tex., 1909), 117 S. W. 170; Galveston H. & S. A. Ry. Co. v. Piper Co., 52 Tex. Civ. App. 568, 572, 115 S. W. 107; Adams Express Co. v. Green (Va., 1911), 72 S. E. 102, 105; Ft. Smith & W. R. R. Co. v. Aubrey (Okla., 1913), 134-P, 1117, 1119; Deaver-Geter Co. v. S. Ry. Co. (S. C., 1913), 79 S. E. 709;U. S. Nickel Co. v. Barrett (1914), 148 N. Y. S. 325, 328; Western & A. R. Co. v. White Provision Co. (Ga., 1914), 82 S. E. 644, 646; So. Pac. Co. v. Frye & Bruhn, 143 Pac. 163, 165; L. & N. R. Co. v. Ohio Valley Tie Co. (Ky.) 170 S. W. 633, 643; Stevens & Russell v. St. Louis Southwestern Ry. Co. (Tex., 1915), 178 S. W. 810, 812; Norfolk & W. Ry. Co. v. A. J. Steele & Son (Virginia 1915), 86 S. E. 124, 126; Aradalou v. New York, N. H. & H. R. Co., (Mass., 1916), 114 N. E. 297. New England Fruit & Produce Co. v. Hines Director General of Railroads, (Conn. 1922) 116 Atl. 243.

II. CARRIER'S LIABILITY.

§5½. In General.

CASES 1887-1908

(a) A railroad company, in the carriage of goods is subject to the liability of a common carrier, and must answer for all losses not occasioned by the act of God or the public enemy, and cannot, in this state, by special contract, limit or relieve itself from this liability. St. Joseph & G. I. R. Co. v. Palmer, 4 I. C. R. 494.

(b) There is nothing in the Interstate Commerce Law which, by reason of an allowance of a rebate to the agents of the owners or consignees of goods, if actually made, would invalidate the contract of affreightment or exempt a railroad company from liability on its bills of lading. Merchants Cotton-Press & S. Co. v. Insurance Co. of North America (U. S. Sup. Ct.), 4 I. C. R. 499.

(c) Common carriers will not be relieved from liability for damages done in consequence of transporting articles dangerous to the property or health of others, where they had knowledge of such dangerous character, or could have had knowledge by the use of due care. Rouse v. Youard (Kan., App.), 5 I. C. R. 315.

IMPORTANT CASES SINCE 1908

(d) Carrier cannot by tariff provision exempt itself from liability to shipper or loss of property in transit. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 30.

(e) A provision in the tariff of western carriers that when the carrier's liability is established there will be deducted from the weight of the grain lost one-eighth of one per cent of the shipping weight on wheat, rye, oats, etc., and one-fourth of 1 per cent on corn to cover shrinkage due to evaporation or other natural causes not found unreasonable. Claims for Loss and Damage of Grain, 48 I. C. C. 530, 544.

(f) Shippers are entitled to information as to the manner in which shipments are handled by the carrier and to be advised of any losses or damage occurring in transit. Claims for Loss and Damage of Grain, 48 I. C. C. 530, 571.

(g) Carriers' responsibility for the safety of freight stored upon right of way instead of in warehouses is not altered by fact that warehouses were congested. Dodge Bros. v. Director General, as Agent, 62 I. C. C. 689, 691.

(h) A common carrier is now regarded as an insurer of goods intrusted to its care and custody for transportation and is liable for all loss, damage or injury occurring to the goods while they are held by it in its capacity of a common carrier, except when such loss, damage, or injury is caused by the act of God; the public enemy; the act of the

shipper himself; public authority; or the inherent vice or nature of the goods. Old Dominion Co. v. Director General, 63 I. C. C. 43, 45.

(i) Proposed limitation of liability of carrier for invisible loss or waste from contract lot shipments of ex-lake grain, to the amount in excess of one-eighth of one per cent of the contract lot regardless of condition of equipment, found justified. Proposed rule will eliminate joint inspection of the cars by carrier and consignee, inevitable variations in the determination whether or not a car is leaky, and computation on individual carloads. Shortage in Weights of Ex-Lake Grain, 74 I. C. C. 619.

(ia) It is the duty of shippers properly to prepare his goods for shipment, and if special protection be needed, this also he must furnish. When suitable car is furnished, it is proper that shipper secure his shipment within it, by staking or otherwise, and so protect it from damage. Slating Cars for Watermelons, 78 I. C. C. 722, 735.

(ib) A railroad was liable for negligence in unreasoably delaying an empty tank car, though freight tariffs filed with the Interstate Commerce Commission specified compensation to be made by the railroad to the shipper or owner for the use of tank cars at specified rate per mile; such tariff having reference to the railroad's use of the car and not to unreasonable delay in return thereof, and the authority of the Interstate Commerce Commission not extending to claims for unreasonable delay. Gustafson et al v. Michigan Cent. R. Co. (Ill. 1920), 129 N. E. 516.

(ic) The Interstate Commerce Act, as amended by Act March 4, 1915, incorporating what is known as the Cummins Amendment, providing that a carrier shall be liable to the holder of a bill of lading for any loss, damage, or injury to the property "caused by it," does not limit the liability of a carrier to that of an ordinary bailee for its own negligence only, but covers any loss or damage for which it would be liable at common law. Lehigh Valley R. Co. v. John Lysaght, Ltd., 271 Fed. 906.

(id) The fact that a contract for the shipment of race horses specified a lower rate than the tariff rate for animals of that value, so as to be in effect the giving and receiving of a rebate on the shipment, which subjected both carrier and shipper to criminal punishment, but which was not declared by the Interstate Commerce Act prohibiting such rebates, to make the contract void, does not prevent the shipper from recovering the value of horses killed by the carrier's negligence. Adams Exp. Co. v. Darden, 286 Fed. 61.

(ie) Provisions in an express company's receipt for a shipment which were invalid under the Cummins Amendment, such as limitation of the carrier's liability to transportation over its own lines, but which were separable from the provision permitted by that amendment, limiting the liability to a stated value, unless greater value was declared do not invalidate the latter provision. Amer. Ry. Exp. Co. v. Lindenberg, 43 Sup. Ct. 206.

(j) The bill of lading required to be issued by a carrier of interstate commerce by the Carmack Amendment constitutes the contract between the shipper and the carrier. Aradalou v. New York, N. H. & H. R. Co., (Mass., 1916), 114 N. E. 297.

(k) When a duty is imposed by law and its performance becomes impossible on account of an act of God, there can be no recovery of damages for the breach. Southern Ry. Co. v. White, 284 Fed. 560.

ALL OTHER CITATIONS

Cincinnati N. O. & P. Ry. Co. v. Smith & Johnston (Ky., 1915), 176 S. W. 1013; Panhandle & S. F. Ry. Co. v. Jones (Tex., 1916), 182 S. W. 1; Kemper Mill Co. v. Missouri Pac. Ry. Co., (Mo., 1916), 186 S. W. 8; Conley v. Chicago, B. & Q. R. Co. (Mo., 1916), 183 S. W. 1111; Claims for Loss and Damage of Grain, 48 I. C. C. 530, 537, 552, 543, 546, 548, 572; Thompson v. Great Northern Ry., (Ida., 1918), 174 Pac. 607; Babbitt v. Grand Trunk Western Ry., (Ill., 1918), 120 N. E. 803; Heisel v. Minneapolis & St. L. R. R., (Iowa, 1919), 171 N. W. 177; Galveston H. & S. A. Ry. v. Compania, Hulera De Monclava, (Tex., 1918), 204 S. W. 236; Charles Bianchi & Sons v. Montpelier & W. R. R. (Vt., 1918), 104 Atl., 144, 145; Spokane Valley Growers' Union v. Spokane & I. E. R. R. (Wash., 1918), 175 Pac. 184; Southern Ry. Co. v. Lewis & Adcock Co. (Tenn., 1918), 201 S. W. 131; Galveston, H. & S. A. Ry. Co. v. Compania Rulera De Monclava (Tex., 1918), 204 S. W. 236; Dulaney Brothers v. C. & A. R. R., 51 I.

C. C. 579; Shellabarger Elevator Co. v. Illinois Cent. R. Co., 278 Ill. 333; Bills of Lading, 52 I. C. C. 671, 693, 694, 696, 701, 702, 704, 705, 720, 738; Northern Potato Traffic Asso. v. C. & N. W. Ry. Co., 53 I. C. C. 100, 101; Claims for loss and damage of Grain, 56 I. C. C. 347, 352, 349, 351; Price & Co. v. A. T. & S. F. Ry., 56 I. C. C. 435, 438; Perishable Freight Investigation, 56 I. C. C. 449, 482, 614, 565; Chesapeake & O. Ry. Co. v. National Bank of Commerce of Norfolk (Va., 1919), 95 S. E. 454; Brass v. Texarkana & Ft. Smith Ry. Co. (Tex., 1920), 218 S. W. 1040; National Industrial Traffic League v. American Ry. Express Co., 58 I. C. C. 304; Dakota Monument Co. v. Director General, 59 I. C. C. 101, 104; Express Classification, 59 I. C. C. 265, 276; National Industrial Traffic League v. A. & R., 61 I. C. C. 120, 125; Southern Ry. v. Prescott, 240 U. S. 632, citing Adams Express Co. v. Croninger, 226 U. S. 491; Wilson v. International Ry. Co., 160 N. Y. S. 367; Louisville & Nashville R. R. Co. v. U. S. 39 Ct. C., 405; McDonald v. the Railroad, 34 N. Y. 497; see also Lewis v. Chesapeake & O. Ry. Co., 47 W. Va. 656; Southard v. Minneapolis, St. P. & S. S. M. Ry., 60 Minn. 382. Citing American Merchants' Union Express Co. v. Wolf 79 Ill. 430; N. C. & St. L. Ry. Co. v. Dreyfuss-Weil Co., 150 Ky., 333; 1 Hutch. Carr, (3d Ed.), 138; Missouri Pac. R. Co. v. Burnett, (Ark. 1923), 247, S. W. 1047; Robinson & Reynolds v. Atlantic Coast Line R. Co. (Ga. 1922), 112 S. E. 389; Yazoo & M. V. R. Co. v. Norman (Miss. 1920), 88 So. 174; Hartford Fire Insurance Co. v. Payne, (Mo. 1922), 243 S. W. 357; Diamond X Land & Cattle Co. v. Director General, (N. Mex. 1922), 205, Pac. 267; Cook v. Northern Pac. Ry. Co., (Mont. 1921), 203 Pac. 512; Williams v. American Ry. Express Co., (S. C. 1921), 110 S. E. 125; City Nat. Bank of El Paso v. El Paso & N. E. Ry. Co. et al, (Tex. 1920), 225 S. W. 391; Payne v. Bassett, (Tex. 1921), 235 S. W. 917; New York, P. & N. R. Co. v. Chandler, (Va. 1921), 106 S. E. 694; Del Signore v. Payne Director General, (W. Va. 1921), 109 S. E. 232.

§5¾. Assignments.

IMPORTANT CASES SINCE 1908

(a) A rule narrowing the carriers' previously acknowledged liability for loss and damage is akin to an increased rate, and the burden therefor rests upon the carrier to show that the narrowed liability is just and reasonable. Northern Potato Traffic Asso. v. C. & N. W. Ry. Co., 53 I. C. C. 100, 102.

(b) In view of the Federal Statutes U. S. Comp. St. 1918, U. S. Comp. St. Ann. Supp. 1919, Secs. 3115 ¾j and 3115¾ l) and the Transportation Act of 1920, secs. 206, 210, assignments of claims for injuries to cattle shipped during federal control were not within U. S. Comp. St. sec. 6383, prohibiting assignments of claims against the United States. Morgan v. Hines, (Mont. 1922), 211 Pac. 778.

ALL OTHER CITATIONS

St. L. & S. F. R. R. Co. v. Mounts (Okla., 1914), 144 Pac. 1036, 1037.

§6. Initial Carrier.

See Initial Carrier.

IMPORTANT CASES SINCE 1908

(a) After a shipper has delivered a shipment to the carrier, with instructions for an interstate carriage, he cannot defeat the liability of the carrier, under the Carmack amendment, for loss of or damage to the goods, by afterwards entering into an agreement with another carrier and obtaining from such other carrier a shipping receipt, since the first transaction has already settled the relation between the owner of the goods and the carrier, and fixed the duties and liability of the carrier to such owner. Aton Piano Co. v. C. M. & St. P. Ry. Co. (Wis., 1913), 139 N. W. 743, 745.

(b) All provisions and bills of lading for interstate commerce, contrary to section 7 of the Hepburn Act of June 29, 1906, which makes the initial carrier liable for loss of or damage to goods in transit caused by a connecting carrier, are void. Smeltzer v. St. L. & S. F. R. R. Co., 158 Fed. 649, 654.

(c) The Carmack Amendment does not apply to foreign commerce; and a railroad whose bills of lading expressly provide that they are issued on behalf of its own lines only, and as agent for its connections but without joint liability, cannot be held for the failure of a connecting steamship line to accept a shipment for transportation. Hamlen & Sons v. I. C. R. R. Co., 212 Fed. 324, 327.

(d) Frequently a connecting carrier issues a bill of lading and in case of loss the claimant attempts to hold it as the initial line. This generally happens

where the originating carrier is a branch road. But even though the intermediate carrier of a through line issues a new bill of lading, it nevertheless does not change the status as intermediate carrier and is not liable under the Carmack Amendment for default of any connecting carrier but only for its own negligence. Hudson v. Chicago, St. P. M. & O. Ry. Co., 226 Fed. 38, 40.

(e) Under the Carmack Amendment, the initial carrier of an interstate shipment is liable for a misdelivery by the terminal carrier. King v. Barbarin, 249 Fed. 303.

(f) Under the Carmack amendment an initial carrier is liable for the loss of goods by the connecting carrier despite a provision in the bill of lading to the contrary. A. C. L. R. R. Co. v. Riverside Mills, 219, U. S. 186, 201; 31 Sup. Ct. 164, 55 L. ed. 167.

(g) The effect of the Carmack amendment in respect to carriers receiving packages in one state for points in another and beyond their own lines, is to deny to the initial carrier the former right to make a contract limiting liability to its own line. A. C. L. R. R. Co. v. Riverside Mills, 219 U. S. 186, 201; 31 Sup. Ct. 164, 55 L. ed. 167.

(h) Under the Carmack amendment (section 20 of the Interstate Commerce Act), wherever the carrier voluntarily accepts goods for shipment to a point on another line in another state, it is conclusively treated as having made a through contract and as though the points of destination were on its own line, and is liable for any loss or damage occurring on its own line, or that of a connecting carrier. Galveston H. & S. A. Ry. Co. v. Wallace, 223 U. S., 481, 491; 32 Sup. Ct. 205, 56 L. ed. 516.

(i) By the schedules filed with the Interstate Commerce Commission, the rate on horses was lower when they were shipped under the "uniform bill of lading conditions" than when shipped not subject to such conditions. Plaintiff shipper, in ignorance of the provisions of the schedule, made a special contract for expedited service in the shipment of horses at the rates specified in the schedule for shipment under the "uniform bill of lading conditions." HELD, he was not precluded from recovering in a suit against the carrier for delay on the ground that his contract attempted to secure a preference in violation of the Interstate Commerce Act. Kirby v. C. & A. R. R. Co., 242 Ill. 418, 432, 90 N. E. 252; reversed on other grounds, 225 U. S. 155, 32 Sup. Ct. 648, 56 L. ed. 1033.

(j) A seizure of a shipment of poultry on a connecting line, by military authorities in a flood district under martial law, to relieve sufferers, if done solely by reason of the invitation of the connecting line, when it could have delivered the shipment with the exercise of ordinary care, renders the initial carrier liable. Chicago & E. I. R. R. v. Collins Produce Co., 39 Sup. Ct. 189.

(k) The fact that a bill of lading contains an exemption of liability void under the Carmack amendment, making the initial carrier liable for loss occuring on the lines of connecting carriers and forbidding the exemption from such liability does not vitiate the entire contract of shipment so as to preclude the holder from recovery for a failure safely to transport goods. Central of Ga. Ry. Co. v. Sims, 169 Ala. 295, 301, 53 So. 826.

(l) Where a carrier issued a bill of lading for transportation of goods to a point within the state on the line of another carrier without notice or reason to suppose that the shipment would pass beyond the destination specified but the other carrier took up the bill of lading and issued a new one covering transportation to a point in another state, the provisions of the Interstate Commerce Act or the tariff schedules for interstate shipments permitting change of destination did not apply as a matter of federal law so as to make the first carrier liable for damage beyond the original point of destination. Bracht v. San Antonio & A. P. Ry. Co., 41 Sup. Ct. 150.

(m) A carload of vegetables was shipped from a point in Texas to another point in Texas where a shipper intended to sell it, and a state bill of lading was issued for such shipment. Subsequently, the car was reconsigned and a new bill of lading issued by a connecting carrier for ultimate interstate shipment. The shipper brought an action for damages for injuries sustained during transit against the first carrier that had issued the state bill of lading. HELD: That such carrier was not the initial carrier within the meaning of the Interstate Commerce Act and

was not responsible for the damage that occurred after the shipment had been reconsigned and the exchange bill of lading issued. Bracht v. San Antonio & A. P. Ry. Co., 41 Sup. Ct. 150.

ALL OTHER CITATIONS

Robertson v. S. Ry. Co. (Ala. 1912), 59 So. 232, A. C. R. R. Co. v. Ward (Ala. 1912), 58 So. 677, 678; Central of Ga. Ry. Co. v. Chicago Varnish Co., 169 Ala. 287, 290, 53 So. 832; St. L. I. M. & S. Ry. Co. v. Jones (Ark. 1910), 125 S. W. 1025, 1029; C. R. I. & P. Ry. Co. v. Miles, 92 Ark. 573, 577, 123 S. W. 775; St. L. I. M. & S. Ry. Co. v. Furlow, 89 Ark. 404, 412, 117 S. W. 517; Pittsburgh C. C. & St. L. Ry. Co. v. Knox (Ind. 1912), 98 N. E. 295, 300; Pittsburgh, etc., Ry. Co. v. Michell (Ind. 1910), 91 N. E. 735, 739; Dodge v. C. St. P. M. & O. Ry. Co., (Minn. 1910), 126 N. W. 627, 629; S. P. Co. v. Lyon & Co. (Miss. 1911), 54 So. 784; International Watch Co. v. D. L. & W. R. R. Co., 80 N. J. L. 553, 556, 78-A 49; Florman v. Dodd & Childs Express Co. 79 N. J. L. 63, 65, 74-A 446; Dewinter & Co. v. Tex. Cent. R. Co. (N. Y. 1912), 135 N. Y. Supp. 893, 896, 897; Earnest v. D. L. & W. R. R. Co. (N. Y. 1912), 134 N. Y. Supp. 323, 325, 326; Shultz v. Skaneateles R. Co., 66 Misc. 9, 12, 122 N. Y. Supp. 445; Shidlovsky v. Mallory S. S. Co., 60 Misc. 67, 68, 11 N. Y. Supp. 778; Drake v. Nashville C. & St. L. R. R. Co. (Tenn. 1911), 148 S. W. 214, 218; Missouri K. & T. Ry. Co. v. Demore (Tex. Civ. App. 1912), 145 S. W. 623, 626; Gulf, C. S. F. Ry. Co. v. Nelson (Tex. 1911), 139 S. W. 81, 85; Eastern Ry. Co. v. Montgomery (Tex. 1911), 139 S. W. 885, 886; Pecos & N. T. Ry. Co. v. Crews (Tex. 1911), 139 S. W. 1049, 1051; Patton v. Texas & P. Ry. Co. (Tex. 1911), 137 S. W. 721, 723; Southern P. Co. v. Weatherford Cotton Mills (Tex. 1911), 134 S. W. 778, 779; Galveston H. & S. A. Ry. Co. v. Johnson (Tex. 1911), 133 S. W. 725, 730; Kemendo v. Fruit Despatch Co., (Tex. 1910), 131 S. W. 73, 79; Carlton Produce Co. v. Velasco, B. & N. Ry. Co., (Tex. 1910), 131 S. W. 1187, 1188; S. P. Co. v. Meadors & Co. (Tex. 1910), 129 S. W. 170, 172; Houston & T. C. R. R. Co. v. Lewis (Tex. 1910), 129 S. W. 594, 595; St. L. S. W. Ry. Co. of Tex. v. Ray (Tex. 1910), 127 S. W. 281, 282; M. K. & T. Ry. Co. of Tex. v. Carpenter, 52 Tex. Civ. App. 585, 587, 114 S. W. 900; Old Dominion S. S. Co. v. Flanary & Co. (Va. 1911), 69 S. E. 1107, 1108; Norfolk & W. R. R. Co. v. Stuart Draft Co., 109 Va. 184, 188, 63 S. E. 415; Parker-Bell Lumber Co. v. Great Northern Ry. Co. (Wash. 1912), 124 P. 389, 390; Coal Rates on Stony Fork Branch, 26 I. C. C. 168, 174; Baltimore C. & A. Ry. Co. v. Sperber & Co. (Md. 1912), 84-A 72, 74; Howatt v. Barrett (N. Y. 1912), 137 N. Y. S. 915, 916; reversed Howatt v. Barrett (N. Y. 1913), 142 N. Y. S. 135, 137; C. C. C. & St. L. Ry. Co. v. Hayes (Ind. 1913), 102 N. E. 34, 39; Perkett v. Manistee & N. E. R. R. Co. (Mich. 1913), 141 N. W. 607, 641; St. L. I. M. & S. Ry. Co. v. Carlisle (Okla. 1912), 128-P 690; Ft. Smith & W. R. R. Co. v. Aubrey (Okla. 1913), 134 P. 1117, 1118; L. & N. R. R. Co. v. Brewer (Ala. 1913), 62 So. 698; Pecos & N. T. Ry. Co. v. Cox (Tex. 1912), 150 S. W. 265, 267; N. C. & St. L. Ry. Co. v. Dreyfuss-Weil Co. (Ky. 1912), 150 S. W. 321, 432; Pecos & N. T. Ry. v. Meyer (Tex. 1913), 155 S. W. 309, 314; C. R. I. & P. Ry. Co. v. Scott (Tex. 1912), 156 S. W. 294, 297; A. T. & S. F. Ry. Co. v. Ward (Tex 1913), 159 S. W. 375, 380; N. J. P. & N. Ry. Co. v. Peninsula Produce Exchange (Md. 1914), 89 Atl. 433, 434, 436; Gamble-Robinson Commission Co. v. Union Pac. Ry. Co. (Ill. 1914), 104 N. E. 666, 667, 668; K. C. & M. Ry. Co. v. N. Y. Cent. & H. Ry. Co. (Ark. 1914), 163 S. W. 171, 174; Hogan Milling Co. v. Union Pac. Ry. Co. (Kan. 1914), 139 Pac. 397, 398, 399; Ross v. M. C. R. R. Co. (Me. 1914), 90 Atl. 711, 713; Norfolk Truckers Exch. v. N. S. R. R. Co. (Va. 1914), 82 S. E. 92; St. L. B. & M. Ry. Co. v. Gould (Tex. Civ. App. 1914), 165 S. W. 13, 14; St. L. I. M. & S. Ry. Co. v. Faulkner (Ark. 1914), 164 S. W. 763; Burke v. G. C. & S. F. Ry. Co., 147 N. Y. S. 794, 796, 798; Wien v. N. Y. C. & H. R. R. R. Co. (1914), 146 N. Y. S. 1010; Glenlyon Dye Works v. Interstate Exp. Co. (R. I. 1914), 91 Atl. 5, 7; Coovert v. S. P. & S. Ry. Co. (Wash. 1914), 141 Pac. 324; St. L. & S. F. R. R. Co. v. Mounts (Okla. 1914), 144 Pac. 1036, 1037; M. K. & T. Ry. Co. v. Ward (Tex. 1914), 169 S. W. 1035; Texas Midland R. R. v. Becker & Cole (Tex. 1915), 171 S. W. 1025, 1026; A. T. & S. F. Ry. Co. v. Boyce (Tex. 1914), 171 S. W. 1094, 1097; A. C. Cheney P. A. Co. v. N. Y. C. & H. R. R. Co. 152 N. Y. Supp. 285, 293; Texas Midland R. R. v. Becker & Cole, 171 S.

W. 1025, 1026; T. M. Ry. Co. v. King (Tex. 1915), 174 S. W. 336, 337; Texas & P. Ry. Co. v. While (Texas 1915), 174 S. W. 953, 955; Burkenroad Goldsmith Co. v. Illinois Cent. R. Co., (La. 1915), 70 Southern 44; Keithley v. Lusk (Mo. 1915), 177 S. W. 756; Jones v. Louisville & N. R. Co. (Mo. 1916), 182 S. W. 1064; Keithley & Quinn v. Lusk (Mo. 1916), 189 S. W. 621; Barrett v. Northern Pac. Ry. Co. (Idaho 1916), 157 Pac. 1016; Missouri, O. & G. Ry. Co. v. French (Okla. 1915), 152 Pac. 591; Looney v. Oregon Short Line R. Co. (Ill. 1916), 111 N. E. 509, 510; A. E. Meyers & Co. v. Norfolk Southern R. Co., 88 S. E. (N. C.) 149, 150; Van Epps v. Atlantic Coast Line R. Co. (S. C. 1916), 89 S. E. 1035; Aydlett v. Norfolk Southern R. Co., 89 S. E. 1000; Brunswick-Balke-Collender Co. v. T. S. & M. Ry., 44 I. C. C. 598, 600; King v. Barbarin, 249 Fed. 303; Atlantic Coast Line R. R. v. Sandlin (Fla. 1918), 78 So. 667, 867; Southern Ry. v. Hodgson Bros. Co. (Ga. 1919), 98 S. E. 541; Louisville & N. R. Co. v. Johnson (Ky. 1918), 206 S. W. 638; Briggs Hardware Co. v. Aroostook Valley R. R. (Me. 1918), 104 Atl. 8; Louis Poultry Co. v. New York Cent. R. R. (Me. 1918), 105 Atl. 109; Yazoo & M. V. R. R. v. Craig (Miss. 1918), 79 So. 102, 192; Cudahay Packing Co. v. Chicago & N. W. Ry. (Mo. 1918), 201 S. W. 596; Central National Bank v. Pryor, (Mo. 1918), 207 S. W. 298; Utz v. Chicago, B. & Q. Ry. (Mo. 1918), 208 S. W. 640; Bracht v. San Antonio & A. P. Ry. (Mo. 1919), 209 S. W. 579; Markowitz v. New York Cent. R. R. 172 N. Y. S. 233; St. Louis & S. F. R. R. v. First National Bank of Elk City (Okla. 1917), 171 Pac. 467; Jeffcoat v. Atlantic Coast Line R. R. (S. C. 1918), 96 S. E. 616; Baker v. Memphis D. & G. Ry. (Tex. 1918), 208 S. W. 182; Vogel v. Delaware, L. & W. R. R. (Wis. 1919), 171 N. W. 198; Central of Ga. Ry. Co. v. Sims, 169, Ala. 295, 299, 53 So. 826; Love Missouri Pac. R. Co. (Ark. 1922), 242 S. W. 829; Chicago R. I. & P. R. Co. v. Dawson (Ark. 1923) 248 S. W. 558; Southern Express Co. v. Truner (Ga. 1920), 103 S. E. 802; Ithaca Roller Mills v. Ann Arbor R. Co., (Mich. 1922), 186 N. W. 516; Miller v. Quincy, O. & K. C. R. Co., (Mo. 1920), 225, S. W. 116; Whiteside v. Chicago, M. & St. P. Ry. Co., (Mo. 1922), 239 S. W. 150, 151; Mayhall & Neible v. Chicago B. & Q. R. Co., (Nebr. 1921), 185 N. W. 326; New York, P. & N. R. Co. v. Chandler (Va. 1921), 106 S. E. 684; McGinn v. Oregon-Washington R. & Nav. Co., 265 Fed. 81; Bracht v. San Antonio & A. P. Ry. Co., 41 Sup. Ct. 150.

§7. Intermediate carrier.

See Intermediate Carrier.

IMPORTANT CASES SINCE 1908

(a) The liability of any carrier in the route over which the articles pass in interstate commerce is, under the Carmack Amendment, that imposed by the Act as measured by the original contract of shipment so far as it is valid under said amendment. Kansas City S. R. co. v. Carl, 33 Sup. Ct. 391, 393, 327 U. S. 639.

(b) Under the Carmack Amendment any stipulation in the shipping receipt of the originating carrier is ineffective in so far as it is not authorized by said amendment, whether intended for its own benefit or that of the succeeding carrier, and any limitation of liability contained in its contract which would be valid in its own behalf would likewise insure to the benefit of its connecting carrier. Kansas City S. R. Co. v. Carl, 33 Sup. Ct. 391, 393; 227 U. S. 639.

(c) A connecting carrier is not liable under Twenty-Eight Hour Law, § 3 for the detention of live stock in the cars without unloading for feed, water, and rest for longer than the prescribed time by the carrier from which it receives the shipment and before it has any control over it. Baker v. United States, 284 Fed. 818.

ALL OTHER CITATIONS

Gibson & Draughn v. Little Rock & H. S. W. Ry. Co. (Ark. 1910), 124 S. W. 1033, 1034; Otrich v. St. L. I. M. & S. F. Ry. Co. (Mo. App. 1911), 134 S. W. 665, 669; Missouri, K. & T. Ry. Co of Texas v. Stark Grain Co. 103 Tex. 542, 546, 131 S. W. 410; Coal Rates on the Stony Fork Branch, 26 I. C. C. 168, 174; A. C. L. Ry. Co. v. Thomasville Live Stock Co. (Ga. 1913), 78 S. E. 1019. 1021; A. C. Cheney P. A. Co. v. N. Y. C. & H. R. R. Co., 152 N. Y. Supp. 285, 293; Elliott v. C. M. & St. P. Ry. Co. (So. Dak. 1915), 150 N. W. 777, 778; Bichlmeier v. Minneapolis, St. P. & S. S. M. Ry. Co. (Wis. 1915), 150 N. W. 508, 509; Norfolk Trucker's Exch. Inc. v. Norfolk Southern R. Co. (Va.), 82 S. E. 92, 93; T. W. Mewborn & Co. v. Louisville & N. R. R., 87 S. E. 37; Missouri, O. & G. Ry. Co. v. French

(Okla. 1915), 152 Pac. 591; Coate Bros. v. New Orleans Terminal Co. (La. 1916), 72 So. R. 678; Knapp v. Minneapolis St. P. & S. S. M. Ry. Co. (N. D. 1916), 159 N. W. 81; Aydlett v. Norfolk Southern R. Co. (N. C. 1916), 89 S. E. R. 1000; St. Louis, I. M. & S. Ry. Co. v. Davis (Ark. 1916), 185 S. W. 478; Utz v. Chicago, B. & Q. Ry. (Mo. 1918), 208 S. W. 640; Southern Ry. v. Lewis & Adcock Co. (Tenn. 1918), 201 S. W. 131; McGinn v. Oregon-Washington R. & Nav. Co., 265 Fed. 81; Baker v. United States, 284 Fed. 818.

§7½. Inspection.

IMPORTANT CASES SINCE 1908

(a) Extension of rule permitting inspection of all cases of eggs enabled dishonest inspectors and consignees to swell improperly the loss and damage claims. New York Merchantile Exchange v. B. & O. R. R. Co., 36 I. C. C. 156, 159.

ALL OTHER CITATIONS

D. & R. G. R. Co. v. Peterson Grocery Co. (Colo. 1915), 147 Pac. 633, 665.

§8. Delivering Carrier.

IMPORTANT CASES SINCE 1908

(a) A terminal carrier is not relieved from liability for misdelivering an interstate shipment by the provisions of the Carmack Amendment, making the initial carrier liable for loss or damage occurring anywhere enroute, with a remedy over against the carrier at fault, but the bill of lading which the initial carrier under that statute must issue governs the entire transportation, and thus fixes the obligations of all participating carriers to the extent that the terms of the bill of lading are applicable and valid. Georgia, F. & A. R. Co. v. Blish Milling Co., 36 Sup. Ct. 541; 241 U. S. 190, 60 L. ed. 948.

(b) Under the Interstate Commerce Act the liability of a connecting or terminal carrier for property lost or damaged while in its custody is the same as that of the initial carrier. John Lysaght v. Lehigh Valley R. R., 254 Fed. 351.

(c) The Carmack Amendment which requires the issuance of a through bill of lading by the initial carrier, and makes that carrier liable for damage occuring anywhere along the route does not abrogate the common-law presumption that the damage was occasioned by the last carrier, but was intended to give the shipper the benefit of remedies against both carriers. Chicago & N. W. Ry. Co. v. C. C. Whitnack Produce Co. 42 Supt. Ct. 328.

ALL OTHER CITATIONS

Tradewell v. C. & N. W. Ry. Co., (Wis. 1912), 130 U. W. 794; A. C. L. Ry. Co. v. Thomas Live Stock Co. (Ga. 1913), 78 S. E. 1019, 1021; Cranor v. Southern Ry. Co. (Ga. 1913), 78 S. E. 1014, 1011; Eastover Mule & Horse Co. v. A. C. L. R. Co. (S. Car. 1914), 83 S. E. 599, 600; W. & A. R. Co. v. White Provision Co., (Ga.), 82 S. E. 644, 645, 646; Illinois Cent. R. Co. v. Mahon Live Stock Co. (Miss. 1916), 71 So. R. 802; T. W. Mewborn & Co. v. Louisville & N. R. R. Co. (N. C. 1915), 87 S. E. 37; South. Exp. Co. v. Saks, 160 Ala. 621, 49 South. 392; Louisville & N. R. Co. v. Lynne (Ala. 1916), 71 So. 338; Texas & P. Ry. v. West Bros. (Tex. 1918), 207 S. W. 918; Cincinnati, etc. Ry. Co. v. Rankin, 241 U. S. 319, 36 Sup. Ct. 555, 60 L. ed. 1022, L. R. A. 1917-A, 265; Southern Ry. v. Morris (Ga. 1918), 95 S. E. 284. Baltimore & O. R. R. Co., v. Maurer (Ind. 1920), 127 N. E. 294; Pittsburg, C. C. & St. L. R. Co. v. Larosa (Ind. 1921), 131 N. E. 22; Letner v. Missouri Pac. R. Co. (Mo. 1922), 249 S. W. 155; Efland Hosiery Mills v. Hines, (N. C. 1922), 114 S. E. 472; Chicago & N. W. Ry. Co. v. C. C. Whitnack Produce Co., 42 Sup. Ct. 328; Remington v. Barrett, 188 N. Y. S. 174;

§8½. Act of God or other exceptions.

CASES 1887-1908

(a) The burning of cotton while awaiting compression, as provided by a bill of lading, in a compress not owned or operated by the carrier, is within a clause in the bill exempting the carrier from loss by fire while the property is on deposit in place of transshipment or depots or landings or at points of delivery. Missouri P. R. Co. v. Sherwood (Tex.) 4 I. C. R. 240.

IMPORTANT CASES SINCE 1908

(b) An unusually heavy snowstorm in February is not an act of God, within a bill of lading excusing a carrier for injuries resulting therefrom, tho delay in transportation of a shipment, where the carrier made all reasonable efforts to obtain men to clear its tracks, may be excused by reason of such snowstorm. Fish v. Erie R. Co., 156 N. Y. Sup. 546.

§8¾. Act of shipper.

IMPORTANT CASES SINCE 1908

(a) If the shipper directs in some

measure the extent or character of the service and damage results which may be ascribed to his directions the Commission is of the opinion the carrier can not be held liable. Perishable Freight Investigation, 56 I. C. C. 449, 482.

§9. Agreed or restricted valuation.

See Infra § 10; Bills of Lading IV; Express Companies §8 (1); Released Rates.

CASES 1887-1908

(a) A common carrier may make no contract protecting itself against liability for its own or its servants negligence, but may, by special contract with the shipper, reasonably restrict its common-law liability in other respects. A carrier may state a reasonable limit to the sum for which he shall be held accountable in case of loss, but can not where this sum is understood to be an undervaluation of the goods thereby evade his full accountability as an ordinary bailee. Duncan v. A. T. & S. F. R. Co., 4 I. C. C. 385, 393.

(b) If fruit is damaged through negligence of the carrier while in transit there is no reason why the carrier can not be required to respond in damages to the full amount of the injury sustained without regard to the valuation placed upon it, and defendants regulation whereby the freight rate on peaches and other fruit from Georgia points is increased in proportion to the carload valuation fixed by the shipper is unreasonable and unjust. Georgia Peach Growers' Asso. v. A. C. L. R. R., 10 I. C. C. 255, 277.

IMPORTANT CASES SINCE 1908

(c) The only purpose in publishing rates dependent upon the declared or released value of the property transported is to limit the carrier's liability in case of loss or damage to the property. By amendment to section 20 of the Act to regulate commerce approved March 4, 1915, "any such limitation to be made" was declared to be unlawful and void. It was without respect to the manner or form in which it is sought provided, however, that under certain conditions the Commission might establish and maintain rates dependent upon the value of the property as stated in writing by the shipper. In the Cummins Amendment, 33 I. C. C. 682, decided May 7, 1915, the Commission said: "Neither bills of lading or other contracts for carriage should contain any provisions which are so declared to be unlawful and void." Effective August 9, 1916, that part of Section 20 of the Act which authorized the Commission to establish and maintain rates based upon declared value was amended and the provision that any attempt to limit the carrier's liability should be unlawful and void was modified so it should not apply to baggage or to property other than ordinary live stock, "concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property." The order of the Commission is as follows: In express Rates, Practices, Accounts, and Revenues, 43 I. C. C. 510, decided April 2, 1917, the Commission said: "We can not, in view of the provisions of the law, authorize or sanction such rates upon ordinary live stock; neither can they lawfully be maintained upon any other character of traffic except under authorization duly granted by the Commission." This decision was followed in Live Stock Classification, 47 I. C. C. 335, and again in Williams Co. v. Hartford & New York Transportation Co., 48 I. C. C. 269, in which the Commission held that the rates complained of which were dependent upon the value of the property, and which the carriers had not been authorized by order of the Commission to maintain, were unlawful. Some carriers have neglected to secure from the Commission authority to maintain such rates or to cancel them from their tariffs. Unnecessary controversies arise as to the charges on property transported thereunder. It is clearly the duty of every carrier to secure from the Commission authority for the maintenance of such rates or to eliminate them from its classification and rate schedules. The Commission expects that each carrier will give this matter prompt and careful attention. In the matter of rates dependent upon the declared or released value of property. Order of I. C. C. April 6. 1918.

(d) Under the law it is a duty of shippers of property of more than ordinary value, to bill the same at its true value, in order that the legal rate may be applied. In the case of the shipper declaring a false value to secure a reduced rate, one of the penalties under a form of receipt basing

the rate on valuation is an estoppel, by which he is precluded, in case of loss or damage, from denying the correctness of such value so given. In re Express Rates, Practices, Accounts and Revenues, 28 I. C. C. 131, 138.

(e) In 36 I. C. C. 265, the rule in the southwestern lines' tariffs providing that in the adjustment of claims for loss of grain in transit, deductions from the loading weights of one-eighth of 1 per cent on wheat, flax-seed, rye, oats and barley and one-fourth of 1 per cent on corn, as representing natural shrinkage, was held to be reasonable. On reargument complainants contended that arbitrarily to deduct any fixed amount for natural shrinkage was illegal, because (1) the carriers thereby limited liability; (2) it was an arbitrary determination in advance by the carrier of a disputed question of fact, in contravention of Article 7 of the federal constitution; and (3) it amounted to the taking of property without due process of law. In both Kansas and Missouri statutes had been enacted providing that a railroad should be deemed to have delivered the whole amount shipped if the shrinkage did not exceed one-fourth of 1 per cent. HELD (1) that the purpose sought to be accomplished by the rule in question, i. e., the limiting of the carrier's liability to losses actually occasioned by it, was not in violation of the Act to regulate commerce or any amendment of it, since it was merely liability for losses due to the inherent nature of the commodities; and (2) that the rule was not unreasonable. Complaint dismissed. Crouch Grain Co. v. A. T. & S. F. Ry., 41 I. C. C. 717.

(f) Certain express companies petitioned the Commission for an order authorizing the maintenance of express rates dependent on the value of the property shipped by express as declared in writing by the shipper or agreed upon in writing and submitted for approval proposed classification rules and form of express receipt. Protestants objected to the provision of the receipt requiring the presentation of certain classes of claims for loss and damage within four months, in that the Cummins Amendment limited the application of the four months' clause to claims arising out of undisclosed loss or damage and to the establishment of rates on ordinary live stock dependent on value. Petitioners did not propose rates on ordinary live stock dependent on agreed or released value, but did plan to continue their existing rates, which were based on value. For instance the rates applicable on horses were predicated on a maximum charge of $200 per head; if the value exceeded that sum an additional charge being made for the excess value, varying with the length of haul. HELD, (1) that an order be entered authorizing the maintenance of existing express rates dependent upon the declared or released value of the property transported, except ordinary live stock; (2) that the Commission was without jurisdiction to authorize the establishment of rates on ordinary live stock dependent upon declared or released value; (3) that the order should, however, apply to live stock chiefly valuable for breeding, racing, show purposes, or other special uses; and (4) that the proposed form of express receipt be authorized, since the four months provision was not in conflict with the Act or unreasonable. Express Rates, Practices, Accounts and Revenues, 43 I. C. C. 510.

(g) The plain and unmistakable purpose of the Cummins Amendment was to make unlawful and void, except as otherwise provided therein, all attempted limitations of liability for loss, damage, or injury to property transported. Williams Co. v. N. Y. Transfer Co., 48 I. C. C. 269, 273.

(ga) When authorized or required by the commission, rates based upon declared or agreed values are sanctioned by the act. Arlington Silver Mining Co. v. G. N. Ry. Co., 83 I. C. C. 255, 257.

(h) Under the Cummins amendment of March 4, 1915, to the Interstate Commerce Act, which declared that carriers should be liable for the full actual loss, a common carrier, where wheat was lost in transit is liable for the value of the grain at the point of destination, notwithstanding the shipment was made under a contract known as a "uniform bill of lading," which was part of the public tariffs filed with the Interstate Commerce Commission, and which provided that the loss should be computed on the value of the property at the time and place of shipment. McCaull-Dinsmore Co. v. Chicago, M. & St. P. Ry. (Minn. 1918), 252 Fed. 664.

(i) It has also been held by a United States District Court that since the Cummins Amendment expressly invalidates any limitation of liability, a provision

in the uniform bill of lading limiting the measure of damages to the value of a shipment at the time and place of shipment is invalid. McCaull-Dinsmore v. C. M. & St. P. Ry., 252 Fed. 664.

(jk) The sole question in this case was whether the loss to the shipper is to be measured by the value of the property at the place of destination at the time it should have been delivered, or by the value of the property at the time and place of shipment; and the decision of this question must depend upon whether or not the provision or stipulation in the bill of lading, issued by the carrier and accepted and agreed to by the shipper that the loss should be measured by the value at the time and place of shipment and settled on that basis, was valid under the Cummins Amendment of March 4, 1915, to the Interstate Commerce Act, which was the law in force at the time of the shipment and of the loss. This amendment was passed after the decisions of the Supreme Court on the Carmack Amendment cited by counsel had been rendered, and it is apparent from its language that its proposal and enactment were caused by these decisions, and that it was aimed directly at them. Viewed in the light of those decisions and of the purpose evidently sought to be the court cannot see that there could be any greater difficulty, after loss has occurred, in ascertaining and proving the value at the time and place of delivery or destination than in ascertaining and proving the value at the time and place of shipment. If it be true, as suggested in the argument and by the Commission, as it may be, that this conclusion will result in difficulties, and in some cases, under these rules and regulations and schedules, in hardship and injustice to the carriers, and possibly in some discrimination amongst shippers, the remedy will be found in facing the law, whose language is too plain for construction or evasion, squarely, and revising and reconstructing those rules and regulations to meet it. McCaull-Dinsmore Co. v. Chicago, M. & St. P. Ry., 252 Fed. 664, 665.

(l) A tariff named a rate of $4.17 on silverware. The bill of lading accepted by the shipper recited that the carrier received the consignment subject to the classifications and tariffs in effect at the time. The bill of lading contained the provisions that the liability of the carrier for loss or damage should be computed upon the basis of the value of the property at the place and time of shipment, unless a lower value had been represented in writing by the shipper or had been agreed upon or was determined by the classifications or tariffs upon which the rate was based, in any of which events such lower value should be the maximum amount to govern such computation. In the case in question, no lower value represented in writing by the shipper was made, and there was none expressly agreed upon by the shipper and the carrier. The tariff carrying the $4.17 rate provided that recovery in case of loss or damage should be limited to 10 times the amount of the rate. A higher rate was provided in the tariff sheets, under which there was no limitation of liability. The carrier's agent inquired as to the value of the goods and was informed by the shipper that their value was close to $5,000. HELD, that under the Carmack amendment and the decisions interpreting the same, the limitation of liability was valid and the shipper could recover only 10 times the rate paid. American Silver Mfg. Co. v. Wabash R. R. Co. (Mo. 1913), 156 S. W. 830, 833.

(m) The traffic manager of the shipper had on hand a quantity of shipping receipts of the express company, and was acquainted with a provision in the receipt limiting liability in all cases to $50 unless a higher value was declared by the shipper, so as to enable the express company to apply a higher rate. In shipping a box of automobile parts, the shipping clerk accepted from the express company a shipping receipt without declaring a higher value. The carrier could not have arrived at the true value of the contents of the box except by inquiring of the shipper. HELD, under the Carmack amendment, in a suit for loss, the express company was liable only to the limited value stipulated and the limitation in the receipt was not contrary to the provision of the Carmack amendment forbidding the limitation of liability. The stipulation in the shipping receipt was not purely fictitious and did not represent an attempt to limit the carrier's liability to an arbitrary amount, but in order to fix the rate to be charged, some value had to be placed on the property, and since

its true value lay within the shipper's knowledge exclusively, the shipper's declaration as to value was binding. Pacific Express Co. v. Ross (Tex. 1913), 154 S. W. 340, 343.

(n) Under the Carmack Amendment, making the initial carrier liable for loss or damage occurring on the line of the connecting carrier and forbidding the limitation of liability, the carrier is not prevented from limiting its liability to a fair agreed value stated in the shipping receipt, where the rate charged is based on said value. M. P. Ry. Co. v. Harper Bros., 201 Fed. 671, 676.

(o) Where, under the filed and published tariffs of an interstate railroad company, the rate on coal was based on its value at the mines where shipment was made, a provision of such tariffs, which became a part of its contracts of carriage, that the amount of any loss or damage for which the company was liable should be computed on the value of the property at the time and place of shipment, as applied to a coal shipment is valid and enforceable. Springfield Light, Heat & Power Co. v. Norfolk & W. Ry. Co., 260 F. 254.

(p) Under Interstate Commerce Act, sec. 20, as amended by Cummins Act, Sec. 1, providing that an Interstate carrier of property shall issue a bill of lading therefore and be liable for any loss or damage to the property caused by it or any other carrier when carried under a through bill of lading, and that no contract limiting such liability shall be valid, a provision of such bill of lading fixing the carrier's liability at the value of the property at the place and time of shipment is a limitation, and is invalid, and not enforceable. Chicago, M. & St. P. Ry. Co. v. McCaull-Dinsmore Co., 260 Fed. 835.

(q) Under the Carmack amendment a limitation of liability to an agreed value, stated in the shipping receipt, is valid where the rate is based on such value. C. B. & Q. Ry. Co. v. Latta, 33 Sup. Ct. 155, 226 U. S. 519.

(r) The Carmack Amendment does not forbid a limitation of liability in case of loss or damage to a valuation agreed upon for the purpose of determining which of two alternative lawful rates shall apply to a particular shipment. Kansas City S. R. Co. v. Carl, 33 Sup. Ct. 391, 394; 227 U. S. 639.

(s) When a shipper delivers a package for shipment and declares a value, either upon request or voluntarily, and the carrier makes a rate accordingly, the shipper is estopped from recovering, in case of loss or damage, any greater amount. Kansas City S. R. Co. v. Carl, 33 Sup. Ct. 391, 394; 227 U. S. 639.

(t) The valuations declared or agreed upon as evidenced by the contract of shipment upon which the published rate is applied must be conclusive in an action to recover for loss or damage a greater sum. Kansas City S. R. Co. v. Carl, 33 Sup. Ct. 391, 395; 227 U. S. 639.

(u) In an interstate shipment of bulls and cows, the shipping receipt stated that the carrier did not haul these animals for the lower rate specified as applying, except upon valuation of $30 and $20 per head for the bulls and cows, respectively, and thereafter recited that the shipper represented the value as not exceeding these sums. A higher rate was specified in the tariffs where the liability was unlimited. HELD, that the shipper, having accepted this receipt, could not recover in excess of the sums limited for loss of the stock, notwithstanding the provision of the Carmack amendment relating to exemption of liability. H. K. & T. R. R. Co. v. Harriman Bros., 33 Sup. Ct. 397, 400; 227 U. S. 657.

(v) The validity of any stipulation in a shipping receipt, limiting liability in interstate shipments, which involves the Carmack amendment, is a federal question, to be determined under the general common law, and, as such, is withdrawn from the field of state law or legislation. M. K. & T. R. R. Co. v. Harriman Bros., 33 Sup. Ct. 397, 401; 227 U. S. 657.

(w) The liability of a terminal carrier of an interstate shipment for a loss due to its negligence while the goods were in its possession as warehouseman at the place of destination must be regarded as controlled by a limitation to an agreed valuation made to adjust the rate contained in the uniform bill of lading issued by the initial carrier, in view of the provisions of the Hepburn act, enlarging the definition of the term "transportation" so as to include all services rendered in connection therewith, and of a provission of the bill of lading that "every service to be performed hereunder" is subject to all the conditions therein contained. Cleveland, C.,

C. & St. L. R. Co. v. Dettlebach, 36 Sup. Ct. 177; 239 U. S. 588, 60 L. ed. 453.

(x) The parties to an interstate shipment may not, by special agreement, alter the conditions specified in the bill of lading governing the carrier's liability when a shipment is not removed within forty-eight hours after notice to the consignee of its arrival, which conform to the carrier's published regulations. Southern R. Co. v. Prescott, 36 Sup. Ct. 469; 240 U. S. 632, 60 L. ed. 836.

(y) The essential choice of rates must be made to appear before a carrier can successfully claim the benefit of such a limitation and relief from full liability. And as interstate rates are not lawful, unless duly filed with the Commission, it may become necessary for the carrier to prove its schedules in order to make out the requisite choice. But where a bill of lading signed by both parties, recites that lawful alternate rates based on specified values were offered, such recitals constitute admissions by the shipper and are sufficient prima facie evidence of choice. If, in such a case, the shipper wishes to contradict his own admissions, the burden of proof is upon him. York Mfg. Co. v. Illinois C. R. Co. 3 Wall 107, 113, 18 L. ed. 170, 172; The Delaware, 14 Wall. 579, 601, 20 L. ed. 779, 783; Hart v. Pennsylvania R. Co., 112 U. S. 331, 337, 28 L. ed. 717, 719, 5 Sup. Ct. Rep. 151; Cau v. Texas & P. R. Co., 194 U. S. 427, 431, 48 L. ed. 1053, 1056, 24 Sup. Ct. Rep. 663, 16 Am. Neg. Rep. 659; Squire v. New York C. R. Co., 98 Mass. 239, 248, 93 Am. Dec. 162; Wabash R. Co. v. Curtis, 134 Ill. App. 409, 412; Hutchinson, Carr. 3ded. § 475. The bill of lading in question is plainly entitled "Contract for Limited Liability in the Transportation of Live Stock at Reduced Rates," and contains the conspicuous provisions concerning published rates, tariff regulations, choice offered the shipper, and limit upon the carrier's liability, etc., above set out. In view of these recitals and admissions, the limitation of liability must be treated as prima facie valid, and, consequently, the trial court erred in holding it void as a matter of law, and permitting a recovery for full value of the animals. Cincinnati, N. O. & T. P. Ry. Co. v. Rankin, 36 Sup. Ct. 555, 558; 241 U. S. 319, 60 L. ed. 102.

(z) Recitals in a bill of lading for an interstate shipment, signed by both parties, that alternate rates, based upon specified values are offered by the carrier's published freight rates, constitute admissions by the shipper and are sufficient prima facie evidence of a choice of rates, and cast upon him the burden of proving, in case he wishes to contradict his admissions, that the carrier had not complied with the requirements of controlling federal legislation respecting the filing and publishing of its rate schedules. Cincinnati, N. O. & T. P. Ry. Co. v. Rankin, 36 Sup. Ct. 555; 241 U. S.

(aa) An express company which accepted in London an automobile to be shipped to New York, and, having boxed the same, shipped it by an ocean carrier without declaring its value, taking from the steamship company a bill of lading limiting liability to $100 unless a greater value is declared and extra freight paid, was secondarily liable to the owner, where the car was seriously damaged through the negligence of stevedores employed by the steamship company to discharge the cargo, even though the express company be regarded as a mere forwarding agent. Reid v. Fargo, 36 Sup. Ct. 712; 241 U. S. 544, 60 L. ed. 156.

(bb) Interstate shipments of the character here in controversy made upon bills of lading, and under tariffs filed with the Interstate Commerce Commission, have been the subject of frequent consideration in this court. The binding character of the stipulations of the bill of lading and of the rates as fixed in the filed tariffs, have been recognized and enforced. St. Louis, Iron Mountain & Southern Ry. Co. v. Starbird, Adm'r, 243 U. S. 592, 37 Sup. Ct. 462, 61 L. ed. 917, and previous cases in this court therein cited. "The Carmack Amendment (Comp. St. 1916, §§8604a, 8604aa) requires the initial carrier to issue a bill of lading, and carriers are obliged to carry the articles shipped at the rates fixed in the published tariffs. Many decisions of this court have held that the carrier may offer to the shipper and the shipper may be bound by a contract which limits recovery to a valuation declared by the shipper in consideration of the reduced rate for the carriage of the freight, This rule was stated in an early case arising after the passage of the Carmack amendment. Adams Express Co. v. Croninger, 226 U. S. 491, 509, 510, 33 Sup. Ct. 148, 57 L. ed. 314, 44 L. R. A. (N. S.) 257, and has been frequently reiterated since. In the cases in which the recovery for the lesser valuation has been affirmed, the shipper was offered an opportunity

to recover a greater sum than the declared value upon paying a higher rate to the carrier. The shipper was offered alternative recoveries based upon different valuations upon the payment of different rates, and was held bound by the one chosen. Such contracts of shipment this court has held not to be in contravention of the settled principles of the common law preventing a carrier from contracting against liability for losses resulting from its own negligence, and are lawful limitations upon the amount of recovery binding upon the shipper upon principles of estoppel. Hart v. Pennsylvania R. R., 112 U. S. 331, 5 Sup. Ct. 151, 28 L. Ed. 717, followed and approved since the passage of the Carmack Amendment in Adams Express Co. v. Croninger, 226 U. S. 491, 33 Sup. Ct. 148 57 L. Ed. 314, 44 L. R. A. (N. S.) 257 supra, and see Wells Fargo & Co. v. Neiman-Marcus Co., 227 U. S. 469, 33 Sup. Ct. 267, 57 L. Ed. 600; Kansas Southern R. Co. v. Carl, 227 U. S. 657, 33 Sup. Ct. 391, 57 L. Ed. 683; Chicago, R. I. & Pacific R. Co. v. Cramer, 232 U. S. 490, 34 Sup. Ct. 383, 58 L. Ed. 697; Boston & Maine R. Co. v. Hooker, 233 U. S. 97, 34 Sup. Ct. 526, 58 L. Ed. 868, L. R. A. 1915B, 450, Ann Cas. 1915B 593; Atchison, Topeka & Santa Fe R. Co. v. Robinson, 233 U. S. 173, 34 Sup. Ct. 556, 58 L. Ed. 901. Furthermore it has been held that low valuation will not prevent the application of the rule making the agreement binding upon the shipper. Pierce Co. v. Wells Fargo & Co., 236 U. S. 278, 285, 35 Sup. Ct. 351, 59 L. Ed. 576. While the rule of the lesser recovery based upon lesser rates, when the shipper has been given the option of higher recovery upon paying a higher rate has been held binding upon the shipper so long as the published tariff remains in force, this court has not held a bill of lading containing a limitation against liability for loss caused by the carrier's negligence, such as is here involved to be conclusive of the shipper's right to recover. In the previous decisions of this court upon the subject it has been said that the limited valuation for which a recovery may be had does not permit the carrier to defeat recovery because of losses arising from its own negligence, but serves to fix the amount of recovery upon an agreed valuation made in consideration of the lower rate stipulated to be paid for the service. In the bill of lading, now under consideration, there is an express agreement limiting liability from unusual delay and detention, caused by the carrier's negligence to the amount actually expended by the shipper in the purchase of food and water for his stock while so detained. This stipulation contravenes the principle that the carrier may not exonerate itself from losses negligently caused by it, and is not within the principle of limiting to an agreed valuation which has been made the basis of reduced freight rate. Such stipulations as are here involved are not legal limitations upon the amount of recovery but are in effect attempts to limit the carrier's liability for negligence by a contract which leaves practically no recovery for damages resulting from such negligence. While this provision was in the bill of lading, the form of which was filed with the railroad company's tariffs with the Interstate Commerce Commission, it gains nothing from that fact. The legal conditions and limitations in the carrier's bill of lading duly filed with the Commission are binding until changed by that body (Kansas Southern Ry. v. Carl, 227 U. S. 639, 654, 33 Sup. Ct. 391, 57 L. Ed. 683); but not so of conditions and limitations which are, as is this one, illegal, and consequently void. Boston & M. R. R. v. Piper, 38 Sup. Ct. 354, 246 U. S. 439, 62 L. Ed. 820.

(cc) On cases arising prior to passage of the Cummins Amendment, it is held that a limitation of liability in consideration of a reduced rate is valid and binding, but the shipper must have been given the option to ship at unrestricted liability. In other words, the mere fact that the carrier has filed a tariff providing for a limited liability will not of itself make such rate valid, unless it is also shown that the shipper had the option of paying a higher rate, under which the carrier would transport the goods at unrestricted liability. Then, if it is shown that the shipper voluntarily elected to use the lower rate, he must be held to be bound by his choice. Boston & M. R. R. v. Piper, 38 Sup. Ct. 354, 246 U. S. 439, 62 L. Ed. 820.

(dd) In the federal courts, it is well settled that a contract by a common carrier relieving him from liability for his negligence is against public policy and void. (Cau. v. T. P. R. R. Co., 194 U. S. 427, 24 Sup. Ct. 663, 48 L. Ed. 1053; Adams Express Co. v. Croninger, 226 U. S. 491, 33 Sup. Ct. 148, 57 L. Ed. 314,

44 L. R. A. (N. S.), 257; but on the other hand, stipulations requiring claims to be presented within a certain time are held by the federal courts not contracts against negligence, but conditions precedent to suit affecting, not the carrier's liability but the shipper's remedy, and when the time is reasonable such stipulations are held by the federal courts to be valid and binding. (Queene of the Pacific, 180 U. S. 49, 21 Sup. Ct. 278, 45 L. Ed. 419; Southern Express Co. v. Caldwell, 21 Wall, 264, 22 L. Ed. 556. The St. Hubert (D. C.) 102 Fed. 362; Metropolitan T. Co. v. Toledo, St. L. & K. C. R. Co. (C. C.) 107 Fed. 629; The Westminster, 127 Fed. 680, 62 C .C. A. 406; The Arctic Bird (D. C.) 109 Fed. 167; M. K. & T. R. Co. v. Harriman, 227 U. S. 657, 33 Supt. Ct. 397, 57 L. Ed. 690.) And such is the general rule in this country. Houtz v. Union P. R. Co. 17 L. R. A. (N. S.), 628, note; 5 Am. & Eng. Enc. of Law, (2d Ed.), 321. Lynch v. N. Y. C. & H. R. R. Co., 153 N. Y. S. 633, 636.

ALL OTHER CITATIONS

Central of Ga. Ry. Co. v. Sims, 169 Ala. 295, 302, 53 So. 826; St. L. I. M. & S. Ry. Co. v. Pape (Ark., 1911), 140 S. W. 265, 267; K. C. S. Ry. Co. v. Carl, 91 Ark. 97, 100, 121 S. W. 932; S. P. Co. v. Crenshaw, 5 Ga. App. 675, 689, 63 S. E. 865; Pittsburgh, etc., Ry. Co. v. Mitchell (Ind., 1910), 91 N. E. 735, 740; Winn v. American Express Co. 149 Ia. 259, 271, 128 N. W. 663; Cramer v. C. R. I. & P. Ry. Co. (Ia., 1911), 133 N. W. 387, 392; Bernard v. Adams Express Co. 205 Mass. 254, 258, 91 N. E. 325; O'Connor v. G. N. Ry. Co. (Minn., 1912), 136 N. W. 743, 745; McElvain v. Railroad 151 Mo. App. 126, 153, 131 S. W. 736; Balckmer & Post Pipe Co. v. M. & O. R. R. Co. (Mo. App. 1909), 119 S. W. 1, 10; Miller v. C. B. & Q. R. R. Co., 85 Neb. 458, 466, 123 N. W. 449; Kissenger v. Fitzgerald, 152 N. C. 247, 252, 67 S. E. 588; Florman v. Dodd & Childs Express Co. 79 N. J. L. 63, 66, 74 A. 446; Travis v. Wells, Fargo & Co., 79 N. J .L. 83, 86, 74 A. 444; Greenwald v. Barrett, 199 N. Y. 170, 175, 92 N. E. 218; Greenwald v. Weir, 130 App. Div. 696, 700, 115 N. Y. Supp. 311, reversing 59 Misc. 431, 111 N. Y. Supp. 235; Vigouroux v. Platt, 62 Misc. 364, 369, 115 N. Y. Supp. 880; Schutte v. Weir, 59 Misc. 438, 440, 111 N. Y. Supp. 240; Wright v. Adams Express Co., 230 Pa. 635, 645, 79 A. 760; Drake v. Nashville C. & St. L. R. R. Co. (Tenn., 1911), 148 S. W. 214, 218; Larsen v. Orgen Short Line R. Co. (Utah, 1910), 110 P. 983, 986; Fielder & Truley v. Adams Express Co. (W. Va., 1911), 71 S. E. 99; United Lead Co. v. L. V. R. R. Co. (N. Y., 1913) 141 N. Y. S. 310, 311, 312; C. C. C. & St. L. Ry. Co. v. Hayes (Ind., 1913), 102 N. E. 34, 41; Coleman v. N. Y. N. H. & H. R. R. Co. (Mass., 1913), 102 N. E. 92, 94; Wabash R. R. Co. v. Priddy (Ind., 1913), 101 N. E. 724, 728, 729; Harrison Granite Co. v. G. T. Ry. System (Mich., 1913), 141 N. W. 642, 645; Carpenter v. U. S. Express Co. (Minn., G. N. Ry. Co. (Minn., 1913), 139 N. W. 618, 619; Pace Mule Co. v. S. A. L. Ry. 1912), 139 N. W. 154, 157; O'Connor v. Co. (N. C., 1912), 76 S. E. 513, 520; Harring v. A. C. L. R. R. Co. (N. C., 1912), 76 S. E. 527; M. K. & T. Ry. Co. v. Walston (Okla., 1913), 133 P. 42; St. L. & S. F. R. R. Co. v. Rinkle (Okla., 1913), 133 P. 199; Apple Suit & Cloak Co. v. Platt (Colo., 1913), 132 P. 71, 72; Southern Nursery Co. v. Winfield Nursery Co. (Kan., 1913), 132 P. 149; St. L. & S. F. R. R. Co. v. Bilby (Okla., 1913), 130 P. 1089; Jones v. Southern Express Co. (Miss., 1913), 61 So. 165, 166; American Express Co. v. Burke (Miss., 1913), 61 So. 312, 313; Visnake v. Southern Express Co. (S. C., 1912), 75 S. E. 962, 963; Adams Express Co. v. Chamberlain etc., Co. (Ga., 1912), 75 S. E. 601; M. S. Express Co. v. Cohn (Ark., 1913), 157 S. W. 144, 146; C. N. O. & T. P. Ry. Co. v. Rankin (Ky., 1913), 156 S. W. 400, 402; C. N. O. & T. P. Ry. Co. v. Dodd (Ky., 1913), 156 S. W. 894, 895; K. C. S. Ry. Co. v. Mixon-McClintock Co. (Ark., 1913), 154 S. W. 205, 208; Christl v. M. P. Ry. Co. (Kan., 1914), 141 Pac. 587; N. C. & St. L. Ry. v. C. V. Truitt Co. (Ga., App. 1914), 82 S. E. 465; K. C. & M. Ry. Co., (Ark., 1914), 170 S. W. 565, 566, 567; Spada v. Pennsylvania R. Co. (N. J., 1914), 92 Atl. 379, 381; St. L. & S. F. R. Co. v. Mounts (Okla., 1914), 144 Pac. 1036, 1037; Zoller Hop Co. v. So. Pac. Co., 143 Pac. 931, 933; Adams Express Co. et al. v. Welborn (Ind., 1915), 108 N. E. 163, 164; Robins v. L. & N. R. Co. (Ky.), 169 S. W. 831; Adams Express Co. v. Cook (Ky., 1915), 172, S. W. 1096, 1098; Thomas Bros. v. St. L. & S. F. R. Co. (Mo., 1915), 173 S. W. 96, 99; Metz v. Railway Co., 90 Kan. 460, 135 Pac., 667; Adams Express Co. v. Croninger, 226 U. S. 491, 33 Sup. Ct. 148, 57 L. Ed., 314, 44 L. R. A. (N. S.) 257; Kirby v. U. P. R. Co., (Kan. 1915) 146 Pac. 1183;

D. & R. G. R. Co., v. A. Peterson Grocery Co., (Colo., 1915), 147 Pac. 633, 665; Canby v. Merchants' & Miners' Transp. Co. (Ga., 1915), 85 S. E. 361, 362; Michelson v. Judson Freight Forwarding Co. (Ill., 1915), 109 N. E. 281, 286; Donohoo Horse & Mule Co. v. Missouri K. & T. Ry. Co. (Kan., 1915), 149 Pac. 436; Colby v. American Express Co. (N. H., 1915), 94 Atl. 198, 199; Ball v. Lusk, (Mo., 1915), 175 S. W. 228, 239; Barnett v. N. Y. C. & H. R. R. Co., 153 N. Y. S. 374, 377; Texarkana & Ft. S. Ry. Co. v. Brass, (Tex., 1915), 175 S. W. 779 780; J. T. Rather & Co. ,v. Nashville C. & St. L. Ry. Co. (Tenn., 1915), 174 S. W. 1113, 1114, 1115; The Cummins Amendment, 33 I. C. C. 682, 683 690, 693; Larkin Co. v. E. & W. Transp. Co., 34 I. C. C. 106, 109; Norfolk & W. Ry. Co. v. A. J. Steele & Son (Va., 1915) 86 S. E. 124, 127; Iowa Railroad Commissioners v. A. T. & S. F. Ry. Co., 36 I. C. C. 79, 82, 83; Cook v. Northern Pac. Ry. Co. (N. Dak., 1915), 155, N. W. 867; Southern Ry. Co. v. Bynum (Ala., 1915), 69 Southern, 820, 821; U. S. Horseshoe Co. v. American Express Co. (Pa., 1915), 95 Atl. 706, 708; Shay v. Union Pac. R. Co. (Utah, 1915), 153 Pac. 31; Missouri, O. & G. Ry. Co. v. French (Okla., 1915), 152 Pac. 591; St. Louis & S. F. R. Co. v. Taliaferro (Okla., 1916), 156 Pac. 359; Cleveland, etc. R. Co. v. Hayes, 181 Ind. 87, 104, 105, 102 N. E. 34, 103 N. E. 839; Illinois, etc. R. Co. v. Henderson Elevator Co., 226 U. S. 441, 33 Sup. Ct. 176, 57 L. Ed. 290; Boston, etc., R. Co. v. Hooker, 233 U. S. 97, 34 Sup. Ct. 526, 58 L. ed. 868, L. R. A. 1915-B, 450 Ann Cas. 1915-D, 593; Adams Express Co. v. Croninger, supra; Missouri, etc., R. Co. v. Harriman Bros. 227 U. S. 657, 33 Sup. Ct. 397, 57 L. Ed. 690; Hart v. Pennsylvania, etc., R. Co., 112 U. S. 331, 5 Sup. Ct. 151 28 L. Ed. 717; Toledo, St. L. & W. R. Co. v. Milner (Ind., 1915), 110 N. E. 758, 759; Cleveland, etc. R. Co. v. Hollowell, 172 Ind. 466, 470, 88 N. E. 680; Pittsburg, etc., R. Co. v. Mitchell, 175 Ind. 196, 208, 91 N. E. 735, 93 N. E. 996; Keithley v. Lusk (Mo. App.), 177 S. W. 756, 759; Adams Express Co v. Croninger, Supra; Boston, etc., R. Co. v. Hooker, supra; Chicago, etc., R. Co. v. Core (Tex. Civ. App.), 176 R. Co., 50 Mont. 122, 145 Pac., 291, 292; Wise v. Atlantic, etc., R. Co., (S. C.), 86 S. E. 22. National Soc. of Rec. Assns. v. A. & R. R. R. Co., 40 I. C. C. 347, 354; Donovan v. Wells Fargo & Co. (Mo., 1915), 177 S. W. 839, 840; Chicago, R. I. & G. Ry. Co. v. Core, (Tex., 1915), 176 S. W. 778; St. Louis & S. F. R. Co. v. Akard (Okla., 1916), 159 Pac. 344; Enderstein v. Atchison, T. & S. F. Ry. Co. (N. Mex., 1916), 157 Pac. 670; Aradalou v. New York, N. H. & H. R. Co., (Mass., 1916), 114, N. E. 297, 300; Washington Horse Exchange v. Louisville & N. R. Co. (N. C., 1916), 87 S. E. 941; Carr v. Pennsylvania R. Co. (N. J., 1916), 96 Atl. 588; D'Utassy v. Barrett, 157 N. Y. S. 916, 917; Wegener v. Chicago & N. W. Ry. Co. (Wis., 1916), 156 N. W. 201; Piper v. Boston & M. R. R., 97 Atl. (Vt., 1916), 509; Kansas City Southern Ry. Co. v. Carl 227 U. S. 639, 33 Sup. Ct. 391, 57 L. Ed. 683; Harrison Granite Co. v. Grand Trunk Ry. System, 175 Mich. 144, 141 N. W. 642; Cranor v. Southern Ry. Co. 13 Ga. App. 86, 78 S. E. 1014; Piper v. Boston & M. R. R., 97 Atl. (Vt., 1916), 509, 510; Orders of I. C. C. April 6, 1918; Silk Assn. of American v. Penn. R. R., 50 I. C. C. 50, 51; Wilson & Co. v. C. M. & St. P. Ry., 50 I. C. C. 126, 129; Thompson v. Great Northern Ry. (Ida., 1918), 174 Pac. 607; Keeney v. Chicago, B. & Q. R. R. (Ia., 1918), 167 N. W. 475; De Bow v. Vicksburg, S. & P. Ry. Co. (Ga., 1918), 95 S. E. 261; Central of Ga. Ry. Co. v. Hall, 124 Ga. 322, 52 S. E. 679, 4 L. R. A. (N. S.) 898, 110 Am. St. Rep. 170, 4 Am Cas. 128; Hill Mfg. Co. v. New Orleans, N. & C. R. R. (Miss., 1918), 78 Southern 187; Cudahy Packing Co. v. Bixby (Mo., 1918), 205 S. W. 865; Bassett v. Chicago & N. W. Ry., (S. D., 1918), 169 N. W. 553; Wells Fargo & Co. Express v. Bollin (Tex., 1919), 212 S. W. 283; Bills of Lading, 52 I. C. C. 671, 677, 682, 699, 708, 710; Crenshaw Bros. & Shaffold v. Southern Pacific Co., (Cal., 1919), 181 Pac. 252; Payne v. McConnell, (Texas, 1921) 234 S. W. 942.

§10. Common law liability in general. See Supra §9.

IMPORTANT CASES SINCE 1908

(a) No contract, receipt, rule or regulation may exempt a carrier from liability for loss or damage. Protection of Potato Shipments in Winter, 29 I. C. C. 504, 507.

(b) Where heater service is performed by shipper and loss or damage results from frost or overheating, not the direct result of negligence of carrier, such loss or damage is not caused by

carrier. Miller & Co. v. N. P. Ry. Co., 34 I. C. C. 154, 157.

(c) A rule where cases of eggs are received at shipping point and receipted for on other than order bills of lading as in apparent good order (contents and condition of contents of package unknown) and arrive at destination in the same apparent good condition and show no external evidence of damage, no inspection of the contents of such cases to be permitted before delivery thereof to the consignee, and the consignee to be required to accept and receipt for same subject to the same conditions under which the shipment was received for transportation, viz., as in apparent good order (contents and condition of packages unknown) can not, of course, bar the consignee from suing for and upon due proof from obtaining compensation for loss or damage caused by the negligence of the carrier, even though undisclosed by the joint examination at delivery point, restricted to cases showing external evidence of damages. N. Y. Merc. Exch. v. B. & O. R. R., 36 I. C. C. 156, 157, 160.

(d) Notation placed on bills of lading exempting carriers from damages caused by freezing not found unlawful. Longo Fruit Co. v. I. T. System, 38 I. C. C. 487, 489.

(e) In case of nondelivery, the carrier's common-law liability is the value of the goods at the point of destination at the time they should have been delivered. McCaull-Dinsmore Co. v. Chicago, M. & St. P. Ry., (Minn., 1918), 252 Fed. 664.

(f) In the absence of legislation a carrier, unless there be a special contract, is only bound to carry over its own line and then deliver to a connecting carrier. A. C. L. R. R. Co. v. Riverside Mills, 219 U. S. 186, 197, 31 Sup. Ct. 164, 55 L. ed. 167.

(g) Where an initial carrier contracts to carry over the whole route its common-law carrier liability extends over its entire route. A. C. L. R. R. Co. v. Riverside Mills, 219 U. S. 186, 197, 31 S. Ct. 164, 55 L. ed. 167.

(h) The liability for loss or damage, under the Carmack Amendment, aside from responsibility for the default of a connecting carrier on the route, is not beyond the liability imposed by the common law, as that body of law applicable to carriers has been interpreted by the United States Supreme Court. Adams Express Co. v. Croninger, 33 Sup. Ct. 148, 154; 226 U. S. 491.

(i) The liability, under the Carmack Amendment, aside from responsibility for the default of a connecting carrier in the route, is not beyond the liability imposed by the common law, as that body of law applicable to carriers has been interpreted by the Supreme Court of the United States, as well as by many courts of the states. Kansas City S. R. Co. v. Carl, 33 Sup. Ct. 391, 395; 227 U. S. 639.

(j) The common-law liability of a carrier as an insurer was not changed with respect to a loss occurring on its own line by the provision of the Carmack Amendment, making the initial carrier of an interstate shipment liable for any loss, damage, or injury "caused by it" or by any other carrier to which the shipment may be delivered. Cincinnati, New Orleans & Texas Pac. Ry. Co. v. Rankin, 36 Sup. Ct. 555; 241 U. S. 319, 60 L. ed. 1022.

(k) Though the Interstate Commerce Act and the Cummins Amendment (U. S. Comp. St. §§ 8592a, 8604a) may be inapplicable to a particular carrier, its standards are relevant to an inquiry whether public policy will permit the enforcement of a stipulation in a bill of lading issued by such carrier, exacting the institution of a suit within 60 days; after notice of claim. South & Central American Commercial Co. Inc. v. Panama R. Co. (New York, 1923), 142 N. E. 666.

ALL OTHER CITATIONS

Central of Ga. Ry. Co. v. Dowe, 6 Ga. App. 858, 65 S. E. 1091; Winn v. American Express Co., 149 Ia. 259, 269; 128 N. W. 663; Holland v. C. R. I. & P. Ry. Co., 139 Mo. App. 702, 722, 123 S. W. 987; Reid v. Southern Ry. Co. 153 N. C. 490, 496, 69 S. E. 618; Terrari v. N. Y. C. & H. R. R. R. Co., (1914), 147 N. Y. S. 376, 379, 381; I. & G. N. Ry. Co. v. Rathblath (Tex. Civ. App., 1914), 167 S. W. 751; U. P. R. Co. v. Libby (Colo., 1915), 146 Pac. 1076, 1078; Morrison Grain Co. v. Missouri Pac. Ry. Co. (Mo.) 170 S. W. 404, 407; K. C. & M. Ry. Co. (Ark.), 170 S. W. 565, 566; Hunt v. St. L. I. M. & S. Ry. Co. (Mo., 1915), 173 S. W. 61, 62; Bailey v. M. P. Ry. Co. (Mo., 1915), 171 S. W. 44, 46; Central of Georgia Ry. Co. v. Patterson (Ala., 1915), 68 So. 513, 514; N. Y. Merc. Exch. v. B. & O. R. R., 36 I. C. C. 156,

157, 160; Toller v. Chicago, R. I. & P. Ry. (Ia., 1918), 168 N. W. 301; Babbitt v. Grand Trunk Western Ry. (Ill., 1918), 120 N. E. 803; Bivens Bros. v. Atlantic Coast Line R. R. (N. C., 1918), 97 S. E. 215; Spokane Valley Growers' Union v. Spokane & E. I. R. R. (Wash., 1918), 175 Pac. 184; Ex-Lake Grain destined to Eastern Points, 74 I. C. C. 619; Shortage in Weights of Ex-Lake Grain, 74 I. C. C. 619; Sullivan v. American Express Co., (Mo. 1922), 245 S. W. 375; Hance Bros. Co. v. American Ry. Express Co., 190 N. Y. S. 530.

§10. (1) Liability for negligence.

CASES 1887-1908

(a) The duties and obligations of carriers to their patrons when engaged in interstate commerce are governed by the common law, in the absence of any legislation of Congress on the subject. Murray v. Chicago & N. W. R. Co. (C. C. N. D. Iowa), 4 I. C. R. 806.

(b) There is no national common law. Gatton v. Chicago, R. I. & P. R. Co., 5 I. C. R. 474.

IMPORTANT CASES SINCE 1908

(c) Where heater service is performed by shipper and loss or damage results from frost or overheating, not the direct result of negligence of carrier, such loss or damage is not caused by carrier. Miller & Co. v. N. P. Ry. Co., 34 I. C. C. 154, 157.

(d) Notation placed on bills of lading exempting carriers from damage caused by freezing not found unlawful. Longo Fruit Co. v. I. T. System, 38 I. C. C. 487, 489.

(e) Under section 20, paragraph 10 of the Interstate Commerce Act, a contract seeking to limit the liability of the carrier for loss or damage arising through its negligence on account of a lower rate accorded is void. Wabash R. R. Co. v. Priddy (Ind., 1913), 101 N. E. 724, 128.

(f) Under the Carmack Amendment the provision forbidding exemption of liability is a statutory declaration that a contract of exemption from liability for negligence is against public policy and void. Kansas City S. R. Co. v. Carl, 33 Sup. Ct. 391, 394; 227 U. S. 639.

(g) An agreement to release a carrier for part of a loss due to negligence is no more valid, under the Carmack Amendment, than one whereby there is complete exemption; neither is such contract any more valid because it rests upon a consideration, than if it was without consideration. Kansas City S. R. Co. v. Carl, 33 Sup. Ct. 391, 394; 227 U. S. 639.

(h) The liability imposed on the carrier for loss or damage in interstate shipments, by the provision of the Carmack Amendment, is the liability imposed by the common law upon the common carrier, and may be limited or qualified by special contract with the shipper, provided the limitation or qualification be just and reasonable, and does not exempt from loss or responsibility due to negligence. M. K. & T. R. R. Co. v. Harriman Bros., 33 Sup. Ct. 397, 401; 227 U. S. 657.

(i) The common-law liability of a carrier as an insurer was not changed with respect to a loss occurring on its own line by the provision of the Carmack Amendment, making the initial carrier of an interstate shipment liable for any loss, damage, or injury "caused by it" or by any other carrier to which the shipment may be delivered. Cincinnati, New Orleans & Texas Pac. Ry. Co. v. Rankin, 36 Sup. Ct. 555; 241 U. S. 319, 60 L. ed. 1022.

(j) A provision in a uniform live stock agreement filed with the Interstate Commerce Commission and covering an interstate shipment which limited the shipper's damages for unusual delay resulting from negligence to the amount actually expended by the shipper in the purchase of food or water for the stock while detained is invalid as a contract exempting the carrier from liability for its own negligence, and cannot be sustained as a contract limiting recovery to an agreed valuation in consideration of a reduced rate. Boston & M. R. R. v. Piper, 38 Sup. Ct. 354.

(k) Claimant made a shipment of race horses while the first Cummins Amendment was in effect which prohibited any limitation of liability, under an express receipt, which limited liability to $100 for each animal, and paid the express rate applicable for such limited liability. Owing to the negligence of the carrier five of the horses were killed and the claimant recovered a verdict for $32,500. It was contended the verdict could not stand because the limitation of liability having been prohibited the parties had entered into a void contract, which was unenforceable. The court overruled this contention and up-

held the verdict. Adams Express Co., v. Darden 286 Fed. 61.

ALL OTHER CITATIONS

St. L. & S. F. R. R. Co. v. Zickafoose (Okla., 1913), 135 P. 406; Oregon R. & N. Co. v. Thisler (Kan., 1913), 133 P. 539; National Rice Milling Co. v. N. O. & N. E. R. R. Co. (La., 1912), 61 So. 708, 720; Cudahy Packing Co. v. Atchison, T. & S. F. Ry. Co., (Mo., 1916), 187 S. W. 149; Piper v. Boston & M. R. R., 97 Atl. (Vt., 1916), 509; Heated Car Service Regulations, 50 I. C. C. 620, 624; Bills of Lading, 52 I. C. C. 671, 679, 695; Northern Potato Traffic Asso. v. C. & N. W. Ry. Co., 53 I. C. C. 100, 101; Claims for Loss and Damage of Grain, 56 I. C. C. 347, 352; E. Bornesman & Co. v. New Orleans, M. & C. R. Co. (La., 1919), 81 So. 882; Decker & Sons v. Director General, 55 I. C. C. 453; Perishable Freight Investigation, 56 I. C. C. 449, 482, 483; Reeves Coal & Dock Co. v. Director General, as Agent, 66 I. C. C., 469, 470.

§10. (2) Limitation of liability.

See Limitation of Liability.

CASES 1887-1908

(ab) A shipment is not within the provisions of a statute forbidding carriers within the state to limit their common-law liability, where the contract provides for the carrying of the goods to a foreign port by means of the carrier's own line, its connecting lines in another state, and an ocean steamship company. Missouri P. R. Co. v. Sherwood (Tex.), 4 I. C. R. 240.

(c) A clause limiting the liability of a railway company to its own line which is wholly within the state will not convert into a domestic bill of lading an instrument which purports on its face to be a through bill of lading to a foreign port, providing for the transportation of the goods to their foreign destination and fixing the through rate of freight. Missouri Pacific R. Co. v. Sherwood Thompson Co., 4 I. C. R. 240.

(d) A shipment is not within the provisions of a statute forbidding carriers within the state to limit their common-law liability where the contract provides for the carrying of the goods to a foreign port by means of the carrier's own line, its connecting lines in another state, and an ocean steamship company. Missouri Pacific R. Co. v. Sherwood Thompson & Co., 4 I. C. R. 240.

(e) A state statute prohibiting carriers from limiting their liability for loss by fire cannot be made to apply to property being transported under a bill of sale from a point in one state to a point in another state, both foreign to the state enacting the statute, although the carrier's charter was granted by such state and the point where the loss occurs is actually within its boundaries. Thomas v. Wabash, St. L. & P. R. Co., 4 I. C. R. 802.

(f) Neither the common-law rule nor a state statute denying validity to a contract exempting a common carrier from liability can be regarded as a regulation of commerce, although applied to an interstate shipment. Solan v. Chicago, M. & St. P. R. Co., 5 I. C. R. 468.

(g) Interstate shipments are not within the purview of the Texas statute restricting the right of common carriers to contract against liability for loss of goods not caused by the carrier's negligence. Texas & Pacific Ry. Co. v. Payne, 7 I. C. C. app. LXIII.

(h) A provision of a State Constitution that common carrier shall not be permitted to contract for relief from its common-law liability is not in conflict with the interstate commerce clause of the Federal Constitution. Western Union Telegraph Co. v. Eubank, 7 I. C. C. app. LXXXIX.

IMPORTANT CASES SINCE 1908

(i) Limitations of liability in respect of ordinary live stock prohibited by Cummins Amendment, and with respect to other commodities they are lawful under this amendment only to extent that by the Commission's order a carrier may be authorized to maintain rates dependent upon values declared or agreed upon in writing by the shipper. Perishable Freight Investigation, 56 I. C. C. 449, 482.

(j) A declaration in the tariff as to the matter of liability under the law can have no controlling effect, for the carriers liability for loss and damage is determined by the law. Nothing can be added or subtracted from the law by limitations or definitions stated in tariffs and there is the constant risk if such declarations are included, of misstating the law and misleading the parties to no good purpose. Perishable Freight Investigation, 56 I. C. C. 449, 482.

(k) In the opinion of the Commission tariff provisions which purport to state

the law, fix limitations of the carriers liability, or define the legal obligations of the parties, are, generally objectionable. Perishable Freight Investigation, 56 I. C. C. 449, 483.

(l) A proposed tariff contained numerous provisions defining or seeking to limit the carriers liability for loss or damage. This liability is determined by the law and can not be changed by declarations or definitions stated in tariff. There is the constant risk therefore, if such declarations are included, of misstating the law and misleading the parties to no good purpose. These provisions should be eliminated, but shippers should be warned that where they direct in some measure the extent or character of the service and damage results which may be ascribed to such directions, the carriers cannot be held liable. Perishable Freight Investigation, 56 I. C. C. 449, 614.

(m) Respondents parties to tariff on contract lot shipments of ex lake grain from Buffalo, Black Rock, Buffalo, East Buffalo, and Oswego, N. Y., and Erie Pa., to Boston New York, Philadelphia, Baltimore and other points in trunk line territory, both locally and for export, proposed to change the rule on liability for shortage so that the liability will be only for shortage in excess of one-eighth of one per cent of the contract lot when the shortage is occasioned in part by accident or defective cars, the same as the liability is now with respect to contract lot shortage all of which is otherwise occasioned. The effect of the change is that one-eighth of one per cent of the contract lot will be deducted for invisible loss and waste, regardless of the condition of the cars, and the liability of the carriers limited to shortage in the contract lot beyond that allowance. This liability of the carriers would arise directly from the existing shortage, without regard to any record of the condition of the cars while in transit or at destination. Under the new rule inspection of the cars at destination would be unnecessary except for the carrier's own purposes, such as repairs. The proposed change in the rule gives the carrier only a protection which it should have in connection with additional liability. The change lessens, but still does not eliminate, the advantage which ex-lake shippers have as compared with all rail shippers. HELD, respondents have justified the schedules under suspension. Claims for Shortage in Weights of Ex-Lake Grain destined to Eastern Points, 74 I. C. C. 619.

(n) Proposed limitation of liability of carrier for invisible loss or waste from contract-lot shipments of ex-lake grain, to the amount in excess of one-eighth of one per cent of the contract lot regardless of condition of equipment, found justified. Proposed rule will eliminate joint inspection of the cars by carrier and consignee, inevitable variations in the determination whether or not a car is leaky, and computation on individual carloads. Shortage in Weights of Ex-Lake Grain, 74 I. C. C. 619.

(o) Where a shipper carries articles of freight to a freight agent of a railroad company in charge of its business, and discloses the nature and value of the articles to be shipped by freight, and such agent writes only one article in the bill of lading when the shipment contains many articles, the company cannot escape responsibility for the negligence or dishonesty of its employees because the bill of lading contains a clause that "no carrier will be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariff, unless a special agreement to do so and the stipulated value of the articles are indorsed hereon." Where the information is furnished the agent in charge, and he fails to write the data on the bill of lading, it must be treated as having waived the provision. Illinois Cent. R. Co. v. King (Miss., 1921), 88 So. 322.

(p) Under the Cummins Amendment permitting the carrier to limit its liability to a stated value, unless a greater value is declared in writing by the shipper or agreed on in writing as the released value of the property, it is not essential that an express receipt limiting the liability to the basic valuation in consideration of the reduced rate be signed by the shipper to be binding on him, though such a signature would be additional evidence of his agreement, but his acceptance of the receipt, the contents of which he is presumed to know, is an assent to its terms, so as to make it the written agreement of the parties. American Railroad Express Co. v. Lindenburg, 43 Sup. Ct. 206.

(q) Proof that express company had filed with the Interstate Commerce Commission a tariff, specifically referring to

an order of the Commission in proceedings to which the express company was not a party, which permitted a limitation of liability to a stated value, and containing the form of receipt therein authorized, and that thereafter it made its charges in conformity with tariff, raises a presumption that the express company was authorized by the Commission to establish and maintain rates dependent on declared or agreed values. American Ry. Express Co. v. Lindenburg, 43 Sup. Ct. 206.

ALL OTHER CITATIONS

Northern Potato Traffic Asso. v. C. & N. W., 53 I. C. C. 100; Burke v. Union Pac. R. R. Co. (N. Y., 1919), 124 N. E. 119; Express Classification, 59 I. C. C. 265, 269; Western Union Telegraph Co. v. Priester (Ala. 1922), 93 Sou. 231; Missouri Pac. R. Co. v. Pugh, (Ark. 1923), 248 S. W. 897; Vanderberg v. Detroit & C. Nav. Co. (Mich. 1921), 186 N. W. 477; Payne v. McConnell. (Tex. 1921), 234 S. W. 942; Payne v. Norman, (Tex. 1923), 249 S. W. 882.

§10¼. Damages in general.

CASES 1887-1908

(a) The market value of horses at the destination which was in the contemplation of the parties at the time the contract of shipment was made is properly considered in measuring the damages resulting from negligence in the shipment. Reeves v. Texas & P. R. Co. (Tex. Civ. App.), 5 I. C. R. 639.

(b) Under the Cummins Amendment providing that interstate carriers shall be liable for actual loss, the measure of damages recoverable by a dealer in coal who sold at both retail and wholesale for loss of a portion of a carload of coal was not his loss of profit, either retail or wholesale, where he had coal in storage ample for his business needs, but was his full actual loss, including cost of coal at mine, plus freight, if paid, and war tax, but not including any allowance for unloading, cartage, overhead or profit. Brown Coal Co. v. Ill. Cent. R. R. Co. (Iowa, 1923), 192 N. W. 920.

(c) In a suit for damages for depreciation in value of seasonable goods the value of which was practically destroyed by delay in shipment during the period of federal control, plaintiff, having accepted the goods when delivered, could recover the amount of the depreciation in the reasonable market value thereof between the dates on which delivery should have been made and that on which deliverey was actually made, not to exceed the maximum liability fixed in the contract pursuant to Federal Control Act, §10. American R. R. Exp. Co. v. Parisian Hat Co., (Texas, 1922), 240 S. W. 947.

(d) The owner of coal requisitioned for railroad use during government operation cannot be compelled to accept a price fixed by the gevernment, but is entitled under the Fifth Amendment to "just comparison." Dexter & Carpenter Inc. v. Davis, 281 Fed 385.

(e) Under the order of the Fuel Administrator of January 17, 1919, providing that all contracts for sale of coal should provide that the coal deliverable thereunder should be subject to requisition by the Fuel Administrator, and that in the absence of a government price such requisition should be "at the price at which such shipment has been consigned by the shipper thereof," where shipments were made to apply on foreign contracts and the coal was requisitioned the shipper is entitled to the foreign contract price notwithstanding the fact that under government regulations the shipper was compelled to consign the coal to the Tidewater Coal Exchange for shipper's account. Dexter v. Carpenter, 281 Fed. 385.

(f) A provision of a bill of lading issued in November 1915 for an interstate shipment requiring the amount of any loss or damage to be computed on the basis of the value of the property at the place and time of shipment including freight charges, violates Act March 4, 1915, (the Cummins Amendment), making carriers liable for the full actual loss, not withstanding any limitation of liability or of the amount of recovery, where the actual loss was more than the amount recoverable thereunder. Chicago, M. & St. P. Ry. C. v. McCaull Dinsmore Co., 40 Sup. Ct. 504.

ALL OTHER CITATIONS

Blessing v. Central R. Co. of New Jersey (N. J., 1918), 103 Atl. 1045; McCaull-Dinsmore Co. v. Chicago, M. & St. P. Ry. Co. (Minn., 1918), 252 Fed. 664; Bills of Lading, 52 I. C. C. 671, 710, 711, 716. National Fibre & Insulating Co. v. N. & W. Ry. Co., 78 I. C. C. 361, 363, 364; American Ry. Express Co. v. Galt. (Miss. 1922), 90 So. 597; Kristianson v. American Ry. Express Co., (S. C. 1921) 115, S. E. 899; New

York, P. & N. R. Co. v. Chandler (Va. 1921), 106 S. E. 684; Smith v. New York, O. & W. R. R. Co. v. McCaull-Dinsmore Co., 40 Sup. Ct. 504.

§10½. Damages for delay.

CASES 1887-1908

(a) A carrier which receives, under a contract to transport it within a reasonable time, freight for shipment which must go through a point at which the facilities are so greatly overcrowded that a delay will be necessary at that point, will be liable for the loss of the property caused by the delay at that point. Thomas v. Wabash, St. L. & P. R. Co. C. C. S. D., Ill.), 4 I. C. R. 802.

(b) Permitting a shipment of cotton to lie at one station for eighteen days is negligence under a contract to transport it within a reasonable time. Thomas v. Wabash, St. L. & P. R. Co. (C. C. S. D. Ill.), 4 I. C. R. 802.

(c) A carrier which receives cotton for transportation under a contract by which it agrees to deliver it to the consignee within a reasonable time is liable for its loss if it leaves it for eighteen days on a barge moored in a river exposed to sparks from passing boats and engines on the levee above, by some of which it is set on fire. Thomas v. Wabash, St. L. & P. R. Co. (C. C. S. D. Ill.), 4 I. C. R. 802.

(d) A carrier who receives under a contract to transport it within a reasonable time, freight for shipment which must go through a point at which the facilities are so greatly overcrowded that a delay will be necessary at that point, will be liable for the loss of the property caused by the delay at that point. Thomas v. Wabash, St. L. & P. R. Co. 4 I. C. R. 802.

IMPORTANT CASES SINCE 1908

(e) The initial carrier of perishable produce is liable under the Carmack Amendment for the failure of a connecting carrier to make a market by a certain time. New York, P. & N. R. Co. v. Peninsula Produce Exch., 36 Sup. Ct. 230; 240 U. S. 34, 60 L. ed. 511.

ALL OTHER CITATIONS

Norfolk Truckers' Exch. v. N. S. R. R. Co. (Va., 1914), 82 S. E. 92, 93; McMickle v. Wabash Ry., (Mo., 1919), 209 S. W. 611; St. Louis & S. F. R. R. v. Ladd (Okla., 1918), 178 Pac. 125; Chicago, R. I. & P. Ry. v. Ranby (Tex., 1918), 207 S. W. 157, 158; Skilton v. Director General, 56 I. C. C. 251, 252.

§10¼. Damages for mental anguish.

ALL CITATIONS

Byers v. Southern Express Co. (N. C., 1914), 81 S. E. 741, 743.

§10⅞. Forwarders authority.

See Agency.

ALL CITATIONS

Grice v. Oregon-Washington R. & Navigation Co. (Oregon, 1915), 150 Pac. 862, 865.

§11. Notice of Loss.

See Notice.

CASES 1887-1908

(a) A stipulation in a contract for the shipment of a stock that no recovery for damages can be had unless written notice is given to the carrier before the stock is unloaded is in violation of Kentucky Constitution, § 196, providing that no common carrier can contract for relief from its common-law liability; and such provision is not an unlawful attempt to regulate or interfere with interstate commerce when applied to a shipment into another state. Ohio & Miss. Ry. Co. v. Taber, 7 I. C. C. app. XXXIII.

IMPORTANT CASES SINCE 1908

(b) Representatives of carriers and shippers alike appeared before the Commission, joining in request for approval of a waiver by the carriers of the provision in the uniform bill of lading that claims for loss, damage or delay must be presented within four months. This provision had been incorporated into both the uniform bill of lading, used in Official and Western Classification territory, and the standard bill of lading used in the Southern territory. In the case of the uniform bill it had been embodied in the freight classifications of carriers and thus made a part of their tariff schedules. The provision had, from a variety of reasons, particularly doubt as to its legality, been disregarded by many of the carriers, thus leading to widespread and serious discrimination. The legality of the provision having been sustained by the courts, however, all parties thought best, in view of the past discriminations, to waive the limitation as to past claims. HELD, that the Commission is without authority to order carriers to disregard their tariffs, nor does it feel justified in acquiescing in the adjustment of matters brought into this condition by disregard of tariff pro-

visions, except from the necessity of the situation, where to do otherwise must leave uncorrected grossly unjust and widespread discriminations. To prevent such results the carriers should deal with all claims presented prior to December 1, 1913, and all claims accruing within two years prior to the report of the Commission and filed by April 1, 1914, upon their merits without regard to the period of limitation fixed by the tariff. Bills of Lading, 29 I. C. C. 417.

(c) A four months limitation in the bill of lading as to the time in which a claim must be filed applies to a claim for freezing. Midland Linseed Co. v. American Liquid Fireproofing Co. (Ia., 1918), 166 N. W. 573, 575.

(d) In an action against the initial carrier of an intrastate shipment, liable under the Carmack Amendment to the Hepburn Act to the legal holder of the bill of lading, the contract providing that claims for loss, damages, etc., should be made in writing to the carrier at the point of delivery, etc., required such notice, even in case of a willful misdelivery by the final connecting carrier. Kemper Mill Co. v. Missouri Pac. Ry. Co., (Mo., 1916), 186 S. W. 8.

(e) Where a live stock shipping contract for an interstate shipment at reduced rates provided that failure to give notice of loss within 10 days after unloading should be a waiver of the same, and the contract or bill of lading had been duly filed with the Interstate Commerce Commission, a connecting carrier is not authorized in view of the Act to regulate commerce and the Carmack Amendment, of the Hepburn Act, to waive the requirement, which was for the benefit of all carriers, by receiving oral complaints, for that would open opportunities to discriminations prohibited by the statute; it appearing that the initial carrier was prepared at a higher rate to transport the animals without such requirement. Olson v. Chicago, B. & Q. R. R., 250 Fed. 372.

(f) An agreement in a reduced rate contract for the shipment of live stock requiring notice of loss or damage to be given within 10 days after the animals should be unloaded, on penalty of waiver, is valid, being fair, just, and reasonable. Olson v. Chicago, B. & Q. R. R. 250 Fed. 372.

(g) A federal court has held that where a shipment is damaged in transit, notice of loss is unnecessary, under the Cummins Amendment ,and suit may be brought if notice has not been given. Where an interstate shipment of horses was unnecessarily and carelesssly held in the railroad yards at an intermediate point, notice of claim for loss was unnecessary; the shipping contract following the Interstate Commerce Act, which declares notice unnecessary for damage in transit by carelessness or negligence. Hailey v. Oregon Short Line R. R., 253 Fed. 569.

(h) Notice of damage to live stock in transit, caused by the carrier's negligence, being unnecessary, under the Cummins Amendment, an allegation, in answer in action for such damage as to lack of notice, will be stricken as redundant and immaterial. Hailey v. Oregon Short Line R. R., 253 Fed. 569.

(i) Notice to an officer or station agent of the connecting carrier at final destination must be deemed to satisfy the requirement of a stipulation in a through bill of lading for an interstate shipment of cattle, issued by the initial carrier, that the shipper, as a condition precedent to his right to recover for any injury to the cattle while in transit, shall give notice in writing of his claim to some officer or station agent "of said company" before the cattle are removed from the place of destination or mingled with other stock, in view of the Carmack Amendment, under which the bill of lading was issued, making the connecting carrier the agent of the receiving carrier for the purpose of completing the transportation and delivering the property, and of a further stipulation in the bill of lading that its terms and conditions shall inure to the benefit of any connecting carrier over whose line the cattle shall pass. Northern Pac. Railway Company v. Wall, 36 Sup. Ct. 493; 241 U. S. 87, 60 L. ed. 905.

(ia) Since the Carmack amendment makes it obligatory upon the initial carrier to issue a through bill of lading, the connecting carrier becomes the agent of the receiving carrier for the purpose of receiving the goods and delivering the property. Atlantic Coast Line R. Co. v. Riverside Mills, 219 U. S. 186, 196, 206, 55 L. ed.. 167, 178, 182, 31 L. R. A. (N. S.) 7, 31 Sup. Ct. Rep. 164; Galveston, H. & S. A. R. Co. v. Wallace, 223 U. S. 481, 491, 56 L. ed. 516, 523, 32 Sup. Ct. Rep. 205. Therefore a provision in a bill of lading governing an interstate shipment

of live stock that notice of loss must be given before the live stock is removed from the place of destination or mingled with other stock is complied with when such notice is given to the delivering carrier, although such carrier is not the initial line. It is not necessary that notice be given to the initial line, as any connecting carrier is its agent. Northern P. R. Co. v. Wall, 36 Sup. Ct. Rep. 493, 496 241 U. S. 87, 60 L. ed. 905

(j) The initial carrier may validly stipulate in the bill of lading, issued conformably to the Carmack Amendment, for an interstate shipment that "claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after the delivery of the property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed." Georgia, F. & A. R. Co. v. Blish Milling Co., 36 Sup. Ct. 541.

(k) Misdelivery of an interstate shipment by the terminal carrier must be regarded as "failure to make delivery," within the meaning of a clause in the bill of lading issued by the initial carrier, conformably to the Carmack Amendment which casts upon that carrier responsibility with respect to the entire transportation, that "claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after the delivery of the property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed." Georgia, F. & A. R. Co. v. Blish Milling Co., 36 Sup. Ct. 541; 241 U. S. 190, 60 L. ed. 948.

(l) A claim for the value of a shipment of flour misdelivered by the carrier is sufficiently made to satisfy the requirement of the bill of lading that claims based on failure to make delivery shall be made in writing within four months after the time for delivery has elapsed, where the shipper, after making an investigation in response to a telegram from the carrier's traffic manager, telegraphed the latter five days after the arrival of the flour at destination "We will make claim against railroad for entire contents of car at invoice price. Must refuse shipment as we cannot handle." Georgia, F. & A. R. Co. v. Blish Milling Co., 36 Sup. Ct. 541; 241 U. S. 190, 60 L. ed. 948.

(m) The effect of a stipulation in a bill of lading for an interstate shipment requiring claims for damages or misdelivery to be presented within four months after a reasonable time for delivery has elapsed cannot be avoided by suing the carrier in trover on the theory that in making the misdelivery it converted the shipment, and thus abandoned the contract, since the parties could not waive the terms of the contract under which the shipment was made, pursuant to the Act of February 4, 1887 (24 Stat. at L. 379, chap. 104), as amended by the Act of June 29, 1906 (34 Stat. at L. 593, chap. 3591, Comp. Stat. 1913, § 8592), nor could the carrier by its conduct give the shipper the right to ignore the terms and hold the carrier to a different responsibility from that fixed by the agreement made under the published tariffs and regulations. Georgia, F. & A. R. Co. v. Blish Milling Co. 36 Sup. Ct. 541; 241 U. S. 190, 60 L. ed. 948.

(n) A shipper of live stock must comply with provisions in bill of lading, issued as required by Act of Congress, that no claim for damages shall be allowed or paid, or sued for, unless claim shall be made in writing, verified by affidavit of shipper or his agent, and delivered to general freight agent of carrier at his office in given city within five days from time live stock is removed from cars. Baltimore & O. R. R. v. Leach, 39 Sup. Ct. 254.

(o) The exception in the Cummins Amendment that "if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim or filing of claim shall be required as a condition precedent to recovery," does not apply to a case of non-delivery. St. Sing v. American Ry. Exp. Co. (N. C. 1922), 111, S. E. 710.

(p) A shipper is not barred from maintaining an action against a carrier for negligently causing the rusting, during transit, of a shipment of stoves, because it did not file its claim with the receiving or delivering carrier within six months as provided by the bill of lading; the Interstate Commerce Act, providing that "no notice of claim * * * shall be required as a condition precedent to recovery" in such cases. A. F. Thompson Mfg. Co. v. Chesapeake & O. Ry. Co. (W. Va., 1923), 115, S. E. 877.

ALL OTHER CITATIONS

A. C. L. R. R. Co. v. Ward (Ala., 1912), 58 So. 677, 678; C. R. I. & P. Ry. Co. v. Williams (Ark., 1912), 142 S. W. 826, 827; St. L. & S. F. R. R. Co. v. Keller, 90 Ark. 308, 316, 119 S. W. 254; St. L. I. M. & S. Ry. Co. v. Furlow, 89 Ark. 404 411, 117 S. W. 517; McKinstry v. C. R. I. & P. Ry. Co. (Mo., 1911), 134 S. W. 1061, 1063; Vigouroux v. Platt, 62 Misc. 364, 371, 115 N. Y. Supp. 880; C. R. I. & P. Ry. Co. v. Rich (Tex., 1911), 138 S. W. 223; St. L. & S. F. R. R. Co. v. Zickafoose (Okla., 1913), 135 P. 406, 407; Post & Woodruff v A. C. L. R. R. Co. (Ga., 1912), 76 S. E. 45; Joseph v. C. B. & Q. R. R. Co. (Mo., 1913), 157 S. W. 837, 838; C. R. I. & G. Ry. Co. v. Linger (Tex., 1913), 156 S. W. 298, 299; Peninsula Produce Exchange v. N. Y. P. & N. Ry. Co., (Md., 1914), 89 Atl. 437, 438; Overton v. C. R. I. & P. Ry. Co. (Tex. Civ. App., 1913), 160 S. W. 111; G. H. & S. Ry. Co. v. Sparks (Tex. Civ. App., 1914), 162 S. W. 943, 944; Ray v. M. K. & T. Ry. Co. 133 Pac. 847, 849; Spada v. Pennsylvania R. Co. (N. J., 1914), 92 Atl. 379, 381; Davenport v. Chesepeake & O. Ry. Co., 149 N. Y. Sup. 865, 866; Bailey v. M. P. Ry. Co. (Mo., 1914), 171 S. W. 44, 45, 46; Howard & Callaghan v. I. C. R. R. Co. (Ky., 1914), 171 S. W. 442, 445, 446; Morphis v. Southern Express Co. (N. C.), 83 S. E. I.; The Cummins Amendment, 33 I. C. C. 682, 691; St. Louis & S. F. Ry. Co. v. Ladd, 33 Okla. 160, 124 Pac. 461; Chicago, R. I. & P. Ry. Co. v. Bruce (Okla., 1915), 150 Pac. 880; Stevens & Russell v. St. Louis Southwestern Ry. Co. (Tex., 178 S. W. 810, 812; Crawford v. Southern R. Co., (S. C., 1915), 86 S. E. 19, 20; Norfolk & W. Ry. Co. v. A. J. Steele & Son (Virginia, 1915), 86 S. E. 124, 127; Hovey v. Tankersley, (Tex., 1915), 177 S. W. 153, 154; Toledo St. L. & W. R. Co. v. Milner (Ind., 1915), 110 N. E. 757; 241 U. S. 190, 60 L. ed. 948; Illinois Cent. R. Co. v. W. J. Davis & Co. (Mo., 1916), 72 So. R. 874; Atchison T. & S. F. Ry. Co. v. Cozart (Okla., 1916), 158 Pac. 933; Chicago, R. I. & P. Ry. Co. v. Craig (Okla., 1916), 157 Pac. 87; Kansas City, M. & O. Ry. Co. of Texas Gleason (Okla., 1916), 158 Pac. 365; Atchison, T. & S. F. Ry. Co. v. Smith (Tex., 1916), 189 S. W. 70; M. K. & T. Ry. Co. v. Harriman, supra; Lynch v. Southern Express Co. (Ga., 1916), 90 S. E. 655; Johnson v. Missouri Pac. Ry. Co. (Mo., 1916), 187 S. W. 282; Castner v. Oregon-Washington R. & Nav. Co. (Wash., 1916), 155 Pac. 167; Texas & P. Ry. Co. v. McMillen (Tex., 1916), 183 S. W. 773; Express Rates, Practices, Accounts and Revenues, 43 I. C. C. 510, 512; Wall v. Northern Pac. Ry. (Mont., 1916), 161 Pac. 518; Atchison, T. & S. F. Ry. v. Cooper(Okla., 1918), 175 Pac. 539; Van Lindley Nursery Co. v. Southern Ry. Co. (S. C., 1918), 96 S. E. 221; Mexico Northern Ry. v. Williams (Tex., 1919), 208 S. W. 712; Emery & Co. v. Wabash R. Co. (Iowa, 1918), 166 N. W. 600; Decker & Sons v. Director General, 55 I. C. C. 453, 457, 459, 460, 461; Price & Co. v. A. T. & S. F., 56 I. C. C. 439; 437, 438; C. F. Blackburn & Co. v. A. & A. 56 I. C. C. 439; Price & Co. v. A. T. & S. F. Ry., 56 I. C. C. 435, 437, 438. Bolatti v. Wabash Ry. Co. (Iowa 1921), 184 S. W. 641; Hunt v. Hines, Director General of Railroads (Kans. City Mo., 1920), 223 S. W. 798; Southern Ry. Co. v. Shipley, (Tenn. 1922), 245 S. W. 524; Davis v. First National Bank, (Tex. 1922) 245 S. W. 1009; Lissberger v. Bush Terminal Co., 197 N. Y. S. 281; Landau v. American Ry. Express Co., 197 N. Y. S. 704.

§11¼. Payment of claims after time limit.

ALL CITATIONS

Decker & Sons v. Director General, 55 I. C. C. 453, 455, 457; Claims for loss and damage of grain, 56 I. C. C. 347; National Industrial Traffic League v. Express Co., 58 I. C. C. 304.

§11½. Presumptions.

ALL CITATIONS

Glassman v. C. R. I. & P. Ry. Co. (Iowa, 1914), 147 N. W. 757, 761; Tribble v. Southern Express Co. (S. C., 1918), 96 S. E. 712.

§11¾. Partial loss.

ALL CITATIONS

Frank v. Michigan Cent. R. Co. (N. Y., 1915), 154 N. Y. S. 701, 702, 703; Illinois Cent. R. Co. v. H. E. Wilson & Co. (Tenn., 1915), 176 S. W. 1036; Washington Horse Exchange v. Louisville & N. R. Co. (N. C., 1916), 87 S. E. 941. De Loach v. Southern Ry. Co. (S. C., 1916), 90 S. E. 701.

§11⅞. Punitive Damages.

ALL CITATIONS

De Loach v. Southern Ry. Co., (S. C., 1916), 90 S. E. 701; Payne v. Domestic Electric Co. (Ga., 1922), 118 S. E. 811.

§12. Settlements and rights inter se.

IMPORTANT CASES SINCE 1908

(a) Under the Carmack Amendment of June 29, 1906, making the initial carrier liable for damage caused by the connecting carrier and allowing the former to recover of the latter for the amount of the judgment secured by the shipper, the initial carrier cannot so recover when it delivers cattle in an injured condition to the connecting carrier and there is no evidence to show that the damage sustained by the shipper was caused by the connecting carrier. M. K. & T. Ry. Co. v. Jarmon (Tex. Civ. App., 1911), 141 S. W. 155, 156.

(b) Where in a suit against the initial and the connecting carrier of an interstate shipment for delay and damage to goods the complainant is dismissed with plaintiff's consent as to the latter carrier the initial carrier may still be prosecuted and recovery had against it under the Carmack Amendment, making such carrier liable for loss, damage or injury caused by subsequent carriers. Shidlovsky v. Mallory S. S. Co., 60 Misc. 67, 68, 111 N. Y. Supp. 778.

ALL OTHER CITATIONS

Carlton Produce Co. v. Velasco B. & N. Ry. Co. (Tex. Civ. App., 1910), 131 S. W. 1187, 1188; K. C. & M. Ry. Co. v. N. Y. Cent. & H. Ry. Co., 163 S. W. (Ark., 1914), 171 174; Burke v. G. C. & S. F. Ry. Co. (1914), 146 N. Y. S. 794, 798; Duvalle v. L. W. R. R. Co. (La., 1914), 65 S. O. 104; Hill Steamboat Line v. Panama R. Co., 160 N. Y. S. 1103; Hill Steamboat Line v. N. Y. C. & H. R. R. Co., 158 N. Y. S. 1084, 1086; St. Louis & S. F. R. R. v. First Nat. Bank of Elk City (Okla., 1917), 171 Pac. 467; Texas & P. Ry. v. West Bros. (Tex., 1918), 207 S. W. 918.

§12½. Sale of shipment.

ALL CITATIONS

Norfolk & S. R. R. Co. v. New Bern Iron Works & Supply Co. (N. C., 1916), 90 S. E. R. 149; F. W. Brockman Commission Co. v. Mo. Pac. Ry. Co. (Mo., 1916), 188 S. W. 920.

§13. Special damages.

IMPORTANT CASES SINCE 1908

(a) In a shipper's action against a carrier for damages to hay while in transit, demurrage charges, which the shipper was compelled to pay while attempting to dispose of the damaged hay, were not special damages requiring notice to the carrier to fix liability therefor. Davis v. Clement Grain Co. (Tex., 1923), 251 S. W. 545.

ALL OTHER CITATIONS

C. R. I. & P. Ry. Co. v. Planters' G. & O. Co., 88 Ark. 77, 85 113 S. W. 352.

§13a. Strikes.

(a) There is much authority for proposition that a bill of lading provision relieving carriers from damages incurred by owners of property because of delay of shipment due to strikes not the result of negligence on part of carriers is valid, and will be enforced. Warren v. Portland Terminal Co., 116 Atl. (Me.), 411; American Fruit Distributors v. Hines, 203 Pac. (Calif.) 821; Carr v. L. I. R. R. Co., 169 N. Y. Supp. 569. National League of Commission Merchants v. P. R. R. Co., 83 I. C. C. 723, 728.

ALL CITATIONS

Jonesboro, L. C. & E. R. Co. v. Maddy, (Ark. 1923), 248 S. W. 911.

§13½. Time to bring suit.

See Actions at Law.

CASES 1887-1908

(a) Tex. act March 4, 1891, making it unlawful to make any contract limiting the period in which suit may be brought to less than two years, and prescribing that no period of less than ninety days shall be required in which to give notice of damages, is not void as an interference with interstate commerce, although it may affect contracts for interstate shipments. Armstrong v. Galveston, H. & S. A. R. Co. (Tex. Civ. App.), 5 I. C. R. 247.

(b) The prohibition of Tex. act March 4, 1891, against entering into a contract limiting the time in which to sue to a shorter period than two years, is binding in interstate as well as domestic shipments, as it is not an attempt to regulate interstate commerce. Reeves v. Texas & P. R. Co. (Tex. Civ. App.), 5 I. C. R. 639.

(c) A state statute providing that no provision in a contract limiting the time within which to sue to less than two years shall be valid, and that no stipulation in any contract requiring notice to be given of any claim for damages as a condition precedent to the right to sue thereon shall be valid unless the stipulation is reasonable, is not an interference with interstate commerce. The court says these statutes should be treat-

ed as in the nature of statutes of limitation. If treated as statutes of limitation they simply affect the remedy, and do not attempt to affect the rights of the parties or to control or regulate in any manner interstate commerce. It is in the undoubted power of the state to pass laws prescribing periods of limitation in which remedies may be enforced, within a certain time and to declare that limitation shall not affect contracts that are made and entered into with its jurisdiction or sought to be enforced there. Gulf, Colorado & Santa Fe Ry. Co. v. Eddins, 7 I. C. C. app. VIII.

(d) Texas act of March 4, 1891, providing that any stipulation in a contract limiting time for suit to less than two years, or which fixes the period within which the notice of damages as a condition precedent to the right to sue at less than ninety days shall be void, and providing that if any such notice is required the same may be given to the nearest or any other convenient local agent of the company requiring the same,—applies to interstate shipments. Mo., Kans. & Tex. R. R. Co. v. Withers, 7 I. C. C. App. LXI.

(e) A state may, in the absence of any action by Congress, provide that no carrier shall limit the time for bringing suit for breach of the carriage contract, or for giving notice of loss, to less than that stated in the statute, although the contract to which it applies is for one of interstate carriage. The court followed Solan v. Chicago, M. & St. P. R. Co., 95 Iowa, 260, 28 L. R. A. 718, which held that such regulations were not in themselves regulations of interstate commerce, although they control in some degree the conduct and the liability of those engaged in such commerce. So long as Congress has not legislated upon the particular subject they are rather to be regarded as legislation in aid of such commerce, and as a rightful exercise of the police power of the State to regulate the relative rights and duties of all persons and corporations within its limits. And overruled the decision of the Texas court of civil appeals to the effect that a through shipment to a point beyond the State is an interstate shipment, to which the State statute authorizing restrictions on carrier's liability does not apply, although the terminus of the initial carrier is within the State, and the contract restricts its liability, except to guarantee the freight rate to its own line. Armstrong v. Galveston, Harrisburg & San Antonio Ry. Co., 8 I. C. C. app. I.

IMPORTANT CASES SINCE 1908

(f) The Cummins Amendment of March 4, 1915, to the Interstate Commerce Act, providing as to carriers subject thereto, among other things, that no shorter period than two years shall be allowed for the institution of suit on claims, which period is to be computed from the disallowance of the claim under Transportation Act Feb. 28, 1920, § 438 is inapplicable to a common carrier by water, whose carriage is unconnected with carriage by land; both the Interstate Commerce Act, § 1, and the Cummins Amendment being limited to carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water, when both are used under a common control, management, or a continuous carriage or shipment. South & Central American Commercial Co. Inc. v. Panama R. Co. (New York, 1923) 142 N. E. 666.

(g) The Transportation Act, Section 206 (a), which provides that actions based on causes arising out of federal possession of railroads under Federal Control Act or of the Act of Aug. 29, 1916, may, after the termination of federal control, be brought against an agent designated by the President, and such actions may, within the periods of limitation prescribed by state or federal statutes, but not later than two years from the date of the passage of this act, be brought in any court which, but for federal control, would have jurisdiction of the action had it arisen against the carrier, did not extend the time, as state or federal laws were to govern if they did not extend the time of bringing actions beyond two years from the passage of the act, and, if they did, then the act limited them to two years from its passage. Northern Milling Co. v. Davis (Wisc. 1922), 190 N. W. 351.

(h) In view of the Cummins Amendment to the Carmack Amendment providing that it shall be unlawful for a carrier to provide a shorter period for the institution of suits against it than two years, limitations in bills of lading that suits shall be brought against the carrier within two years are valid. Northern Milling Co. v. Davis, (Wisc, 1922), 190 N. W. 351.

(i) The expression "periods of limitation," in the Transportation Act, providing that the period of federal control shall not be computed as part of the periods of limitation, applies to limitations fixed by federal or state statute, in view of section 206a, expressly providing that causes of action arising out of federal control may be brought within the periods of limitation prescribed by state or federal statutes, and of section 438, amending the provision relating to contract periods of limitation, but making no reference to the exclusion of the periods of federal control. New York Central R. Co. v. Lazarus, 278 Fed. 900.

(j) The provision of the Transportation Act Feb. 28, 1920, sec. 206a, permitting actions against the federal Agent to be brought within the periods of limitation then prescribed by state or federal statutes, but no later than two years from the date of passage of the act, was intended to limit, not to extend, rights of action, and does not invalidate existing contracts limiting the period within which an action must be brought which were valid when they were made. Ellis v. Davis, 43 Sup. Ct. 243.

ALL OTHER CITATIONS

Watt v. M. K. & T. Ry. Co., 136 P. 600; T. & P. Ry. Co. v. Sargbehn, 158 S. W. 244, 247; Donohoo Horse & Mule Co. v. Missouri K. & T. Ry. Co. (Kan., 1915), 149 Pac. 436; St. L. & S. F. R. Co. v. Pickens (Okla,. 1915), 151 Pac. 1055; Tuller v. Chicago, R. I. & P. Ry. (Ia., 1918), 168 N. W. 301; Marks and Shields v. Chicago R. I. & P. Ry. (Ia., 1918), 169 N. W. 764; Ezell v. Midland Valley R. R. (Okla., 1918), 174 Pac. 781; Atchison T. & S. F. Ry. v. Cooper (Okla., 1918), 175 Pac. 539; St. Louis, I. M. & S. Ry. v. Bently (Okla., 1918), 176 Pac. 250; Cudahy Packing Co. v. Missouri, K. & T. Ry. of Tex. (Tex., 1918), 206 S. W. 854; Decker & Sons v. Director General, 55 I. C. C. 453, 459, 460; National Industrial Traffic League v. American Ry. Exp. Co., 58 I. C. C. 304; Consolidation of express companies, 59 I. C. C. 459, 469. Humphery-Cornell Co. v. Hines, Director General. (Conn. 1921), 115 Atl. 561; Thomas Canning Co. v. Southern Pac. Co. (Mich. 1922), 189 N. W. 210; St. Louis I. M. & S. Ry. Co. v. Patterson (Okla. 1919) 182 Pac. 701; Shroyer v. Chicago R. I. & G. Ry. Co. (Tex. 1920), 222 S. W. 1095; Lazarus v. New York Cent. R. R. Co. 217 Fed. 93; Gillette Safety Razor Co. v. Davis, 278 Fed. 864; Mallary v. Barrett, 194 N. Y. S. 677.

§13⅝. Waiver of provisions.

IMPORTANT CASES SINCE 1908

(a) Where a live stock shipping contract for an interstate shipment at reduced rate provided that failure to give notice of loss within 10 days after unloading should be a waiver of the same, and the contract or bill of lading had been duly filed with the Interstate Commerce Commission, a connecting carrier is not authorized, in view of the Act to regulate commerce and the Carmack Amendment of the Hepburn Act, to waive the requirement, which was for the benefit of all carriers, by receiving oral complaints, for that would open opportunities to discriminations prohibited by the statutes; it appearing that the initial carrier was prepared at a higher rate to transport the animals without such requirement. Olson v. Chicago, B. & Q. R. R., 250 Fed. 372.

(b) "A bill of lading," said the Supreme court in Pollard v. Vinton, 105 U. S. 7, 8 (26 L. Ed. 998) "is an instrument well known in commercial transactions, and its character and effect have been defined by judicial decisions. In the hands of the holder it is evidence of ownership, special or general, of the property mentioned in it, and of the right to receive said property at the place of delivery. * * * It is an instrument of a twofold character. It is at once a receipt and a contract." It is at material whether the property for which such an instrument is issued is to be carried by rail or water. St. Louis, etc., R. Co. v. Knight, 122 U. S. 79, 7 Sup. Ct. 1132, 30 L. Ed. 1077; Friedlander v. Texas, etc., R. Co. 130 U. S. 426, 9 Sup. Ct. 570, 32 L. Ed. 991. And where such an instrument was, as here, issued by the initial carrier of an interestate shipment it was distinctly adjudged by the Supreme Court in the recent case of Georgia, Florida & Alabama R. Co. v. Blish Milling Co., 241 U. S. 190, 36 Sup. Ct. 541, 60 L. Ed. 948, such bill of lading governs the entire transportation and fixes not only the obligations of all participating carriers, but also the rights and obligations of all parties to the contract, none of whom can ignore or waive its terms—the construction of which contract and the determination of all rights and obligations arising thereunder being a federal question. New York Cent. R.

Co. v. Mutual Orange Distributors, 251 Fed. 230 234.

(c) The effect of a stipulation in a bill of lading for an interstate shipment requiring claims for damages or misdelivery to be presented within four months after a reasonable time for delivery has elapsed, cannot be avoided by suing the carrier in trover on the theory that in making the misdelivery it converted the shipment, and thus abandoned the contract, since the parties can not waive the terms of the contract under which the shipment was made pursuant to the Interstate Commerce Act. Nor could the carrier by its conduct give the shipper the right to ignore the terms and hold the carrier to a different responsibility from that fixed by the agreement made under the published tariffs and regulations. Georgia S. & A. Railroad v. Blish Milling Company, 36 Supreme Court, 541 241 U. S. 190, 60 L. ed. 948.

(d) Under the Cummins Amendment Act, the uniform express receipt, conforming in its provisions to the terms of the amendment and filed with the Interstate Commerce Commission, is binding upon the parties and is not the subject of waiver; and, in accordance with its provisions, in the event of a loss in transit, as distinguished from injury in loading or unloading or damage in transit, the giving of notice of claims as specified therein is a condition precedent to the right of recovery from the carrier. Henningsen Produce Co. v. Amer Ry. Express Co. (Minn, 1922), 188 N. W. 272.

ALL OTHER CITATIONS

J. W. Stewart & Son v. C. R. I. & P. Ry. Co. (Ia., 1915), 151 N. W. 485, 487; Banaka v. Missouri Pac. Ry. Co. (Mo., 1916), 186 S. W. 7; Harrington v. Wichita Falls & N. W. Ry. Co. (Okla., 1916), 156 Pac. 634; Olivit Bros. v. Penn. R. Co. (N. J., 1916), 96 Atl. 582; T. W. Mewborn & Co. v. Louisville & N. R. R. (N. C., 1915), 87 S. E. 37; Schloss-Bear-Davis Co. v. Louisville & N. R. Co. (N. C., 1916), 88 S. E. 476; Wall v. Northern Pac. Ry. (Mont., 1916), 161 Pac. 518, 521, 522; Cudahy Packing Co. v. Bixby (Mo., 1918), 205 S. W. 865; Houston E. & W. T. Ry. Co. v. Houston Packing Co. (Tex., 1918), 203 S. W. 1140; Keeney v. Chicago, B. & Q. R. R. (Iowa, 1918), 167 N. W. 475; Decker & Sons v. Director General, 55 I. C. C. 453, 457, 458, 461; Herran v. Chicago & R. R. Co., (Ind. 1922), 135 N. E. 253; Carbic Mfg. Co. v. Western Express Co. (Minn. 1921), 184 N. W. 35; Henningsen Produce Co. v. American Ry. Express Co. (Minn.) 188 N. W. 272; Howell v. Hines (Mo. 1923), 249 S. W. 924; William F. Mosser Co. v. Payne, (W. Va. 1922), 114 S. E. 365.

III. EVIDENCE.

§13¾. In general.

See Evidence.

CASES 1887-1908

(a) Evidence of the value of an entire lot of cotton, while not sufficient to prove the value of a portion of it, in the absence of facts showing the average weight, value, and quality, is admissible as tending to show such value. Missouri P. R. Co. v. Sherwood (Tex.), 4 I. C. R. 240.

(b) A written notification to the consignor, by a carrier's freight claim agent of the destruction of property received for transportation, is not admissible against the carrier to prove the loss of the property, until it is shown to have been made in discharge of the agent's duties or within the scope of his powers and while the obligation of the carrier with reference to the property yet continued. Missouri P. R. Co. v. Sherwood (Tex.), 4 I. C. R. 240.

(c) Evidence of the value of an entire lot of cotton, while not sufficient to prove the value of a portion of it, in the absence of facts showing the average weight, value, and quality, is admissible as tending to show such value. Missouri Pacific R. Co. v. Sherwood Thompson & Co. 4 I. C. R. 240.

(d) That a witness did not see the fire will not preclude his testifying that it consumed certain property where he states that he knows of his own knowledge that it did so. To exclude the evidence it must appear that his knowledge was founded so entirely on hearsay as to be inadmissible. Missouri Pacific R. Co. v. Sherwood Thompson & Co., 4 I. C. R. 240.

(e) Parol testimony is not admissible to impeach the validity of an act which by the record is shown to have been duly and legally passed. Ames v. Union P. R. Co. (C. C. D. Neb.), 4 I. C. R. 835.

(f) One who has been educated as a veterinarian may give an opinion on subjects coming within the scope of his profession; but one who has not been so

educated cannot give an opinion on any such matter requiring science or skill to determine, although he has frequently seen the treatment of diseases by veterinarians and has read extensively from books and papers treating diseases of stock. Rouse v. Youard (Kan. App), 5 I. C. R. 315.

(g) The original waybill is admissible in evidence in a suit against a connecting carrier for refusal to deliver the goods on tender of the charges agreed on in the bill, where other evidence has been given to show that the carrier had paid accrued charges amounting to as much as the sum specified, as tending to show that it did not intend to ratify that contract. Dwyer v. Gulf, C. & S. F. R. Co. (Tex.) 5 I. C. R. 361.

(h) Evidence of the price actually received for certain horses at the place of destination by plaintiff in an action for damages to horses by negligence in shipment is admissible to corroborate the correctness of his estimate of the market value of the horses, to which he has testified. Reeves v. Texas & Pacific R. Co., 5 I. C. R. 639.

IMPORTANT CASES SINCE 1908

(i) In a suit for damages against the initial carrier under the Carmack Amendment for damages or delay by the connecting carrier, a letter to the connecting carrier from the plaintiff settting out its claims is admissible, especially where the bill of lading requires and provides that the claim must be made in writing to the carrier at the point of delivery or at the point of origin. Baltimore C. & A. Ry. Co. v. Sperber & Co. (Md., 1913), 84 A. 72, 74.

(j) Where the question of determining the correct legal rate applicable on a shipment has been submitted to the Interstate Commerce Commission and the Commission decides the rate legally applicable under the tariffs, the matter is res adjudicata and conclusive on that question in a suit in a state court to recover for conversion of the property arising by refusal of the carrier to deliver the shipment except upon payment of a higher sum. Pecos & N. T. Ry. Co. v. Porter (Tex., 1913), 156 S. W. 267, 275.

(k) Rate schedules of an interstate carrier on file with the Interstate Commerce Commission are admissible in evidence in an action against it to recover damages for delay in the delivery of an interstate shipment on the issue of the validity and effect of a provision in the bill of lading by which the carrier undertook to limit its liability to a specified sum. Southern Exp. Co. v. Byers, 36 Sup. Ct. 410, 411; 240 U. S. 612, 60 L. ed. 825.

ALL OTHER CITATIONS

In re Express Rates, 28 I. C. C. 132, 138; Glenlyon Dye Works v. Interstate Ex. Co. (R. I. 1914), 91 Atl. 5, 9; Spada v. Pennsylvania R. Co. (N. J., 1914), 92 Atl. 379, 381; Davenport v. C. & O. Ry. Co., 149 N. Y. Sup. 865, 866; Howard & Callaghan v. I. C. R. R. Co. (Ky., 1914), 171 S. W. 442, 445, 446, 447; A. T. & S. F. Ry. Co. v. Wright, 78 Kan. 94, 95 Pac. 1132; Hinkle v. Southern Ry. Co. 126 N. C. 932, 36 S. E. 348, 78 Am. St. Rep. 685; Lasky v. Southern Express Co., 92 Miss 268, 45 South 869; Zoller Hop Co. v. So. Pac. Co., 143 Pac. 931, 933, 934, 935; Ross v. Maine Cent. R. Co. (Me., 1915), 96 Atl. 223; Missouri, K. & T. Ry. Co. v. A. E. Want & Co. (Tex., 1915), 179 S. W. 903, 905; Pecos & N. T. Ry. Co. v. Porter (Tex., 1916), 183 S. W. 98, 99; Johnson v. Missouri Pac. Ry. Co. (Mo., 1916), 187 S. W. 282; John Vittucci Co. v. Canadian Pac. Co. (Wash., 1918), 174 Pac. 981; Claims for Loss and Damage of Grain, 56 I. C. C. 347, 351, 352; Davis v. Clement Grain Co. (Tex., 1923), 215 S. W. 545; Bateham v. Chicago M. & St. P. Ry. Co. (Ia. 1823), 192 N. W. 818; Carpenter v. Hines (Mo. 1922), 239 S. W. 593; Karnofsky Bros. v. Delaware & Hudson Co., (Pa. 1922), 117 Atl. 783.

§14. Acts of connecting carrier.

IMPORTANT CASES SINCE 1908

(a) Inasmuch as the initial carrier is liable under the Carmack amendment for injuries caused to cattle by its connecting carriers, evidence of injuries done them by such carriers is admissible to prove the extent of such liability. Pecos & N. T. Ry. Co. v. Crews (Tex., 1911), 139 S. W. 1049, 1051.

ALL OTHER CITATIONS

N. C. & St. L. Ry. Co. v. C. V. Truitt Co. (Ga. App., 1914), 82 S. E. 465, 468.

§15. Burden of proof.

See Evidence I; Burden of Proof.

CASES 1887-1908

(a) The fact that a plaintiff rests his case on a common-law liability will not deprive defendant of the right to remove it, if he bases his defense on an Act of

Congress. Lowry v. Chicago, B. & Q. R. Co. (C. C. D. Neb.), 4 I. C. R. 435.

(b) The burden is upon a common carrier seeking to avoid liability for loss of an interstate shipment occasioned by fire, under a provision of the contract relieving it from liability for loss from fire, if not caused by its own negligence, to show that the fire was not due to its negligence. Tex. & Pacific Ry. Co. v. Payne, 7 I. C. C. App. LXIII.

IMPORTANT CASES SINCE 1908

(c) Where a carrier relies on a special contract limiting its liability or showing nonliability the burden is on it to show a valid contract, and to establish the reasonableness of the provisions upon which it relies. If there is no valid contract, such defense is not available. St. Louis, etc., Co. v. Alexander, Ann. Cas. 1915-B, notes, P. 86. Toledo, St. L. & W. R. Co. v. Milner (Ind., 1915), 110 N. E. 759.

(d) The provision of the Carmack Amendment that the initial carrier shall be liable for loss, damage or injury to property on the line of a connecting carrier, but that nothing therein should deprive the holder of a receipt or bill of lading of any remedy or right of action which he has under existing law, was not intended to change the common law liability of the carrier, but to affirm it, and to sustain his cause it is therefore sufficient for plaintiff to show delivery of fruit to defendant initial carrier in good condition, and receipt by the consignee in bad condition, for at common law, that is a showing of damage caused by the carrier prima facie, and it is for the latter to relieve itself by evidence of any lawful excuse. Collins v. D. & R. G. Ry. Co. (Mo. App., 1914), 167 S. W. 1178.

(e) It does not follow in every case that, where tariffs have been filed with the Commission, the contracts to which such tariffs are applied have been approved by the Commission. The burden is upon the carrier to establish the validity of its bill of lading. Norfolk & W. Ry. Co. v. A. J. Steele & Son (Virginia, 1915), 86 S. E., 124, 127.

(f) The Carmack Amendment, declaring that the initial carrier shall be liable to the lawful holder of the bill of lading or receipt for any loss, damage, or injury caused by it or by any connecting carrier, does not impose upon the shipper the burden of establishing, in a suit against the initial carrier, that the loss was in fact caused by the initial or connecting carrier, but merely extends the common-law liability of the initial carrier to all losses, whether occurring on its line or that of a connecting carrier. Chicago, & E. I. R. Co. v. Collins Produce Co., 235 Fed. 857.

(g) Under the Carmack amendment, when the holders of the bills of lading prove the goods have not been delivered to the consignee, the presumption arises that they have been lost by reason of the neglect of the carrier or its agents, and the burden of proof that the loss resulted from some other cause for which the initial carrier is not responsible in law or by contract is then cast upon the carrier. Galveston, H. & S. A. Ry. Co. v. Wallace, 223 U. S. 481, 492, 32 Sup. Ct. 205, 56 L. ed. 516.

(h) Under the Carmack Amendment, in an action against initial carrier for loss of poultry occurring on a connecting line, the burden of proof is not on the shipper to show that loss was "caused by" the connecting line, and not the military authorities in a flood district under martial law, which confiscated the poultry for benefit of sufferers. Chicago & E. I. R. R. v. Collins Produce Co., 39 Sup. Ct. 189.

ALL OTHER CITATIONS

National Rice Milling Co. v. N. O. & N. E. R. R. Co. (La., 1912), 61 So. 708, 720; C. R. I. & G. Ry. Co. v. Scott (Tex., 1912), 156 S. W. 294, 297; A. C. L. Ry. Co. v. Thomasville Live Stock Co. (Ark., 1914), 78 S. E. 1019, 1022; K. C. & M. Ry. Co. v. N. Y. Cent. & H. Ry. Co. (Ark., 1914), 163 S. W. 171, 174; Eastover Mule & Horse Co. v. A. C. L. R. Co. (S. Car.) S. E. 599, 609; Claims for Loss and Damage of Grain, 56 I. C. C. 347, 352; Blackburn & Co. v. A. A. R. R., 56 I. C. C. 439; Holland v. Hines, (Mo. 1921), 234 S. W. 366; Johnson v. Missouri Pac. R. Co. (Mo. 1923), 249 S. W. 658; Cleburne Peanut & Produce Co. v. Missouri, K. T. Ry Co. of Texas, (Tex. 1920) 221, S. W. 270, 271; Southern Ry. Co. v. Russell, (Va. 1922) 112 S. E. 700.

§15a. Election of Remedies.

ALL CITATIONS

Waters v. Becker (Wisc, 1921) 186 N. W. 167.

§16. Judicial notice.

See Evidence II. § 67.

IMPORTANT CASES SINCE 1908

(a) The Carmack Amendment to the Hepburn Act, making the initial carrier liable for loss or damage to goods on its own line or the lines of connecting carriers, and forbidding exemption by contract from such liability, is a law of general operation in Georgia and is to be given effect as such by the courts of the state. S. P. Co. v. Crenshaw, 5 Ga. App. 675, 680, 63 S. E. 865.

(b) Carriers should bring their tariffs into conformity with the fourth section of the law without suggestion from the Commission as to details. Re tariffs of the Columbus & Western Ry. 2 I. C. C. 11.

(c) During the period between May 29 and August 1, 1894, when greatly reduced rates were charged by defendants to Knoxville, Tennessee, dealers at Lynchburg, Virginia, an intermediate locality, were entitled to rates over the defendant lines from New York Providence and Boston not greater than those accepted at the same time on like traffic over said lines to Knoxville, and the excess paid for transportation by the intervening Lynchburg dealers over contemporaneous rates to Knoxville was unlawfully collected. Board of Trade of Lynchburg v. Old Dominion S. S. Co. 6 I. C. C. 632.

ALL OTHER CITATIONS

L. & R. R. Co. v. Scott 133 Ky. 724, 727, 118 S. W. 990; Lewis Poultry Co. v. New York Cent. R. Co. (Me., 1918), 105 Atl. 109. Payne v. White House Lumber Co. (Tex., 1921), 231 S. W. 417.

§17. Parties and Pleadings.

See Courts §13; Parties.

CASES 1887-1908

(a) An amendment to a declaration charging a common-law or implied contract obligation to repay money obtained by wrongful overcharges states a new cause of action within the rule as to the statute of limitations, where the original counts sought to recover treble damages as a statutory penalty. Chicago, B. & Q. R. Co. v. Jones (Ill.), 4 I. C. R. 683.

(b) A railroad company which has an arrangement with another company by which it is enabled to forward all matter intrusted to it for transportation to a designated place, which it adopts as a station on its line, is estopped to deny its possession of property intrusted to it at such place for shipment. Landa v. Missouri, K. & T. R. Co. (Mo.), 5 I. C. R. 254.

IMPORTANT CASES SINCE 1908

(c) Present tariff rule cannot bar consignees from suing for and upon due proof obtaining compensation for loss or damage caused by carrier's negligence even though undisclosed by external evidence. New York Mercantile Exchange v. B. & O. R. R. Co., 36 I. C. C. 156, 160.

(d) It is elementary that an undisclosed principal of a nominal agent can maintain an action at law against a carrier for damages to a shipment in transit. Oden & Elliott v. S. A. L. Ry., 37 I. C. C. 345, 348.

(e) In an action against a common carrier of livestock for damages to a shipment, where, nearly three years after the shipment, and in a second trial, defendant tendered the plea that notice of the loss was not presented within the time required by the contract of shipment, the disallowance of such amendment by the court was proper, defendant having waived the provision of the contract of shipment in view of the lapse of time, the preceding trial, and cost to plaintiff; the fact affording no reason for inflicting a hardship upon plaintiff that defendant had been kept from filing such plea before because the United States Supreme Court had not decided that the Carmack Amendment to the Interstate Commerce Act superseded state laws governing a carrier's liability for damage to interstate shipments. Cincinnati, N. O. & T. P. Ry. Co. v. Smith & Johnson (Ky., 1915), 176 S. W. 1013.

(f) The term "lawful holder" of the bill of lading as used in the Carmack Amendment, making the initial carrier liable for loss or damage occurring on the line of the connecting carrier to such holder, comprehends the owner of the property transported or the one beneficially entitled to recover for the loss or injury, and manual possession of the bill of lading is not prerequisite to the right to suit. Pecos & N. T. Ry. Co. v. Meyer (Tex., 1913), 155 S. W. 309, 312.

ALL OTHER CITATIONS

Baltimore C. & A. Ry. Co. v. Sperber & Co. (Md., 1913), 84 A. 72, 73; Adams Express Co. v. Chamberlin, etc., Co. (Ga., 1912), 75 S. E. 601, 602; N. Y. P. & N. Ry. Co. v. Peninsula Produce Exchange (Md., 1914), 89 Atl. 433, 437; Boden v. P. B. & W. R. R. Co. (Del., 1914), 91

Atl 209; Babbitt v. Grand Trunk Western Ry. (Ill., 1918), 120 N. E. 803. Precos & N. T. Ry. Co. v. Meyer (Texas 1913), 155 S. W. 309, 311; Currie v. Louisville & N. R. Co. (Ala. 1921), 90 Sou. 313; Davis v. Dawkins (Ala. 1922), 95 Sou. 118; Arkansas Central R. Co. v. McCuen, (Ark. 1921), 234 S. W. 617; Farr v. St. Louis Southwestern Ry. Co. (Ark. 1922), 243 S. W. 800; American Fruit Distributors v. Hines, (Calif. 1921), 203 Pac. 821; Payne v. Monroe (Ga. 1921) 110 S. E. 34; Thomas Canning Co. v. Southern Pac. Co. (Mich. 1922), 189 N. W. 210; Erisman v. Wabash Ry. Co. (Mo. 1922), 243 S. W. 237; Grover v. Hines, (Mont. 1923), 213 Pac. 250; Payne v. White House Lumber Co. (Tex. 1921), 231 S. W. 417; San Antonio Southern Ry. Co. v. Burd, (Tex. 1923), 246 S. W. 1060, 1061; William F. Mosser Co. v. Payne, (W. Va. 1922), 114 S. E. 365; Russo v. Davis, 285 Fed. 231.

§17½. Counter Claims.

IMPORTANT CASES SINCE 1908

(a) In an action by a railroad Company for freight charges, defendant held entitled to counterclaim for damages for goods lost on other shipments. Chicago & N. W. Ry. Co. v. E. C. Tecktonius Mfg. Co. (Wis., 1920), 262 F. 715.

ALL OTHER CITATIONS

Chicago & N. W. Ry. Co. v. E. C. Tecktonius Mfg. Co. (Wis., 1920), 262 F. 715, 716.

§18. Filing of tariffs.

See Tariffs.

IMPORTANT CASES SINCE 1908

(a) While the carrier's liability for losses must be determined, not by the Commission, but by the courts, yet to insure uniformity and to avoid unjust discrimination rules or practices concerning liability for loss or damage should be shown in the tariffs lawfully filed by carriers engaged in interstate transportation. Crouch Grain Co. v. A. T. & S. F. Ry. Co., 41 I. C. C. 717, 719.

IV. CRIMINAL LIABILITY.

§19. In general.

See Crimes.

IMPORTANT CASES SINCE 1908

(a) Where it was asserted that a claim against a railroad company was fraudulent and that the pressing of the claim was a violation of the Act to Regulate Commerce, §10, par. 3, as amended, the acts and sayings of one prosecuting or pressing the claim are generally admissible on the question of intent, and he may also testify as to his intention. Laser Grain Co. v. United States 250 Fed. 826.

(b) Released rates and rates based on declared values limit the liability of carriers for loss, damage, or injury to property transported. If carriers could lawfully base rates upon declared values, the value declared would be a part of the description of the commodity and the shipper who, by undervaluing, secured a lower rate than he was entitled to would be guilty of violating section 10 of the act, and by claiming full value in case of loss or damage, would subject himself to prosecution. North Pack. & Prov. Co. v. C. M. & St. P. Ry. Co., 69 I. C. C. 241.

ALL OTHER CITATIONS

Claims for Loss and Damage of Grain, 48 I. C. C. 530, 568, 561, 537.

LOTTERY TICKETS

CASES 1887-1908

(a) A ticket in a lottery authorized at the place of issue is not within the protection of the interstate commerce clause of the Federal Constitution,—especially in view of the legislation of Congress touching lotteries; and an agreement between the holders of different tickets to share the price that the ticket of any member might draw is to be tested by the law of the state in which the agreement is made, and not by the laws of the state where the lottery is located. Roselle v. McAuliffe, 7 I. C. C. App. XI.

(b) A ticket in a lottery authorized at the place of issue is not within the protection of the interstate commerce clause of the United States Constitution. The court says: The people of the State of Missouri have the inherent, sole, and exclusive right to regulate the internal government and police thereof subject to the paramount force of the Federal laws. The Federal laws do not sanction the agreement here in question or add anything towards improving its legal quality as determined by the local law. A ticket in a lottery authorized at the place of issue cannot certainly be regarded as within the protection of the interstate commerce clause of the Federal Constitution; certainly not in view of the legislation of Congress touching lotteries. Roselle v. Farmers' Bank of

Norborne (McAuliffe Inte), 7 I. C. C. App. Page c.

(c) A ticket in a lottery authorized at the place of issue is not within the protection of the interstate commerce clause of the United States Constitution. The court says: "The people of the State of Missouri 'have the inherent, sole, and exclusive right to regulate the internal government and police thereof' subject to the paramount force of the Federal laws. . . . The Federal laws do not sanction the agreement here in question, or add anything toward improving its legal quality as determined by the local law. A ticket in a lottery, authorized at the place of issue, cannot certainly be regarded as within the protection of the interstate commerce clause of the Federal Constitution; certainly not in view of the legislation of Congress touching lotteries." Roselle v. Farmers' Bank of Norborne, McAuliffe, 8 I. C. C. App. LXXV.

MAILS

CASES 1887-1908

(a) Failure of a railroad company to run any other trains than their regular passenger trains for carrying the mail is not a violation of law; but failure or refusal to carry mails on regular passenger trains, whether local or through trains, upon which they are required to carry mails, is unlawful. Re Charge to Grand Jury (No. 1) (D. C. S. D. Cal.), 4 I. C. R. 777.

IMPORTANT CASES SINCE 1908

(aa) The total compensation paid for transportation of mail is made up of a multitude of separate payments and services, differing fundamentally in nature, cost, and value, performed in varying degree by different lines, the relation of which to the total is subject to constant change, and which, taken as a whole, is constantly on the increase. Railway Mail Pay, 56 I. C. C. 1, 15, 16.

(b) The Post Office Department should be charged with whatever the service necessarily requires in the operation of trains and cars, but beyond this limitation any charges of space may not, with propriety, be made against the mail service. Railway Mail Pay, 56 I. C. C. 35, 38.

(c) The carriers have claimed that railroads may be required to transport mail for the Government at rates lower than the Commission would be justified in prescribing under ordinary circumstances and conditions. The Commission held, there is nothing to warrant it in requiring any railroad transporting the mails to perform the service at less than fair and reasonable compensation. Railway Mail Pay, 56 I. C. C. 1, 46, 47.

(d) It is essential to the social and commercial life of the nation that the mails be handled promptly and transported rapidly, and to insure this it is necessary that control of transportation of the mails be lodged with the Postmaster General. Railway-Mail Pay, 56 I. C. C 1, 68.

(e) It is in the interest of the government to have the compensation for transportation of the mails fixed on a basis that will enable the Post Office Department to so supervise the service as will insure a wise and judicious expenditure of the public money, and at the same time encourage the use of railroad facilitie so as to minimize economic waste. Railway-Mail Pay, 56 I. C. C. 1, 68.

(f) There is every reason from an economic stand point why the railroads should continue to perform side, terminals, and transfer service. It is a most important service to the public. The people have to pay for it in the end. The arrangement that will result in the least expenditure of the public money, and at the same time do justice to the railroads, should be adopted. Railway-Mail Pay, 56 I. C. C. 1, 70.

(g) The mail business of electric railroads generally is unimportant. The manner of transportation and the manner in which the mails are tendered to the carriers present the main difficulties encountered in the past. Extreme cases may not, with propriety, be used as the basis for payment generally. It is on the general average conditions that the general bases and rates must be established. Electric Railway Mail Pay 58 I. C. C. 455, 476.

(h) The contention of the department that because of the public nature of the mails and the public character of the carriers lower than fair and reasonable rates may properly be prescribed for the electric lines, is not upheld by the Commission, as although they should have due consideration, they do not justify the Commission in prescribing unreasonably low rates for such service. Electric Railway Mail Pay 58 I. C. C. 455, 476.

ALL OTHER CITATIONS

Railway-Mail Pay, 56 I. C. C. 1, 6, 8, 13, 15, 16, 24, 25, 35, 38, 46, 47, 60, 61 63, 65, 66, 68, 70, 72, 75, 76, 77, 78, 20, 26, 39, 41; Electric Railway Mail Pay, 58 I. C. C. 445, 447, 458, 460, 461, 463, 478, 484.

MANDAMUS

See Courts, §3.

MARINE INSURANCE

See Insurance.

IMPORTANT CASES SINCE 1908

(a) Joint tariffs limited liability for marine risk on shipments moving rail and water. Subsequently tariffs amended to include marine insurance in the rate for full value, the same as provided on shipments moving all rail. HELD: Subsequent amendment amounted in effect to a voluntary reduction in the rate by amount of insurance premiums, but such voluntary reduction is not of itself sufficient ground for a finding that the rate previously in effect was unreasonable. Old Dominion Co. v. Director General, as Agent, 63 I. C. C. 43.

ALL OTHER CITATIONS

Wyman, Partridge & Co. v. B. & M. R. R., 15 I. C. C. 577, 578, 583; Public Utilities Commission of the State of Colorado v. A. T. & S. F. Ry., 55 I. C. C. 374.

MARKET COMPETITION

See Advanced Rates §13; Competition; Discrimination §4, §7, §8 (7); Equalization §3, §4, §5 §6; Evidence §31½, §32; Long and Short Hauls, §4, §8; Reasonableness of Rates, §8 (1½); Reduced Rates, §6½; Through Routes and Joint Rates §8.

MARKING AND ADDRESSING

See Classification, §14; Express Companies, §32.

MEXICO

See Adjacent Foreign Country.

CASES 1887-1908

(a) The "circumstances and conditions" touching the transportation of passengers and freight to and from the Republic of Mexico through El Paso, Texas, by the Texas & Pacific R. Co. are (within the meaning of section 4 of the Interstate Commerce Act) so substantially different from those surrounding transportation to other points on said railway as to justify said Company in establishing lower rates at El Paso on freights transported for export into and received from Mexico and for delivery at El Paso than is charged at points between that city and the points where the freights originate and where the distance and haul are shorter. Re Petition of the Receivers of the Texas and Pacific R. Co. 1, I. C. R. 30.

IMPORTANT CASES SINCE 1908

(b) The Commission has no authority to establish a rate of transportation in Mexico; nor to order the maintenance of a rate for the future from a point in the United States to a point in Mexico; but it may require the American carriers to cease and desist from continuing to apply a joint through rate, or any rule, regulation, or practice in connection with that joint through rate, and it may, where such rate has been voluntarily maintained, inquire whether it has been reasonable, and if found unreasonable, award damages in that behalf. International Nickel Co. v. Director General 66 I. C. C. 627, 629.

(c) Complainant attacked charges assessed on coke, carloads, shipped from Gardner and Koehler, N. M., and Segundo, Colo., to Cananea, Mexico, between June 25 and July 24, 1918, as inapplicable, unjust and unreasonable. Shipments moved to Naco, Ariz., 654, 658 and 688 miles, beyond Naco they were hauled 20 miles within Mexico via the S. P. Complainant relies upon its contention that the rates attacked were unlawful to establish their unreasonableness. These rates were initiated by the president, acting through the Director General, in conformity with the federal control act and the act to regulate commerce. They were lawfully established under the act which is administed by the Commission and it is without jurisdiction to determine whether they were or were not lawfully established under the laws of Mexico. HELD, rates charged not unreasonable, complaint dismissed. Greene Cananea Copper Co. v. Director General, 80 I. C. C. 121.

(d) Contention that rates from points in United States to point in Mexico, increased under General Order No. 28 of general director, were unlawful since laws of Mexico require publication of increased rates for 30 days before becoming effective, not sustained. Rates assailed were lawfully established under acts administered by commission, which is without jurisdiction to determine

whether or not they were lawfully established under laws of Mexico. Greene Cananea Copper Co. v. Director General, as Agent, 80 I. C. C., 121.

(e) The authority of the Commission to award reparation is questioned because part of the transportation took place in Mexico. The rates attacked are joint rates and all carriers parties to such rates are jointly and severally liable for any damage resulting from their application. United States Graphite Co. v. Director General, 88 I. C. C. 157, 159.

(f) The Commission has no authority to establish a rate of transportation in Mexico; nor to order the maintenance of a rate for the future from a point in the United states to a point in Mexico; but it may require the American carriers to cease and desist from continuing to apply a joint through rate, or any rule, regulation, or practice in connection with that joint through rate, and it may, where such rate has been voluntarily maintained, inquire whether it has been reasonable, and if found unreasonable, award damages in that behalf. American Splint Corporation v. C. P. Ry., 88 I. C. C. 221.

(g) As the purpose of the original Interstate Commerce Act of 1887 was merely to regulate commerce between the several states and compel interstate carriers to make their charges reasonable, section 22, preserving the existing remedies at common law, and as prior to the Carmack Amendment of 1906 to section 20, prescribing a rule of liability in case of interstate shipments, the carriers' liability for such a shipment was either that of the general common law or that determined by the public policy of the particular state, the Interstate Commerce Act prior to the Cummins Amendment, which extended its scope to foreign shipments, did not apply to a shipment from Mexico to Texas. Mexico Northwestern Ry. Co. v. Williams (Tex. 1921), 229 S. W. 476.

ALL OTHER CITATIONS

Newark Grain Co. v. S. P. Co., 30 I. C. C. 431, 433; Seymour v. Morgan's L. & T. R. R. & S. S. Co., 35 I. C. C. 492; American Box Co. (Ltd.) v. M. L. & T. R. R. & S. S. Co., 42 I. C. C. 19; Aldrich v. Atlantic Coast Line R. Co., 89 S. E. R. 315; Swift & Co. v. U. P. Ry., 49 I. C. C. 336, 337; Early Foster Co. v. S. P. Co., 63 I. C. C. 209. Saginaw & Manistee Lumber Co. v. A. T. & S. F. Ry. Co.; 80 I. C. C. 487.

MILEAGE SCALE

See Cars and Car Supply, §7⅝, §11¾; Distance Rates; Evidence §58, §59; Passenger Fares and Facilities §6.

MILLING

See Facilities and Privileges, §9½.

MINIMUM RATES

See Classification §15. Interstate Commerce Commission §10¼.

IMPORTANT CASES SINCE 1908

(ab) Once a minimum rate is fixed on traffic between two points the ability of carriers in the exercise of judgment in management to stimulate such traffic by reductions in rates is limited and curtailed. No doubt the power to fix such minimum rates can in some situations be employed to advantage and with propriety, for the purpose of averting rate wars, which are always injurious to the carriers and ordinarily, in the long run, to the public interest, or for the purpose of preventing an unjust burden upon other forms of traffic or upon other parts of the country. This power should be sparingly exercised and only in cases where it clearly appears that its exercise is necessary in order that substantial public injury may be avoided. Sugar cases of 1922. 81 I. C. C. 448, 472.

(b) Power to fix minimum rates on traffic between two points can in some situations be employed to advantage and with propriety, for purpose of averting rate wars, which are always injurious to carriers and ordinarily, in long run, to the public interest, or for purpose of preventing unjust burden upon other forms of traffic or upon other parts of the country. This power should, however, be sparingly exercised and only in cases where it clearly appears that its exercise is necessary in order that substantial public injury may be avoided. Sugar Cases of 1922 81 I. C. C., 448, 472.

(c) Desire of competitive manufacturing points to be each accorded its "fair share" of business in common destination territory does not, standing alone, justify exercise of commission's power to fix minimum rates. Sugar Cases of 1922, 81 I. C. C. 448, 472.

MINIMUM CHARGES

See Classification §15, §16.

MINIMUMS

I. APPLICATION OF MINIMUM

§1. In general.
§2. Tariffs and Publication.
§3. Furnishing car of minimum ordered.
§4. Larger car furnished than ordered.
§5. Minimum higher than car capacity.
§6. Mixed carloads.
§7. Reasonableness and riscrimination.
§8. Two cars for one ordered.
§9. Follow-lot shipments.
§10. Tank cars.
§11. Reparation.

CROSS REFERENCES

See Adjacent Foreign Country; Cars and Car Supply; Classification §4 §15 §21 §65; Evidence §65; Loading and Unloading; Refrigeration §6 §7; Weights and Weighing.

I. APPLICATION OF MINIMUM.

§1. In General.

See Application of Rates.

CASES 1887-1908

(a) Where three connecting roads publish a joint tariff under which they hold themselves out to the public as prepared to transport commodities in carload lots of a certain minimum magnitude at a certain specified rate, such carriers are by their tariff allowed to charge no more than the rate upon such carload, no matter what equipment they may provide for its transportation, except as the tariff in specific terms provides certain minimum weights for carloads in cars of certain lengths or capacity. Pacific Purchasing Co. v. C. & N. W. Ry. Co. 12 I. C. C. 549.

IMPORTANT CASES SINCE 1908

(b) Where different minima exist on a commodity in different states, the Commission cannot undertake to fit the interstate minimum to each. To do so would result in state regulation of interstate commerce. 1915 Western Rate Advance Case, 35 I. C. C. 497, 576.

(c) Within reasonable limits it is proper for the carriers themselves to provide the minimum weights to meet economic and commercial conditions, but the Commission does not believe that it should be required of them except under very unusual circumstances. Efforts and progress made by carriers toward greater economy and efficiency in operation by the employment of more modern facilities of transportation should not be discouraged or retarded by the failure of the shippers facilities to keep pace with the carriers. Natchez Chamber of Commerce v. L. & A. 58 I. C. C. 610, 631.

(d) It is the duty of the carriers to publish regulations protecting the minimum applicable in connection with the car ordered, subject to reasonable provisions for the protection of the carriers equipment. Minimum weight on grain based on capacity of car ordered. 60 I. C. C. 318, 320.

(e) The desirability of uniform minima under appropriate conditions should not be overlooked, but in the absence of any showing to the contrary, it must be assumed that the higher minimum is reasonably intended to comport with the loading capacity of the car. Cairo Association of Commerce v. Director General, 52 I. C. C. 701, 703.

(f) A contention that the phrase in a tariff "highest rate and minimum weight" means the highest rate and highest minimum weight, sustained. Minimum Weight on Live Stock in Mixed Carloads, 64 I. C. C. 546.

(g) In establishing a minimum for the transportation of a light and bulky article it is the aim to name a weight which can be loaded under ordinary circumstances. Bernard Co. v. Director General, as Agent, 74 I. C. C. 557, 560.

(h) A carload minimum weight reasonably adapted to the traffic generally should not be increased merely because one shipper, on account of conditions peculiar to himself, is able to load in excess of the existing minimum thereof. Bernard Coal Co. v. Director General, as Agent, 74 I. C. C. 559, 560.

(i) As a practical matter, a car can not be loaded with tank or silo material merely for the purpose of filling it. Only so much of the material can be loaded as is required for the fabrication of the tanks or silos making up the shipment. International Lime Co. v. Director General, as Agent, 77 I. C. C. 424.

ALL OTHER CITATIONS

Kaye & Carter Lumber Co. v. N. P. Ry. Co., Unrep. Op. 392; Kansas City Hay Dealers' Ass'n v. M. P. Ry. Co., 14 I. C. C. 597, 600, 597, 603; Rail & River Coal Co. v. B. & O. R. R. Co., 14 I. C. C. 86, 90; City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 389; La Salle Paper Co v. Mich. Cent. R. R. Co., 16 I. C. C. 149, 150; Ozark Fruit Growers' Ass'n v. St.

L. & S. F. R. R. Co., 16 I. C. C. 106, 109, 134, 136; Indianapolis Freight Bureau v. C. C. C. & St. L. R. R. Co., 16 I. C. C. 56, 70; Pease Bros. Furniture Co. v. S. P. L. A. & S. L. R. R. Co., 17 I. C. C. 223, 224; Montgague & Co. v. A. T. & S. F. Ry. Co., 17 I. C. C. 72, 75, 76; Ponchatoula Farmers' Ass'n v. I. C. R. R. Co., 19 I. C. C. 513, 517; Georgia Fruit Exchange v. S. Ry. Co., 20 I. C. C. 623, 630; Lull Carriage Co. v. C. K. & S. Ry Co., 10 I. C. C. 15, 16; Milburn Wagon Co. v. L. S. & M. S. Ry. Co. 22 I. C. C. 93, 104; Sunderland Bros. Co. v. St. L. & F. R. R. Co., 23 I. C. C. 259, 261; Rickards v. A. C. L. R. R. Co., 23 I. C. C. 239, 240; Du Pre Co. v. B. R. & P. Ry. Co. 23 I. C. C. 226, 228; In Re Transportation of Wool Hides and Pelts, 23 I. C. C. 151 158, 167, 165; In Re Advance on Lemons 23 I. C. C. 27, 30; Larkin Co. v. E. & W. T. Co., 24 I. C. C. 645. In re Wool, Hides and Pelts, 25 I. C. C. 185, 187; Consolidated Coal Co. v. B. & O. R. R. Co., 27 I. C. C. 105; Lamb-Davis Lumber Co. v. G. N. Ry. Co., Unrep. Op. A-235; Douglas & Co. v. I. C. R. R. Co., 31 I. C. C. 587, 606; Dunnage Allowances, 30 I. C. C. 538, 546; Nix & Co. v. S. Ry. Co., 31 I. C. C. 145, 147; Rates on Beer and Other Malt Products, 31 I. C. C. 544, 545; Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C., 332, 341; Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 630; Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C. 332, 341; Eastern Live Stock Case, 36 I. C. C., 675, 685; Oklahoma Traffic Assn. v. A. & S. Ry. Co., 36 I. C. C. 329, 345; Dressed Beef from New York, 38 I. C. C. 51, 53; Hillerich & Son Co. v. I. C. R. R. Co., 41 I. C. C. 448, 449; Wilcox Merc. Co. v. Wabash Ry., 44 I. C. C. 552; Commissioners of Florida v. Southern Express Co., 44 I. C. C. 645, 651; Dallas Cooperage & Woodenware Co. v. G. C. & S. . Ry., 45 I. C. C. 468; Markley & Co. v. C. N. O. & T. P. Ry., 45 I. C. C. 559, 560; Good-Hopkins Lumber Co. v. G. N. Ry., 51 I. C. C. 99; Felders v. S. Ry., 51 I. C. C. 124; K. C. Millers Club v. A. T. & S. F. Ry., 50 I. C. C. 170, 182; Feltus Lumber Co. v. G. N. Ry., 51 I. C. C. 571, 576; Northern Grain & Warehouse Co. v. O. T. Ry. Co., 55 I. C. C. 101; Northern Grain & Warehouse Co. v. Director General, 55 I. C. C. 488; Timmons v. B. C. & A. Ry., 55 I. C. C. 495; National Pole Co. v. A. T. & S. F. Ry., 55 I. C. C. 625, 629; Lumber Carload Minima, 56 I. C. C. 318; Consolidated Classification Case 54 I. C. C. 19-20; Wheeler Co. v. Director General, 59 I. C. C. 699, 701; Natchez Chamber of Commerce v. L. & A. Ry. Co. 58 I. C. C. 610, 631; Minimum weight on grain based on capacity of car ordered. 60 I. C. C. 318, 320; Cairo Asso. of Commerce v. Director General, 62 I. C. C. 701, 703; Texarkana Pipe Works v. Director General, as Agent, 64 I. C. C. 6. National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co., 80 I. C. C. 179.

§2. Tariffs and Publication.

CASES 1887-1908

(a) Circulars issued by a railway company prescribed maximum and minimum carload weights for grain depending upon the capacity of the car furnished by the railway company to the shipper; the rules so prescribed were not shown upon the carrier's posted schedules of rates and charges; and application of the rules to three carload shipments of corn carried for complainant resulted in materially increasing the charges above those in force under the carrier's published rate schedules. HELD, That complainant only had to consult the schedule showing defendant's rate and charges, and that complainant is entitled to recover charges collected on its shipments in excess of those set forth in such schedule. Suffern, Hunt & Co. v. Indiana, D. & W. A. Co., 7 I. C. C. 255.

(b) The law requires that the minimum weight rule or regulation itself shall be stated on the tariff or schedule of rates, if it is to be made effective, and that changes in such minimum weight, thereby advancing or reducing the charge shall be shown by printing new schedules or plainly indicating such changes upon the existing rate schedule. Where slight changes are made in an existing schedule showing numerous rates, the printing of a supplement or amendment to the schedule showing such changes has been regarded as substantial compliance with the statute, but the Commission has called attention to the uncertainty and confusion caused by the issuance of a considerable number of supplements or amendments to a rate sheet, and have pointed out that such practice is not in conformity with the law. Suffern Hunt & Co. v. I. D. & W. R. Co. 7 I. C. C. 255, 278.

IMPORTANT CASES SINCE 1908

(c) On sacks of Portland cement weighing 38,000 lbs. from Chanute, Kan., to Denison, Ia., a joint rate of 10c to Council Bluffs and a local rate of 4.9c

thence to destination were collected, no through rate being in effect. Defendant initial carrier's tariff failed to provide a carload minimum for the 10c rate to Council Bluffs. The delivering carrier established, by a tariff published subsequently to that of the initial line fixing the 10c rate, a minimum of 40,000 lbs. HELD, the 10c rate to Council Bluffs should be assessed on the actual weight of shipment. When a car is demanded and loaded by the shipper and is tendered and otherwise delivered as a carload, and no minimum carload weight is legally provided, the carload rate, if it makes less than the less-than-carload rate, must be applied on the actual weight, whether the actual weight of shipment be more or less than an ordinary carload quantity. Sunderland Bros. Co. v. M. & T. Ry. Co., 18 I. C. C. 425, 426.

§3. Furnishing Car of Minimum Ordered

See Cars And Car Supply §8.

IMPORTANT CASES SINCE 1908

(a) Where neither the bill of lading nor the waybill bears any notation indicating that a car of a particular size was ordered by the shipper, and neither the complainant nor any other witness states definitely that the order given for the shipment required the defendant carrier to furnish a car of small capacity, and where no other evidence that such equipment was made is offered, reparation will not be granted for charges assessed on the minimum of a larger car than the one complainant alleges he ordered. Wheeler Lumber, Bridge & Supply Co. v. S. P. Co., 16 I. C. C. 547, 548.

(b) While a long course of dealing between the shipper and the carrier, involving daily or frequent shipments of automobiles from a definite station, might so familiarize the carrier's agents at that point with the requirements of the shipper in the way of equipment as to justify a holding that an order for a car for three automobiles was sufficient to charge the carrier with notice that a thiry-six foot car was wanted, such a relationship between shipper and carrier must be clearly made out before reparation can be awarded on that basis for the exaction by the carrier of the minimum for a larger car than the one alleged to be ordered. Pope Mfg. Co. v, B. & O. R. R. Co., 17 I. C. C. 400, 403.

(c) Where a carrier by its tariffs establishes particular minima, as applicable to cars of given dimensions, it must furnish a car of the size provided for in its tariff and ordered by the shipper; or, in case of its inability to do this, it must provide other equipment under such conditions as to fairly protect the minimum of the car ordered, and its tariffs should contain a provision to that effect. Noble v. B. & O. R. R. Co., 22 I. C. C. 432, 438.

(d) When the carrier, for its own convenience, furnishes a car of different character from one ordered for transportation of fir lath or other produce of like nature, car so furnished may be used on basis of minimum weight applicable to car ordered, or on basis of actual weight of shipment if greater than such minimum. Atlas Lumber & Shingle Co. v. N. P. Ry. Co., 26 I. C. C. 313, 314.

(e) The Commission has consistently held that "where a carrier by its tariffs specifies a certain minimum for a car of a certain size, it thereby tenders to the public that rate of transportation;" and that where for its own convenience it tenders a car of different capacity from that ordered by the shipper the carrier must protect the minimum applicable to the car ordered. Feltus Lumber Co. v. G. N. Ry., 51 I. C. C. 571, 575.

ALL OTHER CITATIONS

Slimmer & Thomas Co. v. Penn. Co., 16 I. C. C. 531, 533; Peerless Agencies Co. v. A. T. & S. F. Ry. Co. 17 I. C. C. 218; Jones v. Southern Ry. Co. 18 I. C. C. 150, 153; Maldonda & Co. v. Ferro Carril de Sonora, 18 I. C. C. 65, 67; Torrey Cedar Co. v. C. & N. W. Ry. Co., Unrep. Op 420; Lininger Implement Co. v. C. & N. W. Ry. Co., Unrep. Op. 414; Bentley v. C. & N. W. Ry. Co., Unrep. Op. 181; American Lumber & Mfg. Co. v. S. P. Co., 14 I. C. C. 561, 562; General Chemical Co. v. N. W. Ry. Co., Co., 15 I. C. C. 349, 350; Hanna Coal Co. v. N. P. Ry. Co., 16 I. C. C. 289; Beggs v. Wabash R. R. Co., 16 I. C. C. 208; Peerless Agencies Co. v. A. T. & S. Ry. Co., 17 I. C. C. 218; Kaye & Carter Lumber Co. v. M. & I. Ry. Co., 17 I. C. C. 209, 211; Noble v. B. & O. R. R. Co., 20 I. C. C. 72; Hull & Co. v. M. P. Ry. Co., 21 I. C. C. 486; Milburn Wagon Co. v. L. S. & M. S. Ry. Co., 22 I. C. C. 511; St. L. S. W. Ry. Co., of Texas v. Spring River Stone Co. (Mo., 1913), 154 S. W. 465, 468; Weber & Co. v. H. T. & W. R. R. Co., Unrep. Op A-23;

Berkey & Gay Furniture Co. v. M. C. R. R. Co., Unrep. Op. 1911; Albin v. C. M. & St. P. Ry., 42 I. C. C. 477; Cutler Manager Co. v. M. St. P. & S. S. M. Ry., 47 I. C. C. 249; Good-Hopkins Lumber Co. v. G. N. Ry., 51 I. C. C. 99; Feltus Lumber Co. v. G. N. Ry., 51 I. C. C. 571, 576; Tull & Gibbs v. N. & W. Ry. 55 I. C. C. 17, 18; Northern Grain & Warehouse Co. v. O. T. Ry., 55 I. C. C. 101; Hanover Creamery Co. v. Director General, as Agent, 59 I. C. C. 444, 446; Minimum Weight of Grain, 60 I. C. C. 318, 320; Northern Grain & Warehouse Co. v. S. P. & S. Ry. Co. 63 I. C. C. 205; Acme Cement Plaster Co. v. St. L. S. F. Ry. 64 I. C. C. 662, 664; Arizona Copper Co. v. Director General, 73 I. C. C. 287.

§4. Larger car furnished than ordered.
See Cars and Car Supply §8.

IMPORTANT CASES SINCE 1908

(a) Where a shipper orders a car of specified length and the carrier supplies one of larger dimensions, the shipper is entitled to charges assessed on the actual weight of the shipment where the weight exceeds the minimum of the kind of car ordered, but is less than that of the one furnished, despite the fact that at the time of the shipment the carrier had no published rule to that effect where the shipment actually moved could have been loaded into the car ordered. Reparation awarded on shipment of cedar posts from Hines, Minn., to Benton, Neb., where the shipper ordered a thirty-three-foot car, was furnished a thirty-four-foot car and assessed on the thirty-four-foot car minimum. Kaye & Carter Lumber Co. v. M. & I. Ry. Co., 17 I. C. C. 209, 211.

(b) Where a carrier by its tariffs specifies a certain minimum for a car of a certain size it thereby tenders to the public that rate of transportation; and that where for its own convenience it tenders a car of different capacity from that ordered by the shipper the carrier must protect the minimum applicable to the car ordered. Northern Grain & Warehouse Co. v. S. P. & S. Ry., 63 I. C. C. 205.

ALL OTHER CITATIONS

American Lumber & Mfg. Co. v. S. P. Co. 14 I. C. C. 561, 562; General Chemical Co. v. N. & W. Ry. Co., 15 I. C. C. 349, 350; Bregg v. Wabash R. R. Co., 16 I. C. C. 208; Hanna Coal Co. v. N. P. Ry. Co. 16 I. C. C. 289; Peerless Agencies Co. v. A. T. & S. F. Ry. 17 I. C. C. 218; Noble v. B. & M. R. R. Co. 20 I. C. C. 72; Noble v. B. & O. R. R. Co. 22 I. C. C. 432, 438; Milburn Wagon Co., v. L. S. & M. S. Ry. Co. 22 I. C. C. 511; Hull & Co. v. M. P. Ry. Co. 21 I. C. C. 486. Western Classification Case, 25 I. C. C. 442, 490; Hastings Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-399; Torrey Cedar Co. v. C. & N. W. Ry. Co., Unrep. Op. A-588; A-618; Shaffer & Co. v. G. T. W. Ry., 42 I. C. C. 433; Pacific Line & Gypsum Co. v. O. S. L. R. R. Co., 42 I. C. C. 734; Seldomridge Grain Co. v. A. T. & S. F. Ry. Co., 43 I. C. C. 213; Minimum weight on grain based on capacity of car ordered, 60 I. C. C. 318. Bentley v. C. & N. W. Ry. Unrep. Op. 181; Lininger Implement Co. v. C. & N. W. Ry. Co., Unrep. Op. 414; Torrey Cedar Co. v. C. & N. W Ry. Unrep. Op. 420.

§5. Minimum higher than car capacity.

CASES 1887-1908

(a) It would be manifestly unjust under any rule as to minimum loads or otherwise, to charge for weight not carried in a car which the carrier has furnished and in which on account of its size and the nature and bulk of the freight the required minimum quantity can not be loaded. Suffern Hunt & Co. v. I. D. & W. R. R. Co. 7 I. C. C. 255, 282.

(b) It would manifestly be unjust, under any rule as to minimum loads or otherwise, to charge for weight not carried in a car which the carrier has furnished and in which on account of its size and the nature and bulk of the freight the required minimum can not be loaded. National Hay Asso. v. L. S. & M. S. R. Co. 9 I. C. C. 264, 305.

IMPORTANT CASES SINCE 1908

(c) If cars will not carry the minimum prescribed a provision should be inserted in tariffs to the effect that the capacity of the car shall govern. Milk and Cream Investigation, 43 I. C. C. 375, 377.

(d) Ordinarily carload minimum weights should be established with reference to the loading capacity of the car; and if carriers desire to protect themselves from unrenumerative charges per car they should do so by regulating the rate and not by prescribing minimum weights which manifestly can not be loaded. Dallas Cooperage & W. Co. v. G. C. & S. F. Ry., 45 I. C. C. 468, 469.

(e) Admitting that it was impossible to load the minimum in a few of the cars

used, it does not necessarily follow that the minimum was unreasonable. The test is,what can ordinarily be done? Briggs & Turvias v. Director General, 61 I. C. C. 363, 364.

(ea) Tariff rules providing for charges on mixed carloads of live stock at the highest rate and highest minimum applicable to any of the stock in straight carloads, found unreasonable. Mixed shipments will not ordinarily load to the minimum weights as determined by the present rules, and an undue burden is placed upon the small live-stock shippers who have not sufficient tonnage of each kind of stock to ship in straight carloads. Rule providing for charges based on the rate and minimum for that kind of stock which on a straight c. l. basis produces the highest charges prescribed. National Live Stock Exchange v. A. A. R. R. Co., 69 I. C. C. 125, 131, 137.

(f) It is unreasonable to base transportation charges on minimum weights in excess of the cars' capacity. Arizona Copper Co. v. Director General, as Agent, 73 I. C. C., 287, 288.

(g) Charges on hay, based upon applicable minimum which, could not be loaded in cars furnished, found not unreasonable as compared with lower charges subsequently established as an emergency measure and based upon cubic capacity of cars. While the practice of securing revenue through a minimum higher than the capacity of cars furnished should be condemned, where abnormally low per car charges resulted from emergency rates established as a temporary relief measure a shipper has no well-founded claim because he could not load to the prescribed minimum. Devereaux Co. v. Director General, as Agent, 73 I. C. C., 289.

(h) The practice of securing revenue through a minimum higher than the capacity of cars furnished should be condemned, but where abnormally low per car charges resulted from emergency rates established as a temporary relief measure, a shipper has no well-founded claim because he could not load to the prescribed minimum. Devereaux Co. v. Director General, as Agent, 73 I. C. C., 289, 290, 291.

(i) Charges on certain shipments of cotton twine and cotton factory sweepings from Uniontown, Ala., to Pacsteel, Calif., assessed on basis of minimum weights of cars furnished, found unreasonable to extent they exceeded charges on basis of actual weight, cars having been of lesser capacity than those ordered by shipper were furnished by carrier for its own convenience, into which minimum prescribed could not be loaded. Reparation awarded and carriers ordered to provide "carriers' convenience" rules. California Cotton Mills Co. v. S. Ry. Co., 74 I. C. C. 747.

(j) While minima should be high enough to insure a proper utilization of equipment, they should not exceed what can be reasonably and generally loaded. Minimum weights on coal tar paving cement. 81 I. C. C. 762, 763.

(k) If carriers desire to protect themselves from unduly low charges per car they should not do so by prescribing arbitrary minimum weights which can not be loaded in the ordinary equipment available, and it is unreasonable to base charges on a minimum to which cars are incapable of being loaded. Minimum weights on furniture 83 I. C. C. 64, 67.

(l) Carriers should not attempt to protect themselves from unduly low charges per car by prescribing arbitrary minimum weights which can not be loaded in ordinary equipment available, and it is unreasonable to base charges on such weights. Riverside Mills, 25 I. C. C. 434; Durham Coal & Iron Co., 34 I. C. C. 10. Minimum Weights on Furniture, 83 I. C. C. 64, 67.

(m) A c. l. minimum for light articles such as furniture should be no higher than can ordinarily be loaded. Montague & Co., 17 I. C. C. 72; Minimum Weights on Furniture, 83 I. C. C. 64, 67.

ALL OTHER CITATIONS

Thristle Mfg. Co. v. C. M. St. P. Ry. Co., Unrep. Op. 299; Richmond Co. v. G. T. Ry. Co. of Can., Unrep. Op. 161; Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co., 14 I. C. C. 606, 608; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 15 I. C. C. 504, 527; Ozark Fruit Growers Ass'n v. St. L. & S. F. R. R. Co., 16 I. C. C. 106, 109; Montague & Co. v. A. T. & S. F. Ry. Co. 17 I. C. C. 72, 76, 78, 84; Orgen Lumber Co. v. O. R. R. Co., 19 I. C. C. 582; Richards v. N. P. Ry. Co. 21 I. C. C. 468; Riverside Mills. 25 I. C. C. 434, 435; Barnard Co. v. C. M. & St. P. Ry. Co., 26 I. C. C. 91, 93; Minimum Weights on Corn in Southwest 26 I. C. C. 197; Atlas Lumber & Shingle Co. N. P. Ry. Co., 26 I. C. C. 313, 314; Struck Co. v. L. & N. R. R. Co., 26 I. C. C. 469; Paducah Cooperage

Co. v. I. C. R. R. Co., 25 I. C. C. 372; Hall Lumber & Tie Co. v. C. & O. Ry. Co., Unrep. Op. A-279; Squire Dingee Co. v. C. & E. I. R. R. Co., Unrep. Op. A-440; Dorschel Produce Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-489; Kibbe v. A. & S. Ry., 33 I. C. C., 415; Lamson Bros. & Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A-882; Kibbe v. A. & S. F. Ry. Co., 33 I. C. C. 415, 416; Durham Coal & Iron Co. v. C. of Ga. Ry. Co., 34 I. C. C. 10, 12; New England Milk Case, 40 I. C. C. 699, 736; Bags and Bagging Minimum Weights, 44 I. C. C. 527; Garland Nut & Rivet Co. v. P. L. E. R. R., 45 I. C. C. 593; Cutler- Magner Co. v. M. St. P. & S. S. M. Ry., 47 I. C. C. 249, 250; Northern Potato Traffic Asso. v. B. & O. R. R., 48 I. C. C. 303, 306; Northern Grain & Warehouse Co. v. O. T. Ry. Co., 55 I. C. C. 101; Northern Grain & Warehouse Co. v. Director General, 55 I. C. C. 488; San Antonio Freight Bureau v. Director General, 57 I. C. C. 45; Northern Potato Traffic Association v. C. B. & Q., 57 I. C. C. 385; Armour Grain Co. v. Director General, 58 I. C. C. 306, 308; Hanover Creamery Co. v. Director General, 59 I. C. C. 444, 446; Hawkins v. O. S. L. R. R. Co., 60 I. C. C. 188; Minimum Weight on Grain, 60 I. C. C. 318, 320; Armour & Co. v. Director General, loaded to full visible capacity. Cars of 63 I. C. C. 369, 373; Lumber Carload Minima, 68, I. C. C. 98; California Cotton Mills Co. v. Director General, as Agent, 68 I. C. C. 403; Armour & Co. v. A. T. & S. F. Ry., 69 I. C. C. 485; Noll Lumber Co. v. U. P. R. R., 80 I. C. C. 105; International Lime Co. v. Director General, as Agent, 77 I. C. C. 645; Portland Flouring Mills Co. v. N. P. Ry. Co., 83 I. C. C. 366, 368; National Petroleum Asso. v. A. T. & S. F. Ry. Co., 83 I. C. C. 530, 533; United States Graphite Co. v. Director General, 88 I. C. C. 157, 159.

§6. Mixed Carloads.

See Classification §7 Mixed Carloads.

IMPORTANT CASES SINCE 1908

(a) A minimum was assessed on each of two kinds of grain in one car separated by a bulkhead, the tariff providing for the mixed carload rate only when all but one of the grains were sacked. Rule amended and reparation ordered on shipment made. Hewitt & Connor v. C. & N. W. Ry. Co., 16 I. C. C. 431.

(b) Complainant attacked the mixed carload rule of the defendant which provided that the deficit in minimum should be added to the weight of the highest rate article in the shipment. HELD, that the rule is unreasonable in the requirement that "when the aggregate weight of a mixed carload shipment does not amount to 20,000 lbs. add to the weight of the highest rated articles in the shipment sufficient to make minimum weight of 20,000 lbs." and that in lieu of this requirement the rule should provide that when the aggregate weight of a mixed carload shipment does not amount to 20,000 lbs., there should be added to the weight of the heaviest loaded article in the shipment sufficient to make minimum weight of 20,000 lbs., except that when the shipment consists of two or more articles of equal weight, the weight sufficient to make the minimum weight of 20,000 lbs. should be added to the weight of the lowest rated article. Ponchatoula Farmers' Ass'n v. I. C. R. R. Co., 19 I. C. C. 513, 520.

(c) Generally speaking charges on mixed merchandise in carloads should be paid on the highest class rate with the lowest minimum applicable to any article in the car taking that rate. Sheldon & Co. v. N. Y. C. & St. L. R. R. Co., Unrep. Op. A-276.

ALL OTHER CITATIONS

Fischer Lime Co. v. S. Ry., 46 I. C. C. 473.

§7. Reasonableness and Discrimination.

See Cars and Car Supply §8; Distance Rates §3.

CASES 1887-1908

(a) A practice had existed on the part of certain carriers of live cattle to make a carload rate irrespective of weight, leaving the shipper to load into the car as many cattle as he pleased and was able to put into it. The carriers substituted for this practice the rule that while naming a carlot rate they prescribed a minimum weight for a carload and then charged by the hundred pounds in proportion to the carlot rate for any excess over the minimum. HELD, that this rule was not unlawful. Leonard v. Chicago & Alton R. Co., 2 I. C. R. 599.

(b) A carrier enforced minimum carload weights for corn and other grain (except oats) which were 4,000 pounds less than the capacity of the car furnished by the carrier; the capacity of the car

ordered by the shipper when such order could not be complied with, but this only on application to the superintendent, thus entailing more or less delay and sometimes loss to shipper; the capacity of the car furnished by the carrier on shipments destined to Indianapolis; and a general minimum weight of 28,000 pounds. HELD upon all the facts, that minimum carload weights for corn or other grain which vary with the size of cars furnished by the carrier are unreasonable and unjust and operate to subject complainant and other shippers to unjust discrimination and undue prejudice and disadvantage; and that the carrier should establish a fixed, reasonable and just minimum carload weight for corn and for each other kind of grain. Suffern, Hunt & Co. v. Indiana D. & W. R. Co., 7 I. C. C. 255.

(c) A carrier which had not provided track scales at stations prescribed a rule or regulation forbidding shippers to load grain in cars beyond a specified weight above the marked capacity under a so-called "penalty" of increased rates on the excess weight. HELD, That such rule or regulation, if properly established, is not unlawful, provided the increase in charges for excessive weight is not unreasonable, and the margin between such maximum and the carrier's minimum carload weight for grain is so wide that shippers may, without scales, readily comply with both rules. Suffern, Hunt & Co. v. Indiana D. & W. R. Co., 7 I. C. C. 255.

(d) A maximum carload weight with reasonable increase in rate on the excess loaded is not unlawful if sufficient difference is preserved between such maximum and the minimum carload weight allowed by the carrier. Suffern Hunt & Co. v. I. D. & W. R. Co. 7 I. C. C. 255, 280.

(e) Upon all the facts and circumstances, including, on the one hand, the difficulties and liability to loss attending the production and shipment of peaches, and, on the other hand, the large percentage of cars loaded above the prescribed minimum weights for carloads, for which excess no charge is made by the carriers, the exceptional character of the service, which involves fast time and prompt delivery at destination, the carriage of a large amount of nonpaying freight, return of cars without loads, and many other conditions relating to the highly perishable nature of the traffic, —HELD, that neither the minimum carload weight nor the transportation charge established by the defendant engaged in the carriage of peaches in refrigerator cars from Georgia points to New York, based upon a rate of 81 cents from Atlanta to New York, is unreasonable or unjust. Georgia Peach Growers' Asso. v. Atlantic Coast Line R. Co. 10 I. C. C. 255.

(f) Defendant's rule, providing that the minimum charge upon any single shipment of freight shall be for 100 pounds at the class or commodity rate applying upon the article which is in force in the territory roughly described as south of the Ohio and Potomac and east of the Mississippi rivers, and also on traffic shipped to that territory from points in the central west, does not, upon the facts of the case, unjustly discriminate in its application to complainant's traffic. Wrigley v. Cleveland, C. C. & St. L. R. Co. 10 I. C. C. 412.

(g) It is reasonable and proper that carriers should fix a minimum weight and charges for the transportation of less than carload shipments. Wrigley v. C. C. C. & St. L. R. Co. 10 I. C. C. 412, 420.

(h) Defendants' minimum carload weight of 26,000 lbs. for the carriage of citrus fruit in refrigerator or ventilator cars from southern California points to eastern destinations is not unreasonable, with the 40-foot car in general use. Consolidated Forwarding Co. v. Southern P. Co. 10 I. C. C. 590.

(i) The defendants' charges for the transportation of peaches from Macon and Atlanta, Ga., to Philadelphia, New York, Washington and Baltimore, including both the charge for carriage and the charge for refrigeration, having been complained of as unreasonable and unjust, after full hearing, HELD, That defendants' rate per 100 pounds for the transportation of peaches, other than refrigeration, from Macon and Atlanta, to wit: 81 cents to Philadelphia and New York and 78 cents to Baltimore and Washington, and their refrigeration charge of 12½ cents per crate of 42 pounds, minimum carload 550 crates, between such points, are unreasonable and unjust; and that defendants' practices in using one minimum carload requirement for transportation service other than re-

frigeration and a different minimum carload for refrigeration service is also unreasonable and unjust. HELD, further, That the rate for transportation other than refrigeration to Philadelphia and New York on carload shipments should not exceed 76 cents per 100 pounds, and Baltimore and Washington 73 cents per 100 pounds, such rates to apply on a carload minimum of 20,000 pounds for 36-foot cars and 22,500 pounds for 40-foot cars, and that the refrigeration charge on such shipment should not exceed 11 cents per crate of 42 pounds and apply on a carload minimum of 476 crates for 36-foot cars and 535 crates for 40-foot cars. HELD, further, That defendants' demurrage charge of $5 per day for detention of refrigerator cars by shippers, after expiration of twenty-four hours free time, and defendants' present rate on less than carload shipments, are not shown upon the record to be unreasonable or unjust. Waxelbaum & Co. v. Atlantic Coast Line R. R. Co. 12 I. C. C. 178.

(j) Practice of using one minimum carload requirement for transportation service, and a different minimum for refrigeration service, held unreasonable and unjust. Waxelbaum & Co. v. Atlantic C. L. R. Co. 12 I. C. C. 178.

(k) It is not reasonable that carriers unable to supply shippers with sufficient cars of large or average capacity should make such minimum loading requirements as can not be practically complied with as to the smaller cars in order that they may obtain as much earnings from shipments therein as from those in the larger and superior cars. Weimer & Rich v. Chi. & N. W. Ry. Co. et. al. 12 I. C. C. 462.

(l) If no large cars, small cars must not have too high minima. Wiemer & Rich v. C. & N. W. R. Co. 12 I. C. C. 462.

(m) Complainant attacked as unreasonable minimum carload weights on hay from Ledyard, Iowa, to Minneapolis, Minn., and Pekin, Ill. From the evidence disclosed the minimum weights published in the tariffs of defendants could not be loaded into the size of cars furnished. Minimum applicable to Minneapolis 16,000 pounds for cars 30-feet and under, 18,000 pounds for cars over 30-feet and including 32 feet, 19,000 pounds on cars over 32-feet to and including 34-feet, 20,000 pounds on cars over 34-feet and less than 36-feet and 22,000 pounds on cars 36-feet and over. To Pekin minimum on cars 34 ft. in length and under 15,000 pounds and over 34 feet, 20,000 pounds. Minimum to Chicago on cars 34 feet and under 15,000 pounds, for cars over 34 feet, 20,000 pounds. HELD, minimum attacked to Pekin not unreasonable, but minimum to Minneapolis unreasonable to extent it exceeded minimum to Chicago. Wiemer & Rich v. C. & N. W. Ry. 12 I. C. C. 462.

(n) For charges collected under rule of terminal carrier that minimum carload weight should be marked capacity of car, on steel rails loaded in accordance with rules of Master Car Builders Association enforced by the initial carrier, prohibiting loading to a greater weight than 75 per cent of the marked capacity. HELD: Unjust and reasonable. Cambria Steel Co. v. Great Northern R. Co., 12 I. C. C. 466.

(o) The rule of a terminal carrier, that the minimum carload weight should be the marked capacity of the car, whereby freight charges are collected upon a higher minimum loading requirements than the practice of the carriers governed by the Master Car Builders Association rules permit, which rules are enforced by the initial carrier,—HELD unreasonable and unjust. Cambria Steel Co. v. Great Northern R. Co. 12 I. C. C. 466.

(oa) On March 13, 14, and 17, 1906, complainant shipped 1,560,340 pounds of steel rails from Johnstown, Pa., to Seattle, Wash., with freight charges at the rate of $13 per gross ton aggregating $9,746.52, assessed under the rules prescribed by the Master Car Builders' Association which are enforced by the initial carrier, the Baltimore & Ohio Railroad Company, prohibiting the loading of 60-foot steel rails on twin cars to a greater weight than 75 per cent of the marked capacity of the cars. Upon arrival of shipments at destination additional charges of $2,779.40 were collected by the defendant, covering that part of the haul from Kankakee to Seattle, under its rule providing that the minimum carload weight should be the marked capacity of the car. HELD, that the rule or regulation of the defendant company whereby freight charges were collected upon a higher minimum loading requirement than the practice of the carriers governed by the Master Car Builders'

Association rules would permit, was unreasonable and unjust. This rule having been modified subsequent to the movement of the shipments in question, no order is made in regard thereto. Complainant awarded reparation in the sum of $2,433.04, on account of unreasonable charges collected on shipments specified herein. Cambria Steel Co. v. Great Northern Ry. Co. 12 I. C. C. 466.

(p) Where three connecting roads publish a joint tariff under which they hold themselves out to the public as prepared to transport commodities in carload lots of a certain minimum magnitude at a certain specified rate, such carriers are by their tariff allowed to charge no more than the rate upon such carload, no matter what equipment they may provide for its transportation, except as the tariff in specified terms provides certain minimum weights for carloads in cars of certain lengths or capacities. Pacific Purchasing Company v. C. & N. W. Ry. 12 I. C. C. 549, 552.

IMPORTANT CASES SINCE 1908

(q) Where collapsible bunker cars are presented for loading with the bunkers thrown up, carriers may provide in their tariffs for such carload minima as will require the loading of such cars to their full capacity, not exceeding two tiers in height. Arlington Heights Fruit Exchange v. S. P. Co., 24 I. C. C. 671, 672.

(r) The physical minimum is that minimum which represents the weight or bulk quantities which can be loaded into a car from the point of view of space or the theoretical number of packages capable of being loaded into a car, determined by dividing the cubical contents of the car by the cubical contents of one of the packages, multiplied by the weight of the package, possibly with some consideration of the dimensions of the package. The commercial minimum is that minimum which represents the unit of purchase and sale of the commodity as established by custom and the conditions existing in that trade and in the territory in which it governs at the time the physical minimum would consider only the physical loading capacity, while the commercial minimum would consider, in addition to trade requirements, conditions of manufacture, distribution and consumption. In re Suspension of Western Classification No. 51, 25 I. C. C. 442, 482.

(s) In establishing the minimum weight for a commodity, the test of the physical ability to load a certain weight into a car of given size is not sufficient. If it is in the interest of efficient and economical railway operation to increase the size of cars used, such rate of increase should not exceed the ability of business to adopt itself to the larger cars. The minimum weight for shipments of heavy, low-grade commodities that move in great volume is not calculated to disturb commercial conditions to the same extent that they might be disturbed by a correspondingly high minimum of traffic of a different character. Generally speaking, freight cars should be made to fit the business. Within reasonable limits business may be required to adapt itself to the car, but when there is a conflict between the increase size of the car and the necessities of business, business may not be required unreasonably to adapt itself to the car. Statistics for the United States, as well as for leading countries of Europe, show that increases in the size of the cars have been accompanied by less economical utilization of the car space. The minimum weights prescribed in the three great classifications in the United States have been based quite uniformly upon commercial relations rather than physical dimensions. The commercial minimum is a real thing, and established methods and customs governing business at any particular time should be given proper weight in the establishment of minimum weights at that time. In re Suspension of Western Classification No. 51, 25 I. C. C. 442, 607.

(t) It must be assumed that the minimum weights established by carriers are intended reasonably to correspond with the loading capacity of the car as to the particular commodities to which they relate. Where a shipper makes comparisons between the car earnings, under the rates attacked, and those on analogous commodities moving between the same points, in the absence of direct testimony to show the average loading of the commodities referred to, which evidence is in the possession of the carriers, it is but fair and reasonable to compare the minimum weights on the article in question with those applied to the analogous commodities as a means to ascertain, approximately at least, the comparative car

earnings. Northwestern Woodenware Co. v. C. M. & P. S. Ry. Co., 28 I. C. C. 237, 242.

(u) A carload minimum weight which is reasonably adapted to the needs of the carriers and the great majority of shippers will not be increased because one shipper, by the expenditure of exceptional effort and expense, finds himself able to load more heavily than can his competitors; neither will this Commission under such circumstances prescribe a lower rate per 100 lbs. conditional upon the use of a higher minimum weight as the measure of the carload. Rates on Excelsior and Flax Tow from St. Paul, Minn., 29 I. C. C. 640.

(v) Where there is a uniform minimum for all cars of all lengths, the carrier is not required to furnish a car of any specified length, but is under the duty of establishing a minimum weight that can be reasonably loaded into a car of the size furnished. Tull & Gibbs v. N. & W. Ry., 55 I. C. C. 17, 18.

(w) The maintenance of cubical-capacity minima on tank cars and silo material from Portland to eastern destinations while contemporaneously maintaining minimum weights from San Francisco Bay points, found to result in undue prejudice to Portland. Portland Traffic & Transportation Asso. v. Director General 59 I. C. C. 606, 610.

(x) During a period of car shortage the carriers promulgated a rule for purpose of conserving equipment, whereby shippers were required to load cars to cubical capacity regardless of published minimum weights. The Commission held the rule was in violation of section 6, as its enforcement had the effect of superseding the tariff provision publishing the minimum weights and of increasing the carload charges. Wheeler Co. v. Director General, as Agent, 59 I. C. C. 699.

(y) Where impossible to load the minimum in a few of the cars used, it does not necessarily follow that the minimum was unreasonable. Briggs & Turivas v. Director General, as Agent, 61 I. C. C. 363, 364.

(z) The fact that one point has a higher minimum than another does not of itself constitute undue preference within the meaning of the act. Briggs & Turivas v. Director General, 61 I. C. C. 363, 365.

(aa) Where there is a uniform minimum for cars of all lengths, the carrier is not required to furnish car of any specified length, but is under the duty of establishing a minimum weight that can be reasonably loaded into a car of the size furnished. California Cotton Mills Co. v. Director General 68 I. C. C. 403, 406.

(bb) To load a car below the minimum increases the cost of transportation to the shipper without any advantage to the carriers and is a needless waste of transportation facilities. Nonapplication of transit privileges on deficiencies in weight of grain 69 I. C. C. 19, 22.

(cc) If carriers desire to protect themselves from unduly low charges per car they should do so by regulating the rate and not by prescribing arbitrary minimum weights which can be loaded only in cars of unusual size, and it is unreasonable to base charges on a minimum to which cars are incapable of being loaded. National Livestock Exchange v. Ann Arbor R. R. Co. 69 I. C. C. 125, 130.

(dd) The practice of securing revenue through a minimum higher than the capacity of cars furnished should be condemned, but where abnormally low per car charges resulted from emergency rates established as a temporary relief measure, a shipper has no well-founded claim because he could not load to the prescribed minimum. Devereaux Co. v. Director General, as Agent, 73 I. C. C., 289, 290, 291.

(ee) Whether changes in carload minimum weights may properly be required without consideration of the rates depends upon the fact in each case. California & Hawaiian Sugar Refining Corp. v. A., T. & S. F. Ry. Co., 73 I. C. C., 664, 667.

(ffgg) A carload minimum weight reasonably adapted to the traffic generally should not be increased merely because one shipper, on account of conditions peculiar to himself, is able to load in excess of the existing minimum thereof. Bernard Co. v. Director General, as Agent, 74 I. C. C. 557, 559, 560.

(hh) In establishing a minimum for the transportation of a light and bulky article it is the aim to name a weight which can be loaded under ordinary cir-

cumstances. Phillip Bernard Co. v. Director General, 74 I. C. C., 557, 560.

(ii) Where there is a uniform minimum for cars of all lengths, the carrier is not required to furnish a car of any special length, but is under the duty of establishing a minimum weight that can be reasonably loaded into a car of the size furnished. California Cotton Mills Co. v. S. Ry. Co., 74 I. C. C., 747, 748.

(jj) The practice of assessing charges at the published minimum, where cars furnished by carriers for their own convenience can not reasonably be loaded to the minimum, is unwarranted. Under "carriers' convenience" rules, carriers are not obligated to furnish cars of the sizes ordered, but are required to protect the actual weights where smaller cars furnished are fully loaded. California Cotton Mills Co. v. S. Ry. Co. 74 I. C. C. 747, 749.

(kk) There is a close relationship between the minimum and the rate and if the minimum be reduced to a point which will unduly affect the revenues of the carriers, an attempt to increase the rates to offset the loss in revenue is a possibility that must not be overlooked. Minimum carload weights on hogs in Missouri and other states 81 I. C. C. 373, 379.

(ll) The maintenance of a comparatively low minimum is not an approved method of adjusting a disadvantage growing out of an improper relationship of rates. Anderson Lumber Co. v. N. P. R. Co., 87 I. C. C. 425, 432.

ALL OTHER CITATIONS

Merchants' Traffic Ass'n. v. N. Y. N. H. & H. R. R. Co. 13 I. C. C. 225, 228; Reed v. C. M. & St. P. Ry. Co., 14 I. C. C. 616, 618; Gus. Momsen & Co. v. Gila Valley, Globe & Northern Ry Co. 14 I. C. C. 614, 615; Kansas City Hay Dealers' Ass'n. v. M. P. Ry. Co., 14 I. C. C. 597, 603; Jones Bros. Co. v. Montpelier & Wells River R. R. Co., 14 I. C. C. 139, 140, 141, 142, 143, 144, 145, 146; Tayntor Grante Co. v. Montpelier & Wells River R. R. Co., 14 I. C. C. 136, 137, 138; Rosenbaum Grain Co. v. M. K. & T. Ry. Co., 15 I. C. C. 499, 500; Bennett v. M. St. P. & S. Ste. M. Ry. Co., 15 I. C. C. 301, 303; W. Noble v. C. M. & St. P. Ry. Co., 16 I. C. C. 420, 421; Oshkosh Logging Tool Co. v. C. & N. W. Ry. Co., 14 I. C. C. 109; Ozark Fruit Growers' Ass'n v. St. L. & S. F. R. Co., 16 I. C. C. 106, 109, 108, 110; Black Horse Tobacco Co. v. I. C. R. R. Co., 17 I. C. C. 588, 589; George Tritch Hardware Co. v. Rutland R. R. Co., 17 I. C. C. 542; James & Abbott Co. v. B. & M. R. R. Co., 17 I. C. C. 273; Pease Bros. Furniture Co. v. S. P. L. A. & S. L. R. R. Co., 17 I. C. C. 223, 224; Carstens Packing Co. v. S. P. Ry. Co., 17 I. C. C. 6; Sunderland Bros. Co. v. St. L. & S. F. R. R. Co., 18 I. C. C. 545, 546; Barnum Iron Works v. C. C. C. & St. L. Ry. Co. 18 I. C. C. 94, 95; Miller Brewing Co. v. C. M. & St. P. Ry. Co., 19 I. C. C. 590; Lull Carriage Co. v. K. & S. Ry. Co. 19 I. C. C. 15; Georgia Fruit Exchange v. S. Ry. Co., 20 I. C. C. 623; Stacey and Sons v. O. S. L. R. R. Co., 20 I. C. C. 136, 137; Baxter & Co. v. G. S. & F. Ry. 21 I. C. C. 647, 649; Brunswick-Balke-Collender Co. v. A. T. & S. F. Ry. Co. 23 I. C. C. 395; Carstens Packing Co. v S. P. Co. 23 I. C. C. 236, 237; Du-Pre Co. v. B. R. & P. Ry. Co., 23 I. C. C. 226, 228; In Re Rates Transportation of Potatoes, 23 I. C. C. 69; Peerless Agencies Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 33, 34, 35; Acme Cement Plaster Co. v. C. R. I. & P. Ry. Co., Unrep. Op. 56; Milwaukee Beer Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 61; United States Cast Iron Pipe & Foundry Co. v. L. S. & M. S. Ry. Co., Unrep. Op. 67; Pabst Brewing Co. v. E. P. & S. W. R. R. Co., Unrep. Op. 109, 110; Sunderland Bros. Co. v. C. & N. W. Co., Unrep. Op. 148; Wisconsin Pulp & Paper Mfrs. v. C. M. & St. P. Ry. Co., Unrep. Op. 224; 225; Miller & Co. v. G. H. & S. A. Ry. Co., Unrep. Op. 249; American Cement Plaster Co. v. C. R. I. & P. Ry. Co., Unrep. Op. 285; Milwaukee-Waukesha Brewing Co. v. C. & N. W. Ry. Co. Unrep. Op. 294; Thistle Mfg. Co. v. C. M. & St. P. Ry. Co. Unrep. Op. 299; Stacy & Sons v. C. B. & Q. R. R. Co. Unrep. Op. 343; Walter & Co. v. L. S. & M. S. Ry. Co., Unrep. Op. 350; Kaye & Carter Lumber Co. v. N. P. Ry. Co., Unrep. Op. 392; Barr Chemical Works v. P. & R. Ry. Co. Unrep. Op. 473; Sallisaw Cotton Oil Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. 484; Wisconsin Bridge & Iron Works Co. v. C. M. & St. P. Ry Co. Unrep. Op 582; New Orleans Board of Trade v. C. R. I. & P. Ry. Co. Unrep. Op. A-1; Kibbe v. St. L. B. & M. Ry. Co., 25 I. C. C. 661; Western Classification Case, 25 I. C. C. 442, 43, 480, 482, 483, 481, 607; Riverside Mills v. G. R. R. Co., 25 I. C. C. 434, 435; Lind-

say Bros. v. P. M. R. R. Co., 25 I. C. C. 368, 369; Leach v. N. P. Ry. Co., 25 I. C. C. 275, 276; In re Wool, Hides and Pelts, 25 I. C. C. 185, 187, 188, 189; Thompson v. A. T. & S. F. Ry. Co., 25 I. C. C. 174, 178; Ream v. S. P. Co., 25 I. C. C. 107, 109; Furniture Rates in the Northwest, 26 I. C. C. 655, 667; Rates on Asphalt and Asphaltum, 26 I. C. C. 614, 616; Partridge & Sons Co. v. P. R. R. Co., 26 I. C. C. 484; 485, 487; Struck Co. v. L. & N. R. R. Co., 26 I. C. C. 469, 471; Transcontinental Commodity Rates, Westbound, 26 I. C. C. 456, 464; Restricting the Dimensions of Baggage, 26 I. C. C. 292, 306; Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., 26 I. C. C. 245, 250; Minimum Weights on corn in Southwest, 26 I. C. C. 197, 199, 202; Western Fruit Jobbers' Assn. v. C. R. I. & P. Ry. Co., 27 I. C. C. 417, 423; Rates on Tin Cans and Other Commodities, 27 I. C. C. 298; Alexandria Barrel Co. v. C. R. I. & P. Ry. Co., 27 I. C. C. 196; 197; Northwestern Woodenware Co. v. C. M. & P. S. Ry. Co., 28 I. C. C. 236, 237, 242; Balfour Quarry Co. v. S. Ry. Co., Unrep. Op. A-138; Potato Carload Minimum Weights, Unrep. Op. A-147; Northern Wood Co. v. M. St. P. & S. Ste. M. Ry Co. Unrep. Op. A-200; Lamb-Davis Lumber Co. v. G. N. Ry. Co., Unrep. Op. A-235; American Coal & Supply Co. v. C. & N. W. Ry. Co., Unrep. Op. A-255; Smith System Heating Co. v. G. N. Ry. Co., Unrep. Op. A-296; Minimum Weight on Fresh Meats and Other Commodities, 30 I. C. C. 349; Rock Spring Distilling Co. v. I. C. R. R Co., 29 I. C. C. 18, 27; Orgill Brothers & Co. v. L. & N. R. R. Co., Unrep. Op. A-483; Hammond Brothers v. C. B. & Q. R. R. Co., Unrep. Op. A-502; American Steel Dredge Co. v. American Exp. Co., Unrep. Op. A-807; Boardman Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-835; American Woolen Co. v. N. Y. N. H. & H. R. R. Co., Unrep. Op. A-846; Duplex Mfg. Co. v. C. M. & St. P. Ry. Co. Unrep. Op. A-858; Lamson Bros. & Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A-882; Goodner-Malone Co. v. M. V. R. R. Co., Unrep. Op. A-907; Durham Coal & Iron Co. v. C. of G. Ry., 34 I. C. C. 10, 12; Boise Lumber Co., Ltd., v. P. & I. N. Ry. Co., 33 I. C. C. 109, 111; Hume Co. v. S. P. Co., 33 I. C. C. 126, 127; Lindsay & Co. v. N. P. Ry. Co., 33 I. C. C. 150, 156; Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C. 332, 341; Northern Pine Mfrs. Asso. v. C. & N. W. Ry. Co., 33 I. C. C. 360, 364; Kibbe v. A. & S. Ry. Co., 33 I. C. C. 415, 416; Corp. Comm. of Oklahoma v. A. T. & S. F. Ry. Co., 33 I. C. C. 503, 506; Funck Lumber Co. v. B. & O. S. W. R. R. Co., 33 I. C. C. 511; Menasha Woodenware Co. v. C. & N. W. Ry. Co., 33 I. C. C. 563, 565; Hooker-Hendrix Hdwe. Co. v. M. K. & T. Ry. Co., 34 I. C. C. 3, 8; Grand Rapids Plaster Co. v. L. S. & M. S. Ry Co., 34 I. C. C. 202, 207; Alpha Portland Cement Co. v. B. & O. R. R. Co., 34 I. C. C. 414, 422; 1915 Western Rate Advance Case, 35 I. C. C. 497, 475; Acme Cement Plaster Co. v. G. R. & I. Ry., Unrep. Op. 1880; Minimum Weights on Packing-House Products, Unrep. Op. 1984; Oklahoma Traffic Asso. v. A. & S. Ry., 36 I. C. C. 329, 345; Eastern Live Stock Case, 36 I. C. C. 675, 685, 700; Flue Lining Minimum Weight, 38 I. C. C., 328; Scott Paper Co.v P. & R. Ry. Co., Unrep. Op. 2155; Minneapolis Threshing Machine Co. v. M. & St. L. R. R. Co., 37 I. C. C. 92, 93; Hay Minimum Weights, 39 I. C. C. 167; Detroit Stove Works v. Wabash R. R. Co., 39 I. C. C. 597; 598; Lalance & Grosjean Mfg. Co. v. L. I. R. R., 39 I. C. C. 637; Wedron White Sand Co. v. C. B. & Q. R. R. Co., 40 I. C. C. 483, 484; National Commercial Fixture Mfrs. Asso. v. A. A. R. R. Co., 40 I. C. C. 484, 496; Railroad Commission of Louisiana v. A. H. T. Ry. Co., 41 I. C. C. 83, 107; Iron Ore Rate Cases, 41 I. C. C. 181, 259; Hillerich & Son Co. v. I. C. R. R. 41 I. C. C. 448, 449; Iowa Valve Co. v. C. B. & Q. R. R., 41 I. C. C. 451; American Beet Sugar Co. v. S. P. Co., 41 I. C. C. 631, 639; Lewis Mfg. Co. v. C. B. & Q. R. R. Co., 41 I. C. C. 671, 672; Farmers Lumber Co. v. C. R. I. & P. Ry., 42 I. C. C. 15; Berry Coal & Coke Co. v. T. & G. R. R. Co., 42 I. C. C. 273, 274; Albin, Trustee v. C. M. & St. P. Ry. Co., 42 I. C. C. 477; Peddler Car Minimum, 43 I. C. C. 139, 142; Carload Minimum, 43 I. C. C. 259; Western Trunk Line Rate Increases, 43 I. C. C. 481, 482; Northern Potato Traffic Asso. v. B. & O. R. R., 43 I. C. C. 545; Iron Ore Rate Cases, 44 I. C. C. 368, 378; Bags and Bagging Minimums Weights, 44 I. C. C. 527; Dallas Cooperage & W. Co. v. G. C. & S. F. Ry. 45 I. C. C. 468; Prairie Oil & Gas Co. v. W. Ry., 45 I. C. C. 1; Milk and Cream Rates to Philadelphia, Pa., 45 I. C. C. 371, 389; Dallas Cooperage & Woodenware Co. v. G. C. & S. F. Ry., 45 I. C. C. 468, 470; Garland Nut & Rivet Co. v. P. & L. E.

R. R. 45 I. C. C. 593, 594; Official Classification Ratings, 46 I. C. C. 383, 387; Western Pine Mfrs. Asso. v. C. I. & W. R. R. Co., 46 I. C. C. 650, 656; Swift & Co. v. U. P. R. R., 47 I. C. C. 49, 51; National Live Stock Exchange v. C. B. & Q. R. R., 47 I. C. C. 380, 387, 399; Western Cement Rates, 48 I. C. C. 201, 248; Northern Potato Traffic Asso. v. B. & O. R. R. 48 I. C. C. 303; Roylance Co. v. D. & R. G. R. R. Co., 48 I. C. C. 429, 430; Dewey Bros. Co. v. P., C. C. & St. L. Ry. Co., 48 I. C. C. 467; Christopher & Simpson Iron Works Co. v. P. R. R. Co., 48 I. C. C. 697; Bares v. D. W. & P. Ry., 49 I. C. C. 137; Swastika Fuel Co. v. A. T. & S. F. Ry., 49 I. C. C. 588; Cooper Grocery Co. v. M. L. & T. R. R. & S. S. Co., 49 I. C. C. 641, 643; Hood & Sons v. B. & M. R. R., 49 I. C. C. 694, 699; Royster Guano Co. v. A. C. L. R. R., 50 I. C. C. 34, 41; Kansas City Millers' Club v. A. T. & S. F. Ry., 50 I. C. C. 170, 182; Condie-Bray Glass & Paint Co. v. C. R. I. & P. Ry., 50 I. C. C. 607; Bayless Co. v. Kansas City Southern Ry., 52 I. C. C. 10; New Orleans Joint Traffic Bureau v. A. & S. Ry., 52 I. C. C. 23; Martin Brokerage Co. v. S. P. Ry., 51 I. C. C. 91; Wilson & Co., (Inc.) v. C. C. C. & St. L. Ry., 51 I. C. C. 153; Providence Fruit & Produce Exchange v. A. E. Ry., 51 I. C. C. 167, 169; Kentucky Peerless Distilling Co. v. L. H. & St. L. Ry., 51 I. C. C. 209; Bartlett-Collins Glass Co. v. A. T. & S. F. Ry., 51 I. C. C. 496, 497; Larrowe Milling Co. v. L. E. R. R., 52 I. C. C. 145; F. T. Crowe & Co. v. N. P. Ry. Co., et al., 52 I. C. C. 351; Consolidated Classification Case, 54 I. C. C. 66; Associated Cooperage Industries v. Director General, 55 I. C. C. 327; Sturgis & Burn Mfg. Co. v. Director General, 55 I. C. C. 345; Ernest B. Timmins v. B. C. & A. Ry., 55 I. C. C. 495, 498; Lumber Carload Minima, 56 I. C. C. 318, 325; General Fire Extinguisher Co. v. Director General, 56 I. C. C. 727, 730; Associated Cooperage Industries v. Director General, 55 I. C. C. 327, 330; Dahlstrom Metallic Door Co. v. E. R. R., 55 I. C. C. 402, 413; Northern Grain & Warehouse Co. v. O. T. Ry., 55 I. C. C. 101; Northern Grain & Warehouse v. Director General, 55 I. C. C. 488; Consolidated Classification Case 54 I. C. C. 55-56; San Antonio Freight Bureau v. Director General, 57 I. C. C. 45; Northern Potato Traffic Asso. v. C. B. & Q. R. R. Co., 57 I. C. C. 385; 389; Arlington Heights Fruit Exchange v. S. P. Co., 57 I. C. C. 580, 582; Armour Grain Co. v. Director General, 58 I. C. C. 306, 308; Reconsignment and Diversion Rules, 58 I. C. C. 578, 571; Natchez Chamber of Commerce v. L. & A. Ry. Co. 58 I. C. C. 610, 631; Sugar from California Points to Arizona, 58 I. C. C. 737; Pacific Coast Shippers' Asso. v. Director General, 59 I. C. C. 133; Wheeler Co. v. Director General, as Agent, 59 I. C. C. 699, 701; Rupert Milling Co. v. O. S. L., 60 I. C. C. 188; Chipboard and strawboard, 60 I. C. C. 191; Carload minimum weight on sugar between western points, 62 I. C. C. 510; Hawkins v. O. S. L. R. R. Co., 60 I. C. C. 188; Cairo Asso. of Commerce v. Director General, 62 I. C. C. 701, 703; Minimum Charges on Less-than-Carload Shipments, 61 I. C. C. 727; Minimum on less carload milk and cream, 63 I. C. C. 448; Texarkana Pipe Works v. Director General, 64 I. C. C. 6; Northern Grain & Warehouse Co. v. S., P. & S. Ry. Co., 63 I. C. C. 205; Carload Minimum Weight on Garden Tractors, 64 I. C. C. 1; Minimum weight on egg box material from Missouri River to Kansas, 64 I. C. C. 51; Switching at C. & E. I. Team Tracks, 64 I. C. C. 500; Minimum Weight on Live Stock in Mixed Carloads, 64 I. C. C. 546; Acme Cement Plaster Co. v. St. L. S. F. Ry. Co., 64 I. C. C. 662; Ambrose v. Director General, 66 I. C. C. 153; Salt from Louisiana Mines to Chicago, 66 I. C. C. 81; Lumber Carloads minima, 68 I. C. C. 98, 106; Swift & Co. v. Director General, 68 I. C. C. 287; National Paving Brick Mfrs Asso. v. A. & V. Ry. Co., 68 I. C. C. 213, 252; Cancellation of Rating on Fruits and Vegetables, 68 I. C. C. 401; California Cotton Mills Co. v. Director General, as Agent, 68 I. C. C. 403, 405; Wood Rates Between North Pacific Coast Points 69 I. C. C. 7; Armour & Co. v. A. T. & S. F. Ry. Co. 69 I. C. C. 485; Brooks-Scanlon Lumber Co. v. Director General, as Agent, 73 I. C. C. 109, 110, 111; Arizona Copper Co. v. Director General, as Agent, 73 I. C. C. 287; Armour & Co. v. B., S. L. & W. Ry. Co., 73 I. C. C. 415; Minimum Weights on Furniture from C. F. A. to Transcontinental Points 74 I. C. C. 190; Portland Traffic & Transp. Asso. v. A. A. R. R. Co., 77 I. C. C. 423; South Dakota R. R. Commissioners v. C. & N. W. Ry. Co., 77 I. C. C. 451; Ft. Worth Freight Bureau v. Director General, as Agent, 80 I. C. C. 237; Schlieper v. S.

P. Co., 80 I. C. C. 630; National Live Stock Exchange v. A., T. & S. F. R. R. Co., 81 I. C. C 305; Minimum weights on coal tar paving cement, 81 I. C. C. 762; Minimum weight on furniture 83 I. C. C. 64; National Petroleum Assn. v. A. T. & S. F. Ry. Co. 83 I. C. C. 530.

§8. Two cars for one ordered.

See Bill of Lading §5; Cars and Car Supply §8; Classification §21; Follow Lot Shipment.

CASES 1887-1908

(a) It is not reasonable that carriers unable to supply shippers with sufficient cars of large or average capacity should make such minimum loading requirements as can not be practically complied with as to the smaller cars in order that they may obtain as much earnings from shipments therein as from those in the larger and superior cars. Weimer &Rich v. C. & N. W. Ry. 12 I. C. C. 462, 465.

(b) Complainant attacked commodity rates charged on steel rails, carloads, from Johnstown, Pa, to Seattle, Wash., in March 1906 as unreasonable. Charges were collected on basis of $3 per gross ton from Johnstown to Kankakee, Ill., and $10 per gross ton beyond. The rails were 60 feet in length and consequently it was necessary to load them on twin cars, the entire consignment requiring 20 pairs of cars so loaded. Additional charges were collected at destination. Under the rules of the Master Car Builders Association shippers are not permitted to load 60 foot rails on twin cars to a greater weight than 75 per cent of the marked capacity of the cars. The aggregate marked capacity of the 40 cars used for these shipments was 2,100,000 pounds. The maximum permitted under the rules referred to would be 1,575,000 pounds. The G. N., provided a rule which allows a minimum weight of 60,000 pounds on steel rails, carloads, unless the marked capacity of the car is less, in which case the minimum weight will be the marked capacity of the car from Kankakee to Seattle. The rule of the initial carrier was in accordance with the Master Car Builders rule but that of the G. N., prescribed an arbitrary minimum. Subsequently the G. N., published a rule providing on rails, steel, C. L., minimum weight 60,000 pounds, except where length of rails requires two or more cars, in which case the minimum carload weight will be 40,000 pounds for each car used. HELD, rule of the G. N., unreasonable to extent it exceeded the rule prescribed by the Master Car Builders, reparation awarded. Cambria Steel Co. v. G. N. Ry. 12 I. C. C. 466.

(c) Complainant attacked rates and minimum weight charged on several carloads of brass beds from Kenosha, Wis., to Los Angeles, Cal., as unreasonable. A car was ordered but defendant was unable to furnish a single car which would hold the minimum weight of 30,000 pounds provided for in the tariff, and instead provided two small cars making the following notation on the through billing: Care U. P., and S. P. Two cars used as one, in lieu of proper equipment and inability of C. & N. W., to furnish same. Charged at commodity rate of $2.20 whereas complainant contended for fifth class rate of $1.65. Minimum under the commodity rate 12,000 pounds, under the class rate 30,000 pounds. It was entirely proper for the originating road to furnish the two cars because of its inability to furnish a single car of sufficient capacity to contain the shipment tendered. HELD, rate attacked unreasonable to extent it exceeded $1.65, reparation awarded. Pacific Purchasing Co. v. C. & N. W. Ry. 12 I. C. C. 549.

(d) Reparation on shipments of brass beds, of difference between rates charged by connecting carrier on two cars furnished by an initial carrier on account of its inability to furnish a single car which would hold the minimum weight provided for in the joint tariff, and the rate to which such a shipment, if made in a single car, would have been entitled. Pacific Purchasing Co. v. Chicago & N. W. Ry. Co. 12 I. C. C. 549.

IMPORTANT CASES SINCE 1908

(e) Where carriers by their tariffs specifiy minima for large size cars they should further provide that when such cars are not available two smaller cars may be used under such circumstances as will fairly protect the minimum specified for the larger car. Noble v. B. & O. R. R. Co., 22 I. C. C. 432, 437.

(f) The mere failure of carriers to provide "two for one" rules is not prima facie unreasonable unless graduated minimum weights are provided for cars of different sizes. Dietly v. N. Y. C. R. R., 46 I. C. C. 317, 319.

(g) In establishing a minimum for the transportation of a light and bulky

article it is the aim to name a weight which can be loaded under ordinary circumstances. Bernard Co. v. Dir. Gen., as Agent, 74 I. C. C. 557, 560.

(h) The practice of assesing charges at the published minimum, where cars furnished by carriers for their own convenience can not reasonably be loaded to the minimum, is unwarranted. Under "carriers' convenience" rules carriers are not obliged to furnish cars of the sizes ordered, but are required to protect the actual weights where smaller cars furnished are fully loaded. California Cotton Mills Co. v. S. Ry. Co., 74 I. C. C. 749

(i) Carrier for own convenience furnished one larger car in lieu of two smaller ones ordered by shipper, and charges assessed on basis of combined full minima of cars ordered. HELD: Charges assessed found unreasonable to extent they exceeded those that would have accrued on basis of minima of ordered cars loaded to full visible capacity. Reparation awarded. Noll Lumber Co. v. U. P. R. R. Co., 80 I. C. C. 105.

(j) Initial carrier will be liable for such additional charges as may be imposed on shipper by reason of failure to furnish car of capacity ordered. Conf. Ruling 339. Peninsular Portland Cement Co. v. Director General, as Agent, 83 I. C. C. 10, 12.

ALL OTHER CITATIONS

Bradford-Kennedy Co. v. N. P. Ry. Co., Unrep. Op. 445; Moline Plow Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 419; Pate v. C. & N. W. Ry. Co., Unrep. Op. 417; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 15 I. C. C. 504, 526; Falls & Co. v. C. R. I. & P. Ry. Co., 15 I. C. C. 269, 272; Racine-Sattley Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 488, 489 Kaye & Carter Lumber Co. v. M. & I. Ry. Co., 16 I. C. C. 285, 287; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 16 I. C. C. 56, 58, 254, 258, 260; Milwaukee Falls Chair Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 217, 218; Jobbins v. C. & N. W. Ry. Co., 17 I. C. C. 297, 299; Springer v. E. P. & S. W. Ry. Co., 17 I. C. C. 322, 323; Consolidated Water Power Co. v. S. P. L. A. & S. L. R. R. Co., 20 I. C. C. 169; Goodman Mfg. Co. v. C. B. & Q. R. R. Co., 21 I. C. C. 583; Minneapolis Threshing Machine Co. v. C. M. & St. P. Ry. Co., 21 I. C. C. 181; Scuder v. T. & P. Ry. Co., 21 I. C. C. 60; Riverside Mills v. G. R. R., 25 I. C. C. 434, 435; McLoughlin v. T. & P. Ry. Co., 26 I. C. C. 307, 308; Minneapolis Threshing Machine Co. v. M. St. L. R. R. Co., 37 I. C. C. 92, 95, 97; Lalance & Grosjean Mfg. Co. v. L. I. R. R., 39. I. C. C., 637, 638; National Pole Co. v. A. T. & S. F. Ry., 55 I. C. C. 625; Harmon & Co. v. P. C. C. & St. L. R. R. Co., 69 I. C. C. 348, 349; California Cotton Mills Co. v. S. Ry. Co., 74 I. C. C. 747; Stone-Fisher Co. v. Director General, 77 I. C. C. 369.

§9. Follow-lot shipments.

See Follow Lot Shipments.

IMPORTANT CASES SINCE 1908

(a) There is some doubt as to the propriety of that part of the rule applicable to the last car of the various grades of ore from vessels or stock piles. The general rule of the official classification governing part lot or follow lot shipments does not apply to bulk commodities and it would seem that the carriers would be justified in prescribing a minimum weight on iron ore that would at least return revenues sufficient to cover the cost of transporting the car and its contents. Iron Ore Rate Cases, 41 I. C. C. 181, 206.

ALL OTHER CITATIONS

In re Suspension of Western Classification, No. 51, 25 I. C. C. 442, 494.

§10. Tank Cars.

See Tank Cars.

IMPORTANT CASES SINCE 1908

(a) The minimum of a tank car should be the capacity of the tank. Rates on Asphalt and Asphaltum, 26 I. C. C. 614, 616.

(b) The general practice of all carriers to provide that the carload minima on liquids shipped in tank cars shall be the capacity of the tank and to assess charges upon basis of weight ascertained by multiplying the capacity of the tank by an estimated weight per unit of volume of the commodity. Fuller & Co. v. A., T. & S. F. Ry., 44 I. C. C. 519, 520.

(c) The assessment of charges on the full gallonage capacity of tank cars is virtually a publication of graduated minima based upon the varying sizes or capacities of the cars in service. Every consideration of economy if not of safety demands the movement of tank cars under full loading. Lange Soap Co. v. G. H. & S. Ry., 45 I. C. C. 452, 454.

§11. Reparation.

See Reparation.

IMPORTANT CASES SINCE 1908

(a) Complainant attacked as unjust and unreasonable rule of the defendants requiring it to load cars to their cubical capacity regardless of published minimum weights, and seeks reparation. The latter part of the year 1917 was a period of acute car shortage occasioned by the extraordinary volume of war traffic, and every effort was being made to secure more economical use of equipment through heavier loading. The defendant issued bulletin reading as follows: "In future agents will decline to furnish cars for shipment of lumber, or other products, where the weight of shipment is less than the capacity of the car. This is a war measure in the interest of conservation of equipment, and all employees are requested to co-operate in this important matter." This bulletin was not filed with the Commission and was canceled Dec. 13, 1917. Notice of its cancellation was not sent to defendants agents, however, and they continued to enforce it until April 5, 1918. On one occasion defendant refused to accept a carload shipment and permitted it to remain on a side track for several days until complainant increased the lading. The average weight of complainant's shipment to interstate destinations during the period covered by the complaint was 48,109 pounds. Most of these shipments went to customers with whom complaint had previously entered into contracts of sale, based on the carload rather than feetage unit. Taking into consideration the urgent necessity for preventing transportation wastes which existed in the autumn of 1917, the Commission is unable to say that the rule here considered, as an emergency measure, was unjust. However, the Commission is of the opinion the method of promulgating the rule was in violation of section 6 of the Act, providing for printed schedules naming rates. The enforcement of such a rule as this would have the effect of superseding the tariff provision publishing the minimum weight carload charges for hauling shipments of that commodity. If defendant desired to promote the economical use of equipment by raising the minimum weight, it should have done so in the manner prescribed by law. Had public necessity been shown, defendant could have secured the permission of the Commission to amend its tariffs on short notice. HELD, complaint dismissed and reparation denied for lack of proof. Wheler Co. v. Director General, 59 I. C. C. 699.

(b) If complainant had stood on its right under the tariff to demand transportation of shipments of the minimum weight, it would have had an appropriate remedy in mandamus or an action for damages for refusal to furnish transportation on reasonable request therefore, but complaint chose to comply with defendants bulletin, and transportation was not refused. The alleged damage for which complainant here seeks reparation is speculative and not the direct result of defendants attempt to change the carload minimum in an unlawful manner. Wheler Co. v. Director General, 59 I. C. C. 699, 701.

ALL OTHER CITATIONS

Hall Lumber & Tie Co. v. C. & O. Ry. Co., Unrep. Op. A-279; D. & W. Ry. Co. v. R. C. B. H. & W. R. R. Co., Unrep. Op. A-646; Pacific Coast Shippers Asso. v. Director General, 59 I. C. C. 133.

MISBILLING

See Classification §8; Crimes IV.

MISROUTING

See Routing and Misrouting.

MISSIONARY RATES

ALL CITATIONS

Fruit and Vegetable, 43 I. C. C. 291, 293, 319;

MISTAKES

See Crimes §28½; Erroneous Rates.

MIXED CARLOADS

See Classification §7; §16⅝; Evidence §34¼; Express Companies §16; Minimum §6.

MIXING

See Facilities and Privileges §8½.

MONOPOLIES

ALL CITATIONS

State v, Arkansas Lumber Co. (Mo. 1914) 169, S. W. 145, 171; Proposed Bond Issue by N. Y. C. & H. R. R. R. Co. 30 I. C. C. 147, 151; Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 231, 232, 247.

MOTOR COMPETITION

See Evidence §14 (6); Long and Short Hauls §8½; Wagon Competition.

NARROW GAUGE RAILROADS

IMPORTANT CASES SINCE 1908

(a) On mixed carloads of potatoes and onions in sacks and packages from Reno, Nev., to Alturas, Cal., a rate was exacted of 80c per 100 lbs. Defendant was a narrow-gauge railroad extending from Reno to Alturas, a distance of 184 miles. The rate in the opposite direction between these points was $6 per ton. One of the carloads moved while a combination rate of $12 per ton was in effect between the points in question. The rate charged yielded 8.7c per ton mile. HELD, the rate exacted was unreasonable to the extent that it exceeded $12 per ton. Reparation awarded. E. Lauer & Son v. Nevada-California-Oregon Ry., 17 I. C. C. 488, 489.

(b) Somewhat higher rates may exist on narrow-gauge lines than on the standard trunk lines. In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 176.

(c) Less-than-carload rates assessed upon weight of two shipments in excess of maximum loading of narrow-gauge cars, which were subsequently loaded into standard-gauge, found unreasonable Thompson v. A. T. & S. F. Ry. Co., 31 I. C. C. 138, 141.

ALL OTHER CITATIONS

Bunch & Tussey v. Nevado-California-Oregon Ry. 17 I. C. C. 506; Blankenship v. Big. Sandy & Cumberland R. R. Co., 17 I. C. C. 569, 571; American Asphalt Ass'n v. Uintah Ry. Co., 13 I. C. C. 196, 209, 211.

NAVIGABLE WATERS

CASES 1887-1908

(a) The control of navigable waters constituting channels of communication between States and foreign countries is within the commercial power of Congress. Cited in Gloucester Ferry Co. v. Commonwealth of Pennsylvania (U. S. Sup. Ct.) 1 I. C. R. 382, 388.

(aa) Act of Congress of June 16, 1886, authorizing construction of bridge across Staten Island Sound, known as Arthur Kill, etc., is valid. Stockton v. Baltimore etc. R. R. Co. (U. S. Ct. N. J.) 1 I. C. R. 411; Decker v. Baltimore etc. R. R. Co., (U. S. Ct. N. Y.) 1 I. C. R. 434.

(b) Congress may authorize a private corporation to occupy the navigable waters within a State and appropriate soil under them, for purposes of interstate commerce, without consent of State. Stockton v. Baltimore etc. R. R. Co. (U. S. C. Ct. N. J.) 1 I. C. R. 411; Decker v. Baltimore etc. R. R. Co. (U. S. C. Ct. N. Y.) 1 I. C. R. 434.

(c) The shores of navigable waters and the soil under them were not granted by the Constitution to the United States but were reserved to the States respectively. Cited in Decker v. Baltimore etc., R. R. Co., (U. S. Ct. N. Y.) 1 I. C. R. 441.

(ca) Navigable waters of the United States are those which form by themselves or by uniting with others a continuous highway for commerce with other States. Cited in Decker v. Baltimore etc. R. R. Co. (U. S. C. Ct. N. Y.) 1 I. C. R. 441.

(d) There is no inhibition against said statute of Louisiana in the act for the admission of the state of Louisiana into the Union, or in the act of Congress which provides that the river Mississippi and the navigable rivers and waters leading into the same shall be common highways and forever free, as well to the inhabitants of said state as to other citizens of the United States, without any tax, duty, impost, or toll therefor imposed by the said state, nor is there, in said statute, any discrimination between the transportation of coal and coke from Alabama and from Pennsylvania, which in any respect, impairs its efficiency. Pittsburg & Southern Coal Co. v. State of Louisiana. 5 I. C. R. 18. Sullivan v. Booth & Flinn, 202 N. Y. S. 807.

ALL OTHER CITATIONS

Sullivan v. Booth & Flinn, 202 N. Y. S. 807.

NEGLIGENCE

IMPORTANT CASES SINCE 1908

(a) Negligence is the violation of an obligation to use care and due diligence. Reeves Coal & Dock Co. v. Director General 66 I. C. C. 469, 470.

NESTING

See Classification §15½.

NET RATES

IMPORTANT CASES SINCE 1908

(a) Complaint attacked so-called manufacturers or net rates on logs, bolts, billets and poles, from points south of the Ohio river on the I. C., and M. & O., to Cairo, Ill., as unjust and unreasonable;

that the minimum weight provisions maintained by the I. C. R. R. are unreasonable; and that the rates on billets have been erroneously charged on shipments of handle bolts. Defendants maintain two sets of rates on rough material from points on their line south of the Ohio river, the higher being known as gross rates and the lower as net rates. The use of the latter is conditioned upon an outbound movement of manufactured products in the ratio of 1 pound of products to every 1.5 to 5 pounds of inbound rough material. The net rates are published in the form of distance scales. From points on the I. C., the rates on billets are higher than on logs, bolts, and poles, the original basis having been 120 per cent of the log rates with a minimum differential of 9.5c per 100 pounds. The M. & O. applies the same rates on billets as upon the other classes of rough material. The scales of net rates do not apply to points on the north bank of the Ohio river and rates to Cairo are made by adding an arbitrary of 3c per 100 pounds to the net rates applying to East Cairo and Wickliffe, Ky. The through rates attacked are lower than the through rates on lumber from the same points of origin to Cairo. The minimum weights for the gross and net rates are usually the same, but on billets from points on the I. C., the minimum is 30,000 pounds for the gross and 50,000 pounds for the net rates. The record affords no basis upon which it might be found unreasonable or otherwise unlawful. HELD, the pieces of wood introduced in evidence are billets and not bolts and the net rates and minimum weights attacked are not unreasonable, complaint dismissed. Cairo Association of Commerce v. Director General, 62 I. C. C. 701.

ALL OTHER CITATIONS

Smith v. I. C. R. R. Co., 68 I. C. C. 427.

NEWLANDS ACT

See Labor Board.

IMPORTANT CASES SINCE 1908

(a) The reduction of wages by a railway receiver appointed by the federal court, forbidden by Newlands Act, § 9 (Comp. St. § 8674), without a hearing after 20 days' notice, is a reduction not consented to, since only such reduction provoke strikes, which it was the object of the act to prevent, and therefore that statute does not prevent the receiver from making contracts with the existing employees or with new employees for employment at reduced wages. Birmingham Trust & Savings Co. v. Atlanta, B. & A. Ry. Co., 271 Fed. 731.

(b) Under Newlands Act, § 9 (Comp. St. § 8674), requiring a hearing on 20 days' notice before reduction of wages of employees of a receiver of a railway appointed by a federal court, and section 1, (section 8666), defining employees affected by the act as persons actually engaged in train operation or train service, train operatives and train service men include only engineers, firemen, conductors, switchmen, train hands, and porters, and these alone are covered by the act, though telegraphers, station agents, clerks, and track and shop men are necessary to the continued operation of trains. Birmingham Trust & Savings Co. v. Atlanta, B. & A. Ry. Co., 271 Fed. 731.

(c) Under Newlands Act, § 1 (Comp. St. § 8666), defining carriers and employees affected thereby, and section 9 (section 8674), providing that, whenever receivers are in control of the business of employers covered by the act, the employees of such employers had a right to be heard before wages were reduced, after at least 20 days' notice of the proposed hearing, clearly includes all persons operating railroad trains at the time the receiver takes possession, so that the reduction of the wages of such persons under the act can only be made after 20 days' notice. Birmingham Trust & Savings Co. v. Atlanta, B. & A. Ry. Co., 271 Fed. 731.

(d) The provision of Newlands Act, § 9 (Comp. St. § 8674), requiring a hearing after 20 days' notice before the reduction of wages by a railway receiver appointed by the federal courts, is justified as a statute of procedure in federal courts, under the implied power of Congress to regulate the exercise of the jurisdiction of the courts which it is authorized by the Constitution to establish. Birmingham Trust & Savings Co. v. Atlanta, B. & A. Ry. Co., 271 Fed. 731.

(e) Employees of a railroad when a receiver took it who continued in such employment under protest after the receiver reduced the wages under an order of court invalid under Newlands Act, § 9 (Comp. St. § 8674), because not rendered after a hearing of which 20

days' notice had been given, were entitled to claim the compensation previously paid them for the time they so served under protest, and therefore have a standing in court to attack the validity of the order reducing the wages, though thereafter they terminated their employment by striking. Birmingham Trust & Savings Co. v. Atlanta, B. A. Ry. Co., 271 Fed. 731.

(f) Newlands Act, § 9 (Comp. St. § 8674), forbidding wage reductions by federal receivers of interstate railways until after a hearing on 20 days' notice, is not unconstitutional, as taking property without due process of law or without just compensation, since it merely requires maintenance for a brief period, of the wage consented to by the owner of the property and if such maintenance is impossible the operation can be stopped. Birmingham Trust & Savings Co. v. Atlanta, B. & A. Ry. Co., 271 Fed. 731.

NON-AGENCY STATION

See Prepay Station.

NOTICE

See Demurrage §16; Evidence §39; Facilities and Privileges §11; Loss and Damage §11; Procedure Before Commission §3; Reconsignment §5½; Tariffs §3 (3); Transportation §6, §6½.

IMPORTANT CASES SINCE 1908

(a) Where no rule is published requiring payment of transportation charges prior to turning shipments over to a delivering line, shippers are not on notice of any such practice or requirement. A shipper does all that is required when he notifies the delivering line shown in the billing of such disposition of the cars as is desired, and to escape responsibility for failure to effect delivery called for the line-haul carrier must clearly and unequivocally show that the delivering lines had knowledge of the arrival of the cars and that they were being held for its account. Excelsior Shook & Lumber Co. v. S. A. L. Ry., 66 I. C. C. 241, 243, 244.

OPEN CARS

See Cars and Car Supply §38.

ORDER NOTIFY SHIPMENT

See Bill of Lading V; Demurrage §7.

ORDER OF COMMISSION

See Procedure Before Commission IV.

ORIGIN OF TRAFFIC

See Advanced Rates §5 (8); Discrimination §10; Evidence §14½ §40½; Reasonableness of Rates §22; Routing and Misrouting §6; Through Rates and Joint Rates §9, VI; Transportation §15.

ORIGIN WEIGHTS

See Weights and Weighing §5½.

OVERCHARGES

See Claims I, V; Express Companies §27; Freight Charges; Reparation §20½; Undercharges.

CASES 1887-1908

(a) Complaint for overcharges withdrawn where complainant's receipt in full settlement for overcharges was shown by respondent. Stahl v. Oregon R. & Nav. Co. 1 I. C. R. 314.

(b) Hearing of complaint of people of Hot Springs, N. C., against the Western, North Carolina Railroad Company for overcharges in passenger rates; upon company's promises to refund excess, the case was permitted to remain open for a few days to see if company fulfilled promise. Hot Springs v. Western N. C. R. R. Co. 1 I. C. R. 316.

(c) A claim for the refusing to a shipper of an overcharge made in a petition by railroad commissioners for the enforcement of their order as to rates is waived on appeal if not asked in the appellate court. Campbell v. Chicago, Milwaukee & St. P. R. Co., 4 I. C. R. 203.

(ca) The retention of an overcharge has all the effect of extortion and unjust discrimination against the person from whom its payments has been required, and when the refund of an excessive charge has been unnecessarily delayed for a considerable period the officials responsible therefor become fairly chargeable with willful intention to violate the law. Phelps & Company v. The Texas & Pacific Railway Company. 4 I. C. R. 363.

(d) The retention of an overcharge has all the effect of extortion and unjust discrimination against the person from whom its payment has been required, and when the refund of an excessive charge has been unnecessarily delayed for a con-

siderable period the officials responsible therefor become fairly chargeable with willful violation of the law. Phelps & Co. v. T. & P. R. Co. 4 I. C. C. 363, 369.

(e) The statute of limitations of the state in which the offense was committed applies in actions under the Interstate Commerce Act to recover back freight paid to a carrier in excess of that charged other shippers. Copp v. Louisville & N. R. Co. (C. C. E. D. La.) 4 I. C. R. 805.

(f) The concealment from a shipper of the fact that the rates charged him were excessive and that rebates were secretly given to others, and false representations as to these facts, do not take a cause of action for the recovery of the excess paid by him out of the statute of limitations, as the case is not based on fraud. Murray v. Chicago & N. W. R. Co. (C. C. N. D. Iowa) 4 I. C. R. 806.

(g) There is no national common or general law which can be made the basis of an action to recover back unreasonable rates imposed by a carrier. Swift v. Philadelphia & R. R. Co. (C. C. N. D. Ill.) 5 I. C. R. 116.

(h) A joint tariff rate of $2.70 per ton on shipments of coal between Richmond. Mo. and Mankato, Kan.. had been agreed on, and was in force and in use by the St. Joseph, St. Louis, & Santa Fe Railroad Company, which operated a line from Richmond, Mo., to St. Joseph, Mo., and the Chicago, Rock Island, & Pacific Railway Company, which operated a connecting line from St. Joseph, Mo., to Mankato, Kan. The agent of the first-named conmpany by mistake quoted the plaintiff a rate of $1.70 per ton on carload shipments of coal from Richmond to Mankato. The plaintiff thereupon shipped 10 car loads. HELD, that the Rock Island Company is in no manner affected by such mistake, but is entitled to collect the full customary rate, there being no pretense that such rate is excessive or unreasonable. Chicago, Rock Island, & Pacific R. Co. v. Hubbell 5 I. C. R. 241.

(i) A champertous agreement between a client and his attorney with reference to a suit against a carrier for an overcharge is not a defense to such suit. Missouri P. R. Co. v. Smith (Ark.) 5 I. C. R. 348.

(j) A railroad company which has been in possession of its road for fifteen years cannot plead mistake as to the distance traveled in defense of an action for the statutory penalty for overcharge for transportation. Missouri Pacific R. Co. v. Smith, 5 I. C. R. 348.

(k) That plaintiff has made a champertous agreement with his attorney is no defense to an action against a carrier for the statutory penalty for an overcharge for transportation. Missouri Pacific R. Co. v. Smith, 5 I. C. R. 348.

(l) The recovery of the statutory penalty for overcharge by a carrier is not prevented by the fact that plaintiff boarded the train for the sole purpose of paying the overcharge and bringing an action Missouri Pacific R. Co. v. Smith 5 I. C. R. 348.

(m) Overcharges by a common carrier on interstate shipments made prior to the taking effect of the interstate commerce act of Congress cannot be recovered by the shipper by the application of common-law doctrines. Gatton v. Chicago, R. I. & P. R. Co. (Iowa) 5 I. C. R. 474.

(n) The retention of an overcharge has all the effect of extortion and unjust discrimination against the person from whom its payment has been required, and when the refund of an excessive charge has been unnecessarily delayed for a considerable period the officials responsible therefor become fairly chargeable with wilful intention to violate the law. Phelps & Co. v. Texas & Pacific Railway Co., 6 I. C. C. 36.

(o) When the refund of an excessive charge by a carrier has been unnecessarily delayed for a considerable period, the officials responsible therefor become fairly chargeable with wilful intention to violate the law. Phelps V. Texas & P. R. Co. 6 I. C. C. 36.

(p) A shipper who is compelled to pay charges in excess of those set forth on the published rate schedules, because of rules prescribed by the railroad company in circulars as to minimum and minimum carload weights, is entitled to recover the same back from the company. Suffern v. Indiana. D. & W. R. Co. 7 I. C. C. 255.

(q) A shipper from an intermediate station, to whom through rates in force for more distance points are denied, contrary to § 6 of the Act to Regulate Commerce, is entitled to recover the overcharge. Chicago Fire Proof Covering

Co. v. Chicago & N. W. R. Co. 8 I. C. C. 316.

(r) The defendants are not shown to be guilty of any wilful or intentional violation of the law, where it was charged that they imposed charges in excess of the tariff rate on certain shipments of fruit from Michigan points to Chicago, but the fact showed the existence of errors in charges arising from lack of knowledge by the Chicago agent of the kind of package used, or the actual contents of the package shipped to complainant, the shipments having been unloaded by complainant, and that such errors also arose from a practice of the agent of the initial carrier at one point temporarily used as a receiving station for fruit, of making a charge in addition to the freight rate, without the knowledge of the railroad company. Davis v. Pere Marquette R. Co. 10 I. C. C. 405.

(s) Complaint attacked as an overcharge rate charged on snapped corn, carloads, from Grove, Indian Territory to Marshal, Tex., via Frisco to Paris, Tex., thence T. & P. Rate charged on the first car 44½c, on the second 31½c. For some time previous there had been a through rate in effect of about 30c but this was canceled and the T. & P., established a proportional rate of 14½c from Paris to Marshall. The rate from Grove to Paris was 21c on corn, snapped corn to take a rate 25% higher than on corn. No distinction is made in the tariff between corn and snapped corn. HELD, shipments overcharged to extent rate charged exceeded 35c per 100 pounds. H. B. Pitts & Sons v. St. L. & S. F. R. Co. 10 I. C. C. 684.

(t) Complaint alleged overcharge on shipments of hay from Robinson and La Junta, Colo., and Dodge City, Kan., to Marshall, Jefferson and Kildare, Tex., routed via Santa Fe to Fort Worth and T. & P., beyond. Shipments moved between January and July 1903. Previous to December 1902 a through rate of 36 cents was in effect which was afterwards published on Sept. 11, 1903. The T. & P., after the cancellation of the through rate established a proportional rate of 18¾c from Fort Worth applicable on hay from points on the Santa Fe. Distance 775 miles from Robinson and La Junta to Fort Worth, 575 miles from Dodge City, from Fort Worth to destinations about 200 miles. From the meagre evidence the Commission is not able to pass upon the reasonableness of the rates. The local rate of the T. & P., was 15c and the Santa Fe should be allowed 21c for its haul. HELD, rate of 18¾c unreasonable to extent it exceeded 15c, rate of Santa Fe unreasonable to extent it exceeded 21c. H. B. Pitt & Sons v. A. & S. F. Ry. 10 I. C. C. 691.

IMPORTANT CASES SINCE 1908

(u) It is not unlawful for carriers uninformed as to contract relations between consignor and consignee to make refund of overcharge in ordinary course of business to consignee named in bill of lading. Ludowici-Celadon Co. v. F. E. C. Ry. Co., 35 I. C. C. 81.

(v) If an overcharge exists refund thereof should be promptly made. Perry & Co. v. A. E. R. R., 44 I. C. C. 755, 756.

(w) The Commission declared in effect in Conference Ruling 489, that carriers should pay interest on all unsettled claims for overcharges from the date the charges are improperly collected until the overcharges are refunded. The fact that the overcharges are refunded subsequent to the appointment of receivers does not affect the situation. Lexington Flouring Mills v. M. P. Ry., 48 I. C. C. 687, 688.

(x) The Commission has assumed jurisdiction of overcharge claims against the director general on interstate shipments during the part of federal control prior to General Order No. 28. Terre Haute Indianapolis & Eastern Co. v. Director General 77 I. C. C. 658, 661.

(y) Under the amendment of February 24, 1922, to section 206 of the Transportation Act, complaints for the recovery of overcharges may be filed against the director general, as agent, within two years and six months subsequent to the termination of Federal control on March 1, 1920. Terre Haute, Indianapolis & E. T. Co. v. Director General as Agent. 77 I. C. C. 662.

(z) An overcharge has been defined to be the amount collected on shipments in excess of the legally published rates. Conf. Ruling 489. Lay Fish Co. v. Director General, as Agent, 80 I. C. C. 4, 5.

(aa) An overcharge is the amount collected on shipments in excess of the legally published rate. La Fish Co. v. Director General 80 I. C. C. 4, 5.

(bb) What the Commission has sometimes called a plain overcharge has been

defined as the amount collected in excess of that applicable in accordance with the lawfully published and filed tariff providing the rate. Gerard Ragone & Co. v. Director General 80 I. C. C. 491, 492.

(cc) The phrase overcharge as used by the Commission embraces only cases where the carriers have demanded and received a rate in excess of the published rate. The Commission does not use that phrase in cases where the published rate has been collected but is alleged on one ground or another to be an excessive rate. Gerard Ragone & Son v. Director General 80 I. C. C. 491, 492.

(dd) Section 206 c of the Transportation Act, 1920, as amended, provides that straight overcharge claims against the agent designated under subdivision A of that section may be filed with the Commission within two years and six months after the termination of federal control. Allied Machinery Co. of America v. Director General 81 I. C. C. 204.

(dda) Contention that section 6 of the act, in providing penalty for failure to comply with regulations or orders made by commission under that section, precludes recovery of overcharge arising from illegal rates, not sustained Section 8 of the act provides for liability to persons injured through carrier's violation of the act, and section 9 gives such persons election to make complaint to commission or prosecute action in Federal court. Complainant could recover amount paid in excess of legal rate in common-law action for money had and received, and reparation in like amount can be awarded by commission because collection of illegal rate constitutes violation of the act. Proctor & Gamble Co. v. Director General, as Agent, 81 I. C. C., 361, 363.

(ee) A cause of action to recover against a carrier for an overcharge of freight arises, whether ex delicto or ex-contractu, at the time and place of the actual payment of the overcharge. If the cause of action is one ex contractu, the contract upon which it is based was made and was to be performed at the time and place where the overcharge was paid. Where the shipment out of which the overcharge arose was over the lines of connecting carriers, and the overcharge was paid to the terminal carrier, the cause of action nevertheless arose at the time and place of payment to the terminal carrier, even assuming that its collection by the terminal carrier amounted to a payment to the initial carrier through the terminal carrier as its agent. Drake v. Davis, (Ga. 1923), 116 S. E. 552.

(ff) If a carrier fails to desist from charging a rate which the Interstate Commerce Commission has held to be excessive, the shipper, or person injured, may recover. Mobile & O. R. Co. v. Southern Sawmill Co., (Mo. 1923), 251 S. W. 434.

(ffa) The fact that a payment was voluntarily made does not prevent its recovery from a third person whose breach of contract made it necessary to make the payment to the payee, even though it would prevent recovery from the payee. Devine v. Meramec Portland Cement & Material Co., (Missouri, 1923, 253 S. W. 444.

(gg) A shipper's right at common law to sue the carrier to recover excessive and discriminatory freight charges collected from the shipper by the carrier is not abrogated by the Utah law requiring reasonable rates, and authorizing an overcharged shipper to recover double the charges paid; hence a suit to recover excessive freight charges collected is not governed by the State law as to action for liability created by statute, as to action for statutory penalty, but by the four year statute. Jeremy Fuel & Grain Co. v. Denver & R. G. R. Co., (Utah 1922), 207 Pac. 155.

(hh) In an action against a carrier for excessive freight charges, a statement in the complaint that an overcharge has been collected is one of ultimate fact, and not simply a legal conclusion, and a complaint alleging the rate charged, and that it is unreasonable or extortionate, is not subject to demurrer. Jeremy Fuel & Grain Co. v. Denver & R. G. R. Co., (Utah 1922,) 207 Pac. 155.

(ii) Since the Transportation Act provides that the period of federal control shall not be computed as a part of the period of limitation in actions against carriers for causes of action arising prior to federal control, the period from the date the government took control of and operated a railroad must be excluded from the computation of the period of limitation of the state statute. Jeromy Fuel & Grain Co. v. Denver & R. G. R. Co., (Utah 1922), 207 Pac. 155.

(jj) Federal Transportation Act, § 206

(f), providing that the period of federal control shall not be computed as part of the periods of limitation in actions against carrier or in claims for reparation to the commission for causes of action arising prior to federal control, applies only to the federal rate regulating statutes, and has no effect on Rem. Code 1915, § 8626-91, requiring complaints concerning overcharges to be filed with the Public Service Commission (now Department of Public Works) within two years from accrual of cause of action, compliance with which is necessary for jurisdiction. Northern Pac. Ry. Co. v. Department of Public Works, (Wash 1922,) 207 Pac. 686.

(kk) A direct action in court may be maintained against a railroad company to recover overcharges on shipments, where no question is made as to tariff schedules or rules requiring administrative action by the Interstate Commerce Commission, but the only issue is one of fact as to whether or not defendant furnished a service that entitled it to the higher rate charged. Kansas City Southern Ry. Co. v. Wolf, 272 Fed. 681.

(ll) Where, on the hearing before the Interstate Commerce Commission of a petition against a railroad company for reparation for unreasonable rates "heretofore and hereafter charged to petitioners," both parties treated the issues as embracing shipments made both before and after filing of the petition, and evidence relating thereto was taken without objection, the commission HELD to have power to award reparation for overcharges made after as well as before the filing of the petition. Lehigh Valley R. R. Co. v. G. B. Markle Co., 279 Fed. 261.

(mm) Interstate Commerce Act providing that all claims for the recovery of damages shall be filed within two years after the cause of action has accrued applies only to claims for damages filed before the Commission, and an action in court to recover an excessive freight rate is governed by the period of limitation fixed by the state statute. Davis v. Parrington, 281 Fed. 10.

(nn) Claims against a railroad company for overcharges collected more than five years before the property of the company was impounded for administration by a court of equity HELD not within the class of claims which may be given priority over recorded liens. North American Co. v. St. Louis & S. F. R. Co., 288 Fed. 612.

(oo) Shippers, who have purchased the statutory remedy for recovery of overcharges collected by a railroad company, by obtaining from the Interstate Commerce Commission an order awarding them damages, and a judgment on such order, cannot later maintain a suit to charge the company as trustee, on the inconsistent theory that ownership of the money collected remained in them. North American Co. v. St. Louis & S. F. R. Co., 288 Fed. 612.

(pp) The collection by a railroad company of rates in accordance with its established schedule is not unlawful, though the Interstate Commerce Commission may afterward adjudge such rates to be unreasonable and excessive, and order reparation to shippers, and the company is not chargeable with holding the excess rates so collected as a trustee ex maleficio. North American Co. v. St. Louis & S. F. R. Co., 288 Fed. 612.

(ppa) Where freight on a commodity is paid by the consignee, who is the purchaser, but pursuant to contract is charged against the consignor as a payment on the purchase price, such payment is to be considered as originally made by the consignor, who may recover against the carrier for an overcharge. Louisville & N. R. Co. v. Sloss-Sheffield Steel & Iron Co. 295 Fed. 53.

(qq) An action to receive overcharges is barred under the Interstate Commerce Act after the expiration of two years from the time the cause of action accrues. Kansas City Southern Ry. v. Wolf, 43 Sup. Ct. 259.

(rr) The Interstate Commerce Act, § 9, authorizing a person claiming to be damaged by a common carrier to make complaint to the Commission, or bring suit in court, and section 16, requiring all complaints for the recovery of damages to be filed with the Commission within two years from the time the cause of action accrues, and a petition for the enforcement of an order of the Commission to be filed within one year from the date of the order, apply to a suit to recover charges collected by a carrier in excess of its tariffs on file, even though the demand for such relief required no administrative act by the Commission, so

that an application to the Commission before suit was unnecessary, and tne provision is a condition to the right to recover, so that a demurrer, raising the objection that the pleading showed on its face that more than two years had elapsed since the right to recover accrued, should have been sustained. Kansas City Southern Ry. Co. v. Wolf, 43 Sup. Ct. 259.

ALL OTHER CITATIONS

Sonneland v. M. P. R. Ry. Co. Unrep. Op. 399; Huerfano Coal Co. v. D. & R. G. R. R. Co. Unrep. Op. 390; Neosho Milling Co. v. K. C. S. Ry. Co. Unrep. Op. 450; Ottumwa Box Car Loader Co. v. W. R. R. Co. Unrep. Op. 382; Douville v. G. F. & A. Ry. Co., Unrep. Op. 342; Clover Leaf Lumber Co. v. L. Ry. & Nav. Co., Unrep. Op. 311; Emery, Bird, Thyaer Dry Goods Co. v. C. & N. W. Ry. & Nav. Cp. Unrep. Op. 310; Copper Queen Consolidated Mining Co. v. L. & N. R. R. Co., Unrep. Op. 279; Germain Co. v. A. B. & A. R. R. Co., Unrep. Op. 277; Robinson Clay Product Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 276; Joseph Co. v. C. of Ga. Ry. Co., Unrep. Op. 166; American Lumber Mfg. Co. v. C. of Ga. Ry. Co., Unrep. Op. 153; Arrow Lumber & Shingle Co. v. M. St. P. & S. Ste. M. Ry. Co., Unrep. Op. 145; Dickinson Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. 82; Georgia R. R. Co., 13 I. C. C. 401, 404; Gus Momsen & Co. v. Gila Valley, Globe & Northern Ry. Co. 14 I. C. C. 614; C. L. Flaccus Glass Co. v. C. C. C. & St. L. Ry. Co., 14 I. C. C. 333, 335; Laning-Harris Coal & Grain Co. v. St. L. & S. F. R. R. Co. 15 I. C. C. 37, 39: Accrual of cause of action, 15 I. C. C. 201, 204; Tyson, Jones Buggy Co. v. A. & A. Ry. Co., 17 I. C. C. 330, 331, 332; Isbeel-Brown Co. v. M. C. R R. Co. 15 I. C. C. 616, 617; Riverside Mills v. G. R. R. Co., 20 I. C. C. 423, 424; Pacific Coast Biscuit Co. v. S. P. & S. Ry. Co., 20 I. C. C. 546, 549; Georgia-Carolina Brick Co. v. S. Ry. Co. 20 I. C. C. 148, 149; American Cigar Co. v. P. & R. Ry. Co., 20 I. C. C. 81; Casey-Hedges Co. v. A. G. S. R. R. Co., 23 I. C. C. 249, 250; Cohen & Co. v. Mallory S. S. Co., 23 I. C. C. 374, 375; Presmeyer Shoe Co. v. C. & A. R. R. Co., 23 I. C. C. 78, 80; National Refrigerator and Butcher Supply Co. v. I. C. R. R. Co. 20 I. C. C. 64, 65; Interstate Grain Co. v. C. & N. W. Ry. Co. 22 I. C. C. 34, 35; Imperial Candy Co. v. C. B. & Q. R. R. Co., Unrep. Op. 412; Alabama Lumber & Export Co. v. C. of Ga. Ry. Co., Unrep. Op. 442; Browne Grain Co. v. M. L. & T. R. R. Co. Unrep. Op. 499; Haas & Sons v. P. R. R. Co., Unrep. Op. 578; Tyson & Jones Buggy Co v. Aberdeen & Asheboro Ry. Co. 17 I. C. C. 330, 332; Cooper Queen Consolidated Mining Co. v. L. & N. R. R. Co., Unrep. Op. 279; Hendrie & Bolthoff Mfg. Co. v. S. Ry. Co. Unrep. Op. 380; Morris & Co. v. N. & W. Ry. Co. Unrep. Op. 411; Bartley Co. v. Ocean S. S. Co., 5 Ga. App. 844, 845, 63 S. E. 1129; Hardaway v. Southern Ry. Co. (S. C. 1912), 73 S. E. 1020, 1021, 1022; Robinson v. B. & O. R. R. Co. 64 W. Va. 406, 411, 63 S. E. 323; Kansas City So. Ry. v. Albers Comm. Co., 223 U. S. 573, 591, 32 Sup. Ct. 316, 56 L. ed. 556; Darnell v. I. C. R. R. Co., 190 Fed. 656, 658; K. C. S. Ry. Co. v. Albers Comm. Co. 79 Kan. 59, 60, 99 P. 819; Baldwin Land Co. v. Columbia Ry. Co., 58 Or. 285, 291, 114 P. 469; Hardaway v. Southern Ry. Co. (S. C. 1912), 73 S. E. 1020, 1024, 1025; Pecos River R. Co. v. Reynolds Cattle Co. (Tex. 1911), 135 S. W. 162, 163; Robinson v. B. & O. R. R. Co., 64 W. Va., 406, 411 S. E. 323; Kansas City S. Ry. Co. v. Tonn (Ark. 1912), 143 S. W. 577, 580, 581; C. R. I. & P. Ry. Co. v. Lena Lumber Co. (Ark. 1911), 137 S. W. 562, 563; Forster Bros. Co. v. D. S. S. & A. Ry. Co., 14 I. C. C. 232, 234; Rehberg & Co. v. Erie R. R. Co., 17 I. C. C. 508, 510; Platten Produce Co. v. K. L. S. & C. Ry. Co. 18 I. C. C. 249; Edison Portland Cement Co. v. D. L. & W. R. R. Co., 20 I. C. C. 95, 96; American Sugar Refining Co. v. D. S. & W. R. R. Co., 207 Fed. 733, 736; Geraty v. A. C. L. R. R. Co., 211 Fed. 227, 229; St. L. & S. F. Ry. Co. v. S. Samuels & Co., 211 Fed. 588, 594; L. V. R. R. Co. v. Meeker, 211 Fed. 785, 797; Gimble Bros. Inc. v. Barrett 215, Fed. 1004; Gimble Bros. v. Barrett, 218 Fed. 880, 886, 887; Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391, 394, 395; Beekman Lumber Co. v. S. L. B. & S. Ry. Co., Unrep. Op. A-119; Bartlett Co. v. C. P. & St. L. Ry. Co., Unrep. Op. A-203, A-791; Mason v. A. C. L. R. R. Co., Unrep. Op. A-247; St. Louis Southern Ry. Co. v. J. S. Patterson Const. Co. (Ind. 1914), 104 N. E. 512, 516; New York Hay Exchange Asso. v. L. V. R. R. Co., 29 I. C. C. 90, 92, 93; E. D. Clough & Co. v. B. & M. R. R. (N. H., 1914), 90 Atl. 863, 865; Mott Store Co. v. St. L. & S. F. Ry. Co. (Mo. App. 1914), 168 S.

W. 322; Paducah Box & Basket Co., Inc., v. I. C. R. R. Co., Unrep. Op. A-582; Montague Mailing Machinery Co. v. N. C. & St. L. Ry., Unrep. Op. A-626; Corporation Commission of Oklahoma v. K. C. M. & O. Ry. Co., 32 I. C. C. 384, 385; Virginia-Carolina Peanut Co. v. A. C. L. R. Co. (N. C. 1914), 82 S. E. 1, 5; National Pole Co. v. M. & I. Ry. Co., 33 I. C. C. 372, 373; Barnes Grocer Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-769. Goodhart-Hartman Co. v. S. P. Co., Unrep. Op. A-781; New Orleans Board of Trade v. L. R. & N. Co., Unrep. Op. A-799; Hardwood Lumber Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-822; Corporation Commission of Oklahmoba v. W. F. & N. W. Ry. Co., Unrep. Op. A-828; Boardman Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-835; Alliance Alfalfa Hay Co. v. S. Ry. Co., Unrep. Op. A-837; Brodnax & McLiney v. St. L. & S. F. R. R. Co., Unrep. Op. A-848; Peden Iron & Steel Co. v. S. P. Co., A. S. S. Lines, Unrep. Op. A-869; Jewett v. C. B. & Q. R. R. Co., Unrep. Op. A-878; Peycke Bros. Commission Co. v. C. R. I.& P. Ry. Co., Unrep. Op. A-899; Lee-Coit-Andreesen Hardware Co. v. Crosby Transportation Co., Unrep. Op. A-944; New Orleans Shippers' Asso. v. I. C. R. R., 34 I. C. C., 32, 33; Board of Trade of Kansas City v. C. M. & St. P. Ry. 34 I. C. C. 208; Ludowici-Celadon Co. v. F. E. C. Ry., 35 I. C. C. 81, 82; National Pole Co. v. M. & I. Ry. Co., 33 I. C. C. 372, 373; Menasha Wooden Ware Co. v. C. & W. Ry. Co., 33 I. C. C. 563, 566; New Orleans Shippers' Asso. v. I. C. R. R. Co., 34 I. C. C. 32, 33; Wolverine Brass Works v. Southern Pac. Co., (Mich. 1915), 153 N. W. 778, 780; Krauss Bros. Lumber Co.v . N. C. & St. L. Ry. Co., 36 I. C. C. 285, 288; Merrill & Bro. v. I. C. R. R. Co., 36 I. C. C. 523, 524; Coad v. Chicago, St. P. M. & O. Ry. Co., (Ia. 1915) 154 N. W., 396, 397, 398; Blalock Hardware Co. v. Seaboard Air Line Ry. Co., (N. C. 1915), 86 S. E. 1025, 1026; Bergerman v. A. T. & S. F. Ry. Co., Unrep. Op. 2132; California Adjustment Co. v. Southern Pac. Co., 226 Fed. 349, 350 Canales v. G. H. & S. A. Ry. Co., 37 I. C. C. 573, 574; International Lum. Co. v. C. N. Ry., 40 I. C. C. 283; Abel & Robert v. M. P. Ry. Co., 39 I. C. C. 211; Templeton & Sons v. C. I. & S. R. R. Co., 39 I. C. C. 335; American Enameled Brick & Tile Co. v. R. R. R. R. Co., 39 I. C. C. 653, 657; Seidel Lumber Co. v. M. P. Ry. Co., 39 I. C. C. 670; Goodman Mfg. Co. v. C. M. & St. P. Ry. Co., 40 I. C. C. 675, 676; Great Western Oil Refining & Pipe Line Co. v. Chicago, M. & St. P. Ry., 113 N. E. (Ill. 1916) 876; Henry L. Hunter, Inc., v. New York, N. H. & H. R. R. Co., 161 N. Y. S. 10; Dulweber Co. v. Y. M. V. R. R., 45 I. C. C. 549; Herrick Refrigerator & Cold Storage Co. v. G. G. W. R. R. 46 I. C. C. 421, 422; Wilson v. Long Island R. Co., 165 N. Y. S. 913, 915; Minnesota & Orleans Power Co. v. B. F. & I. F. Ry., 47 I. C. C. 208; Reliance Elevator Co. v. Chicago M. & St. P. Ry., (Minn. 1917) 165 N. W. 867; Lafayette Chamber of Commerce v. A. & V. Ry., 47 I. C. C. 246; Flanley Grain Co. v. C. St. P., M. & O. Ry. Co., 48 I. C. C. 505; Arka Delphia Milling Co. v. St. Louis Southwestern Ry., 39 Sup. Ct. 237, 242; California Adjustment Co. v. Atchison, T. & S. F. Ry., (Calif. 1918), 175 Pac. 682; Casey-Hodges Co. v. A. G. S. R. R., 50 I. C. C. 240; International Paper Co. v. B. & M. R. R., 50 I. C. C. 341; Dunhom Co. v. N. Y. C. R. R., 50 I. C. C. 343; Seller & Co. v. S. P. & S. Ry., 50 I. C. C. 419; National Supply Co. v. C. B. & Q. R. R., 51 I. C. C. 429, 430; Scullin Steel Co. v. North American Co., 255 Fed. 945; West Const. Co. v. Seaboard Air Line Ry., 210 S. W. 633; Coad v. Pennsylvania Ry. Co., (Ia. 1919), 175 N. W. 344; Chicago, M. & St. P. Ry. Co. v. Frye & Co., (Wash. 1919), 186 Pac. 668; Fla. East Coast Ry. Co. v. State, (Fla. 1919), 82 So. 136; Gallup v. St. Louis, I. M. & S. R. Co., (Ark. 1919), 215 S. W. 586; Boldt Paper Mills v. Director General, 55 I. C. C. 331, 332; Gwinn Bros. & Co. v. C. & O. Ry., 56 I. C. C. 298, 302; Cobbs v. Joyce-Watkins Co. et al. (Mo. 1921) 228 S. W. 504; American Cement Plaster Co. v. Ft. W. & D. C. Ry. Co., 58 I. C. C. 435; Prairie Pipe Line Co. v. Director General, as Agent, 69 I. C. C. 157; American Cement Plaster Co. v. C. & A. R. Co., 59 I. C. C. 165; Ayers, Bridges & Co. v. Director General, as Agent, 61 I. C. C. 339; California Fruit Growers Exchange v. C. & N. W. Rv. Co., 63 I. C. C. 361; Mitsui & Co. v. Director General, as Agent, 64 I. C. C. 4; Madison Lumber & Mill Co. v. Director General, as Agent, 64 I. C. C. 699, 701; Liberty Oil Co. v. Director General, 69 I. C. C. 96; Houston & T. C. Ry. Co. v. Southern Architectural Cement Stone Co., (Tex. 1922), 245 S. W. 644; Corotto v. Director General, as Agent, 77 I. C. C. 89; Acme Cement Plaster Co. v. Director General, 81 I. C. C. 298; Moore

& Moore v. Director General, as Agent, 78 I. C. C. 31; Procter & Gamble Co. v. Director General, as Agent, 78 I. C. C. 47; Crookston Gas Co. v. G. N. Ry. Co., 81 I. C. C. 128; Boston Wool Trade Asso. v. Director General, as Agent, 81 I. C. C. 131; Standard Oil Co. v. M. V. R. R. Co., 81 I. C. C. 193; Acme Cement Plaster Co. v. Director General, as Agent, 81 I. C. C. 298; Ginocchio-Jones Fruit Co. v. Director General as Agent, 81 I. C. C. 495; Webb Fuel Co. v. Director General as Agent, 81 I. C. C. 631; Dow Co. v. G. N. Ry Co. 81 I. C. C. 649; Northwest Steel Co. v. Director General, as Agent, 83 I. C. C. 298; Crown Cork & Seal Co. v. Director General, 88 I. C. C. 305; General Electric Company v. Director General, 88 I. C. C. 643. Bartlett Co. v. C. P. & St. L. R. R. Co., Unrep. Op. A-791; State v. Florida East Coast Ry. (Fla. 1920), 86 So. 691; Louisville, H. & St. L. Ry. Co. v. Johns & Patterson, (Ky. 1924), 258 S. W. 312.

OWNERSHIP OF COMMODITIES

See Reasonableness of Rates §23.

PACKAGE RATES

IMPORTANT CASES SINCE 1908

(a) Complaint attacked charges collected on 15 carloads of citrus fruit, in field boxes the size of which is prescribed by a Florida law, shipped intrastate in Florida, during January 1919 for packing and reshipping beyond and on 11 carloads of empty field boxes from Tavares to the groves as unjust and unreasonable. Rates on citrus fruit from groves to packing houses in Florida, and on returned empty boxes, are published in cents per field box. The field boxes used by complainant were smaller than the standard field boxes and prior to Oct 23, 1918 rates on half sized boxes were one half standard box rates. On that date defendant canceled these half rates and made basis applicable the regular rate. The desirability of a standard size field box is not disputed. The dimensions prescribed by the Florida legislature are not claimed to be unfair nor are the rates per standard box alleged to have been unreasonable HELD, rates attacked not unreasonable, complaint dismissed. Florida Citrus Exchange v. Director General 66 I. C. C. 307.

(b) The mere fact that complainant was charged more for hauling a like quantity of fruit than were the users of the standard box does not entitle it to reparation. Such a result inevitably follows where rates are stated in amounts per package and the shipper chooses to use a package smaller than the standards prescribed by the tariff. Florida Citrus Exchange v. Director General 66 I. C. C. 307, 308.

PACKING

CROSS REFERENCES

See Classification §15½ §16;

PADDING

See Allowances §8 (4½).

PANAMA CANAL ACT

See Erie Canal; Evidence §42; Facilities and Privileges §16; Water Carriers; Water Competition.

IMPORTANT CASES SINCE 1908

(a) Congress has decreed that there shall be a restoration of conditions prevailing when railroads had no interest in boat lines. Lake Line Applications, Under Panama Canal Act, 33 I. C. C. 699, 713.

(b) One evident purpose of section 11 of the Panama Canal act was to remove restraints on competition between the rail and the water lines, and the showing which would justify the Commission in granting permission to continue the operation of boat lines, is not merely that the existing service and the rates are reasonably statisfactory and have not been the cause of substantial complaint but that under railroad ownership the lines render service as good as they would render if independently owned and operated, and that railroad ownership does not deprive the public of substantial benefits of competition, either in service or in rates. Steamer Lines of Chesapeake Bay, 35 I. C. C. 692, 696.

(c) It must be shown not only that existing service and rates are reasonably satisfactory, but that under railroad ownership the lines render service as good as if independently owned and operated and that railroad ownership does not deprive the public of substantial benefit of competition. Steamer Lines on Chesapeake Bay, 35 I. C. C. 692, 696, 607.

(d) Where one rail carrier owns all the capital stock of another and that other in turn owns all the stock of a

water carrier both have such interest in the latter as is defined in section 5 of the act. Ocean Steamship Co. of Savannah, 37 I. C. C. 422, 423.

(e) The volume of traffic handled by a steamship company between two points served by a controlling rail carrier may be negligible, and the steamship company may not solicit or seek such traffic; but neither of these factors is controlling in determining whether or not possibility of competition, exists. Potential competition may exist via a route in the absence of any tonnage whatever. It is not altogether metaphorical to say that each route competes with every other route. If the violation of the water carrier is to determine wether or not competition may exist, a water line in active competition with its railroad owner for certain traffic might avoid the provisions of the act by temporarily withdrawing from such competitive business. To concede this would render the amendment to the act impotent to accomplish one of its prime purposes—the preservation of competition on the route by water. Ocean Steamship Co. of Savannah, 37 I. C. C. 422, 425.

(f) A rail carrier by participating in a through route between two termini only one of which is reached by its rails in fact serves both termini, and may compete within the meaning of section 5 with steamers operating as part of another through route between the same termini. Peninsular & Occidental S. S. Co., 37 I. C. C. 432, 434.

(g) A contention that inasmuch as heavy through freight is not considered desirable traffic by a steamship company because of its limited facilities, and is not sought or desired by the latter, it can not be considered competitive traffic within the meaning of the Act, is unsound. Whether or not a steamship company competes for a certain class of traffic is largely a matter of policy shaped by its owners. To concede that the possibility of competition depends on the volition of the water carrier would defeat the evident purpose of the amendment to restore and maintain competition in instances where rail carriers had secured the control of a potentially competitive water line. Peninsular & Occidental S. S. Co., 37 I. C. C. 432, 436.

(h) The Act was not intended to prevent water lines competing with rail carriers, but, on the other hand, it contemplates encouragement of such competition by divorcing the water line from rail line which is using the water carrier to stifle competition, os is not operating it in the best interests of the public. S. P. Co., Ownership of Oil Steamers, 37 I. C. C. 528, 536.

(i) Competition is a question of fact to be determined by the circumstances in each case. It means something more than an occasional movement via a rail line which parrallels a water line, where the rail line operates at a serious disadvantage in that it does not and can not offer rates and service on anything like equal terms with the water line. Whether or not there would be a normal, active competition between the rail line and the water line if operating independently of each other is the best practical test of competition. S. P. Co. Ownership of Oil Steamers, 37 I. C. C. 528, 536.

(j) The provisions of section 1 of the Act apply to any common carrier engaged in the transportation of passengers or property. There is no change or modification by the amendment of Aug. 24, 1912, with respect to the agency of transportation over which the Act confers regulatory authority upon the Commission. A corporation which proposed, but only under certain contingencies, to become a common carrier is not covered by the wording of the amendment. Analysis of the language used in the amendment justifies the conclusion that it deals with common carriers which, whether existing at the time of its enactment or thereafter, should, at the time when its provisions are invoked, be going concerns equipped and ready to engage in the interstate transportation of property. Charleston & Norfolk S. S. Co. v. C. & O. Ry. Co., 40 I. C. C., 382, 385.

(k) Paragraph (a) of the Panama Canal Act contemplates that a common carrier by water must be operating, or at least equipped to operate, since not only is a physical connection with its dock to be established, but the situation must be such that the Commission may ascertain whether "such connection is reasonably practicable"; whether it "can be made with safety to the public;" whether "the amount of business to be handled is sufficient to justify the

outlay"; and "to determine the terms and conditions upon which these connecting tracks, when constructed, shall be operated"; and the Commission "may either in the construction or operation of such tracks, determine what sum shall be paid by either carrier." These preliminary requirements may not, as a practical matter, to be determined in advance of the acquirement by the water line of terminal facilities. C. & N. S. S. Co., v. C. & O. Ry. Co., 40 I. C. C., 382, 385.

(l) The time during which petitioning rail carriers may continue to operate or have an interest in a boat line can not be extended unless the Commission finds such extension is of advantage to the convenience and commerce of the people, and will neither exclude, prevent, or reduce competition on the route by water. Direct Nav. Co., 46 I. C. C. 378, 379.

(m) But the Commission has not before them for determination any general question of public policy, for that is a matter for the Congress. Section 5 of the Interstate Commerce Act charges the Commission only with the duty, in a case of this kind, of determining whether or not competition for traffic between the owning rail carriers and their boat lines through the Panama Canal does or may exist, and in doing this the Commission has to give due weight to the actual conditions at the present time. Application of United States Steel Products Co., 57 I. C. C. 513-516.

(n) It had been found that the ownership and operation of boat lines by rail lines had retarded and stifled competition on routes by water in the interest of rail lines, and it was to prevent this evil and permit the development of water borne commerce in the interest of the public that the Panama Canal amendment was passed. S. P, Co. Ownership of Atlantic steamship lines 77 I. C. C. 124, 128.

(o) Under section 5 of the Interstate Commerce Act, as amended by the Panama Canal act, providing that applications may be "filed * * * for the purpose of asking an order to install new service not in conflict with the provisions of this paragraph." the word "paragraph" clearly does not refer to that in which it is used because such paragraph contains no prohibitions. The word "paragraph" in an act of Congress will be construed to mean "section" whenever to do so accords with the legislative intent. S. P. Co. Ownership of Atlantic S. S. Lines, 77 I. C. C. 124, 128.

(p) Contention that the paragraph of section 5 of the Interstate Commerce Act which provides that the commission may extend the time during which a service by water may be continued, does not grant authority to install a new service, and that if the commission finds that a proposed service is new and that in that service applicant does or may compete with all-rail routes, the application must be denied whether in the public interest or not. HELD: Not sustained. S. P. Co., Ownership of Atlantic S. S. Lines, 77 I. C. C. 124, 128.

(q) The Panama Canal amendment to section 5 of the Interstate Commerce Act is a part of a public statute and passed in the public interest. It has been found that the ownership and operation of boat lines by rail lines has retarded and stifled competition on routes by water in the interest of the rail lines, and it was to prevent this evil and permit the development of water-borne commerce in the interest of the public that the amendment was passed. S. P. Co., Ownership of Atlantic S. S. Lines, 77 I. C. C. 124, 128.

(r) Under section 5 of the Interstate Commerce Act, as amended by the Panama Canal Act, the same consideration of advantage to the convenience and commerce of the people which applies to the continuance of an existing service would have equal application in the installation of a new service, and it does not appear that it was the intention of Congress to prohibit the continuance of an existing line, but to permit the further development of service when traffic offering warrants and it is in the public interest. S. P. Co. Ownership of Atlantic S. S Lines, 77 I. C. C. 129.

(s) The purpose of the Panama Canal amendment to the Interstate Commerce Act was not to forbid railroad ownership, operation, or control of steamship lines, but to forbid the use of such ownership or control in such a manner as to restrict movement of interstate commerce in the interest of that railroad's competing rail lines. S. P. Co. Ownership of Atlantic S. S. Lines 77 I. C. C. 137.

(t) Competition now exists between steamship lines operating through the Panama Canal and the railroads gener-

ally. Application of United States Steel Products Co., 77 I. C. C. 685, 686.

(u) Contention that independent steamship lines can not survive in competition with a steamship line "subsidized" by an industry. HELD: Whether or not an industry should be permitted to operate a steamship line is a question of public policy to be determined by the lawmaking body. Application of United States Steel Products Co., 77 I. C. C. 685, 687, 688.

(v) The Interstate Commerce Act makes it unlawful for any railroad company subject to the provisions of the act after July 1, 1914, to own, operate, control, or have any interest in any common carrier by water with which its railroad does or may compete for traffic, under penalty of a fine for each day's violation. By a further provision it confers on the Interstate Commerce Commission jurisdiction to determine, on application of any railroad company also owning or controlling a water line, the questions of fact as to competition or possibility of competition between the rail and water lines, and upon certain findings to make an order extending the time during which the water service may be continued after July 1, 1914. In all such cases the order of the Commission is made final. HELD, That an order of the Commission pursuant to the statute dismissing the petition of a carrier for such an extension does not require a dissolution of the connection between the rail and water service, but merely leaves the petitioner subject to the operation of the statute, and that a suit in the district court to enjoin enforcement of the Commission's order is not an appropriate proceeding to review its action. Lehigh Valley R. Co. v. United States, 234 Fed. 682.

(w) Under the jurisdiction conferred on the Commission to determine questions of fact as to actual or potential competition between the rail and water service of a petitioner and the provision making its order final, such order is reviewable by the courts only so far as to ascertain that the fundamental requirements of a hearing have been observed, and that the findings were not arbitrary, but based on relevant and substantial evidence; its weight and effect being for the Commission. Lehigh Valley R. Co. v. United States, 234 Fed. 688.

ALL OTHER CITATIONS

In re Wharfage Facilities at Pensacola, Fla., 27 I. C. C. 252, 259; R. R. Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 653; G. T. Ry. of Canada Operation of Car Ferry Co., 34 I. C. C. 49; Application of the Penn. Co. under the Pan. Can. Act, 34 I. C. C. 47; Financial Relations, Etc., L. & N. R. R. Co., 33 I. C. C. 168, 207; Railway Ownership of Boat Line on Lake Tahoe, 33 I. C. C. 426; Ownership of the D. P. & A. Nav. Co., 33 I. C. C. 462, 466; S. P. Co. Ownership of Schooner Pasadena, 33 I. C. C. 476, 478; G. F. & A. Ry. Ownership of Boat Line, 33 I. C. C. 632; Transcontinental Commodity Rates, 32 I. C. C. 449, 456; Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 621; Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 692, 693, 694, 695, 696, 697, 698, 699, 700; Commodity Rates to Pacific Coast Terminals, 34 I. C. C., 13, 16, 17; Operation of Ontario Car Ferry, 34 I. C. C. 52; G. T. W. Ry. Operation of Car Ferry, 34 I. C. C. 55, 56; S. P. Co. Ownership of Oil Steamers, 34 I. C. C., 77, 79, 80, 82; A. A. R. R. Operation of Car Ferry Boats, 34 I. C. C. 83; P. M. & B. & L. E. R. R. Cos. Operation of Car-Ferry Boats, 34 I. C. C. 86; O. W. R. & N. Co. Ownership of S. F. & P. S. S. Co. 34 I. C. C., 165, 166; S. P. Co. Steamboats on Sacramento River, 34 I. C. C. 174; Erie R. R. Co. Operation Lake Keuka Nav. Co., 34 I. C. C. 212; C. & E. R. R. Ownership of Water Equipment, 34 I. C. C. 218, 219; D. S. S. & A. Ry. Etc., Operation of Mackinac Transp. Co., 34 I. C. C. 229; Rates in Chicago Switching District, 34 I. C. C. 234; Financial Relations, etc., L. & N. R. R. Co., 33 I. C. C. 168, 207; Rates on Asphaltum, Barley, Beans, and Canned Goods, 33 I. C. C. 480, 485; Lake Line Applications Under Panama Canal Act, 33 I. C. C. 699, 705, 710 713, 714, 715; Commodity Rates to Pacific Coast Terminals, 34 I. C. C. 13, 16; G. T. W. Ry. Operations of Car Ferry Co., 34 I. C. C. 54, 56; S. P. Co. Ownership of Oil Steamers, 34 I. C. C. 77, 80, 81; C. & E. R. R. Co. Ownership of Water Equipment, 34 I. C. C. 218, 219; S. P. Co. Ownership of Stock in Transportation Co., 34 I. C. C. 648; Steamer Lines on Chesapeake Bay, 35 I. C. C. 692, 696, 697; Lake Line Applications under Panama Canal Act, 37 I. C. C. 77; Steamship "Great Northern," 37 I. C. C. 260; Ocean Steamship Co. of Savannah, 37 I. C. C. 422, 426; The Boat "H. B. Plant," 37 I. C. C. 453; Peninsular & Occidental S. S. Co., 38 I. C.

C. 662; Black & White River Transportation Co. v. M. P. Ry. Co., 37 I. C. C. 244, 248; Rates via Rail-and-Lake Route, 37 I. C. C. 302, 303, 305, 306; Relations Between Carriers by Rail and by Water, 39 I. C. C. 1, 6; Maine Central Boat Lines, 40 I. C. C., 272; Delaware & Hudson Boat Lines, 40 I. C. C., 297, 305; C. & N. S. S. Co., v. C. & O. Ry., 40 I. C. C., 382, 385, 386; Kerr & Co. v. S. S. Ry. Co., 40 I. C. C. 291, 293; Boston & Maine Boat Lines, 40 I. C. C. 565, 567; Central Vermont Boat Lines, 40 I. C. C. 589, 592; Steamer Lines Norfolk to Baltimore and other points, 41 I. C. C. 285, 293; S. P. Co. Ownership of Atlantic S. S. Lines, 43 I. C. C. 168, 171, 173, 174, 177, 172; Application of G. T. Ry. Co. of Canada, 43 I. C. C. 286, 290; Bay State Milling Co. v. Transit Corpn., 43 I. C. C. 338, 347; S. P. Ownership of Atlantic S. S. Lines, 45 I. C. C. 505; Lehigh Valley R. R. Co. v. U. S. 37 Sup. Ct. 397, 243 U. S. 412, 61 L. Ed. 819; Transcontinental Rates, 46 I. C. C. 236, 277; Direct Navigation Co., 46 I. C. C. 378, 382, 379; C. & N. S. S. Co., 47 I. C. C. 365, 368, 371; Charleston & Norfolk S. S. Co., 47 I. C. C. 365, 368; N. C. & St. L. Ry. Boats and Barges, 49 I. C. C. 737; Steamer Lines on Long Island Sound, 50 I. C. C. 634; Control of Water Carriers by Railroad Carriers, 51 I. C. C. 436, 437; Colonial Nav. Co. v. N. Y. N. H. & H. R. R., 50 I. C. C. 625, 628, 629, 630, 631, 632, 633, 634, 646; S. P. Co. Ownership of Atlantic Steamship Lines, 77 I. C. C. 124, 128; Panama Canal, 77 I. C. C. 685; Ocean Steamship Co. of Savannah, 78 I. C. C. 251; Railroad Operation and Control of Water Carriers, 77 I. C. C. 749; Application of United States Steel Products Co., 57 I. C. C. 513, 515, 517; S. P. Co. Ownership of Atlantic Steamship Lines, 58 I. C. C. 67, 71; Rates from Chicago via Panama Canal, 68 I. C. C. 74.

PAPER RATES

See Advanced Rates §4 (1), §5 (7½); Evidence §42½; Reasonableness of Rates §24.

PARCEL POST RATES

See Express Companies §21 (e)

IMPORTANT CASES SINCE 1908

(a) In all the parcel post systems that the Commission has examined, the low rates of carriage have been invariably accompanied by correspondingly low limitations of value. In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 395.

PARTIAL LOSS

See Loss and Damage §11¼;

PARTICIPATION IN THRU TRAFFIC

See Interstate Commerce Commission §3; Long and Short Hauls §6½; Through Routes and Joint Rates §3½, §21½.

PARTIES

See Association §1; Courts §12½; Loss and Damage §17; Procedure Before Commission V; Reparation §6, §19; Routing and Misrouting §10.

PASSENGER FARES AND FACILITIES

I. CONTROL AND REGULATION
- §½. In general.
- §1. Jurisdiction of Commission.

II. REASONABLENESS AND DISCRIMINATION.
- §2. In general.
- §3. Basing fares.
  - (1) Combination on state fares.
  - (2) State fares.
  - (3) The fourth section.
- §3a. Caretakers.
- §4. Certificate plan.
- §4½. Conductor's penalty charge.
- §5. Commutation fares.
- §5¼. Compartments, parlor cars and drawing rooms.
- §5½. Excess fares.
- §5¾. Local fares.
- §6. Mileage, excursion rates and scrip.
- §6½. Military passengers.
- §7. Party rates.
- §7a. Pooling.
- §7¼. Reduced rates.
- §7½. Round-trip tickets.
- §7¾. Special trains and services.
  - (1) Sur-charges.
- §7⅞. Transfers.
- §8. Validation.

III. DISCRIMINATION IN FACILITIES.
- §9. Regulations in general.
- §10. Baggage.

§11. Colored passengers.
§11½. Divisions.
§12. Free transportation and passes.
§12a. Land settlers.
§13. Stations.
§13½. Stopovers.
§14. Through routes and rates.
§14½. Tourist cars.

IV. CLAIMS FOR DAMAGES.
§14¾. In general.
§14¾a. Burden of proof.
§15. Errors of ticket agents.
§16. Lost tickets.
§16½. Redemption of tickets.

V. OPERATION.
§17. In general.
§18. Publication and tariffs.
§19. Procedure.

CROSS REFERENCES

See Crimes III; Eating Houses; Electric Lines; Personal Injuries; Sleeping Car Companies; Special Trains; Station Facilities.

I. CONTROL AND REGULATION.

See Control and Regulation.

§½. In general.

CASES 1887-1908

(a) The only state interference with the landing and receiving of passengers and freight which is permissible is confined to such measures as will prevent confusions among vessels and collision between them, and insure their safety and convenience and facilitate the discharge and receipt of passengers and freight. Gloucester Ferry Co. v. Pennsylvania (U. S. Sup. Ct.), 1 I. C. R. 382.

(aa) There being no proof in this case of the amount invested by the reorganized corporation or its trustees, this court has no means, if it had the power, to determine that the rate of three cents a mile, fixed as the fare of passengers by the legislature, is unreasonable; and it does not appear that there has been any such confiscation as amounts to a taking of property without due process of law, because the income of the road, at that rate of fare, will pay only one and one half per cent on the original cost of the road. Dow v. Beidelman, 2 I. C. R. 56.

(b) An agreement between several railroad companies, some of which own and control competing lines, for the appointment of a common governing committee, or an association composed of one member from every company, to fix the rates for which freights should be carried to and from points within the State of Texas, is illegal because contrary to Tex. Const. art. 10, § 5, which provides that "no railroad, . . . or managers of any railroad corporation, shall consolidate the stock, property, and franchises of such corporation with, . . . or in any way control, any railroad corporation owning or having under its control a parallel or competing line." Gulf, C. & S. F. R. Co. v. State (Tex.), 2 I. C. R. 335.

(c) Transportation of persons is as much commerce as transportation of property. Louisville, New Orleans, Texas R. Co. v. State, 2 I. C. R. 615.

(d) The extraordinary liability imposed by law upon a railroad company as a common carrier for the sufficiency and safety of its passenger cars, and the competency of its employes in operating such cars is a highly important protection to the public; but such company might very reasonably claim that it was not responsible for a passenger car of a private car company or the consequences of that passenger car being transported as part of its train in causing a wreck, collision or delay, when it had no volition in accepting or rejecting such car, but was forced to transport it by order of a civil tribunal. Worcester Excursion Car Co. v. Pennsylvania Railroad, 2 I. C. C. 792, 794.

(da) The word "owner," as used in the act, includes all those who operate a railroad or steamboat in the transportation of passengers; as for example, lessees, receivers and the like. State v. Corbett, 4 I. C. R. 694.

(e) A maximum rate fixed by the legislature for the transportation of passengers is not unreasonable as to a particular road merely because such road cannot, by charging only such rate, pay its operating expenses and the interest on its debts. Missouri Pacific R. Co. v. Smith, 5 I. C. R. 348.

(f) The regulation of the sale of tickets on railroads and steamboats, which makes such sale unlawful without a certificate of authority from the carrier, is not a regulation of commerce beyond the power of a State legislature, but is a mere police regulation of a public employment. The court says that the du-

ties which the act imposes upon the carriers therein named and their agents cannot interfere with the freedom of interstate travel. Such travel is not impeded because tickets are required to be purchased from agents of the carrier who are provided with certificates of their authority. The limitation of the sale of tickets to such agents may be a restraint upon the business of scalpers and ticket brokers, but cannot be regarded as a burden upon interstate commerce. The business of the carrier being a proper subject for the exercise of the police power, its necessary incidents and adjuncts are also subject thereto. As the issuing and use of tickets are required in such business their sale is an incident thereof and may be regulated by legislative action. G. Burdick v. People of the St. of Ill., 7 I. C. C. App. XX.

(g) An excursion ticket entitling the purchaser to a continuous passage over five different railroads, beginning in one State and ending in another after passing through two intermediates, is a contract for interstate passenger traffic within the provision of the Federal Constitution empowering Congress to regulate commerce among the several States. And a State statute requiring the redemption of unused portions of tickets or coupons cannot be made applicable to such ticket. Mo., Kans. & Tex. R. R. Co. v. Fookes, 7 I. C. C. App. LXI.

(h) A state statute attempting to regulate the fares of travelers from one State to another would be repugnant to the commerce clause of the Constitution but the State legislature may regulate the fare for persons traveling from one point to another within the State where the trip is not part of a trip to a point without the State. Beardsley v. N. Y. Lake Erie & Western R. R. Co., 7 I. C. C. App. LXXVII.

(i) Cars employed in interstate commerce are not exempt, in the absence of national legislation covering the subject, from the operation of a State law forbidding under penalties the heating of passenger cars in that State by stoves or furnaces kept inside the cars or suspended therefrom. The court says: The mere grant to Congress of the power to regulate commerce with foreign nations and among States did not, of itself and without legislation by Congress, impair the authority of the States to establish such reasonable regulatioons as were appropriate for the protection of the health, the lives, and the safety of the people. The statute in question had for its object to protect all persons traveling in the State of New York on passenger cars moved by the agency of steam against the perils attending a particular mode of heating such cars. There may be reason to doubt the efficacy of regulations of that kind. But that was a matter for the State to determine. We know from the face of the statute that it has a real, substantial relation to the object as to which the State is competent to legislate, namely, the personal security of those who are passengers on cars used within its limits. Why may not regulations to that end be made applicable within a State to cars of railroad companies engaged in interstate commerce as well as to cars used wholly within such State? The statute in question is not directed against interstate commerce. Nor is it within the meaning of the Constitution a regulation of commerce, although it controls, in some degree, the conduct of those engaged in such commerce. So far as it may affect interstate commerce it is to be regarded as legislation in aid of commerce and enacted under the power remaining with the State to regulate the relative rights and duties of all persons and corporations within its limits. N. Y., N. H. & Hartford R. R. Co. v. People of the St. of N. Y., 7 I. C. C. App. LXXXVIII.

(j) The interstate commerce clause of the United States Constitution is violated by a statute which attempts to make it a penal offense for a person not authorized by the charter of a railroad or a steamship to sell railroad or steamboat tickets. People of the St. of Ill. v. Ullman, 8 I. C. C. App. LIX.

(k) Interstate passengers, defendant road not required to transport at rate fixed by state law for intrastate transportation, where conditions do not warrant reduction. Railroad Commission of Arkansas v. St. L. & N. R. R. Co., 12 I. C. C. 233.

(l) State rates for passengers will not be followed in fixing interstate rates on unprosperous line. Railroad Commission of Arkansas v. St. L. & N. R. R. Co., 12 I. C. C. 233.

IMPORTANT CASES SINCE 1908

(m) Section 22 of the act, as amended, contemplates that carriers shall be

required to recognize an additional class of passenger travel and to provide a special form of ticket which shall be used at just and reasonable rates fixed by the commission. Interchangeable Mileage Ticket Investigation, 77 I. C. C. 204.

(n) The business of a railroad station checkroom is not interstate under Interstate Commerce Act, § 1, enacting that it shall not apply to "storage or handling of property wholly within one state." Denver Union Terminal Ry. Co. v. Cullinan, (Colo 1922), 210 Pac. 602.

(o) Section 6 (second paragraph of the Act) provides for the publication of tariff rates on the transportation of freight, but makes no mention of passenger rates. To properly interpret such paragraph, the entire section must be read and considered in connection therewith, when it will clearly appear that the provision for publishing and posting rates is not limited to the shipment of merchandise, but by implication, if not in terms, includes passenger service. United States v. Grand Trunk Ry. Co. of Canada, 225 Fed. 283, 284.

(p) The Hepburn Act does not prevent a state commission from entering an order requiring reasonable service of passenger trains to county seats as such regulation are only incidental to interstate commerce. Gulf C. & S. F. Ry. v. State of Texas, 38 Sup. Ct. 236.

ALL OTHER CITATIONS

U. S. v. E. R. R. Co., 213 Fed. 391; Chesapeake & Ohio R. Co. v. Public Service Commission, 37 Sup. Ct. 234 U. S. 603, 61 L. ed. 520; Clark v. Southern Ry. (Ind. 1918), 119 N. E. 539; Gray v. Colorado Southern Ry. (Tex. 1918), 204 S. W. 347; Louisville & N. R. Co. v. Bishop (Ala. 1920), 85 Sou. 859; Neubert v. Chicago, R. I. & G. Ry. Co. (Tex. 1923), 248 S. W. 141; Brown v. Seaboard Air Line Ry. Co. (S. C. 1924), 121, S. E. 669.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission; Jurisdiction of Commission.

CASES 1887-1908

(a) The Interstate Commerce Commission, having no authority to control commissioners of immigration, cannot do so indirectly by inhibiting railroad companies from carrying out arrangements made by them with the commissioners. Savery v. New York C. & H. R. R. Co. (Com), 2 I. C. R. 210.

(b) The Interstate Commerce Commission may make its own inspection to ascertain the unfitness of cars for transporting immigrants. Savery v. New York C. & H. R. R. Co. (Com.), 2 I. C. R. 210.

(c) The matter of the reception of immigrants at New York having been put by the laws af the state under the control of a board of commissioners of emigration, and that board having made such regulations as it has deemed desirable for the protection of the immigrants, until they are ticketed and put on board of railroad trains for their respective destinations and the federal government through its legislative and executive departments having sanctioned the control by the commissioners of emigration, the Commission has no authority to interfere with their regulations. Savery & Co. v. N. Y. C. & H. R. R. 2 I. C. C. 210, 216.

(d) A railroad company which transports immigrants in unfit cars will be required to provide better accomodations, and to ascertain their fitness the Commission will make its own inspection. Savery & Co. v. N. Y. C. & H. R. R., 2 I. C. C. 210, 217.

(e) Transportation of persons is as much commerce as transportation of property. Louisville, N. O. & T. R. Co. v. State (Miss.) 2 I. C. R. 615.

(f) The contention that the Commission has power, under the act to regulate commerce, as amended June 29, 1906, to require a common carrier to locate or relocate and maintain a station at a given point is open to doubt; but, without deciding this question here, it is manifest that the Commission should not exercise such power unless all the facts and conditions clearly indicate that the interests of the general public in the locality involved are materially impaired by the lack of such facilities. Jones, E. and Al. v. St. L. & S. F. R. R. Co., 12 I. C. C. 144.

(g) Assuming the Interstate Commerce Commission to have power to require a common carrier to locate or relocate and maintain a station at a given point, such power should not be exercised unless all the facts and conditions clearly indicate that the interests of the general public in the locality involved

are materially impaired by the lack of such facilities. Jones v. St. L. & S. F. R. R. Co., 12 I. C. C. 144.

IMPORTANT CASES SINCE 1908

(h) The Commission has no power to control the mileage sol din one state by its terms, good only for transportation wholly within that state, receivable for interstate journeys. In re Mileage Books, 28 I. C. C. 318, 321.

(i) The Commission cannot compel a carrier to reduce its fares solely on the ground that to do so would induce settlement of sparsely populated communities. Arizona Corp. Commission v. A. T. & S. F. Ry., 45 I. C. C. 436, 442.

(j) Under the Act as it stood prior to the amendment of 1912 the Commission had authority to establish through routes and joint rates or fares for passenger traffic, and yet nowhere is such authority given in specific terms. It arises out of consideration of the Act as a whole. Col. Nav. Co. v. N. Y. N. H. & H. R. R., 50 I. C. C. 625, 631.

(k) If the mantenance of intrastate passenger fares fixed by a franchise contract result in unjust discrimination against interstate commerce, it is within the Commission's power to remove it by prescribing other and different intrastate fares. Ohio Rates, Fares, and Charges, 64 I. C. C. 493, 498.

(ka) The commission has no authority to require carriers to establish for particular passengers or particular occasions, special fares lower than the regular fares. Reduced Rates, 1922, 68 I. C. C. 676, 729.

(l) The suitable location of a passenger terminal within a great city is a matter which can best be determined locally rather than by a commission sitting in Washington, and a referendum vote is entitled to great weight in this connection. Cleveland Passenger Terminal Case, 70 I. C. C. 342, 350.

(m) Jurisdiction of Commission does not extend to claims arising from anticipated delay of passenger trains. Hohlfelder v. D. & R. G. W. R. R. Co., 83 I. C. C. 587, 588.

(n) Interstate Commerce Act, §22, as amended by Act Aug. 18, 1922 (Comp. St. Ann. Supp. 1923, § 8595), directing the Commission to require railroads to issue interchangeable mileage scrip coupon tickets at just and reasonable rates, HELD, not to warrant an order of the Commission requiring issuance of such tickets at reduced rates, based not on the independent exercise of the Commission's judgement, but on erroneous interpretation of the statute or its assumed purpose. United States v. New York Cent. R. R. Co. 44 Sup. Ct., 212.

ALL OTHER CITATIONS

Field v. Southern Ry. Co., 13 I. C. C. 298; In Re Through Passenger Routes, 16 I. C. C. 300, 301; West End Improvement Club v. O. & C. B. R. & B. Co., 17 I. C. C. 239, 244; Commutation Rate Case, 21 I. C. C. 428, 443; Cosby v. Richmond Transfer Co., 23 I. C. C. 72; O. & C. B. St. Ry. Co. v. I. C. C., 191 Fed. 40, 48; In Re Mileage Books, 28 I. C. C. 318, 325; Ligon v. St. L. & S. F. Ry. Co. (Mo. App. 1914), 168 S. W. 647; Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 352, 355; Pennsylvania Paraffine Works v. P. R. R. Co., 34 I. C. C. 179, 188; Western Passenger Fares, 37 I. C. C. 1, 41; Public Service Comm. of Wash. v. A. & V. Ry. Co., 42 I. C. C. 54, 63; Illinois Cent. R. R. v. Public Utilities Commission, 38 Sup. Ct. 170, 245 U. S. 493, 62 L. ed. 425; Proposed Increases in New England, 49 I. C. C. 421, 447.

II. REASONABLENESS AND DISCRIMINATION.

§2. In general.

See Discrimination; Reasonableness of Rates.

CASES 1887-1908

(a) Rate at which excursion tickets are sold does not entitle mileage ticket purchaser to complain of unjust discrimination if charged a higher rate. Asso. Wholesale Grocers v. Missouri Pacific R. Co., 1 I. C. R. 393.

(b) In the transportation of passengers carriers are performing a public duty under franchises granted by the State, and are subject to the rules of law which require absolute impartiality of law, when the circumstances and conditions are substantially similar. Smith v. N. P. R. R., 1 I. C. C. 611, 620.

(c) It will be very difficult to find any principle upon which the transportation of passengers in our country can be impartially and fairly carried short of maintaining the rule of absolute equality of payment from all persons enjoying the same accomodations. Smith v. N. P. R. R., 1 I. C. C. 611, 621.

(d) A passenger rate war in which

rates were repeatedly reduced by several competing lines to an exceedingly low basis on a particular class of traffic, without any filing of tariffs, was contrary to the requirements of law, as well as against the true interest of each party thereto. Re Passenger Tariffs & Rate Wars (Com.) 2 I. C. R. 340.

(ef) No necessity or compulsion is created by a war of rates, which justifies disobedience of the statute. Re Passenger Tariffs & Rate Wars (Com.) 2 I. C. R. 340.

(g) Rates obtained of ticket brokers and scalpers lower than those offered at the regular offices of the company effect unjust discrimination. Re Passenger Tariffs and Rate Wars, 2 I. C. C. 340, 341, 347.

(h) The employment of ticket brokers and scalpers for the sale of railroad tickets placed in their hands, to be disposed of at reduced rates under the pretense of paying commissions thereon is illegal. Re Passenger Tariffs and Rate Wars, 2 I. C. C. 341, 349.

(i) The design of the Act was to put each individual, in the matter of transportation, on exact equality. It was not a new idea in law, for it had always been recognized as a sound legal proposition, though violated in practice, that a common carrier must treat all persons alike under similar circumstances and conditions. P. C. C. & St. L. R. Co. v. B. & O. R. Co., 2 I. C. C. 729, 730.

(j) Complainant attacked passenger fares of $1.85 or 10c per mile between Seligman, Mo., and Eureka, Ark., while the local rate between the stations in Arkansas is 5c per mile, as unjustly discriminatory and unreasonable. The through rate over a railroad 18½ miles long (10½ miles in Arkansas and 8 in Missouri) was $1.85 or 10c per mile. The local charges between the stations in Arkansas were on the basis of 5c per mile, any higher charge being unlawful under the statute of the state. On roads of this class in Missouri the rate authorized is 4c per mile. The net earnings are in excess of a moderate return on the actual investments of the railway company, but are less than in former years. HELD, that the through rate is unreasonable and unjust, and that any through rate over the road in excess of $1.20 (6½c per mile) is unreasonable and unlawful. Board of Railroad and Warehouse Commissioners of Missouri v. E. S. R. Co., 7 I. C. C. 69.

(k) The defendant railway company and a land company owning land and a suburban hotel along the line of railway are distinct corporations, but under substantially the same ownership and control. The land company purchased passenger tickets of the railway company at full rates of fare, and sold them at half rates to guests of its hotel, to persons residing upon land which it had sold or otherwise transferred, and to others, but refused to sell such tickets at half rates to complainant, who, though living in the same locality, resided upon ground not acquired from the land company. HELD, upon the evidence presented, that no discrimination was practiced by the railway company; that the community of interest between the two corporations resulting from common ownership was not made a device for enabling the railway company to evade its legal obligations; and that the action of the land company in discriminating between persons in the sale of tickets for the benefit of its separate business is not subject to correction by the Commission. Wilson v. Rock Creek R. Co., 7 I. C. C. 83.

(l) A charge for interstate fares between two cities in different states, which is higher than the maximum charge for carriage of passengers allowed by the state statutes, is not unreasonable or otherwise unlawful, where the section of country between such points is particularly barren and sparsely settled, and the passenger receipts of the road have been decreasing for several years, and the conditions governing local passenger traffic of such road in one of the states are substantially dissimilar to those applying on its interstate passenger service between the two cities. Savannah Bureau of Freight & Transp. v. Charleston & S. R. Co., 7 I. C. C. 601.

(m) The charge for the carriage of passengers between two points in different states need not be reduced under the Federal statute, because of the reduction of the maximum mileage rates in one of the states, subject to the right of the Commission of that state to restore the old rate under which the charge was fixed by the Interstate Commerce Commission. Savannah Bureau of Freight & Transp. v. Charleston & S. R. Co., 7 I. C. C. 601.

(n) Complainant was charged a through fare of $4.65 from W. to M., passing through R. although the sum of the fares from W. to R and from R. to M. was fifty cents less; but it appeared that the local fares to and from R. applied to and from different stations, and that the extra fifty cents covered a transfer charge. HELD, That as the complainant was not subjected to unjust discrimination and the reasonableness of the transfer charge was not attacked, the complaint must be dismissed. Behrend v. Washington Southern Ry. Co. et al, 9 I. C. C. 637.

(o) A passenger is not unjustly discriminated against by a railroad fare from Washington to Moseley passing through Richmond, although the fare is 50 cents in excess of the combined local fares, where the extra 50 cents covered a bus transfer charge. Behrend v. Washington, S. R. Co., 9 I. C. C. 637.

(p) Complainant attacked as unreasonable passenger fare from Boston, Mass. to Janesville, Wis., as compared with the rate in the reverse direction. HELD, this was not unjust discrimination and did not, if itself render the higher rate unreasonable. MacLoon v. B. & M. R. R. Co., 9 I. C. C. 642.

(q) A passenger fare from Boston, Mass., to Janesville, Wis., is not rendered unreasonable by the fact that it is $2.00 greater than the fare the passenger paid from Janesville to Boston. MacLoon v. Boston & M. R. Co., 9 I. C. C. 642.

(r) Complainant attacked passenger fare charged from Niagara-on-the-Lake Canada, to Buffalo, N. Y., as unjustly discriminatory. The route is to Victoria, Canada, distance 30 miles, thence across the International Bridge to Black Rock, N. Y., and from there to Buffalo, 5 miles. The bridge is operated by an independent company which charges 6c for each passenger. The regular published fare is $1.10 but during the summer season it makes a special rate of 85c to meet competitioin. To get the benefit of the special 85c rate it is necessary to purchase a ticket at the station. Complainant failed to buy a ticket and was charged $1.10. When a railroad company makes a reduction from regular passenger fares which are not found unreasonable, it may lawfully require that a person desiring to avail himself of such reduction shall purchase a ticket, and that all person not holding such special reduced rate ticket shall pay the reasonable ordinary fare. HELD complaint dismissed. Cist v. M. C. R. R., 10 I. C. C. 217.

(s) When a railroad company makes a reduction from its regular rates, which are not found unreasonable, it may require that the person desiring to avail itself of that reduction shall purchase a ticket and that it may collect of all persons not holding such special ticket the reasonable ordinary fare. Cist. v. M. C. R. Co., 10 I. C. C. 217, 219.

(t) An unlawful discrimination is made by charging of a given sum for rail transportation to Gardiner, Mont., and return only, and the acceptance of a smaller sum for the rail transportation when the passenger goes by stage to points in or through Yellowstone Park, with or without hotel accomodations therein, the service performed by the railway company being the same in each case. Wylie v. Northern P. R. Co., 11 I. C. C. 145.

(u) An arrangement between a railway company, stage transportation company, and a hotel association, under which coupon tickets are issued, covering transportation and hotel charges, constitutes and effects an undue and unreasonable preference and advantage to the transportation company and hotel association, and subjects the complainant, who operates a stage line, as well as the passengers, to undue and unreasonable prejudice and disadvantage. Wylie v. Northern P. R. Co., 11 I. C. C. 145.

(v) The defendant railway company publishes rates entitling passengers to transportation over its line from St. Paul, Minn., and other points, including eastern cities, to Gardiner, Mont., and return, via Gardiner through the Yellowstone Park, a Government reservation, by stages of the defendant transportation company and return, and also, if desired, to accomodations at hotels in the Park conducted by the defendant association. Complainant also operates a stage line through the Yellowstone Park and has established permanent camps where hotel accomodations are furnished. Licensed camping parties are conducted through the Park by the interveners. Tickets issued by the defendant railroad company providing both railroad and stage transportation, and

those also including hotel accomodations, are coupon tickets, covering the service by rail, by stage, and at the hotels, and the rates charged therefor are divided between the railway company and the stage company, or between the railway company, the stage company and the hotel company, as the case may be, in such manner that the railway company receives for its rail service less than its established rate to Gardiner and return. The joint rate and ticketing arrangement is solely between the railway company and the other defendants. The railway company admittedly controls the policy and operations of the other defendants. Excellent facilities for touring the Park are furnished by complainant. HELD: (1) That the defendant railway company, stage transportation company, and hotel association are not competent in law to form through routes and establish joint rates as provided in section 6 of the Act to Regulate Commerce, and the circular or tariff under which the rates and tickets in question are provided cannot be regarded as a joint tariff established by connecting carriers under that Act. Wylie v. Northern P. R. Co. et al, 11 I. C. C. 145. (2) That, upon the facts in this case, the charging of a given sum for rail transportation to Gardiner and return only, and the acceptance of a smaller sum for the rail transportation when the passenger goes by stage to points in or through Yellowstone Park, with or without hotel accomodations therein, the service performed by the railway company being the same in each case, constitutes unlawful discriminatioin. Wylie v. Northern P. R. Co., et al, 11 I. C. C. 145. (3) That the arrangement between defendants under which the through tickets are issued and sold and the proceeds divided, and the joint operations of defendants as actually carried on, constitute and effect an undue and unreasonable preference and advantage to the transportation company and hotel association, and subject complainant and others in like situation, as well as passengers traveling to and from Yellowstone Park, to undue and unreasonable prejudice and disadvantage; and while it is not decided that a carrier subject to the Act may not in some cases provide for transportation beyond its own line by stage or other similar conveyance, the facts shown in this case establish a discrimination forbidden by law. Wylie v. Northern P. R. Co., et al, 11 I. C. C. 145.

(w) It is the duty of the defendant railway company to so conduct and control its operations relating to the transportation of passengers to Yellowstone Park as to afford such passengers full and equal opportunities at the terminus of its line at Gardiner, and elsewhere, to select the stage line or other agency they may desire to use for touring the Park, and the places and manner of entertainment therein. Wylie v. Northern P. R. Co., 11 I. C. C. 145.

(x) Defendant's charge for passenger fare from Ellenton, S. C., to Augusta, Ga., 22 miles, is 80 cents, and from Jackson, S. C., to Augusta 15 miles, 60 cents, and these fares are alleged to be unreasonable. The local passenger fares in South Carolina and Georgia are controlled by a maximum of three cents per mile fixed by state authority. The distance covered between the points mentioned is via the C. & W. C. Ry. the other defendant, the A. C. L. R. Co., having certain trackage rights over part of the other line. All fares collected by the A. C. L. R. Co. for transportation between Ellenton or Jackson and Augusta are turned over to the C. & W. C. Ry. Co. The financial condition of the C. & W. C. Ry. Co is poor. The country along the line of this road, though long settled, is sparsely inhabited and the traffic is light. HELD: (1) That the rates fixed by the State Commissions of South Carolina and Georgia are presumptively reasonable, but such presumption is not conclusive and the railroad companies are entitled to show the contrary in a case involving the rates on interstate traffic. (2) That a railroad company is entitled to a fair return upon the value of that which it employs for the public convenience, and that in view of all the facts in this case, and previous decisions of the Commission cited, it is not apparent that the interstate passenger rates complained of are unreasonable. Brabham et al, v. Atlantic C. L. R. Co. et al, 11 I. C. C. 464.

(y) A commodity rate can not be applied to the transportation of passengers or a passenger rate to the transportation of a commodity. HELD, that newspaper employees can not lawfully be carried on special newspaper trains under a commodity rate established for the carriage of newspapers, or at any

rate other than one specified in a regularly published schedule of passenger rates. In the matter of Free Transportation of Newspaper Employees on Special Newspaper Trains, 12 I. C. C. 16, 19.

(z) The defendant road being unfinished, without through connections, not extravagantly managed, under the necessity of making extensions required by public authority and the need of equipment and extension, and not earning sufficient to more than meet its operating expenses, and fixed charges not having been shown to be excessive, should not, in the judgement of the Commission, under all the circumstances at this time, be required to transport interstate passengers at the same rates per mile as are finished, well-equipped and prosperous roads. Railroad Commission of Ark. v. St. L. & Nor. A. R. R. Co., 12 I. C. C. 233.

(aa) Complainant attacked passenger rates in effect on the St. Louis & North Arkansas Ry. This road runs from Seligman, Mo., a point on the Frisco to Leslie, Ark., 120 miles. Passenger rates in Arkansas are 3c per mile on all roads over 75 miles in length. The defendant road being unfinished, without through connections, not extravagantly managed, under the necessity of making extensions required by public authority and the need of equipment and extension, and not earning sufficient to more than meet its operating expenses, and fixed charges not having been shown to be excessive, should not, in the judgement of the Commission, be required to transport interstate passengers at the same rates per mile as are finished, well-equipped, and prosperous roads. HELD, complaint dismissed. Railroad Commission of Arkansas v. St. L. & N. A. Ry., 12 I. C. C. 234.

IMPORTANT CASES SINCE 1908

(bb) And the interests of the public can not go by default in any proceeding before Commission. Public interest requires highly efficient passenger service. Jewelers' Protective Union v. P. R. R. Co., 36 I. C. C. 71, 75.

(cc) The established formula for computing the rate per passenger per mile is to divide passenger revenue by the number of revenue passengers carried 1 mile. The computation is confined to revenue passengers and does not include free passengers, mail, express, baggage or any service other than revenue passengers and the fares they pay. Western Passenger Fares, 37 I. C. C. 1, 5.

(dd) Separation of maintenance of equipment, transportation, and traffic between freight and passenger traffic presents no insurmountable difficulties. The separation of the expenses incident to the maintenance of way and structures, however, is more difficult. These latter expenses in the main can not be directly allocated to the respective services. They are common expense necessary to and influenced by the necessities of both services but not wholly controlled by either. Western Passenger Fares, 37 I. C. C. 1, 12.

(ee) The high velocity of passenger trains, as compared with freight trains, necessitates a better maintenance standard on that account. Western Passenger Fares, 37 I. C. C. 1, 18.

(ff) Inasmuch as the greater speed of passenger trains necessitates more power than would be required were the speed less, it is asserted that the weights of the passenger locomotives bear some direct relation to both the weight and the speed of the trains they draw. The locomotive ton-mile therefore to a certain extent measures the work done by the engines in each class of service, and to a certain extent forms a measure of the wear on track and structures. There is, however, a large proportion of the expenses incident to the maintenance of way and structures that is influenced only to a small extent and certain expenses are not influenced at all by the weight and speed of the trains that pass over the tracks. The action of the elements and deterioration of materials will go on whether trains pass over the tracks or not. The effect of these natural agencies varies greatly with the location, the materials used in track structure, and with the season. It is uncertain how much of any particular item of expense is due to action of the elements and how much to wear. Western Passenger Fares, 37 I. C. C. 1, 18.

(gg) The expenses for maintenance of way and structures which apparently can not be at this time directly allocated as between passenger and freight upon the basis of the costs should be divided between passenger and freight as nearly as possible upon the basis of their respective utilization of this part of the

plant. If one could correctly measure and compare the degree of utilization of the track and structures by these two branches of the service this comparison might serve as a basis for the division of these unallocated expenses. What is the best measure that can be obtained of this utilization of the track by these respectives services? In the absence of any certainty that the scale of passenger fares and that of freight rates is properly proportioned, the revenue derived from the respective services can not form a fair measure of this utilization. The absence of such a known relation between these charges, however, leads to an examination of certain expenses as probably indicative of the utilization of the track and structures. The fuel consumed by road locomotives drawing trains over the road; the lubricants, water, and other supplies for these locomotives; the train supplies; the wages of trainmen and enginemen, are all separated between passenger and freight, and each by itself or the aggregate of all will constitute an index of the utilization of the tracks by these two branches of the service. Western Passenger Fares, 37 I. C. C. 1, 22.

(hh) The public has a right to demand of the railroads that transportation shall be safe; that reasonably expedited service shall be furnished; that the number of trains operated shall be commensurate with the volume of traffic moving; that the trains and stations shall be clean, sanitary, and comfortable. For such services and facilities the carriers should be allowed under reasonable fares to earn a reasonable return upon the property used in that service. Neither competition nor the unreasonable demands of the public, however, must be made the excuse for waste and extravagance in the passenger service. Western Passenger Fares, 37 I. C. C. 1, 34.

(ii) Travel is influenced by so many different factors that statistical proof of the existence of casual relations between the volume of the movement of passengers and the level of the fares is generally impossible. The general deduction that travel may be influenced by the level of the fares will probably not be challenged in any quarter; nor can there be found much ground for questioning the statement that where the change in fares is decidedly marked, a corresponding change in the amount of travel may be attributed wholly or in a large part to such change. On the other hand, where changes in fares are relatively slight, it is doubtful whether any appreciable effect upon the volume of passenger movement will result therefrom. Western Passenger Fares, 37 I. C. C. 1, 40.

(jj) While the Commission should permit reasonable interstate fares it can not sanction fares that are higher than are reasonable for the service performed because intrastate fares are alleged or shown to be unduly low. Western Passenger Fares, 37 I. C. C., 1, 41.

(kk) The average receipts per passenger-mile in a given territory may diverge widely from the standard fare per mile in the same territory. Where commutation traffic has been extensively developed, the receipts from such service will depress heavily the average receipts per passenger-mile. And similarly the extent to which excursion fares, half rate fares, and mileage book fares are accorded will cause the average receipts per passenger-mile to fall below the standard fare per mile. So, too, the extent to which long lines by an abatement in fares meet the competition of short lines to a common destination and the extent to which state controlled fares preclude the application of higher fares for interstate travel will operate in the same general direction. Western Passenger Fares, 37 I. C. C. 1, 43, 44.

(ll) The terminal costs are about the same whether the passenger is intrastate or interstate. Intrastate fares within Illinois, 59 I. C. C. 350, 358.

(mm) Uniformity in passenger fares could not be maintained if it should become the policy of the Commission, in fixing fares, to consider as controlling the transportation characteristics of particular lines or portions of lines. South Carolina Fares and Charges, 60 I. C. C. 290, 296.

(nn) Cost of service is only one of the elements to be considered in determining what would be a proper relationship between intrastate and interstate fares. If it does cost more to handle one character of passenger traffic than the other it would not necessarily follow that there should be a difference in rates. Nebraska Rates, Fares and Charges, 60 I. C. C. 305, 308.

(oo) While the effect may be to divert

traffic from the direct line, there is no inhibition in the act to prevent a circuitous carrier meeting the fares of a competitor between common termni, so long as such fares are not so unduly low as to place a burden on other traffic and to not contravene the provisions of section 4 of the act. Proportional Basing Fares to Ogden, 73 I. C. C. 434, 437.

(pp) Respondents proposed to cancel the application of special newspaper rates on illustrated newspaper supplements shipped in baggage cars on passenger trains prior to publication. The American Railway Express Company urged upon respondents its objections to their present tariffs on the ground that, under its contract for conducting express business over their lines, it was not permissible for respondents to transport these supplements from the printer to the publisher on passenger, mail or express trains, and these schedules were filed. If the suspended schedules become effective the considerably higher first class freight rate of respondents or first class express rates will be applicable. Respondents admit it is necessary and in the public interest that newspapers, milk, and emergency shipments such as oxygen tanks, should be given expedited service, and they have for many years provided such service in their baggage cars. It is a matter of common knowledge that many passenger trains which carry baggage do not carry express or mail. It seems clear that if these schedules are permitted to become effective the express service alone will be adequate to move this traffic. Protestants principal objection to that service rests upon the considerably higher rates which would apply. While the present rates are undoubtedly low, the Commission is not prepared upon this record to sanction the considerably higher charges that would become applicable for the only kind of service that would appear adequate upon the cancellation of the present rates. HELD, suspended schedules not justified. Cancellation of newspaper rates on illustrated newspaper supplements shipped from printers to publishers, 74 I. C. C. 336.

(qq) Attempts to evade the plain requirements of the fourth section of the act in the matter of passenger fares, by annexing different conditions relating to the amount of bagage carried, or to the time for which tickets are good, will receive no countenance by the commission. Fares between New York and Points West of Newark, 74 I. C. C. 516, 520.

(rr) Under section 2 prohibiting unjust discrimination, and section 3 prohibiting undue preferences, a passenger has no right to be transported over a longer route between two points at the tariff rate applicable to a shorter route. If he travel by the longer route, he must pay the fare applicable thereto and at the time chargeable to all persons traveling by that route and if he refuse to do so, it is not only the right but the duty of the conductor to refuse to carry him. Ligon v. St. L. & S. F. Ry. Co. (Mo. App., 1914), 168 S. W. 647, 649.

ALL OTHER CITATIONS

Chappelle v. L. & N. R. R. Co., 19 I. C. C. 56, 59; U. S. V. B. & O. R. R. Co., 15 I. C. C. 470, 471; Kurtz v. Penn. R. R. Co., 16 I. C. C. 410, 415; Weber Club & Intermountain Fair Ass'n v. O. S. L. R. R. Co., 17 I. C. C. 212, 217; Littell v. St. L. S. W. Ry. Co., 18 I. C. C. 187, 189; Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co., 19 I. C. C. 218, 227, 228, 229; Commutation Rates Case, 21 I. C. C. 428, 449; In re Express Rates, 24 I. C. C. 380, 426; Bitzer v. W. V. Ry. Co., 24 I. C. C. 255, 259; Colorado Free Pass Investigation, 26 I. C. C. 491, 497; The New England Investigation, 27 I. C. C. 560, 563, 564, 576, 577; Carnegie Board of Trade v. P. Co., 28 I. C. C. 122, 126; In re Mileage Books, 28 I. C. C. 318, 322; Board of R. R. Com'rs of Mont. v. G. N. Ry. Co., Unrep. Op. A-124; U. S. v. A. C. L. R. R. Co., Unrep. Op. A-175; Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 352, 354, 355; Railroad Com. of Arkansas v. M. & N. A. R. R. Co., 30 I. C. C. 488, 491; The Five Per Cent Rate Case, 31 I. C. C. 351, 392, 436, (Dissenting Opinion); Commutation Fares to and from Washington, D. C., 33 I. C. C. 428, 435, 436; Cunningham v. B. & O. S. W. R. R. Co., Unrep. Op. A-798; Jordan v. S. Ry. Co., (S. C., 1915), 84 S. E. 871: Western Passenger Fares, 37 I. C. C. 1, 28,37, 42; Mace v. P. R. R., 37 I. C. C. 268, 272; New York-Jersey City Ferry Rates, 37 I. C. C. 103, 110; Business Men's League of St. Louis v. A. T. & S. F. Ry., 41 I. C. C. 13, 25, 28, 29, 503; The Fifteen Per Cent Case, 45 I. C. C. 302, 313; Arizona Corp. Com. v. A. T. & S. F. Ry., 45 I. C. C. 436, 441; Illinois Cent. R. R. v. Public Utilities Commission, 38 Sup. Ct. 170, 245, U. S. 493, 62 L. Ed. 425; Proposed Increases

in New England, 49 I. C. C. 421, 443, 447, 463; Business Men's League of St. Louis v. A. T. & S. F. Ry., 49 I. C. C. 713, 715; Western Pacific R. R. v. S. P. Ry., 55 I. C. C. 71, 80; Railway Mail Pay, 56 I. C. C. 1, 76; LaSalle County Carbon Coal Co. v. Director General, 57 I. C. C. 367; Increased Rates, 1920, 58 I. C. C. 220, 227, 242, 302, 303; Local Fares on Hudson & Manhattan R. R., 58 I. C. C. 270; Intrastate Rates within Illinois, 59 I. C. C. 350, 357, 358; Wisconsin Passenger Fares, 59 I. C. C. 391, 394; Arkansas Rates and Fares, 59 I. C. C. 471, 475, 476, 477; Minnesota Fares and Charges, 59 I. C. C. 502; Joint Passenger Fares, 59 I. C. C. 170; Local and Joint Passenger Fares, 59 I. C. C. 430; Rates, Fares and Charges of N. I. C. R. R. Co., 59 I. C. C. 290, 295, 298; Iowa Passenger Fares and Charges, 60 I. C. C. 55; Michigan Passenger Fares, 60 I. C. C. 245; North Carolina Fares and Charges, 60 I. C. C. 362, 365; Utah Rates, Fares and Charges, 60 I. C. C. 386, 388; Surcharge for Sleeping Car Service in Alabama, 62 I. C. C 153; Kansas Rates, Fares and Charges, 62 I. C. C. 440; South Carolina Fares and Charges, 60 I. C. C. 290, 295; Montana Rates and Fares, 60 I. C. C. 61; Ohio Rates, Fares and Charges, 60 I. C. C. 78; Indiana Rates, Fares and Charges, 60 I. C. C. 337; Intrastate Rates within the State of Texas, 60 I. C. C. 421; Louisiana Rates, Fares and Charges, 60 I. C. C. 467; Nevada Rates, Fares and Charges, 60 I. C. C. 623; Montana Rates and Fares, 61 I. C. C. 500; North Dakota Rates, Fares and Charges, 61 I. C. C. 504; Arizona Rates, Fares and Charges, 61 I. C. C. 572; Surcharge for Sleeping Car Service in Alabama, 62 I. C. C. 153; Intrastate Fares of the C., N. S. & M. R. R., 62 I. C. C. 188; Beall v. W. T. Co., 63 I. C. C. 220; Arizona Corporation Commission v. A. E. R. R., 64 I. C. C. 253; City of New Albany v. L. & N. Ry. & L. Co., 64 I. C. C. 468; Ohio Rates, Fares and Charges, 64 I. C. C. 493, 498; Ohio and Pennsylvania Rates, Fares and Charges, 64 I. C. C. 517, 524; Kansas Rates, Fares and Charges, 62 I. C. C. 440; Indiana Passenger Fares of C. L. S. & S. B. Ry. Co., 69 I. C. C. 180; Surcharge in Sleeping or Parlor Car in Georgia, 69 I. C. C. 623; Oklahoma Rates and Charges, 69 I. C. C. 635; Rates on Illustrated Newspaper Supplements, 74 I. C. C. 336; Koine v. M. C. R. R. Co., 83 I. C. C. 407; Arizona Corporation Commission v. A. E. R. R., 88 I. C. C. 90.

§3. Basing fares.

See Basing Points and Lines.

IMPORTANT CASES SINCE 1908

(a) It is lawful for a carrier or carriers having duly established in the manner required or authorized by law any form of excursion, commutation, or mileage fares, to provide in their schedules for the use of any of said fares as basing fares, thus enabling other carriers to use the same, in connection with their own duly established fares, for the through transportation of passengers on any physical line of connecting carriers, upon a combination of tickets over all of the component parts of such through lines, and for the carriers composing or operating such through line to afford through sleeping car, baggage, checking and other through accommodations in the same manner as in case of through tickets over the entire line, provided the passenger demanding such through transportation and through accommodation shall present to the initial carrier at the point of starting the lawfully authorized tickets covering the lines necessary for the entire through journey. It, however, is not deemed lawful for a carrier to check a passenger's baggage beyond the point to which he presents tickets at the point of starting, upon the mere declaration of intention to go farther upon another ticket, to be thereafter purchased or otherwise. In Re Mileage Excursion and Commutation Tickets, 23 I. C. C. 95, 96.

(b) Upon duly established tariff authority therefor the initial carrier may issue to a passenger a through ticket for the sum of two or more duly established fares applicable over the several connecting roads composing the through physical line from the starting point to destination, or may issue additional or separate ticket or tickets at lawful tariff fares therefor, which, in connection with the ticket or tickets already held by the passenger, will cover the entire journey that the passenger desires to take. In Re Mileage, Excursion and Commutation Tickets, 23 I. C. C. 95, 97.

ALL OTHER CITATIONS

Montana Rates and Fares, 77 I. C. C. 141; Intrastate Rates Within Illinois, 77 I. C. C. 173; Montana Rates and Fares, 77 I. C. C. 141.

§3. (1) Combination on state fares.

CASES 1887-1908

(a) Passenger fares on the C. & S. R.

Co., between Savannah, Ga., and points in South Carolina, exceed the combined state rate now in force, but most of them, including the fare between Savannah and Charleston, are less than the sum of state rates in effect prior to the South Carolina statute of March 9, 1896, which limits passenger fares in that state 3¼c per mile, unless otherwise provided by the State R. R. Commission, and abrogates a special rate of 4c per mile provided by this railway in an act of 1884. The interstate fare between Savannah and Charleston is equal to 3.826c per mile. The conditions governing local passenger traffic in South Carolina on the C. & S. R. Co., and those applying on the interstate passenger service of that railway between Savannah and Charleston are substantially dissimilar. HELD, that the federal statute contains no provision under which the interstate fares must necessarily be reduced because the South Carolina mileage rate was lowered by the state act of March 9, 1896, or be varied to a different mileage rate which may be fixed by the State Commission. That the interstate fares of the C. & S. Ry. between Savannah, Ga., and points in South Carolina are not unlawful upon the evidence in this case. Savannah Bureau of Freight & Transportation v. C. & S. R. Co., 7 I. C. C. 601.

(b) Complainant attacked as unreasonable and unduly discriminatory passenger fare from Fernandino, Fla., to Savannah, Ga., which is higher than the local passenger rate of defendant in Georgia and Florida. Defendants passenger fare from Fernandino, Fla., to Savannah, Ga., 124 miles is $5.00, or about 4c per mile. A rate of 3c per mile is fixed by state authority for fares within Florida and Georgia. Defendants line between Savannah and Fernandino or Jacksonville is more expensive to maintain than other parts of its system. The freight traffic is light and the local passenger traffic is insignificant. A reduction of this interstate passenger fare would not contribute to development of the section or increase materially the passenger business of the line. Reducing the fare to 3c per mile would render the earnings of this part of the system less than the average upon the whole system and less than the average of other roads in that part of the country. HELD, that ordinarily the through interstate passenger fare should not exceed the sum of local fares, but there is no specific requirement in the regulating statute to that effect, and the only question for determination is whether the fare complained of is unreasonable. HELD, the fare charged can not be deemed excessive, complaint dismissed. Artz v. S. A. L. Ry., 11 I. C. C. 458.

(c) Complainant attacked as unreasonable passenger fare from Ellenton, S. C., to Augusta, Ga., and from Jackson, S. C., to Augusta, Ga. Fare from Ellenton is 80c for 22 miles and from Jackson, 15 miles, 60c. The local passenger fares in South Carolina and Georgia are controlled by a maximum of 3c per mile fixed by state authority. The financial condition of the road is poor, and the country along its line, though long settled, is sparsely inhabited and the traffic is light. HELD, the rates fixed by the State Commissions are presumptively reasonable, but such presumption is not conclusive and the railroad companies are entitled to show the contrary in a case involving the rates on interstate traffic, complaint dismissed. Brabham v. A. C. L. R. R., 11 I. C. C. 464.

IMPORTANT CASES SINCE 1908

(d) It is lawful for a carrier or carriers having duly established in the manner required or authorized by law any form of excursion, commutation, or mileage fares, to provide in their schedules for the use of any of said fares as basing fares, thus enabling other carriers to use the same, in connection with their own duly established fares, for the through transportation of passengers on any physical line of connecting carriers, upon a combination of tickets over all of the component parts of such through lines, and for the carriers composing or operating such through line to afford through sleeping car, baggage, checking and other through accommodations in the same manner as in case of through tickets over the entire line, provided the passenger demanding such through transportation and through accommodations shall present to the initial carrier at the point of starting the lawfully authorized tickets covering the lines necessary for the entire through journey. It, however, is not deemed lawful for a carrier to check a passenger's baggage beyond the point to which he presents tickets at the point of starting, upon the mere declaration of intention to go farther upon another ticket, to be thereaf-

ter purchased or otherwise. In Re Mileage, Excursion and Commutation Tickets 23 I. C. C. 95, 96.

ALL OTHER CITATIONS

Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 352, 354; Corporation Com. of Oklahoma v. A. T. & S. F. Ry., 31 I. C. C. 532.

§3. (2) State fares.

CASES 1887-1908

(a) The Interstate Commerce Commission has no power, upon an application for a suspension of § 4 of the Interstate Commerce Act, to allow or disallow a differential as to passenger rates in favor of a company on account of whose low rates suspension is sought by competing companies, though the question as to the propriety of such differential may influence it in deciding the application. Canadian Pacific Passenger Rate Differentials, 8 I. C. C. 71.

IMPORTANT CASES SINCE 1908

(b) Petitioner requested the Commission to authorize use in Montana the interstate scale of passenger fares and excess baggage charges found reasonable on interstate traffic in 61 I. C. C. 500. Petitioner is a line of railroad 49 miles in length between Butte and Southern Cross, Mont., the Butte, Anaconda & Pacific Ry. Co. While petitioner has shown that its interstate passenger fares are now on a basis of 3.6 cents per mile, while its intrastate fares are but 3 cents per mile, the record is silent as to the effect on interstate commerce of this difference. For aught that appears of record, petitioners entire passenger and excess baggage revenue results from its intrastate traffic. HELD, there is no showing of such substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce as would warrant the order sought. Montana Rates and Fares, 77 I. C. C. 141.

ALL OTHER CITATIONS

Intrastate Rates Within Illinois, 77 I. C. C. 173; Wichita Falls & Southern Passenger Fares, 83 I. C. C. 603; Alabama Passenger Fares and Charges, 88 I. C. C. 621.

§3. (3) The Fourth Section.

CASES 1887-1908

(a) Reductions in competitive passenger rates cannot legally be made without, at the same time reducing intermediate rates, as required by § 4 of the Interstate Commerce Act. Re Passenger Tariffs and Rate Wars (Com.) 2 I. C. R. 340, 341, 349.

(b) Additional transportation facilities and accommodations for passengers traveling to Chicago and return, during the World's Fair, are shown to be necessary to the convenience and safety of travelers. The petitioner has made provision for increased facilities by establishing a new route which can only be utilized by the acceptance of a lower rate from a longer distant point, and such acceptance without relief from the operation of the fourth section, will compel the reduction of rates which are reasonable from shorter distance points. HELD, to secure additional guaranties for the safety and convenience of the public under conditions like these is believed to be in accordance with the spirit and purpose of the act, and the relief from the operation of the fourth section will be granted. In petition of the C. H. & D. for relief from fourth section, 6 I. C. C. 323.

(ba) A common carrier which has established a reasonable excursion rate to the World's Fair from designated points may be relieved from the operation of the Act to Regulate Commerce, § 4, so as to charge a less amount from a longer-distance point without reducing the rate from the shorter-distance point, where the reduced amount is necessary to enable such carrier to compete with other roads, on the ground that the use of all routes of transportation is necessary for the safety and convenience of visitors. Re Rome, W. & O. R. Co., 6 I. C. C. 328.

(c) The established rate for carrying passengers from Ogdensburg and points east of Richland on the R. W. & O., to Chicago and return had previously been $36.00, or $18 each way. After the opening of the World's Fair the Canadian roads established an excursion rate from the points referred to, to Chicago and return, of $24.00. The R. W. & O., and its connections established an excursion World's Fair rate, to Chicago and return of $25.75, which was reasonable, from shorter distance points south of Richland, including Syracuse, N. Y. The largely increased travel during the Chicago Exposition required the use of all routes of transportation for the greater safety and convenience of visitors. On application of the R. W. & O., to be relieved from the operation of the fourth

section, relief was granted, and the petitioner was authorized, during the continuance of the World's Fair, to accept $24.00 to Chicago and return, the rate established by its competitors, the Canadian roads, without reducing its greater charge of $25.75 to shorter distance points, including Syracuse. Application of the R. W. & O., for relief from the fourth section., 6 I. C. C. 328.

(d) The Canadian Pacific Ry., operated through the Dominion of Canada, connects with lines which reach various sections of the United States, and that Railway is thereby enabled to engage in the carriage of passengers between numerous points in the United States, and of passengers traveling to and from the Klondike region in Canada, in competition with lines wholly within the United States and subject to the act. This foreign carrier has greatly reduced passenger fares currently in effect on such traffic, including those in force from Boston and other eastern points to St. Paul, Minn., and points on the Pacific coast, and from St. Paul to Pacific coast destinations, without the concurrence of its connecting American lines; and it makes such reduced rates effective by including therein the separately established rates of such connecting lines. The competing American lines must either meet the reduced rates of such foreign carrier, or lose their share of the traffic; and they can not make such reduced rates apply at intermediate points without suffering large loss of necessary revenue. HELD, that the petitioning American carriers should be relieved temporarily from the operation of the fourth section so that they may meet the competitive passenger rates of the Canadian Pacific, without making such rates effective on passenger traffic to or from intermediate points on their respective lines. In the matter of the application of the A. T. & S. F. R. Co. for a suspension of the fourth section., 7 I. C. C. 593.

(e) That a railroad company elects to take more time by its best line to reach a point than its competitors, while it substantially makes the same time by its inferior line, does not entitle it to a differential in passenger rates against competing lines, or furnish a ground for the denial of an application by the competing lines for the suspension of § 4 of the Interstate Commerce Act. Canadian Pacific Passenger Rate Differentials, 8 I. C. C. 71.

(f) The Canadian Pacific Ry. published reduced passenger rates via its line from Boston and New England territory to Seattle and points on the Pacific coast. Various American lines applied to the Commission for permission to meet these rates, under the proviso of the fourth section, without making them applicable at intermediate points. HELD, suspension orders granted. Canadian Pacific Passenger Rate Differentials, 8 I. C. C. 71.

§3a. Caretakers.

IMPORTANT CASES SINCE 1908

(a) Complainant attacked the retention by defendants between Jan. 1, 1921 and Sept. 18, 1920, of passenger fares paid for the transportation of caretakers sent by the complainants to accompany shipment of livestock from California, Nevada and Utah, subjected them to payment of rates, fares and charges which were unreasonable, unjustly discriminatory and unduly prejudicial. Complainants are accustomed to send buyers into the country to purchase livestock, delivery of which is taken at the ranches or railroad stations. They then send out experienced drovers, retained in their employ to assemble the stock and accompany the shipments to their plants. This custom is due to the scarcity of public stock yards in this section. The rule had been in effect for some time prior to time complainant was filed and was subsequently restored. The fares were paid for transportation subsequently had. There is nothing unreasonable in the mere retention of those fares. It is only as an incident related to the movement of the livestock that the cancellation of the rule in question can be said to be unreasonable. The cancellation of the rule resulted in increased charges. The reasonableness of the fares as such, and of the aggregate fares is not attacked. It can be inferred that the making of the livestock rates in this territory, the cost of the passenger service was given due consideration. HELD, cancellation of the provision for free transportation unreasonable, reparation awarded. Western Meat Co. v. Director General, 83 I. C. C. 218.

§4. Certificate plan.

IMPORTANT CASES SINCE 1908

(a) Defendant carriers published tariffs for the letter carriers' convention at St. Paul, Minn., 1909, which carried

the provision that a rate of a fare and a half on the certificate plan would apply to this occasion from points east of the Missouri River, on condition that a thousand or more persons be in attendance by rail, holding certificates which show the purchase of one-way tickets at one dollar or more. It was also provided that passengers must purchase one-way tickets at place of meeting or normal (not special or reduced) one-way fare and obtain a certificate receipt. The receipt when signed by the secretary of the meeting and stamped by the joint agent, to be honored for "delegate" return ticket at reduced fare. Attendance at the convention was over 1,400, but there were only 888 certificates. The St. Louis delegation purchased 106 summer tourist's round-trip tickets, St. Louis to St. Paul, and return, and the Kansas City delegation 39½ round-trip tickets, Kansas City to St. Paul and return. The agent refused to validate any certificates unless there were 1.000 or more present, and would not allow the tickets from St. Louis to Kansas City to be counted. HELD, that the certificate plan be approved; that the tariffs must control, and that reparation would not be allowed to those certificate holders who had been compelled to pay the full fare on the return. National Ass'n of Letter Carriers v. A. T. & S. F. Ry. Co., 20 I. C. C. 6.

§4½. Conductor's penalty charge.

CASES 1887-1908

(a) A regulation published on public tariff schedules, that the conductor shall collect fare on trains from passengers without tickets by adding 25 cents to single-trip rates, does not make an unjust discrimination. Sidman v. Richmond, & D. R. Co. (Com.), 2 I. C. R. 766.

(b) It was a regulation of the respondent Company, published on its public tariff schedules filed and posted as required by the Act to Regulate Commerce, that the conductor should collect fare on trains from passengers without tickets by adding 25 cents to single trip rates. HELD, that it was not unjust discrimination against the complainant to exact this addition from him. Sidman v. Richmond & Danville R. Co., 2 I. C. R. 766.

IMPORTANT CASES SINCE 1908

(c) Conductor's penalty charge, if reasonable in amount and in the conditions under which it is levied, has been recognized as proper by the Commission and the courts. South Carolina Fares and Charges, 60 I. C. C. 290, 298.

(d) The failure of carriers to make a conductor's penalty charge, in addition to the regular fares against intrastate passengers who board trains without tickets at points where they might have been purchased, while maintaining such a charge against interstate passengers; or, maintaining lower penalty charges intrastate than interstate, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. Penalty charge of not in excess of 15 cents prescribed. South Carolina Fares and Charges, 60 I. C. C. 290, 303; North Carolina Fares and Charges, 60 I. C. C. 362.

ALL OTHER CITATIONS

L. & N. R. Co. v. United States, 35 Sup. Ct. 696, 698; 238 U. S. 1, 59 L. ed.

§5. Commutation fares.

See Commutation Fares.

CASES 1887-1908

(a) Mileage, excursion, or commutation passenger tickets must be offered impartially to all who accept the conditions on which they are issued, and the rates at which they are sold must be published. The general requirements of the Act to Regulate Commerce as amended are as applicable to these classes of tickets as to any others. Re Passenger Tariffs (Com.), 2 I. C. R. 445.

(b) One who purchased a quarterly commutation ticket thirteen days after the quarter began is not entitled to recover any portion of the purchase price on account of the fact that a portion of the term had expired. Sidman v. Richmond & D. R. Co., (Com.), 2 I. C. R. 766.

(c) The respondent issued commutation tickets for a stated number of trips within a specified time, subject to several conditions, one of which was that the purchaser should have no claim for rebate on account of non-use of the ticket from any cause; another that it be presented to the conductor for cancellation of each trip when taken. A commuter had to pay the conductor full fare if he did not have his ticket, but in such cases the respondent had fallen into the habit of refunding the same on

presentation of the ticket for cancellation of the trip at the proper office of the Company. About three weeks prior to the complainant's purchase of his ticket, the respondent had discontinued this habit and had given notice to that effect in a new tariff sheet filed with the Interstate Commerce Commission and posted in the stations of the railroad as required by law on a change of tariff rates. HELD, that it was not an unlawful discrimination to refuse to refund to the complainant who held such ticket, but had forgotten to take it on a certain trip and had paid his fare, notwithstanding he supposed the former custom was in vogue when he purchased his ticket. Sidman v. Richmond & Danville R. Co., 2 I. C. R. 766.

(d) It is not an unlawful discrimination to refuse to refund money paid by a person who had forgotten his commutation ticket, after the carrier had discontinued a former practice of refunding in such cases, and had given proper notice to that effect, although the passenger supposed the custom was in vogue when he purchased his ticket. Sidman v. Richmond & D. R. Co. (Com) 2 I. C. R. 766.

(e) The action of the defendants in withdrawing the 180 trip quarterly ticket between Baltimore and Washington was within the limits of their discretion, and did not constitute a violation of the Act to Regulate Commerce. (Clements, Commissioner, dissenting), Sprigg v. Baltimore & O. R. Co., 8 I. C. C. 443.

(f) Under section 22 of the Act, carriers are allowed to issue mileage, excursion and commutation tickets, but ordinarily they cannot be compelled to do so. To the extent necessary for their use, tickets of the description named are exempt from the general rules of the statute. Compliance with those rules may be directed by the Commission, but requiring exceptions thereto is not within its province; and this applies as well to the restoration of such tickets where they have been withdrawn, as to the refusal to furnish them where their introduction has been requested. (Clements, Commissioner, dissenting), Sprigg v. Baltimore & O. R. Co., 8 I. C. C. 443, 451.

(g) The provision in section 22, above referred to, authorizes special rates to commuters, which are less per mile than the charges to other passengers for longer distances. Such a relation of rates must exist at certain points along any system of commutation. The most remote point within a commutation district secures lower rates per mile than the next and more distant point without that district; but the discrimination thus created is not unjust, nor are places outside the commutation territory thereby subjected to undue prejudice. Sprigg v. Baltimore & O. R. Co. 8 I. C. C. 443.

(h) The provision of § 22 of the Act to Regulate Commerce, allowing the issuance of mileage, excursion, and commutation tickets, authorizes special rates to commuters, which are less per mile than the charges to other passengers for longer distances. The discrimination thus created is not unjust, nor are places outside the commutation territory thereby subjected to undue prejudice. Sprigg v. Baltimore & O. R. Co. 8 I. C. C. 443.

(i) Complainant alleged the withdrawal by defendants of the 180 trip quarterly ticket between Baltimore, Md. and Washington, D. C., as unreasonable and a violation of the Act. The Commission is of the opinion that the act of withdrawing this ticket was within the limits of the discretion of the carriers, and did not constitute a violation of the act. The provision in section 22 authorizes special rates to commuters, which are less per mile than the charges to other passengers for longer distances. Such a relation must exist at certain points under any system of commutation. The most remote point within a commutation district secures lower rates per mile than the next and more distant point without that district; but the discrimination thus created is not unjust, nor are places outside the commutation territory thereby subjected to undue prejudice. Sprigg v. B. & O. R. R. Co., 8 I. C. C. 443.

(j) Interstate commerce is not affected by Mich. Pub. Acts 1891, No. 90, providing that 1,000 mile tickets shall be kept for sale by railroads, at not more than $20 each, in the Lower Peninsula, or $25 each in the Upper Peninsula, as this refers to the place where the tickets are to be used, rather than to the place of sale, and does not provide for their use outside of the state. Smith v. Lake Shore & Mich. Southern Ry. Co., 8 I. C. C. App. XXVIII.

(k) No opinion expressed upon law-

fulness of carrier's practice of transporting packages of a certain kind free for commuters or passengers, nor as to whether it may, as a part of the contract of sale of a commutation ticket, or ticket, to a suburban station, provide that the privileges of a parcels express operated in conjunction with an express company should be extended to the holder of such ticket. Walker v. B. & O. R. R. Co., 12 I. C. C. 196.

IMPORTANT CASES SINCE 1908

(l) Commutation fares are entirely different from mileage books. Commutation Rate Case, 21 I. C. C. 428, 434.

(m) The prosperity and growth of many communities throughout the country depend upon an efficient and reasonable commutation service. Many such communities have not only been encouraged by the carriers, but were, in fact, originally established largely on their initative. Suburban property has been bought, homes have been established, business relations made, and the entire course of life of many families adjusted to the conditions created by a commutation service. This may not have been done on the theory that the fares in effect at any particular time would always be maintained as maximum fares, but countless homes have been established in suburban communities in the belief that there would be a reasonable continuity in the fares, and that the carriers in any event would perform the service at all times for a reasonable compensation. Suburban communities have grown into existence on the theory, voluntarily accepted by the carriers as well as by the public, that one who makes daily use of an agency of transportation between his place of business and his home must necessarily be accorded a special and a low rate. This theory is firmly fixed in the history and traditions of transportation by rail and must, therefore, be regarded as embraced in the law under which such transportation is regulated. Commutation Rate Case, 21 I. C. C. 428, 437, 442.

(n) Commutation traffic stands by itself as a special and distinct kind of service, for which the carrier may demand no more than a reasonable compensation. Excursion traffic is sporadic and occasional, and altogether exceptional. Unlike excursion traffic, commutation traffic is neither occasional, nor sporadic but, on the contrary, is characterized by an unusual regularity in volume; it may be accurately measured and provided for more readily than in the case of any other kind of passenger traffic. It is ordinarily constant, except as it may gradually grow in volume. Its stability is established by the juxtaposition of a community of homes and a community of workshops; and this separation of the place of residence from the place of work is in many cases the direct result of the efforts of the carrier. It has been encouraged, developed, and fostered by the carriers and large and numerous suburban communities have grown up in the belief, not that some fare less than the normal full passenger fare would be demanded in the future, but in the belief that no more than a just and reasonable fare would at any time be exacted, considering the special character of the traffic and of the service and the conditions that differentiate both the traffic and the service so completely and absolutely from all other kinds of passenger traffic and service. That it has been regarded as a different class of traffic conducted under entirely different conditions and a different kind of service is shown, not only by the origin of commutation and the subsequent traditions that have accumulated with its growth, but by the general recognition of it by the carriers themselves as an independent and a special service. This being so, there is no reason why the reasonableness of the fares demanded for the service may not be looked into by the Commission under section 1. It is conceded on behalf of the principal complainant that a carrier may not be compelled under the present law to undertake a commutation service and to establish commutation rates. That is probably true. But having undertaken a definite and regular commutation service such as is shown of record on the part of each of the defendants in this proceeding, the power as well as the duty of the Commission under section 1 to examine into the reasonableness of the charges exacted when complaint has been made seems to be beyond question. Reading section 22 (which provides "that nothing in this Act shall prevent . . . the issuance of mileage, excursion or commutation passenger tickets") in the light of the special nature and character of commutation traffic and service, the utmost that reasonably may be said of it as applied to commutation tickets is that it constitutes a statutory recogni-

tion of the fact that commutation is a different kind of traffic. Commutation Rate Case, 21 I. C. C. 428, 441, 442, 443.

(o) Improvements which required expenditures of large sums of money, which have added to the efficiency of the service, and therefore to its value to the commuters, are entitled to some recognition in determining the reasonableness of the increased commutation rates. Commutation Rate Case, 21 I. C. C. 428, 444.

(p) Commutation traffic is sometimes a by-product, a sort of pick-up traffic, incidental to other traffic which is productive of greater remuneration; a traffic which adds slightly to the income, and which were it not present would permit but little decrease in expense. Commutation Fares to and from Washington, D. C., 33 I. C. C. 428, 434.

(q) The nature of commutation traffic must be considered. Passenger traffic is generally recognized as being dependent upon factors different from those controlling freight; and its fares are constructed upon bases dissimilar from those of freight rates. However, just as commodities of low grade take rates lower than other commodities though the cost of carrying may often be the same, commutation traffic frequently takes lower fares than passenger traffic generally, and on the same supplemental principle, and not altogether because of the sale of transportation in quantity. It has not been held by the carriers to the same degree of per unit remunerativeness and probably can not be. This does not imply, however, that the carriers are to carry at an actual loss or without some margin of profit. Commutation Fares to and from Washington, D. C., 33 I. C. C. 428, 434.

(r) In fixing reasonable fares for commutation traffic elements other than cost which determine reasonableness must not be glossed over. Value of the service to the habitual traveler, if often vaguely conceived, is none the less a real factor; and fares tending to put the use of the railroads beyond the reach of the average commuter of a particular region or which might tend to compel on a large scale changes of residence, or which tend to disrupt the community life of those dependent upon this service, must be viewed in the light of the carrier's obligation as a common carrier designed for community service. Commutation Fares to and from Washington, D. C., 33 I. C. C. 428, 435.

(s) The fundamental matter for determination is what is a reasonable price for the commuter to pay who travels every day; whether the ticket upon which he travels be for one month or for three months neither alters the value of the service to the commuter nor the cost to the carrier. Commutation Fares to and from Washington, D. C., 33 I. C. C. 428, 437.

(t) When it is considered that the development of our suburban communities has the beneficial effect of reducing the concentration of population in large cities, and that the welfare both of the city and of the suburb depends in large measure upon the existence of efficient and reasonably inexpensive means of transportation, it is obvious that some form of commutation or trip ticket may be regarded as an economic and social necessity. Proposed Increases in New England, 49 I. C. C. 421, 447.

(u) Where a railroad company has recognized the propriety and necessity of rendering a peculiar service to suburban communities by establishing commutation rates, a state may, without committing any violation of the federal constitution, regulate such rates within the limitation of reasonableness, and may fix rates for the special services rendered commuters, different from those charged for the general service, as the service rendered a commuter carrying little baggage and riding many times on a single ticket for short distances, is of a special character, and different from that given the single way passenger. P. R. Co. v. Towers, 38 Sup. 2, 245 U. S. 6, 62 L. ed. 117.

ALL OTHER CITATIONS

Weber Club & Intermountain Fair Assn. v. O. S. L. R. R. Co., 17 I. C. C. 212, 216; In Re Commutation Tickets to School Children, 17 I. C. C. 144; Commutation Rate Case, 21 I. C. C. 428, 438; In re Mileage, Excursion and Commutation Tickets, 23 I. C. C. 95, 96, 97; Bitzer v. W. Va. Ry. Co., 24 I. C. C. 255, 257; Suburban Fares on Washington-Virginia Ry Co., 26 I. C. C. 398; The Commutation Rate Case, 27 I. C. C. 549, 552; Virginia Highlands Citizens Assn. v. W. V. Ry. Co., 30 I. C. C. 593, 596; Gage v. Erie R. R., 33 I. C. C. 593, 594; Southern Commutation Fares, 35 I. C. C. 36, 37;

Commutation Fares to and from Washington, D. C., 33 I. C. C. 428, 434, 437, 438; Southern Commutation Fares, 35 I. C. C. 36, 37; Mace v. P. R. R., 37 I. C. C. 268, 272, 273; City of Steubenville, Ohio v. Tri-State R. & E. Co., 38 I. C. C. 281; St. Louis, Mo.-Illinois Passenger Fares, 41 I. C. C. 584, 600; New York Commutation Fares, 42 I. C. C. 354, 355, 356; Gerety v. New York & N. J. R. Co., 98 Atl. (N. J. 1916), 400; Edmond v. G. & S. Street Ry., 43 I. C. C. 164; Proposed Increases in New England, 49 I. C .C. 421, 446; Gersch v. N. Y. N. H. & H. R. R., 50 I. C. C. 486; City of East Liverpool, Ohio v. S. E. L. & B. V. T. Ry., 51 I. C. C. 563, 569; Joint Passenger Fares, 59 I. C. C. 170; W. B. A. Commuters Club v. W. B. & A. E., 61 I. C. C. 302; Interchangeable Acceptance of Commutation Tickets, 61 I. C. C. 677, 679; City of New Albany v. L. & N. Ry., 64 I. C. C. 468; Delaney v. Erie R. R. Co. (N. J. 1922), 117 Atl. 395; Intrastate Rates within Illinois, 77 I. C. C. 173.

§5¼. Compartments, Parlor Cars, and Drawing Rooms.

CASES 1887-1908

(a) It is not a violation of law to charge a higher parlor car rate in one direction on certain trains than is charged in the other direction on all trains between the same points, provided the carrier furnishes adequate parlor car accommodations at the lower rates. Hewins v. New York, N. H. & H. R. Co., 10 I. C. C. 221.

(b) A discrimination against passengers by reason of charging on three of defendant's trains a parlor car rate higher than the regular parlor car rate is not undue or unreasonable, where the defendant's run numerous trains daily on which parlor car seats may be had at the lower rates. Hewins v. New York, N. H. & H. R. Co., 10 I. C. C. 221.

(c) Complainant attacked as unduly discriminatory parlor car fare charged by defendant between New York, N. Y., and Boston. Defendant has numerous through daily trains between New York and Boston, Mass., on which the through parlor car fare is $1, on all trains from intermediate points the parlor car fare is 50 or 75c according to distance, and on three trains the parlor car rate is $1 to any intermediate point. HELD, it is not a violation of law to charge more in one direction on certain trains than is charged in another direction on all trains between the same points. Defendant furnishes adequate parlor car accomodations at the lower rates for local and short distance passengers, and the discrimination against such passengers by reason of the $1 rate to intermediate points on three of defendant's trains is not undue or unreasonable. Hewins v. N. Y., N. H. & H. R. R., 10 I. C .C. 221.

IMPORTANT CASES SINCE 1908

(d) Complainant attacked the requirement that a passenger desiring the exclusive use of a Pullman drawing-room must present two first-class railroad tickets as unreasonable and discriminatory, and also challenged the legality of a tariff rule under which a passenger holding two railroad tickets was not permitted to check free more baggage than a passenger holding only one ticket. He was not permitted to procure a Pullman drawing-room for the exclusive use of his wife from St. Paul, Minn., to Chicago, Ill., until he had purchased two tickets; and her baggage weighing 225 lbs. he was charged for the excess over 150 lbs. HELD (1) following Railroad Commission of Nevada v. S. P. Co., 36 I. C. C. 250, that the rule requiring the purchase of two tickets was not unreasonable; and (2) that the allegation with respect to the alleged illegal excess baggage charge could not be considered, as not all of the proper parties were made defendants; but (3) that the rule was open to criticism in that it prescribed the maximum weight and value of baggage which would be checked free for each passenger, instead of for each ticket. Complaint dismissed. Carter v. M. St. P. & S. Ste. M. Ry., 43 I. C. C. 51.

ALL OTHER CITATIONS

Re Increased Charges for Exclusive Occupancy of Drawing-Room and Compartments (Can. Ry. Co.), File 9451, Part 2; Mosely v. A. T. & S. F. Ry., 33 I. C. C. 521; Railroad Commission of Nevada v. S. P. Co., 36 I. C. C. 250.

§5½. Excess fares.

IMPORTANT CASES SINCE 1908

(a) An excess of $3 over the regular fare for passenger transportation between Chicago and New York City on fast trains not found to be unreasonable or unjustly discriminatory. Harrington v. N. Y. C. & H. R. R. R. Co. Unrep. Op. A-227.

§5¾. Local fares.

See Local Rates and Combinations.

IMPORTANT CASES SINCE 1908

(a) Proposal to establish, in lieu of a 5-cent fare, and 8-cent interstate local passenger fare between Jersey City and Hoboken, N. J., and Hudson Terminal station, New York, N. Y., down-town, and a 7-cent fare between Jersey City and Hoboken and stations in New York City, Christopher street to Thirty-third street, inclusive, uptown, found not justified, but present 6-cent fare down-town and 10-cent fare uptown, established by special permission of the Commission in order that respondent might obtain additional revenue to which it was prima facie entitled, found justified. Local Fares on Hudson & Manhattan R. R. 58 I. C. C. 270.

§6. Mileage, excursion rates and scrip.

See Advertising I; Distance Rates; Mileage Scale.

CASES 1887-1908

(a) Complainant attacked excessive charges in the sale of thousand mile tickets and defendant made a motion to dismiss complaint. HELD, a motion to dismiss a complaint denied, because, no notice of motion had been given; and because the object of the motion was to reach the merits of the case and have them passed upon summarily, instead of at the customary final hearing. It is the desire of the Commission that the practice and proceedings shall be as simple as possible, and that final hearings be had forthwith, without the interposition of dilatory motions, etc. Associated Wholesale Grocers of St. Louis v. M. P. R. R., 1 I. C. C. 321, 323.

(b) Twenty-five dollars for 1,000 miles is not unreasonable for a mileage ticket. Associated Wholesale Grocers v. Missouri Pacific R. Co., 1 I. C. R. 321, 393.

(c) A sale of mileage tickets to commercial travelers at a certain rate, and refusal to sell to other passengers, except at a higher rate, is an unjust discrimination, within the meaning of the Act. Larrison v. Chi. & Grand Trunk R. Co., 1 I. C. R. 369.

(d) Persons belonging to the class known as commercial travelers are not privileged to ride over railroads at lower rates than other persons, and to make a difference in this respect is unjust discrimination; this is true whether tickets issued are mileage tickets or in some other form. Larrison v. Chic. & Grand Trunk R. Co., 1 I. C. R. 369.

(e) Neglect on the part of a railroad company to publish rates for mileage tickets, is a violation of the Act. Larrison v. Chic. & Grand Trunk R. Co., 1 I. C. R. 369.

(f) Common carriers may continue the issuance of mileage passenger tickets, the charges for which must be reasonable and just and free from unjust discrimination or unreasonable preference. Larrison v. Chic. & Grand Trunk R. Co., 1 I. C. R. 369.

(g) A release of liability by commercial travelers to the railroad company does not constitute a good and sufficient consideration for such discrimination; nor does the fact that they may influence business in favor of the road, etc. Larrison v. Chic. & Grand Trunk R. Co., 1 I. C. R. 369.

(h) The proviso in §22 of the Interstate Commerce Act "That nothing in this Act shall apply to . . . the issuance of mileage . . . passenger tickets applies only to the act of issuing or giving out such tickets; the terms, condition and circumstances upon which the sale of such tickets is made are subject to and must be in accordance with the Act in its general provision. Larrison v. Chic. & Grand Trunk R. Co., 1 I. C. R. 369.

(i) Complainant alleged unjust discrimination and neglect to publish fares, rates and charges for mileage tickets from Port Huron and Detroit, Mich., to Chicago, Ill. Defendant refused to sell to complainant a thousand mile ticket on the ground that complainant was not a commercial traveler. HELD, this was unjust discrimination as it had the effect of charging one person more than another and in contravention of the Act. Louis Larrison v. C. & G. T. R. Co., 1 I. C. C. 369.

(ia) Complainant alleged unjust discrimination and neglect to publish fares, rates and charges for mileage tickets from Port Huron and Detroit, Mich., to Chicago, Ill. HELD, the proviso in section 22 of the Act that nothing in this act shall apply to the issuance of mileage passenger tickets applies only to the act of issuing or giving out such

tickets; the terms, conditions and circumstances upon which the sale of such tickets is made are subject to and must be in accordance with the Act in its general provision. A sale of mileage tickets to commercial travelers at a certain rate, and refusal to sell to other passengers except at a higher rate, is an unjust discrimination within the meaning of the act. A release of liability by commercial travelers to the railroad company does not constitute a good and sufficient consideration for such discrimination, nor does the fact that they may influence business in favor of the road. Common carriers may continue the issuance of mileage passenger tickets, the charges for which must be reasonable and just and free from unjust discrimination or unreasonable preference. Persons belonging to the class known as commercial travelers are not privileged to ride over railroads at lower rates than other persons, and to make a difference in this respect is unjust discrimination; this is true whether tickets issued are mileage tickets or in some other form. Neglect on the part of a railroad company to publish rates for mileage tickets is a violation of the act. Louis Larrison v. C. & G. T. Ry., 1 I. C. C. 369.

(j) A sale of mileage tickets to commercial travelers at a lower rate than to other passengers is an unjust discrimination. Associated Wholesale Grocers v. Missouri Pac. R. R. Co. 1 I. C. R. 393. Larrison v. Chicago, etc. R. R. Co., 1 I. C. R. 369.

(k) Rate at which excursion or commutation tickets are sold does not entitle mileage ticket purchaser to complain of unjust discrimination if charged a higher rate. Associated Wholesale Grocers v. Missouri Pac. R. R. Co., 1 I. C. R. 393.

(lm) HELD, that upon the evidence offered, the Commission cannot find that $25 per 1,000 miles is an unreasonable rate for mileage tickets. Asso. Wholesale Grocers of St. Louis v. Missouri Pac. R. Co., 1 I. C. R. 393.

(n) The fact that excursion or commutation tickets are put on sale at a given rate, does not entitle the purchaser of a mileage ticket (each class of tickets being issued for distinct purposes and the form of contract in each case being different) to complain of unjust discrimination if charged a higher rate. Asso. Wholesale Grocers of St. Louis v. Missouri Pac. R. Co., 1 I. C. R. 393.

(o) Commercial travelers are not entitled to mileage tickets at lower prices than they are sold to the public generally. Asso. Wholesale Grocers of St. Louis v. Missouri Pac. R. Co., 1 I. C. R. 393.

(oa) Complainant attacked charges as excessive in the sale of thousand mile tickets. HELD, the fact that excursion or commutation tickets are put on sale at a given rate, does not entitle the purchaser of a mileage ticket (each class of tickets being issued for distinct purposes and the form of contract in each case being different) to complain of unjust discrimination if charged a higher rate. Upon the evidence offered, the Commission can not find that $25 per 1,000 miles is an unreasonable rate for mileage tickets. Commercial travelers are not entitled to mileage tickets at lower prices than they are sold to the public generally. Associated Wholesale Grocers of St. Louis v. M. P. R. R., 1 I. C. C. 393.

(ob) Complainant charged discrimination in selling tickets to land explorers and settlers at lower rates than to the general public. The Northern Pacific has been accustomed to sell tickets to land seekers or explorers at its land office in St. Paul, thus enabling them to go out on the line of its road and inspect the land which it has for sale, at about one half of the regular rate for round trip tickets. It has also been accustomed to sell tickets to settlers, passing through St. Paul with their effects and who are about to purchase railroad or public lands, at low rates. These explorers and settlers are carried on regular trains. After the Act went into effect the sale of these special classes of tickets was for a time discontinued, but was resumed in May, and complaint was made to the Commission. HELD, the Law does not permit the sale of tickets to any class of people at rates different from those established for the general public. The fact that it is very desirable for the defendant to make sale of its lands is not a reason for discriminating in favor of explorers or settlers; the same reason would apply in case a company should desire to stimulate its freight traffic or any other branch of its business by the use of reduced rates or free transportation to customers. That the claim that the settlement of the

western territories should be promoted by special facilities of transportation to emigrants, is a claim proper to be addressed to the legislative body, but not for consideration in interpreting the present statute; and moreover the Company is able, by excursion rates open to all, and by making allowances upon the price charges for its land of part or all of cost of tickets, to perhaps accomplish the desired effect to a sufficient extent without violation of the law. That the means, occupation or purpose of parties are not proper considerations upon which to found discriminations among them. The N. P., is therefore notified to desist from selling either of said special classes of tickets at rates less than the regular rates charged to the general public. Smith v. N. P. R. R., 1 I. C. C. 611.

(oc) That the claim that the settlement of the western territories should be promoted by special facilities of transportation to emigrants, is a claim proper to be addressed to the legislative body, but not for consideration in interpreting the present statute; and moreover the Company is able, by excursion rates open to all, and by making allowances upon the price charged for its land of part or all of cost of tickets, to perhaps accomplish the desired effect to a sufficient extent without violation of the law. Smith v. N. P. R. R., 1 I. C. C. 611, 620.

(p) Mileage, excursion, or commutation passenger tickets, must be offered impartially to all who accept the conditions on which they are issued, and the rates at which they are sold must be published. The general requirements of the Act to Regulate Commerce as amended are as applicable to these classes of tickets as to any others. Re Passenger tariffs 2 I. C. R. 445, 447.

(q) When a railroad company sells mileage tickets, it must sell them impartially to all the public who apply for them; and their sale to a particular class of persons at lower rates than are charged to others is unjust discrimination. P. C. C. & St. L. R. Co. v. B. & O. R. Co., 2 I. C. C. 729, 731.

(r) The Interstate Commerce Act was not designed to prevent competition between different roads, or to interfere with the customary arrangement made by railway companies for reduced fares in consideration of increased mileage, where such reduction does not operate as an unjust discrimination against other persons traveling over the road. Interstate Commerce v. Baltimore & O. R. Co. (U. S. Sup. Ct.) 4 I. C. R. 92.

(s) A carrier is not compelled to give special excursion rates to one political convention because it has given them to a similar convention of another political party on another date. Cator v. Southern P. R. Co. (Com.) 4 I. C. R. 397.

(t) Complainant attacked as unjustly discriminatory special excursion rates in effect to California and return. HELD under the statute the defendants had a legal right to withhold or put into effect an open excursion rate to Omaha, and such right was not affected by the fact that open excursion rates, lower than regular rates of fare, had been in force over their connecting roads during the month previous. Comparison of the rates charged to complainant and others in July for transportation from San Francisco to Omaha and return with reduced excursion rates charged for the transportation of persons from San Francisco to Chicago and Minneapolis in June of the same year, does not of itself present a discrimination or preference which the act empowers this Commission to correct. Cator v. S. P. Co., 4 I. C. C. 397.

(u) Under the statute the defendants had a legal right to withhold or put into effect an open excursion rate to Omaha, and such right was not affected by the fact that open excursion rates, lower than regular rates of fare, had been in force over their connecting roads during the month previous. Comparison of the rates charged to complainant and others in July for transportation from San Francisco to Omaha and return with reduced excursion rates charged for the transportation of persons from San Francisco to Chicago and Minneapolis in June of the same year, does not of itself present a discrimination or preference which the Act to Regulate Commerce empowers this Commission to correct. Cator v. Southern Pacific Co., 4 I. C. R. 397.

(v) The allowance of excess mileage by railroad receivers to employees will be approved by the court for portions of the road running through mountains and desert country, where competent men cannot be kept at regular rates, but where such course was entirely successful as employed by the company. Ames v. Union Pacific Co., 4 I. C. R. 619.

(w) A carrier is not compelled to give special excursion rates to one political convention because it has given them to a similar convention of another political party on another date. Cator v. Southern P. Co., 6 I. C. C. 113.

(x) Under the statute the defendants had a legal right to withhold or put into effect an open excursion rate to Omaha, and such right was not affected by the fact that open excursion rates, lower than regular rates of fare, had been in force over their connecting roads during the month previous. Comparison of the rates charged to complainant and others in July for transportation from San Francisco to Omaha and return with reduced excursion rates charged for the transportation of persons from San Francisco to Chicago and Minneapolis in June of the same year, does not of itself present a discrimination or preference which the Act to regulate commerce empowers this Commission to correct. Thos. V. Cator v. S. P. Co. & U. P. Ry. Co., 6 I. C. C. 113.

(y) A State statute requiring every railroad company operating a railroad in the State more than 100 miles in length and authorized to charge a maximum fare of not more than 3 cents per mile to use mileage books will be construed, in the case of a railroad having more than that number of miles in the State but whose lines extend into other States, to apply solely to commerce within the State. Beardsley v. N. Y. L. Erie & Western R. R. Co., 7 I. C. C. App. XC.

IMPORTANT CASES SINCE 1908

(z) The language of section 22 of the Act, to the effect that nothing in the Act shall prevent the issuance of mileage, excursion or commutation passenger tickets, is permissive and does not give the Commission any authority to require interstate carriers to sell interstate transportation in that form. Eschner v. Penn. R. R. Co., 18 I. C. C. 60, 63.

(aa) In permitting the continued sale and use of mileage books for passenger transportation, Congress has to some extent recognized the principle involved therein, sometimes referred to as the "wholesale theory" of transportation; but such books, if issued, must be free from discriminatory classifications and must be open to all who can avail themselves of their use. National Baggage Com. v. A. T. & S. F. Ry. Co., 32 I. C. C. 152, 156.

(bb) The use of mileage books is merely a privilege accorded by carriers voluntarily, and that purchasers take them subject to all lawful and nondiscriminatory conditions attached to them. Section 22 of the Act provides expressly that nothing in the Act shall prevent the issuance of mileage, excursion, or commutation passenger tickets, which provision has always been construed as permissive and never as authorizing the Commission to compel the issuance of such tickets. Rules and Regulations Governing Checking of Baggage, 35 I. C. C. 157, 160.

(cc) Travelers are not the only parties interested in excursion fares. The Act to Regulate Commerce makes it unlawful for any common carrier subject to its provisions to make or give any undue or unreasonable preference or advantage not only to "any particular person" but to any "locality." It is clear that in some instances discriminatory rate adjustments may operate less to the prejudice of passengers or shippers than to rival communities or localities which are endeavoring to develop their natural resources and increase the prosperity of their people. Public Service Commission of Wash. v. A. & V. Ry. Co., 42 I. C. C. 54, 63.

(dd) If travelers want mileage tickets as a convenience and not as a discrimination, there is no great objection to permitting their sale. Proposed Increases in New England, 49 I. C. C. 421, 444.

(ee) Upon investigation, pursuant to section 22 of the Act, as amended, certain carriers by rail required to issue nontransferable interchangeable scrip coupon ticket in the denomination of $90, which shall be sold at a reduction of 20 per cent from the face value of the ticket. Interchangeable Mileage Ticket Investigation, 77 I. C. C. 200.

(ff) The Commission instituted an investigation under section 22 of the Act for the purpose of issuing interchangeable mileage or scrip coupons at just and reasonable rates, good for passenger carriage upon the passenger trains of all carriers subject to the act. All parties who appeared at the hearing were in substantial agreement with respect to most of the conditions, rules, and regulations under which the tickets shall be issued. Every convenience or advantage adherent in a mileage tick-

et appears to be more completely and satisfactorily met by a scrip coupon ticket, both from the standpoint of the passenger and of the carrier. The amount of the rate is the most important question. CLASSIFICATION. Carriers have long recognized different classes of travel for each of which different rates of fare have been exacted; such as, the standard, the commutation, the convention, the excursion, and the summer and winter tourist. On June 10, 1918, the director general abolished all mileage books and established in lieu thereof an interchangeable scrip coupon ticket sold at the standard fare and good on all passenger trains operated by railroads under federal control. It was established to relieve congestion at ticket offices in the larger cities and partly to take the place of the mileage book and thus afford the public the convenience of boarding trains for short trips without the necessity of purchasing a ticket at the ticket office for each trip. Carriers have never issued an interchangeable mileage ticket good for use on all railroads in all parts of the country. Mileage tickets were issued good for use over particular lines and were interchangeable as to carriers within defined territories, sometimes including a large number of railroads. The demand for an interchangeable mileage or scrip coupon ticket comes chiefly from organizations of commercial travelers. The question whether the mileage or scrip coupon ticket at reduced fare will stimulate travel sufficiently to increase or to equalize any loss in revenue that might result must remain in the realm of speculation until and unless such a ticket is established and experience recorded. The evidence neither proves the affirmative nor the negative of the question whether the mileage book used in the past stimulated travel and whether reductions in fares increased the number of revenue passenger miles. HELD, rail carriers shall establish a nontransferable interchangeable scrip coupon ticket in the denomination of $90, which shall be sold at a reduction of 20% from the face value of the ticket, good for one year, for carriage of passengers on all passenger trains operated by respondents. Interchangeable mileage ticket investigation 77 I. C. C. 200.

(gghh) The scrip ticket contemplates the issuance of a book of coupons which for passenger travel are equivalent to currency, the coupons being detached by the ticket agent or conductor to cover the transportation charge at the time the service is performed. Interchangeable Mileage Ticket Investigation 77 I. C. C. 202.

(ii) Section 22 of the act, as amended, contemplates that carriers shall be required to recognize an additional class of passenger travel and to provide a special form of ticket which shall be used at just and reasonable rates fixed by the commission. Interchangeable Mileage Ticket Investigation 77 I. C. C. 204.

(jj) A scrip ticket at reduced fares could not be justified solely upon the theory that the cost per passenger-mile might thereby be reduced, although it is apparent that anything that will tend to cause a fuller utilization of passenger-train facilities without overcrowding will also tend to reduce the average cost per passenger-mile. Interchangeable Mileage Ticket Investigation, 77 I. C. C. 200, 209.

(kk) Section 22 of the Act as amended, does not upon its face indicate upon what basis an interchangeable mileage or scrip ticket should be issued. The spirit and intended theory of the law is that carriers shall be required to sell such a ticket at something less than the standard fare, which would be just and reasonable because it would be sold in such quantities as to stimulate travel and thereby increase net revenue or at least offset any loss in revenue that might result from the reduction, in which event carriers would render greater service to the public. Interchangeable Mileage Ticket Investigation 77 I. C. C. 209.

(ll) In 77 I. C. C. 200 the Commission required carriers to establish, issue and maintain at their offices a nontransferable interchangeable scrip coupon ticket in the denomination of $90, which shall be sold at a reduction of 20% from the face value of the ticket, and that such ticket shall be good within one year from date of sale. Rules and regulations not agreed upon relate to (a) the character of the identification which shall be required, (b) whether the scrip coupon ticket shall be good for carriage on all passenger trains upon presentation to conductors or shall be good only when such coupon ticket has been exchanged for one way or round trip ticket, and (c) the baggage privileges to which the lawful holders of the tickets are entitled and whether the coupons shall be accepted by the re-

spondents in payment of excess baggage charges. The owner of the coupon ticket shall be required to identify himself by photograph and autograph. An autograph requirement standing alone would not be sufficient to protect the nontransferability of the ticket. HELD, the ticket should be protected by both photograph and autograph. The second rule in dispute provides that coupons must be exchanged at ticket offices for one way or round trip tickets. HELD, the practical and revenue aspects of the situation appear to the Commission to be of greater and of more controlling importance than the inconvenience to passengers, under the rule that coupons must be exchanged for tickets, although when stations are crowded the inconvenience may be serious. HELD, respondent rule should be approved. Respondents rule with respect to baggage provides that, with the exceptions of passengers who board trains at nonagency stations, baggage will not be checked except on presentation of a one way ticket, issued in exchange for scrip. HELD, respondents rule with respect to baggage is reasonable. The rule providing scrip tickets will be sold at stations at which interline tickets are sold is reasonable. Interchangeable Mileage Ticket Investigation, 77 I. C. C. 647.

(mm) Act Aug. 18, 1922, amending Interstate Commerce Act § 22, by directing the Interstate Commerce Commission to require interstate carriers of passengers to issue interchangeable mileage or scrip coupon tickets, HELD within the constitutional power of Congress to regulate interstate commerce. New York Cent. R. Co. v. United States 288 Fed. 951.

(nn) Interstate Commerce Act, § 22, as amended by Act Aug. 18, 1922, by directing the Interstate Commerce Commission to require the issuance by interstate carriers of interchangeable mileage or scrip coupon tickets, does not require the Commission to order such tickets to be issued at reduced rates, but at "just and reasonable rates," to be determined by the Commission, and an order made thereunder, requiring the issuance of such tickets at reduced rates, not fixed by the Commission in the exercise of its own independent judgment, but based on an erroneous interpretation of the statute, or on the assumed intention of Congress is without warrant of law. New York Cent. R. Co. v. United States, 288 Fed. 951.

ALL OTHER CITATIONS

Kurtz v. Penn. R. R. Co., 16 I. C. C. 410, 415, 416; Waber Club & Intermountain Fair Ass'n v. O. S. L. R. R. Co., 17 I. C. C. 212, 216; Eschner v. Penn. R. R. Co. 18 I. C. C. 60, 63, 64; Commutation Rates Case, 21 I. C. C. 428, 437, 442; Merchants & Mfrs.' Ass'n of Baltimore v. A. C. R. R. Co., 23 I. C. C. 129; In Re Mileage, Excursion and Commutation Tickets, 23 I. C. C. 95, 96; Parker v. S. P. Co., 24 I. C. C. 681, 682; Edelston v. Pennsylvania R. R. Co., 26 I. C. C. 359; In re Mileage Books, 28 I. C. C. 318, 321, 322, 323, 324, 325; Carnegie Board of Trade v. P. Co. 28 I. C. C. 122, 128, 129; Sou. R. Co. v. Campbell, 36 Sup. Ct. 33, 34, 239 U. S. 99, 60 L. ed.; Southern Commutation Fares, 35 I. C. C. 36, 37; Crout v. Yazoo & M. V. R. Co., (Tenn. 1915), 176 S. W. 1027, 1028, 1029, 1030, 1031; Western Passenger Fares, 37 I. C. C. 1, 43; Public Service Commission of Wash. v. A. & V. Ry. Co., 42 I. C. C. 54, 57; Transp. Bur. of New Seattle C. of v. G. N. Ry., 42 I. C. C. 497; Proposed Increases in New England, 49 I. C. C. 421, 445, 463; Commercial Club of Omaha v. B. & O. R. R., 52 I. C. C. 205; St. Louis Electric Terminal Ry. Co. v. Buechel. (Mo. 1919) 213 S. W. 177; Proportional basing fares to Ogden, 73 I. C. C. 434; Snowden Civic League v. W. V. Ry. Co., 78 I. C. C. 530; Russell v. St. Louis & S. W. Ry. Co. of Texas (Tex. 1923), 250 S. W. 1076.

§6½ Military Passengers.

IMPORTANT CASES SINCE 1908

(a) Upon complaint alleging unjust discrimination in granting reduced fares to officers, enlisted men, or nurses of the United States Army, Navy and Marine Corps, when on furlough, but not when on short term passes and liberties from ships or stations to nearby cities HELD: Commission without authority to determine the justness and reasonableness of the distinction, which was authorized by the President for purposes connected with the war emergency. Golden v. Director General, 53 I. C. C. 385.

(b) Minimum charge per passenger required by state authority to be maintained within the state, lower than the corresponding interstate charge authorized in Increased Rates, 1920, 58 I. C. C. 220, found unduly prejudical to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against commerce. South

Carolina Fares and Charges, 60 I .C. C. 290, 303; North Carolina Fares and Charges. 60 I. C. C. 362.

(c) Charges for transportation of passengers in sleeping and parlor cars required by state authority to be maintained in the state of Alabama, lower than the corresponding interstate charges authorized in Increased Rates, 1920, 58 I. C. C., 220, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unduly discriminatory against interstate commerce. Surcharge for Sleeping Car Service in Alabama, 62 I. C. C. 153.

§7 Party Rates.

See Reasonableness of Rates §25.

CASES 1887-1908

(a) Party rates and passenger car load rates, lower than contemporaneous rates for single passengers, constitute discrimination between persons entitled to transportation at equal rates, and are therefore illegal. Re Passenger Tariffs v. 2 I. C. R. 445, 448.

(b) Party-rate tickets are not commutation tickets; and when party rates are lower than contemporaneous rates for single passengers, they constitute discrimination, and are illegal. Pittsburgh, C. & St. L. R. Co. v. Baltimore & O. R. Co. (Com.) 2 I. C. R. 729.

(c) Party-rate tickets for ten or more persons traveling together in one body on one ticket, at a reduced rate per mile, which is reasonable and just, are commutation tickets, which by the Act to Regulate Commerce, § 22, are exempted from the provisions of that Act. Interstate Commerce Commission v. Baltimore & O. R. R. Co. (C. C. S. D. Ohio) 3 I. C. R. 192.

(d) No unlawful preference or discrimination is made to the disadvantage of single passengers by issuing a party-rate ticket for any company of ten or more persons traveling together on the same ticket, at a reduction of about one third from the rate for single passengers, being the same rate per mile charged for 1.000 mile tickets. Interstate Commerce Commission v. Baltimore & O. R. Co. (C. C. S. D. Ohio) 3 I. C. R. 192.

(e) A party-rate ticket which is a single ticket covering the transportation of ten or more persons from one place to another on a railroad is not in violation of the Interstate Commerce Act, although sold at a reduction from the regular passenger rates. Interstate Commerce Commission v. Baltimore & O. R. Co. (U. S. Sup. Ct.) 4 I. C. R. 92.

(f) Can not be limited to particular classes but must be opened to general public. Re Party Rate Tickets, 12 I. C. C. 95.

(g) Party rate tickets can not be limited to particular classes of persons but must be opened to the general public. In the matter of party rate tickets. 12 I. C. C. 96, 105.

IMPORTANT CASES SINCE 1908

(h) Special party rates cannot lawfully be limited by carriers to particular classes of persons, such as theatrical companies and other special organizations engaged in giving public exhibitions, but must be open to the general public. Field v. S. Ry. Co., 13 I. C. C. 298, 299.

(i) Complainant attacked rules, regulations and charges applicable to the transportation of chautauqua outfits from Chicago, Ill., to the Pacific coast and return as unreasonable and unduly prejudicial. The same rules and regulations cover theatrical outfits and paraphernalia used in public entertainments and exhibitions in general. Defendants rules and regulations provide for the free transportation of one special baggage car containing paraphernalia, if the persons traveling on the same train with it number 25 or more. Complainants seven days circuit, however, does not afford such a party of 25. In order for complainants to secure a baggage car they are required to pay, in addition to the fares for the persons, an amount sufficient to make the total revenue equal 18 1-3 fares, minimum $30. The additional tickets bought are the measure of the charge for the baggage car furnished. Complainants inability to avail themselves of the rule is due to the peculiar nature of their business, which requires a complete change of program at each point daily, while the theatrical companies which take advantage of the rule usually have a weekly change of program and are thus enabled to move their personnel enmasse. HELD, allegations not sustained, complaint dismissed. Ellison K. White Chautauqua system v. Director General 68 I. C. C. 492.

ALL OTHER CITATIONS

Koch Secret Service v. L. & N. R. R.

Co., 13 I. C. C. 523, 524, 525; Bitzer v. W. Va. R. Co., 24 I. C. C. 255, 257; Commutation Rate Case, 27 I. C. C. 549, 553; Proposed Increase in New England, 49 I. C. C. 421, 446, 463.

§7a Pooling.

CASES 1887-1908

(a) It is at least doubtful whether section five of the Act to regulate commerce, and which forbids the pooling of freight, applies to a practice whereby the transportation of immigrants from Atlantic ports westward is divided between the carriers in agreed proportions based upon the proportion of the domestic passenger traffic done by each line, where such a practice cannot be made effective in respect to any other class of passenger business, and the immigrants are carried at domestic published rates, and the arrangements adopted by the carriers in connection with the immigration authorities of the United States have efficiently prompted the protection and greatly improved the treatment and comfort of immigrants. Re Transportation of Immigrants from New York, 10 I. C. C. 13.

(b) Upon investigation by the Commission of practices applied in the westbound transportation of immigrants from New York and other Atlantic ports, it appeared, among other things, that this immigrant traffic is divided between the carriers in agreed proportions based upon the proportion of the domestic passenger traffic done by each line; that, apparently, such a practice cannot be made effective in respect to any other class of passenger business; that the immigrants are carried from the seaboard at domestic published rates; and that the arrangements adopted by the carriers in connection with the immigration authorities of the United States for handling immigrant business have efficiently promoted the protection and greatly improved the treatment and comfort of immigrants: HELD, That whether section 5 of the Act to regulate commerce, prohibiting carriers from entering into any contract, agreement or combination "for the pooling of freight by different and competing railroads or to divide between them the aggregate or net proceeds of the earnings of such railroads or any portion thereof," applies to such a division of passengers as has been shown to exist in this case is, at least doubtful; that no discrimination as against individuals, classes or localities results from the handling by the carriers of this immigrant business at domestic published rates, and that there is no justification at this time for the issuance of any order in the premises. Re Transportation of Imigrants from New York. 10 I. C. C. 13.

§7¼ Reduced Rates.

See Reduced Rates.

CASES 1887-1908

(a) Religious teachers may have reduced rates. Re Religious Teachers 1 I. C. R. 21.

(b) Railroads have a right to grant special privileges to religious teachers. Re Religious Teachers, etc. 1. I. C. R. 21.

(c) Application made as to whether it is unlawful under the Act for a common carrier to offer to make special rates to individuals in order that such individuals may offer and make proposals to the Interior Department for the transportation of Indian supplies. HELD, it is lawful, under the Act, for a common carrier to offer to make special rates with individuals, in order that such individuals may make proposals to the Interior Department for the transportation of Indian supplies, such transportation being for the United States and the government receiving the benefit of the reduced rates. Re Indian supplies. 1 I. C. C. 22.

(d) It is lawful, under the Act, for a common carrier to offer to make special rates with individuals, in order that the latter may make proposals to the Interior Department for the transportation of Indian supplies, such transportation being "for the United States" and the government receiving the benefit of the reduced rates. Re Indian Supplies 1 I. C. R. 22.

(e) A carrier may make special rates with individuals, to enable the latter to make proposals to the Interior Department for transportation of Indian supplies, such transportation being for the United States. Re Indian Supplies, 1 I. C. R. 22.

(f) Application on behalf of the inmates of the national homes for disabled volunteer soldiers and sailors, for a ruling as to whether the granting to them of half rate fares by railroads would be unjust discrimination within the meaning of section 2 of the Act. HELD, the Commission cannot make an order or give an option in advance of an actual complaint and hearing. Re Inmates of National Homes. 1 I. C. C. 75.

(g) Section 2 of Act prohibits giving of passes to particular persons; and the exception allowed in section 22 in favor of officers and employees of road does not include the families of such persons. Ex parte Koehler (U. S. C. Ct. Or.) 1 I. C. R. 317.

(h) A sale of mileage tickets to commercial travelers at lower prices than they are sold to public generally, is an unjust discrimination. Associated Wholesale Grocers v. Missouri Pac. R. Co. 1 I. C. R. 321, 393. Larrison v. Chicago etc. R. R. Co. 1 I. C. R. 369.

(i) Rate at which excursion or commutation tickets are sold does not entitle mileage ticket purchaser to complain of unjust discrimination if charged a higher rate. Associated Wholesale Grocers v. Missouri Pac. R. Co., 1 I. C. R. 321, 393.

(j) Twenty-five dollars per 1,000 miles is not unreasonable rate for mileage tickets. Associated Wholesale Grocers v. Missouri Pac. R. Co. 1 I. C. R. 321, 393.

(k) Rates are not to be lower for commercial travelers than for general public. Associated Wholesale Grocers v. Missouri Pacific R. Co. 1 I. C. R. 321, 393; Larrison v. Chicago & Grand Trunk R. Co. 1. I. C. R. 369.

(l) The Northern Pacific Railroad Company has been accustomed to sell tickets to land seekers or explorers at its land office in St. Paul, thus enabling them to go out on the line of its road and inspect the land which it had for sale, at about one half of the regular rate for round trip tickets. It has also been accustomed to sell tickets to settlers, passing through St. Paul with their effects, and who are about to purchase railroad or public lands, at low rates. These explorers and settlers are carried on the regular trains. After the Interstate Commerce Law went into effect the sale of these special classes of tickets was for a time discontinued, but was resumed in May, and complaint was made to the Commission. An investigation of the matter was held at Minneapolis, and briefs were filed. The Commission now decides: (a) That the Interstate Commerce Law does not permit the sale of tickets to any class of people at rates different from those established for the general public. The fact that it is very desirable for the defendant to make sale of its lands is not a reason for discrimination in favor of explorers or settlers; the same reason would apply in case a company should desire to stimulate its freight traffic or any other branch of its business by the use of reduced rates or free transportation to customers. (b) That the claim that the settlement of the Western Territories should be promoted by special facilities of transportation to emigrants, is a claim proper to be addressed to the legislative body, but not for consideration in interpreting the present statute; and moreover the Company is able, by excursion rates open to all, and by making allowances upon the price charged for its land of part or all of cost of tickets, to perhaps accomplish the desired object to a sufficient extent without violation of the Law. (c) That the means, occupation or purpose of parties are not proper consideration upon which to found discrimination among them. (d) The Northern Pacific Railroad Co. is therefore notified to desist from selling either of said special classes of tickets at rates less than the regular rates charged to the general public. Smith v. Northern Pac. R. R. Co., 1 I. C. R. 611.

(m) Land explorers and settlers are not entitled to lower rates than the general public. Smith v. Northern Pac. R. R. Co. 1 I. C. R. 611.

(n) When the defendant puts on sale in an emigration office special tickets at reduced rates, which are not open to the public at large, but which are used by passengers upon its ordinary trains, justification for which is claimed in the fact that they are a valuable auxiliary to the companys sales of real estate, it certainly demands and receives from its ordinary passengers more for the same purpose than it collects from persons who, truthfully or otherwise, represent themselves to be prospective purchasers of land or settlers. Smith v. N. P. R. Co. 1 I. C. C. 611, 620.

(o) Rates may be reduced for religious teachers and as act of charity. Re Religious Teachers, 1. I. C. R. 21.

(p) A railroad company may make a special rate for immigrants as a class, and decline to give the same rate to others for whom different accommodations are furnished. Savery v. New York C. & H. R. R. Co. (Com.) 2 I. C. R. 210.

(q) There is nothing illegal or wrongful in a railroad company making a rate for immigrants as a class, and declining to give the same rate to others for whom different accommodations are furnished.

Savey & Co. v. N. Y. Central & Hudson River R. Co. 2 I. C. R. 210, 218.

(r) Rates obtained from ticket brokers lower than those offered at the regular offices of the company effect unjust discrimination. Re Passenger Tariffs and Rate Wars v. 2 I. C. R. 341.

(s) The employment of ticket brokers and scalpers for the sale of railroad tickets placed in their hands, to be disposed of at reduced rates under the pretense of paying commissions thereon, HELD, illegal. Re Passenger Tariffs and Rate Wars v. 2 I. C. R. 341.

(tw) Where a carrier by its published general tariffs charges the general public from and to all points upon a large portion of its lines certain rates upon a class of freight, and at the same time publishes and puts into force a special tariff by which it charges a class of persons named, from and to the same points on its lines, less than one half in amount of the rates on the same class of freight that it charges the general public in its general tariffs, such a discrimination is unjust and is violative of the Act to Regulate Commerce. Elvey v. Illinois Central R. Co., 2 I. C. R. 804.

(v) A shipper to whom, as an emigrant, is accorded the rate provided by the special tariff, for example, sixty dollars on a carload of freight weighing 20,000 pounds, from Chicago, Illinois, to Hammond, Louisiana, a distance of 863 miles in December, 1888, and in May, 1889, makes return shipment of same freight from Hammond, Louisiana, to Chicago, Illinois, under the general tariffs of the carrier, there being no other tariffs on north-bound freight between these points, and is charged therefor $122 per car, complains of an unjust charge; HELD, that as the carrier in each instance charged only its open published rates, and no evidence is offered to show that the rates in either instance are unjust and unreasonable, and as the general tariffs of the Company have long been in use and published and open to the public, and the special tariff has been but recently issued, and is open to a certain special class only, and is unlawful, that the general tariffs afford a better standard of what are reasonable and just rates than the special tariff, and that the shipper in such cases has not been injured in paying less than one half the amount charged the general public on the first haul, and only what was charged the general public on the second haul. Elvey v. Illinois Central R. Co., 2 I. C. R. 804.

(w) A discrimination by a special tariff cannot be sustained upon the ground that the special tariff is made to aid "emigrants" in moving from one State to another where land is cheap, and to develop a sparsely settled country, and to build up business along the carrier's lines, and upon the supposition that this constitutes substantially dissimilar circumstances and conditions from those which exist when similar services are rendered by the carrier for the general public. Elvey v. Illinois C. R. Co. (Com.) 2 I. C. R. 804.

(x) A special tariff by which carrier charges a class of persons named, from and to the same points on its lines, less than one half in amount of the rates on the same class of freight that it charges the general public in its general tariffs, makes a discrimination which is unjust and is violative of the Act to Regulate Commerce. Elvey v. Ill. C. R. Co. (Com.) 2 I. C. R. 804.

(y) Whatever the reason which impels a carrier to put reduced rate tickets on sale for a limited period may be, so long as the tickets are open to all who desire to purchase them, the law does not question the priority of making the reduced rates; on the contrary, the statute says in terms that this right of carriers shall be preserved. Cater v. S. P. Co. 4 I. C. C. 397, 399.

(z) A proceeding by a minister of religion for unjust discrimination in the allowance of reduced rates to ministers will be dismissed where complainant fails to show that he had made proper application for the reduced rate, producing credentials showing that he was a minister, or that such an application would have been refused by the carrier. Emerson v. Chicago, R. I. & P. R. Co. 6 I. C. C. 289.

(aa) Unjust discrimination in allowance of reduced rates to ministers of religion was alleged in these cases, but the complainant failed to show that he had made proper application for the reduced rate, or that such an application would have been refused by either of the defendants, and upon these grounds the complaints were dismissed. Edgar W. Emerson v. Chicago, R. I. & P. R. Co. 6 I. C. C. 289.

(bb) Complainant attacked as unduly

discriminatory an allowance of reduced rates to ministers of religion. Complainant failed to show that he had made proper application for the reduced rate, or that such an application would have been refused by either of the defendants. HELD, complaint dismissed. Emerson v. C. R. I. & P. R. Co. 6 I. C. C. 289.

(cc) A railway company practices no discrimination within the Interstate Commerce Act by selling passenger tickets at full fare to a land company which sells them at half rates to guests of its hotel, persons residing upon land sold or transferred by it, and others, but refusing to sell them at half rates to a person living in the same locality upon ground not acquired from it, although the two corporations are under substantially the same ownership and control, where their community of interests is not made a device for enabling the railway company to evade its legal obligations. Wilson v. Rock Creek R. Co. 7 I. C. C. 83.

(dd) The defendant railway company and a land company owning land and a suburban hotel along the line of railway are distinct corporation, but under substantially the same ownership and control The land company purchased passenger tickets of the railway company at full rates of fare, and sold them at half rates to guests of its hotel, to persons residing upon land which it had sold or otherwise transferred, and to others, but refused to sell such tickets at half rates to complainant, who, though living in the same locality, resided upon ground not acquired from the land company. HELD, Upon the evidence presented, that no discrimination was practised by the railway company; that the community of interest between the two corporations resulting from common ownership was not made a device for enabling the railway company to evade its legal obligations; and that the action of the land company in discriminating between persons in the sale of tickets for the benefit of its separate business is not subject to correction by this Commission. Morrison and Clements, Commissioners, dissenting. Wilson v. Rock Creek R. Co., 7 I. C. C. 83.

(ee) Where a railroad company makes a reduction from regular passenger fares which are not found unreasonable, it may lawfully require that a person desiring to avail himself of such reduction shall purchase a ticket, and that all persons not holding such special reduced rate ticket shall pay the reasonable ordinary fare. Cist v. Michigan C. R. Co. 10 I. C. C. 217.

IMPORTANT CASES SINCE 1908

(ff) A fare of 1c per mile was allowed officers, enlisted men and nurses, on furlough except they were not allowed on short term passes or on liberty. HELD, the conditions as set forth in subdivision E of Section 8 of G. O. 28 are not subject to the jurisdiction of the Commission but properly come within the province of the President acting as head of the Army and Navy. William E. Golden v. Director General, 53 I. C. C. 385, 388.

(gg) The Commission has no authority to require carriers to establish for particular passengers or particular occasions special fares lower than the regular fares. Reduced Rates, 1922, 68 I. C. C. 676, 729.

§7½ Round-trip tickets.

IMPORTANT CASES SINCE 1908

(a) Proposal of the Southern Pacific to establish proportional round-trip summer excursion fares from certain California points to Ogden, Utah, for purpose of meeting the competition of the Union Pacific, which forms the direct route, and to be applicable when passenger holds local round-trip ticket over the O. S. L. from Ogden to West Yellowstone, Mont., found justified. Proposed fares do not appear unduly low; will not have a demoralizing effect upon the rate structure in this territory; the S. P. will receive traffic not otherwise obtainable; and the public will be afforded an additional route. Proportional. Basing Fares to Ogden, 73 I. C. C., 434.

(b) Applicant sought authority to continue 30-day round-trip passenger fares equal to double the one-way fares between New York and stations on its line west of Newark, N. J., which exceed the contemporaneous aggregates of intermediate passenger fares, composed of a 15 day round trip fare between New York and Newark, plus 30 day round trip fares, equal to double one way fares, between Newark and points west thereof, without observing the aggregate of intermediate rates provision of the fourth section. The Commission is inclined to hold that even if a violation of the aggregate of intermediate fares provision of the fourth section were shown to exist, the situation would constitute a special case under the fourth section,

and would entitle the applicant to relief. While the existing case presents no features such as has been encountered in other applications, the Commission deems it advisable to remark that attempts to evade the plain requirements of the fourth section in the matter of fares, by annexing different conditions relating to the amount of baggage carried, or to the time for which tickets are good, will continue to receive no countenance at its hands. HELD, :Proceeding should be discontinued, application may be withdrawn. Passenger Fares Between New York and Points West of Newark, N. J. 74 I. C. C., 516.

ALL OTHER CITATIONS

Ford v. W. Va., Ry. Co., 24 I. C. C. 632; Beach v. A. A. R. R. Co., 26 I. C. C. 410, 412; L. & N. R. R. Co. v. Maxwell, 35 Sup. Ct., 494, 495; 237 U. S. 94, 59 L. ed; Bergman v. I. C. R. R., 36 I. C. C. 306; Curl v. S. P. L. A. & S. L. R. R. 40 I. C. C. 65; Public Service Commission of Washington v. A. & V. Ry., 53 I. C. C. 1; Fares between New York and Points West of Newark, 74 I. C. C. 516; Snowden School Civic League v. Washington-Virginia Ry., 78 I. C. C. 530.

§7¾ Special trains and Services.

See Special Trains; Special Rates and Service.

CASES 1887-1908

(a) A guaranty by a railroad company to an opera troupe transported over its line of arrival at destination at a certain time is not in contravention of the provisions of the Interstate Commerce Act against undue or unreasonable preference or advantage to any particular person or firm, although the transportation is had upon party-rate tickets. The action was for damages for breach of the contract to carry within the specified time, and the carrier set up the invalidity of the contract because an undue and unreasonable preference or advantage had been given. The court said the transportation was not and was not to be any different from what any party might have had on the same train. The substance of the guaranty was that such condition would be made as would take the troupe through in time. This was not anything undue, but was what was due, and if it was not undue it was not unreasonable. W. H. Foster et al. v. Cleveland, Cincinnati, Chicago & St. Louis Ry. Co. 7 I. C. C. App. XVI.

(b) Complainant, a commercial salesman, travels with his assistant over the defendant transcontinental line in a private car stocked with samples of men's clothing and furnishings. For the first trip the car was transported from point to point as complainant required for fifteen round-trip fares between St. Paul, Minn., and Portland, Ore.; but defendant's charge for subsequent trips was fifteen local fares from point to point where stoppages were made by complainant for business purposes. Complainant alleged this higher charge to be unreasonable and also wrongfully discriminating as compared with the lower rate of fifteen round-trip fares usually granted to pleasure, theatrical and other parties in private cars. While there is no substantial difference in cost to the carrier in transporting complainant's car and cars used by theatrical or other parties, the dissimilarity in the nature and value of the two services is marked and the benefit accruing to complainant exceptional. He uses in all cases the property of defendant, its side tracks and station yards, for transacting his business, and his occupation is such that he derives advantages peculiar to himself which are not available to other owners of private cars. Defendant claimed not to be a common carrier of private cars, and that it may transport some cars and refuse to transport others as and when it sees fit. HELD—1. The regulating statute is opposed to every species of favoritism, and seeks to secure like treatment for all persons in like relations to the carrier. Defendant may lawfully decline to haul private cars at all, or it may haul private cars of one class and refuse to haul others of a wholly different class; but if it transports private cars of any class, it must in like manner and upon like terms transport all private cars occupied for the same or similar purposes. 2. Where the differences in cost or character of service are substantial either in the work performed by the carrier or in its utility and value to the persons served, a fair relation of rates meets the carrier's obligation. 3. In comparison with the private-car service more or less frequently performed by defendant for pleasure seekers and theatrical companies, the service demanded by complainant is dissimilar and unusual to such a degree that to require from him greater compensation, or to refuse his car altogether, would not subject him to unlawful dis-

crimination or disadvantage. 4. In determining whether it will in any case transport complainant's car or others of that class, defendant may properly take into account the effect of the practice upon the interests and localities it serves; but the right of complainant to have his car hauled does not depend upon the wishes of his business rivals ,nor can the compensation to be paid by him be justly conditioned upon the routing of his freight traffic. 5. Rates may be fair and reasonable for the service rendered, and, from the carrier's standpoint, justly related to other charges; and yet if a low rate is granted upon conditions with which only a few can comply (e. g., a charge below the ordinary carload rate for shipments of a hundred or a thousand carloads), that rate is presumably unfair and wrongfully prejudicial to all other shippers of like traffic, because they are practically unable to meet the terms upon which it is offered. This principle may properly be considered with reference to the class of cars employed by complainant, which only a limited number of dealers can afford to use for reaching their customers and exhibiting their wares. In the competitive struggle to supply consuming markets neither contestant should be favored through the facilities furnished or the rates enforced by public carriers. This is at once the aim of the law and the requirement of relative justice. 6. The rates charged to complainant for moving his car, while not held to be reasonable, are not shown to be unreasonable. 7. It is the legal duty of defendant to publish and file its rates and regulations for the movement of private cars, certain kinds of which are more or less frequently handled over its line Carr v. Northern Pacific Ry. Co. 9 I. C C. 1.

(c) Complainant, a traveling salesman, travels with his assistant over the defendant in a private car stocked with samples of mens clothing and furnishings. For the first trip the car was transported from point to point as complainant required for fifteen round trip fares between St. Paul, Minn., and Portland, Ore.; but defendants charge for subsequent trips was fifteen local fares from point to point where stoppages were made by complainant for business purposes. Complainant attacked this higher charge as unreasonable and also wrongfully discriminating as compared with the lower rate of fifteen round trip fares usually granted to pleasure, theatrical and other parties in private cars. While there is no substantial difference in cost to the carrier in transporting complainants car and cars used by theatrical or other parties, the dissimilarity in the nature and value of the two services is marked and the benefit accruing to complainant exceptional. He uses in all cases the property of defendant, its side tracks and station yards, for transacting his business, and his occupation is such that he derives advantages peculiar to himself which are not available to other owners of private cars. HELD, the rates charged to complainant for moving his car, while not held to be reasonable, are not shown to be unreasonable, complaint dismissed. Carr v. N. P. Ry. 9 I. C. C. 1.

IMPORTANT CASES SINCE 1908

(d) A passenger purchased a regular ticket, intending to use the same in interstate transportation. His employer, without his knowledge or request, chartered special train for a part of his transportation wholly within one state, which he used. HELD, that when passenger left the regular train and boarded the special train, his contract with the carrier terminated, and therefore the special train service cannot be considered part of an interstate transportation, and the Commission is without jurisdiction to determine the reasonableness of the charge exacted therefor. Wait Talcott v. Southern Pacific Co., 33 I. C. C., 292, 293.

(e) The Commission considered the proposed withdrawal by the M. & O. R. R. and S. Ry. in Miss. of concurrences from tariffs publishing rates, rules, and regulations governing the transportation of special baggage and passenger cars (such as were used by dramatic, minstrel, or chautauqua companies). About 16,000 companies had invested about $1,000,000,000 in show property, including private cars. The carriers contended that the handling of these cars was unprofitable and subjected the carriers to fire and personal injury hazards, but it did not appear that damage claims of any consequence have ever arisen; while it was evident that withdrawal from the concurrences would result in the disruption of the traffic which was widespread and of long continuance. HELD, that the carriers had not justified their proposed withdrawal from participation in the existing rates, rules and regula-

tions. Cancellation of sustended schedules directed. Special Passenger Equipment, 45 I. C. C. 590.

(f) Complainant attacked as unreasonable and illegal charges assessed by the C. M. & St. P. Ry., for passenger train service rendered its employes from Oglesby, Ill., to Cedar Point, Ill. Defendant agreed to furnish an additional train more suitable to the purpose of complainant if the latter would guarantee payment of $75 per round trip. The carrier assessed this charge based upon a rule in its tariffs that when a special train was furnished minimum charge would be $75 per round trip. It was shown this train was not a special one as it also carried other passengers to Granville, Ill., where a mine of defendant was located. It was not shown that the miners to Granville paid any fares. HELD, the train was not a special passenger train but was an extra train, and charge made was illegal and not covered by tariff; reparation with interest awarded based upon what the charges paid exceeded those which should have been collected at the rates applicable for regular passenger service. La-Salle County Carbon Coal Co. v. Director General, 57 I. C. C. 367.

ALL OTHER CITATIONS

Special Passenger Equipment, 45 I. C. C. 590, 591, 592; National Box Co. v. M. P. R. R. Co., 61 I. C. C. 211; Ellison-White Chatauqua System v. Director general, as Agent, 68 I. C. C. 492.

§7¾ (1) Sur Charges

IMPORTANT CASES SINCE 1908

(a) Commission in 58 I. C. C. 220, authorized all steam railroads to establish a surcharge upon passengers in sleeping and parlor cars amounting to 50 percent of the charges for space, effective August 26, 1920, and become effective locally in Georgia, Sept. 1, 1920, but was canceled locally in that state on Dec. 20, 1921, carriers petitioning this Commission for rehearing and order to remove alleged discrimination between state and intrastate traffic. The surcharge is now being collected from both interstate and intrastate passengers throughout southern territory except those traveling intrastate in Georgia. This has resulted in the imposition of higher transportation charges for interstate journeys between points ir Georgia and points in adjoining states than for intrastate movements within Georgia for the same or greater distances. Interstate travelers may void full payment of the surcharge on a through journey by paying combinations of local sleeping or parlor car fares to and from border line points. There are no transportation or traffic conditions which justify exemption of the intrastate passengers from the surcharge. HELD, non payment of the surcharge locally in Georgia unduly discriminates against interstate traffic and this discrimination should be removed by applying the surcharge on intrastate traffic the same as on interstate. Surcharge for transportation of passengers in sleeping or parlor cars between points in Georgia 69 I. C. C. 623.

§7⅞ Transfers.

IMPORTANT CASES SINCE 1908

(a) Complainants attacked the withdrawals of the transfer arrangement theretofore existing between the W. & O. D. Ry., and the Capital Traction Co., as subjecting them to the payment of unreasonable and discriminatory fares. There was no connection between the lines of the two carriers, but their terminals were within a few feet of each other. Prior to Aug. 9, 1916, the W. & O. D. had issued transfers to and accepted them from the traction company on the basis of combination fares based on Cherrydale or Thrifton, Va. Effective that date through fares to the Washington, D. C. terminal considerably lower than the combination fares were made available, but by reason of the withdrawal of transfer privileges there was an increase amounting to $1.05 for 52 monthly commutation trips. Prior to Aug. 9, 1916, the prices of 52 trips between Washington and Hayes, Round Hill, Harrison, and Great Falls, Va.., were $3.72, $17.82, $3.72 and $7.52; and subsequent to that date $2.60, $16.70, $2.60 and $6.40. The traction company did a street to street business in Washington and ran a line to Chevy Chase Lake, Md., but there was nothing to distinguish its business from that conducted by other street railways. HELD (1) that the Commission had no jurisdiction over the traction company to require restoration of the prior transfer arrangement; and (2) that it had not been shown that new through fares of the W. & O. D. were unreasonable. Case held open for 15 days. James v. W. & O. D. Ry., 44 I. C. C. 570.

§8. Validation.

(a) Where there is tariff authority, it is not violation of the Act to require validation of limited excursion tickets and to charge validation free therefor. Riter v. O. S. L. R. R. Co., 19 I. C. C. 443, 444.

ALL OTHER CITATIONS

Non-Validation of Limited Excursion Tickets, 19 I. C. C. 440; Riter v. O. S. L. R. R. Co., 19 I. C. C. 443, 446.

III DISCRIMINATION IN FACILITIES

See Discrimination; Facilities and Priviliges.

§9. Regulations in General.

See Rules and Regulations.

CASES 1887-1908

(a) In absence of statutory authority, one railroad company can sell tickets over road of another company only by agreement. Chicago & A. R. R. Co. v. Pennsylvania Co. 1 I. C. R. 357.

(b) Railroad companies may forbid their agents to receive commissions for sale of tickets over other companies' roads. Chicago & A. R. R. Co. v. Pennsylvania Co. 1 I. C. R. 357.

(c) The practice of one company's paying the agents of another company a commission for selling tickets over former's road is not reasonable or proper. Chicago & A. R. R. Co. v. Pennsylvania Co. 1 I. C. R. 357.

(d) Companies may forbid their agents to receive commissions for sale of tickets over other company's roads. Chicago etc. R. R. Co. v. Pennsylvania Co. 1 I. C. R. 357.

(e) The practice of paying commissions for sales of tickets is not proper. Chicago etc. R. R. Co. v. Pennsylvania Co. 1 I. C. R. 357.

(f) Railroad companies may, under their right to control the official conduct of their own agents, forbid their agents to receive commissions from other companies for the sale of tickets over such other companies' roads, and may direct them not to sell tickets over roads of companies which refuse to recognize this corporate authority but which insist on subsidizing such agents. One person or corporation has no right to interfere with the employees of another, and the Act does not disturb this principle. Chicago & A. P. R. Co. v. Penn. Co. 1 I. C. R. 357.

(g) It is both the right and the duty of railroad companies to make such reasonable regulations as will secure order and promote the comfort of their passengers. Council v. W. & A. R. R. Co. 1 I. C C. 638, 641.

(hi) When the matter is not regulated by statute it seems to be generally held that it is a reasonable requirement that passengers who neglect to purchase tickets at stations before embarking on cars shall be charged additional fare, if proper conveniences and facilities are furnished them for procuring tickets. Sidman v. R. & D. R. Co. 2 I. C. C. 766, 768.

(j) It would be directly at war with the rights and safety of the traveling public, as well as of the railroad company, if the line of the carrier should become an arena over which it should be compelled to make a contract of some sort with every car company or inventor of cars, and transport the public in trains of which such cars were part. Worcester Excursion Car Co. v. Pennsylvania Railroad 2 I. C. C. 792, 796.

(k) The interest of the public lies in the direction of holding every common carrier by rail to the strictest responsibility in furnishing safe, suitable and sufficient car equipment for the transportation of persons over its line; and the law making power in enacting the Act has not undertaken to divide this responsibility with the carrier in the selection of its cars. Worcester Excursion Company v. Pennsylvania Railroad 2 I. C. C. 792, 796.

(l) Proceeding to compel respondent to accept complainants cars for transportation over its line. Where a railroad company has by an arrangement with one car company procured a sufficient supply of sleeping and excursion cars for all the business of its lines, and refuses to haul excursion cars of other private car companies over its track for this reason, it cannot be forced to do so against its objection. Complaint dismissed. Worcester Excursion Car Co. v. Pennsylvania Railroad 2 I. C. C. 792, 797.

(m) An arrangement between a railway company, stage transportation company, and a hotel association under which coupon tickets are issued, covering transportation and hotel charges, constitutes and effects an undue and unreasonable preference and advantage to the favored transportation company and hotel asso-

ciation, and subjects complainant, who operates a stage line, as well as the passengers, to undue and unreasonable prejudice and disadvantage. Wylie v. Northern P. R. Co. 11 I. C. C. 145.

(n) It is the duty of the defendant railway company to so conduct and control its operations relating to the transportation of passengers to Yellowstone Park as to afford such passengers full and equal opportunity at the terminus of its line at Gardiner, and elsewhere, to select the stage line or other agency they may desire to use for touring the Park, and the places and manner of entertainment therein. Wylie v. Northern P. R. 11 I. C. C. 145.

(o) An unlawful discrimination is made by the charging of a given sum for rail transportation to Gardiner, Mont., and return only, and the acceptance of a smaller sum for the rail transportation when the passenger goes by stage to points in or through Yellowstone Park, with or without hotel accommodations therein, the service performed by the railway company being the same in each case. Wylie v. Northern P. R. Co. 11 I. C. C. 145.

IMPORTANT CASES SINCE 1908

(p) To prevent discrimination and promote equality of treatment in charges and services, the law requires not only definite statement of the amount of the rates, fares and charges of carriers in their established schedules, but equally definite statement therein of all privileges and facilities granted or allowed in connection therewith, and any rules or regulations which in anywise affect or determine any part or the aggregate of the rates, fares or charges, or the value of the service rendered to the passenger, shipper or consignee. It is clear that no schedule complies with the requirements of the law which does not definitely and fully state the charges, on the one hand, and the services to be rendered therefor on the other. In Re Mileage, Excursion and Commutation Tickets, 23 I. C. C. 95.

(q) Carriers, individually and jointly, may afford many facilities, accommodations and conveniences to shippers and passengers which they may not be compelled to afford, but they are no more at liberty to unjustly discriminate with respect to such services than with respect to those things which, under the law, they may be compelled to do. In Re Mileage, Excursion and Commutation Tickets, 23 I. C. C. 95, 96.

(r) A provision that "no tickets or ticket orders issued by foreign lines will be honored as forming part of through transportation for the checking of baggage sale or parlor-car or sleeping-car tickets, or for reservations in parlor cars or sleeping cars, to points beyond" is obviously unjust and unreasonable. It operates to subject the holders of all such tickets to an annoying and often prohibitory inconvenience, no carrier receiving the equivalent of its full local fare to the junction may in respect of combinations of tickets severally subject to the Act, whatever the character of the transportation issued and accepted by the connecting line, lawfully withhold provision for incidental services so constantly and universally in demand. Rules and Regulations Governing Checking of Baggage, 35 I. C. C. 157, 160.

(s) No carrier receiving the equivalent of its full local fare to the junction may, in respect of combinations of tickets severally subject to the Act, lawfully withhold provision for incidental services universally in demand. Rules and Regulations Governing Checking of Baggage, 35 I. C. C. 157, 160.

(t) An order of a state Public Service Commission, requiring a railroad company to detour through trains between points in different states in order to pass through a particular city of 4,000 inhabitants, constituted an undue burden on interstate commerce, where such city had seven local trains each way, which met its reasonable requirements, and compliance with the order would add 10 miles to the route of the through train and require the maintenance of 16 additional miles of track at the high standard essential for through trains. St. Louis & S. F. Ry. Co. v. Public Service Comm. of State of Missouri. 41 Sup. Ct. 192.

ALL OTHER CITATIONS

Cozart v. So. Ry. Co., 16 I. C. C. 226, 231; Loch Lynn Construction Co. v. B. & O. R. R. Co., 17 I. C. C. 396, 399; Weber Club & Intermountain Fair Ass'n. v. O. S. L. R. R. Co., 17 I. C. C. 212; Ballin v. S. P. Co., 19 I. C. C. 503, 504; Merchants' & Mfrs.' Ass'n v. A. C. L. R. R. Co., 23 I. C. C. 129; Western Classification Case, 25 I. C. C. 442, 445; Johnson v. A. T. & S. F. Ry. Co., 25 I. C. C. 207; Beach v. A. A. R. R. Co., 26 I. C. C. 410; New

England Investigation, 27 I. C. C. 560, 565; Ligon v. St. L. & S. F. Ry. Co. (Mo. App. 1914), 168 S. W. 647, 649; Johnson v. A. T. & S. F. Ry. Co., 38 I. C. C. 294; Business Men's League of St. Louis v. A., T. & S. F. Ry. Co., 41 I. C. C. 13, 25; Boston v. So. Pac. Ry., (Ky. 1917) 194 S. W. 814; Binder v. Union Pac. R. Co. (Kan. 1920), 194 Pac. 314.

§10 Baggage.

See Baggage; Baggage Transfer; Rules and Regulation.

CASES 1887-1908

(a) The Commission will not make rules as to free baggage until violation of Act is charged. Re Order of Railway Conductors. 1 I. C. C. 18; Traders & Travelers Union v. Phila. & Reading R. Co. 1 I. C. R. 18, 62, 315, 371.

(b) The Commission has no jurisdiction in a case presented involving agreement between Traders & Travelers Union and certain carriers, for allowance of extra free baggage to passengers presenting "baggage indemnity certificate" issued by such Union under arrangement made prior to time when Act went into effect. Re Order of Railway Conductors, 1 I. C. C. 18; Traders & Travelers Union v. Phila. & Reading R. Co. 1 I. C. R. 18, 62, 315, 371.

(ba) Complainant attacked the rule of defendants to the effect that since the Act became effective 150 pounds of extra free baggage was not allowed on the baggage indemnity certificate presented. HELD, there is nothing in the facts disclosed by the evidence which involves any question of unjust discrimination or extortion, or any other matter over which the Commission has jurisdiction. That the power to enforce contracts has not been confided to the Commission, nor has it any general power or authority to manage the business of carriers, but only a limited power, expressly defined by the Act, to interfere to prevent wrong and oppression in specified cases. Petition dismissed. Traders & Travelers Union v. P. & R. R. R. 1 I. C. C. 371.

(c) On a petition by the Traders & Travelers Union, alleging that the defendant railroad had, prior to the time when the Interstate Commerce Act went into effect, entered into an arrangement with petitioner to allow 150 pounds of extra free baggage to passengers presenting the "baggage indemnity certificate" issued by petitioner, and that the defendants now refuse to make such allowance of extra free baggage,—HELD, (a) That there is nothing in the facts disclosed by the evidence which involves any question of unjust discrimination or extortion, or any other matter over which the Commission has jurisdiction. (b) That the power to enforce contracts has not been confided to the Commission, nor has it any general power or authority to manage the business of carriers, but only a limited power, expressly defined by the Act, to interfere to prevent wrong and oppression in specified cases. (c) That the petition must be dismissed. Traders & Travelers Union v. Phila. & R. R. R. Co., 1 I. C. R. 371.

(d) The defendant railroad company transports packages of a certain kind free only when they belong to commuters or to a person who is a passenger upon the train. No opinion is expressed upon the lawfulness of this practice, nor as to whether such defendant might, as a part of the contract of sale of a commutation ticket, provide that the privileges of this parcels express should be extended to the holder of such ticket or that the purchase of a ticket to one of these stations should carry with it the right to purchase and use a certain number of these stamps. J. E. Waker v. Baltimore & Ohio R. R. Co. et al. 12 I. C. C. 196.

IMPORTANT CASES SINCE 1908

(e) Undue discrimination is not exercised by a railroad company in carrying free 150 pounds of baggage for a passenger, as against the many passengers who travel without baggage. Herbeck-Demer Co. v. B. & O. R. R. Co., 17 I. C. C. 88, 89.

(f) Where railroad companies, acting through a transfer company which was their agent but was not subject to the Act, placed their baggage checks at the homes of passengers in certain sections of Washington, D. C., to the exclusion of passengers located in another section, they were guilty of a discrimination which, under all the circumstances of the case, was unjust. Anacostia Citizens' Assn. v. B. & O. R. R. Co., 25 I. C. C. 411, 415.

(g) Paraphernalia for public entertainments not subject to rule relating to size of baggage. Regulations Restricting the Dimensions of Baggage, 26 I. C. C. 292, 295.

(h) In considering the question of

regulation of dimensions and shape of baggage receptacles, the factor of personal safety of employes of the carriers, if not a prime one, is not the least important from an operating standpoint. Regulations Restricting the Dimensions of Baggage, 26 I. C. C. 292, 302.

(i) Carriers may make proper and needful rules for the handling of baggage which are consistent with safe and efficient operating practices and in accord with the service which they owe to the public. This is not only their right, but it is their duty, circumscribed only by the requirements that such rules, regulations and practices shall be just and reasonable. Regulations Restricting the Dimensions of Baggage, 26 I. C. C. 292, 302.

(j) The courts have held that the transportation of a certain amount of a passenger's baggage is not gratuitous, the compensation therefor being included in the fare of the passenger. National Baggage Com. v. A. T. & S. F. Ry. Co., 32 I. C. C. 152.

(k) The Cummins Amendment applies to transportation of baggage. The Cummins Amendment, 33 I. C. C. 682, 696.

(l) The amended law seems clearly to recognize the carrier's right to fix conditions and terms applicable to baggage dependent upon value as declared by person offering same for transportation. The Cummins Amendment, 33 I. C. C. 682, 697.

(m) The Commission considered proposed rules prohibiting the through checking from trunk line territory to southern and southeastern territory, of baggage and sale of through parlor or sleeping car tickets, and combination tickets. Respondent, the P. R. R., issued 1000 mile mileage books at 2¼c per mile, while the Southern Passengers Association's interchangeable mileage exchange orders against which the proposed rules were directed, sold at 2c per mile; making the combination fare from New York to Atlanta, for instance, $13.88 or $3.42 less than the joint through fare. HELD that respondents had not justified proposed rules, since it appeared that they received the equivalent of their full local fare to the junction point. Rules and Regulations Governing Checking of Baggage, 35 I. C. C. 157.

(n) The initial carrier is now made liable for the full actual loss, damage, or injury to baggage caused by it or by connecting carriers, notwithstanding any limitation of liability or of the amount of recovery in any receipt, contract, regulation, or tariff, and any such limitation by act of the parties, as by checking at owner's risk, is made unlawful and void. The statutory limitation of which the carrier may avail itself in certain cases, if it so elects, is not extended by the first proviso of the Cummins' Amendment to cover the practice of checking at owner's risk. Jewelers' Protective Union v. Penn. R. R., 36 I. C. C. 71, 72.

(o) Transportation without additional charge of a greater amount of baggage for passengers traveling in intrastate commerce, than is accorded passengers traveling in interstate commerce, under corresponding fares found to result in unjust discrimination against interstate commerce and should be removed by reducing the intrastate baggage allowance to the level of the interstate allowance. South Carolina Fares and Charges, 60 I. C. C., 290; North Carolina Fares and Charges, 60 I. C. C. 362.

(p) So it was also held that excess baggage charges required by state authority to be maintained within the state, lower that the corresponding interstate charges authorized in increased Rates, 1920, 58 I. C. C., 220, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. (Following cases are all in 60 I. C. C.) Montana Rates and Fares, 61; Ohio Rates, Fares and Charges, 78; Indiana Rates, Fares, and Charges, 337; Utah Rates, Fares, and Charges, 388; Nevada Rates, Fares and Charges, 623.

(q) The free transportation of a limited amount of baggage is an incident of, and is included within the passenger fare contract. Ellison-White Chautauqua System v. Director General 68 I. C. C. 492, 495.

(r) It is impracticable to set forth the voluminous rules regarding baggage on railroad tickets, baggage check, or valuation slip, and notice thereon that the property transported as baggage is "subject to tariff regulations" is adequate. Jones v. L. I. R. R. Co. 74 I. C. C. 238, 239, 240.

(s) Tariff defined personal baggage as consisting of "wearing apparel, toilet articles and similar effects," but specifi-

cally provides that jewelry was not to be enclosed in baggage to be checked. HELD: While the courts have held variously with respect to the classification of jewelry as baggage, the implication here is clear that it is excluded. Jones v. L. I. R. R. Co. 74 I. C. C. 238, 239.

(t) A limitation by a carrier as to its baggage liablity is determinative of the rate to be charged and affects the service to be rendered the passenger, within section 6 of the Act, as amended by the Act of June 29, 1906, requiring that such regulations be filed with the Commission as a part of the carrier's tariffs. B. & M. R. R. Co. v. Hooper, 34 Sup. Ct. 526, 531; 233 U. S. 97; 58 L. ed.—

(u) The requirements of the Carmack or Cummins' amendment, that a railroad corporation receiving property for transportation in interstate commerce shall issue a receipt or bill of lading therefor, does not require, in the case of baggage, other receipts than baggage checks. Such checks are receipts, and there is no special requirement in the statute as to their form, though the Commission is authorized to make requirements as to the checks or receipts to be given for baggage if that subject needs regulation. B. & M. R. R. Co. v. Hooker, 34 Sup. Ct 526, 532; 233 U. S. 97. 58; L. ed.—.

ALL OTHER CITATIONS

In re Wharfage Facilities at Pensacola, Fla., 27 I. C. C. 252, 258; Restricting the Dimensions of Baggage, 26 I. C. C. 292, 296, 301, 306; Johnson v. A. T. & S. F. Ry. Co., 25 I. C. C. 207; Anascostia Citizens' Association v. B. & O. R. R. Co., 25 I. C. C. 411, 414; Homer v. O. S. L. R. R. Co. (Utah, 1912), 128 P. 522, 527, 528; M. K. & T. Ry. Co. v. Hailey (Tex., 1913), 156 S. W. 1119, 1122; B. & M. R. R. Co. v. Hooker, 34 Sup. Ct. 526, 529; 233 U. S. 97; 58 L. ed.—; Ford v. C. R. I. & P. Ry. Co., (Minn. 1913), 143 N. W. 249; L. & N. Ry. Co. v. Miller (Ky. 1914), 162 S. W. 73, 75; Barstow v. N. Y., N. H. & H. Ry. Co. (N. Y. App. Div. 1913), 143 N. Y. Supp., 983, 990, 991; St. L. I. M. & S. Ry. Co. v. Faulkner (Ark., 1914), 164 S. W. 763; Wright v. S. P. Co. (Mo. App. 1914), 167 S. W. 1137; National Baggage Committee v. A. T. & S. F. Ry. Co., 32 I. C. C. 152, 154, 157, 159, 160; Beaham v. N. Y. C. & H. R. R. Co. (Mo.). 174 S. W. 150. 153; Harris v. Southern Ry. Co. (S. C. 1915), 85 S. E. 158, 160; Regulations restricting the Shape of Baggage 33 I. C. C. 266, 269; Jewelers Protective Union v. Penn. R. R., 36 I. C. C. 71, 73, 74, 75; Gallo v. L. V. R. R. Co., Unrep. Op. 2022; Wiley v. Grand Trunk Ry. of Canada, 227, Fed. 127, 128, 130; Secoulsky v. Oceanic Steam Nav. Co., (Mass. 1916), 112 N. E. 151, 152; Crout v. Yazoo & M. V. R. Co., (Tenn. 1915), 176 S. W. 1027, 1030; Portland Chamber of Commerce v. C. M. & St. P. Ry., 40 I. C. C. 167; Noell v. Westcott Express Co., 158 N. Y. S. 702; Carter v. M., St. P. & S. S. M. Ry. Co., 43 I. C. C. 51, 52; A. T. & S. F. Ry. v. Public Service Commission of Mo., (Mo. 1917) 192 S. W. 460; Borden v. New York Central R. Co., 162 N. Y. S. 1099; Michigan Ry. v. M. C. R. R., 49 I. C. C. 255, 258; Perkins v. New York N. H. & H. R. R., (Mass. 1919) 122 N. E. 306; Woodbury v. Galveston, H. & S. A. Ry., (Tex. 1919), 209 S. W. 432; Rieck Co. v. B. & O. R. R., 50 I. C. C. 298; Perkins v. New York, N. H. & H. R. R., (Mass. 1919), 122 N. E. 306; Increased Rates, 1920, 58 I. C. C. 220, 242; Rates, Fares and Charges on the N. Y. C. R. R. Co., 59 I. C. C. 290, 295, 298; Wisconsin Passenger Fares, 59 I. C. C. 391, 396; Arkansas Rates & Fares 59 I. C. C. 471; Minnesota Fares and Charges, 59 I. C. C. 502; Montana Rates and Fares, 61 I. C. C. 500; North Dakota Rates, Fares and Charges, 61 I. C. C. 504; Arizona Rates, Fares and Charges, 61 I. C. C. 572; Kansas Rates, Fares and Charges, 62 I. C. C. 440; Mrs. E. F. Berkley Jones v .Long Island R. R. 74 I. C. C. 238; Montana Rates and Fares, 77 I. C. C. 141 San Antonio U. & G. Ry. Co. v. Nast. (Tex. 1922), 240, S. W. 596; Galveston H. & S. A. Ry. Co., v. Woodbury et al., 41 Sup. Ct. 114.

§11. Colored Passengers.

CASES 1887-1908

(a) It is unjust discrimination to remove a colored passenger holding a first class ticket from a first class car to a second class car, less clean and comfortable. Heard v. Georgia R. Co. 1 I. C. R. 493, 719. Council v. Western & A. R. Co. 1 I. C. R. 292, 355, 638.

(b) The separation of white and colored passengers is not unlawful if the accommodations are equal in all respects. Heard v. Georgia R. Co. 1 I. C. R. 314, 719; Council v. Western & Atlantic R. Co. 1 I. C. R. 292, 355, 638.

(c) There is no undue prejudice or unjust preference shown by railroad companies in separating their white and col-

ored passengers by providing cars for each, if the cars so provided are equally safe and comfortable. But fair dealing and common honesty require that a colored passenger should have the security and convenience of travel for which his money has been accepted. Where a colored passenger had purchased a first class ticket, and there was but one car on the train furnishing the accomodation for which he had paid and was entitled to have, and after he had entered this car, he was forcibly removed to a car assigned to passengers of his race, which was a half car, half lighted, in which men and women were huddled together and where men, white and black, smoked at pleasure, the car being designated as a "second class" car, being dismal, less clean and less comfortable than the car in which he was first seated, the railroad company was held to have subjected him to undue prejudice, and unreasonable disadvantage in violation of section 3 of the Act to Regulate Commerce; and these unlawful acts and all unjust discrimination were ordered to be discontinued. Council v. Western & Atlantic R. R. Co., 1 I. C. R. 638.

(ca) Complainant claimed it had been subjected to unreasonable prejudice and unjust discrimination by the refusal of defendant to furnish the accommodations for which he had paid. There is no undue prejudice or unjust preference shown by railroad companies in separating their white and colored passengers by providing cars for each if the cars so provided are equally safe and comfortable. But fair dealing and common honesty require that a colored passenger should have the security and conveniences of travel for which his money has been accepted. Where a colored passenger has purchased a first class ticket, and there was but one car on the train furnishing the accomodation for which he had paid and was entitled to have, and after he had entered this car, he was forcibly removed to a car assigned to passengers of his race, which was a half car, half lighted, in which men and women were huddled together and where men, white and black, smoked at pleasure, the car being designated as a second class car, being dismal less clean and less comfortable than the car in which he was first seated, HELD, the railroad company subjected him to undue prejudice and unreasonable disadvantage in violation of section 3; and these unlawful acts and all unjust discriminations ordered to be discontinued. The complainant having offered evidence of pecuniary damages as a basis for an award of injuries done in his violent removal from the car and for reasonable fees of attorneys he has been compelled to employ the defendant railroad company under the 7th amendment of the Constitution of the United States being entitled to a trial by jury, the Commission, because it could not give such a trial, declined to go into that question leaving the complainant to his appropriate remedy in the courts for the alleged trespass and assault upon him, in which, under section 8 of the Act, the defendant may be held liable for counsel or attorneys fees to be fixed by the court. Council v. W. & A. R. R. 1 I. C. C. 638.

(d) Complainant claimed he had been subjected to unreasonable prejudice and unjust discrimination by the refusal of defendant to furnish the accomodations for which he had paid. Regulations setting apart cars for separate use of white and colored persons had been established by the defendant similar other carriers in the south. The one designated the colored peoples car was divided by a partition into two nearly equal apartments with a door between them opening either way by slight pressure and without a fastening when closed. The rear half end was the smoking car for white and colored men by the rule, but for the white men in practice. The front half of the car was the colored car for both sexes. This separation may be carried out on railroad trains without disadvantage to either race and with increased comfort to both. Complainant paid the same fare as other first class passengers. It was no more than fair dealing and common honesty that he should have the security and conveniences of travel for which his money had been expended. There was in the train no car furnishing the accommodations for which the complainant had paid and was entitled to have, other than the one from which he was removed because he was a colored man. HELD, in denying to complainant equal accommodations furnished the other passengers paying the same fare the defendant subjected complainant to undue prejudice and unreasonable disadvantage. Council v. W. & A. R. Co. 1 I. C. C. 638.

(e) Passengers paying the same fare

upon the same railroad train, whether white or colored, are entitled to equality of transportation, in respect to the character of the cars in which they travel, and the comforts and conveniences supplied. Heard v. Georgia R. R. Co., 1 I. C. R. 719.

(f) Separation of white and colored passengers paying the same fare is not unlawful, if cars and accommodations equal in all respects are furnished to both, and the same care and protection of passengers observed. Heard v. Georgia R. R. Co. 1 I. C. R. 719.

(g) By requiring the petitioner who had paid a first class fare to ride in a half car set apart for colored passengers, with accommodations and comforts inferior to the car for white passengers in the same train who paid the same fare, and without the protection against annoyance furnished to white passengers, the Georgia Railroad Company subjected him to undue and unreasonable prejudice and disadvantage, in violation of the third section of the Act to Regulate Commerce. Heard v. Georgia R. R. Co. 1 I. C. R. 719.

(h) Complainant attacked the rules of defendant in being required, while holding a first class ticket, to travel in a compartment of a car allotted to colored persons and inferior, in its accomodations and comforts to the car for white persons in the same train, as being unduly discriminatory. HELD, the subjection of complainant to the inferior accomodations and discomforts of the colored compartment and amid the fumes of tobacco smoke and whisky, while the company had his money for a first class passage, enjoyed by white passengers but denied to him, was a palpable violation of the third section of the act. Heard v. Georgia R. R. Co. 1 I. C. C. 719.

(i) A carrier furnishing separate cars to white and colored passengers on its line engaged in interstate travel must make them equal in comforts, accommodation, and equipment, without any discrimination. Heard v. Georgia R. Co. (Com.) 2 I. C. R. 508.

(j) A carrier engaged in interstate travel over its lines must afford the equal protection of the law alike to all passengers, without regard to race, color, or sex, against undue prejudice and disadvantage from disorderly conduct on the part of other passengers or persons. Heard v. Georgia R. Co. (Com.) 2 I. C. R. 508.

(k) Complainant, a colored passenger, was excluded from a first class car although he held a first class ticket, and attacked this exclusion as unreasonable and unjustly discriminatory. Petitioner purchased a first class ticket from Philadelphia, Pa., to Atlanta, Ga., but traveled in the first class coach only as far as Augusta, Ga., where he was required to leave this car and enter a second car reserved for colored people. This latter car was in an unfit condition for the transportation of passengers although the law provides equal and like conditions should prevail. HELD, defendant discriminated against complaint in not furnishing equal accommodations with those furnished white persons. Heard v. Georgia R. R. 2 I. C. C. 508.

(l) It is a lawful duty that a carrier owes to the traveling public in carrying out its rules of furnishing separate cars to white and colored passengers on its line engaged in interstate travel, to make them equal in comforts, accommodation, and equipment without any discrimination. Heard v. Georgia R. 2 I. C. C. 508, 511.

(m) It is a lawful duty which a carrier owes to the traveling public engaged, in interstate travel over its line, to afford the equal protection of the law alike to all such persons without regard to race, color or sex, against undue prejudice and disadvantage from disorderly conduct on the part of other passengers or persons. Heard v. Georgia R. 2 I. C. C. 508, 511.

(n) The law will not tolerate the doctrine any more in the transportation of persons than of property, that one class is to be favored by the carrier over another. Heard v. Georgia R. R. 2 I. C. C. 508, 514.

(o) The Mississippi statute of March 2, 1888, § 1, requiring all railroads carrying passengers (other than street railroads) to provide equal but separate accommodations for white and colored races, by providing two or more passengers cars for each passenger train, or by dividing the cars by a partition, is not invalid as an interference with interstate commerce, as it refers only to the carriage of passengers between points within the State. Louisville, N. O. & T. R. Co.

v. State (Miss.) 2 I. C. R. 615. Affirmed by U. S. Sup. Ct. 2 I. C. R. 801.

(p) The first section of said Statute which requires railroads to provide separate accommodations for the white and colored races, is within the power of the State, and is not a regulation of interstate commerce and does not violate the commerce clause of the Constitution. Louisville, N. O. & T. R. Co. v. State of Mississippi. 2 I. C. R. 801.

(q) A railroad company must furnish to colored people who pay first-class fare cars to ride in that are as safe and comfortable in their conditions and appointments as the cars furnished to white passengers who pay first-class fare. Houck v. Southern P. R. Co. (C. C. W. D. Tex.) 4 I. C. R. 441.

(r) A railway company, in the management of its complicated interests, may be authorized in law,—on showing a proper or sufficient state of facts, to establish in the opinion of the court the reasonableness of the rule—in setting apart one or more cars for the use exclusively of colored passengers, and a like number, more or less, as the service may require, for the use exclusively of white passengers; but whenever the company enforces such a rule the company is charged with the duty of furnishing to colored people who pay first class fare cars to ride in that are as safe and comfortable in their conditions and appointments as the cars furnished to white passengers who pay first class fare. Houck v Southern Pac. R. Co., 4 I. C. R. 441.

(s) The provisions of the Kentucky statute requiring separate compartments or cars for white and colored passengers to be furnished by all railroad companies operating trains within the state, in respect to interstate commerce, cannot be separated from those relating to commerce wholly within the state, and render the whole act void. Anderson v. Louisville & N. R. Co. (C. C. D. Ky.) 4 I. C. R. 764.

(t) A statute requiring separate cars or compartments to be furnished white and colored passengers upon railroads is valid as a proper exercise of the police power of the state when confined to the intrastate commerce of the state and not applying to interstate commerce. Anderson v. Louisville & N. R. Co. 4 I. C. R. 764.

(u) The prohibition contained in U. S. Const. 14th Amend. against discrimination by a state because of race or previous condition of servitude, though securing to citizens certain fundamental rights as against state action, does not secure the joint and common enjoyment of such rights. Anderson v. Louisville & N. R. Co. 4 I. C. R. 764.

(v) The Kentucky statute requiring all companies operating railroads within the state to provide separate cars or compartments for white and colored passengers is so broad as to embrace all passengers, including those whose passage commences or ends in other states, and is void as an interference with interstate commerce. Anderson v. Louisville & N. R. Co. 4 I. C. R. 764.

(w) The Kentucky statutes requiring all railroad companies to furnish separate coaches or compartments for colored and white passengers does not violate U. S. Const. 14th Amend. prohibiting discrimination by a state because of race or previous condition of servitude, as it prohibits any discrimination in the quality, convenience, or accommodations in the cars and compartments set apart for the different classes of passengers. Anderson v. Louisville & N. R. Co. 4 I. C. R. 764.

(x) A statute requiring all railroads in the state to furnish equal but separate accommodations for whites and blacks, and requiring conductors to assign passengers to their respective places, when applied to a passenger from another state on an interstate railroad line, invades the powers conferred on Congress by the commerce clause of the Constitution. Carrey v. Spencer, 5 I. C. R. 636.

(y) A railroad company which authorizes a railroad company in another state to sell a ticket to a negress entitling her to a first-class passage over the former company's line, thereby recognizes her as an interstate passenger and entitled to the rights of such a passenger. Carrey v. Spencer, 5 I. C. R. 636.

(z) The requirement of the Kentucky statute of separate coaches for white and colored passengers does not, at least as applied to carriage wholly within the State, violate the interstate commerce clause of the Federal Constitution, although the line extends beyond the State. The ruling was placed upon Britton v. Atlantic & C. Air-Line R. Co., 88 N. C. 542, 43 Am. Dec. 749; Chesa-

peake O. & S. W. R. Company v. Wells, 85 Tenn. 615; Day v. Owens, 5 Mich. 525, 72 Am. Dec. 62; West Chester & P. R. Co. v. Miles, 55 Pa. 209, 93 Am. Dec. 744; Com. v. Power, 7 Met 596, 41 Am. Dec. 465; Murphy v. Western & A. R Co. 23 Fed. Rep. 637; Houck v. Southern P. R. Co. 38 Fed. Rep. 226, 4 Inters. Com. Rep. 441; Louisville, N. O. & T. R. Co. v. Mississippi, 133 U. S. 587, 33 L. ed. 784, 2 Inters. Com. Rep. 801; and Plessy v. Ferguson, 163 U. S. 537, 41 L. ed. 256. The court says it is well known that a large portion of the white race is opposed to being required to keep the same seat or to travel in the same coaches that are occupied by the colored race, and it is wholly immaterial whether the colored race shares the same feeling in that regard or not toward the white race, but the presumption is that many of them likewise prefer to occupy seats in coaches not occupied by white persons. But whether this be true or not, it is manifestly better for the colored race to be separated from the white race than to be placed in the same coach with white persons, with the result that the same would be offensive to the white race; for, if this be true, it would reasonably cause disturbances which would be alike disagreeable and injurious to both races. It seems to us that the law complained of is more necessary for the comfort, convenience, and protection of the colored race than of the white race; and it is to be regretted that the law has not been accepted by both races as designed and intended for the mutual benefit and protection of both races. McLeod, Receiver of Ohio Valley Ry. Co. v. Lander 8 I. C. C. App LX.

(aa) A State statute providing for separate and equal accommodations for the white and colored races on railroads is a valid police regulation and applies both to intra and interstate travel. The court distinguishes the case of Hall v. De Cuir, 95 U. S. 485, 24 L. ed. 547, saying that subsequent cases have established three distinct propositions: First, that any legislation by a State, whether it be or not in the exercise of police power, though it incidentally and remotely affects interstate commerce without constituting a regulation of it, may be valid; second, that in the reasonable exercise of the police power a State may impose burdens upon interstate commerce which occasion both inconvenience and hardship to the carrier, provided Congress has not directly acted upon the same subject; third, that laws passed under the police power of the State for the reasonable regulation of travel and transportation are not regulations of interstate commerce in the objectionable sense, under the Constitution. Specifically, they have also settled, fourth, that laws providing for the separation of the white and colored races in public conveyances, giving each equal privileges of travel and accommodation, are reasonable, and are valid exercises of State authority under the police powers, although they affect and impose burdens upon interstate commerce; citing Plessy v. Ferguson, 163 U. S. 537, 41 L. ed. 256; Hennington v. Georgia 163 U. S. 299, 41 L. ed. 166; New York, N. H. & H. R. Co. v. New York, 165 U. S. 628, 41 L. ed. 853; Gladson v. Minnesota, 166 U. S. 427, 41 L. ed. 1064; Louisville, N. O. & T. R. Co. v. Mississippi, 133 U. S. 587, 33 L. ed. 784, 2 Inters. Com. Rep. 801. Smith v. State of Tennessee, 8 I. C. C. App. LXXII.

(bb) Employees of railroads may have passes. Re Transportation of Land and Immigration Agents, 12 I. C. C. 7.

(cc) White and colored passengers. Carriers may not discriminate between white and colored passengers paying the same fare, in the accommodations which they furnish to each. Edwards v. N. C. & St. L. Ry. Co. 12 I. C. C. 247.

(dd) Carrier may not discriminate in accommodations to be provided to white and colored passengers paying same fare. Edwards v. N. C. & St. L. R. Co. 12 I. C. C. 247.

(eeff) Colored, passengers equal accommodations to be provided for. Edwards v. N. C. & St. L. Ry. Co. 12 I. C. C. 247.

(gg) Segregation of white and colored passengers on interstate journeys is a reasonable regulation of interstate traffic and permissible under the Act to Regulate Commerce. Georgia Edwards, v. Nash Chat. & St. Louis Ry. Co. 12 I. C. C. 247.

(hhii) Complainant attacked as discriminatory the facilities furnished by the defendants in connection with the transportation of passengers between negroes and those belonging to other races. Complainant purchased a first class ticket from Chattanooga, Tenn., to Dalton, Ga., and occupied a seat in a car

by passengers other than negroes and was requested to move to another car set apart by defendant for the use of people of her race. Defendant furnished one of the cars with wash bowls and towels, the other was not supplied with such conveniences, the former being used by the white race. A separate smoking department is set aside for white passengers but none for colored passengers. The separation of white and colored passengers paying the same fare is not unlawful if cars and accommodations equal in all respects are furnished to both and the same care and protection of passengers is observed. HELD, similar accommodations should be furnished to both white and colored people and defendant is ordered to furnish accordingly. Georgia Edwards v. N. C. & St. L. Ry. 12 I. C. C. 247.

(jj) Where a carrier provides facilities for personal cleanliness in first class coaches devoted to the use of white passengers, and a separate smoking compartment for the use of such passengers also, similar accommodations should be provided for colored passengers paying first class fare Georgia Edwards v. N. C. & St. L. Ry. 12 I. C. C. 247, 250.

(kk) Segregation of white and colored passengers on interstate journeys is a reasonable regulation of interstate traffic and permissible under the Act. Georgia Edwards v. N. C. & St. L. Ry. 12 I. C. C. 247, 249.

(ll) Carriers may not discriminate between white and colored passengers paying the same fare in the accommodations which they furnish to each. Georgia Edwards v. N. C. & St. L. Ry. 12 I. C. C. 247, 249.

IMPORTANT CASES SINCE 1908

(mm) Compartment passenger cars running from Atlanta, Ga., to Washington, D. C., were provided for the colored people and for the whites. The forward compartment was occupied by the colored people and was supplied with a washbowl, a duplicate of that in the compartment assigned to white passengers. Ordinarily, soap and towels were furnished to all passengers, and, if on account of an emergency they were not furnished, the white and colored passengers suffered alike. But one toilet was furnished for men and women in each compartment which did not bear designation. In emergency, the cars were sometimes turned so that the colored compartment was in the rear, in which case a separate smoking compartment was not furnished the colored passenger. HELD, the general treatment and accommodation of colored passengers was not unduly discriminatory in favor of the whites. Cozart v. S. P. Ry. Co., 16 I. C. C. 226, 230.

(nn) Complainant, colored bishop, alleged that colored passengers in the southeastern states were unduly discriminated against, in the character and condition of the passenger coaches furnished to them, in the refusal to sell sleeping car tickets, or to deny the holder of such tickets the right to use the space called for by them, and in refusal to colored passengers of access to dining cars, and of service of food and refreshments. The evidence showed that the day-coaches accommodations offered to colored passengers were the same as to white people, and that more space was provided for the colored than the white travelers. Colored passengers were not served with meals in the dining car at the same time with whites, but were served on the third and last call, or upon request were served at their seats either in the Pullman, or in the ordinary coach, portable tables being used for that purpose. In other respects the dining service was the same for the colored as for white travelers. As to sleeping cars, the rules and regulations did not discriminate against colored persons, the real discrimination arising from the application of the rules to individual travelers by the carriers' servants. The laws in the section of the country involved provided for the separation of the white and black passengers on trains, such laws having been upheld as constitutional. The evidence indicated that the average colored traveler was not welcomed by the average ticket seller or Pullman conductor when applying for sleeping car accommodations on account of the exceeding infrequency of the demand, and the fear of breaking state laws in acceding thereto, the confusion with respect to state and federal laws, and the rights, obligations and penalties attaching thereto, and the manner of the making of the demand. Colored travel for long distance was exceedingly slight, as compared with white travel. The evidence indicated that the colored people demanding accommodations were often lacking in tact with respect to the race problems actually existing. HELD, under the evidence no un-

due discrimination or prejudice was established. Complaint dismissed. Gaines v. S. Air Line Ry. Co., 16 I. C. 471, 474, 476.

(oo) A bulletin issued by a carrier engaged in both intrastate and interstate carriage of passengers, announcing the enactment of a state statute requiring the segregation of races, declaring the statute applied only to intrastate passengers and requiring its enforcement on trains which carry passengers to which the law does apply, was not by its terms a valid regulation for the segregation of interstate passengers according to race. Washington, B. & O. Electric R. Co. v. Waller, (1923), 289 Fed. 598.

§11½. Divisions.

IMPORTANT CASES SINCE 1908

(a) A lower basis of divisions of joint through passenger fares between points in California and Salt Lake City, Utah, and points north and east thereof, accorded complainant than defendants allowed each other of similar joint fares, found to be unlawful, in violation of the second paragraph of section 3 of the Act. Reparation awarded. Western Pacific R. R. Co. v. S. P., 55 I. C. C. 71.

§12. Free Transporation and Passes.

See Crimes III; Express Companies §5; Free transportation.

CASES 1887-1908

(a) Section 2 of Act prohibiting giving of passes to particular persons, and the exception allowed in section 22 in favor of officers and employees of road does not include the families of such persons. Ex parte Koehler (U. S. C. Ct.) 1 I. C. R. 317.

(b) Passes to families of employees. Section 2 of the Interstate Commerce Act in effect prohibits the giving of passes or free carriage to particular persons; and the exception allowed in section 22, in favor of officers and employees of the road, does not include the families of such persons. Ex Parte Koehler, Receiver of Ore. & Cal. R. Co. 1 I. C. R. 317.

(c) In the absence of an actual case, the Commission will not pass upon the question of passes to the United States Fish Commission. Re United States Commission of Fish and Fisheries, 1 I. C. R. 606.

(d) The Interstate Commission declines, in the absence of an actual case, to pass upon the question for the propriety of railroads continuing the issuance of free passes to the United States Fish Commission and the National Museum, to enable their employees to carry on their official duty at less expense to the United States. Re U. S. Commission of Fish & Fisheries v. 1 I. C. R. 606.

(e) Under the Interstate Commerce Act, § 2, where passes issued to a company's ex-employe, good for twenty days, were not used, and no one was ever transported upon them, a charge of unjust discrimination cannot be sustained. Griffee v. Burlington & M. R. R. Co. 2 I. C. R. (Com.) 194.

(ea) On the 10th of April, 1887, on the request of one C. H. Waite, trip passes were issued to him by an officer of the defendant from Lincoln, Nebraska to Atchison, Kansas, and return to be good for twenty days. Waite had been an employee of the defendant for several years in the capacity of an engineer, and, having been recently discharged professed when he applied for the passes that he desired to go to Atchison to seek employment on another road. They were issued to him as ex-employee. They were not used, and no one was ever transported upon them. They were delivered to the Commission on the hearing. HELD: (a) That the offense charged is under the second section of the Act and consists in charging, demanding, collecting or receiving by a common carrier to which the Act applies, from any person or persons, a greater or less compensation for service rendered or to be rendered, in the transportation of persons or property subject to the Act, than it charges, demands, collects or receives from any other person or persons, for doing him or them a like and contemporaneous service; (b) That the unlawfulness under this section is the doing of a service by a carrier in the manner forbidden by the statute, and if no such service has been done a contravention of the Act has not occurred; (c) That the passes in question not having been used, but having long ago become defunct by their terms, and no transportation of anyone upon them having ever taken place, the charge of unjust discrimination is not sustained. Griffe v. Burlington & Missouri R. R. Co., in Nebr., 2 I. C. R. 194.

(f) Free transportation issued in the form of an annual pass, to a person not in the regular and stated service of the carrier nor receiving any wages or salary under a contract of employment, but re-

quested by him as compensation for throwing in its way what business he conveniently could, HELD to be illegal. Slater v. Northern Pacific R. Co., 2 I. C. R., 243.

(g) Complainant attacked the illegal free transportation of a person not a railway employe. HELD, free transportation issued in the form of an annual pass, to a person not in the regular and stated service of the carrier nor receiving any wages or salary under a contract of employment, but requested by him as compensation for throwing in its way what business he conveniently could is illegal. Slater v. N. P. R. Co., 2 I. C. C. 243.

(h) A pass costs the carrier little or nothing, and when the good will and occasional good words of a person who is able to influence the direction of traffic can be obtained so cheaply it is a hardship to prevent the carrier from making use of the opportunity; but the evils of the unrestricted employment of free passes by common carriers has grown so great and had become so apparent, both to the public and to the carriers themselves, that it was deemed by Congress to be absolutely necessary to eradicate the whole system from interstate commerce in order to put an end to the abuses which had grown beyond the limits of any other regulation or control. Slater v. N. P. R. R. Co. 2 I. C. C. 243, 245.

(i) Unreasonable and unlawful preference may be given by a common carrier by granting free transportation over its lines from one State into another to one passenger, who is not an officer or employe of the carrier, while denying it to others. United States v. Cleveland, C. & S. R. Co. (C. C. N. D. Ohio), 3 I. C. R. 290.

(j) The defendant issued passes entitling the holders to free transportation over the lines of its system, extending into the states of Maine, New Hampshire, Vermont and Massachusetts; there were several classes of the persons who received the passes, among them, gentlemen long eminent in the public service, higher officers of the states, prominent officials of the United States, members of the legislative railroad committees of the above named states and persons whose good-will was claimed to be important to the defendant; HELD, that the giving of free transportation to such persons was a violation of the Act to Regulate Commerce. The defendant also issued such passes to other classes of persons, among them, the sick, necessitous and indigent, proprietors of hotels, members of the families of employes, agents of ice companies, milk contractors, state railroad commissioners, trustees of railroad mortgages and newspaper publishers for advertising; HELD, as to these latter classes of persons that as the investigation as to them had not been finished, the case should be held for further consideration and order. When an investigation by the Commission to inquire into the business management of a common carrier has been fully concluded as to some matters, and not concluded as to others, an order may be made pendente lite, as to the former, and the cause retained for further consideration and order as to the latter. Upon the facts found in this case, held, that the second section of the Act prohibits the giving of free transportation to the persons embraced within the classes first above named; that a carrier is bound to charge equally to all persons regardless of their relative individual standing in the community; that the words, "under substantially similar circumstances and conditions" relate to the nature and character of the service rendered by the carrier, and not to the official, social or business position of the passenger; that section twenty-two of the Act is exceptive in character and only applies to the persons and subjects expressly specified therein. Re Boston & Maine Co. 3 I. C. R. 717.

(k) Issuing free passes to gentlemen long eminent in the public service, high officers of the States, prominent officials of the United States, members of the legislative railroad committee of several States, and persons whose goodwill was claimed to be important to the defendant, —is a violation of the Act to Regulate Commerce. Re Boston & M. R. Co. (Com.) 3 I. C. R. 717.

(lm) The action of the railroad company in granting to members of the city council of New Orleans and the clerk of that body, on account of their official position free transportation as passengers over all or some portion of its interstate lines, violates the Act to Regulate Commerce, and is unlawful. Harvey v. Louisville & N. R. Co. (Com.), 3 I. C. R. 793, 794.

(ma) The refusal of a railroad company to honor tickets or coupons for passage issued by another company over its lines does not constitute a discrimination within the Interstate Commerce Act as, in the absence of arrangement between the companies, there is no obligation on the part of either to honor tickets issued by the other. Oregon Short Line & U. N. R. Co. v. Northern Pacific R. Co., 4 I. C. R. 718.

(n) The free transportation of shippers or dealers between state or interstate points on account of interstate freight traffic furnished to the carrier is unlawful. Milk Producers' Protective Asso. v. Delaware, L. & W. R. Co., 7 I. C. C. 92, 163.

(o) A railroad official who grants a pass as a matter of personal favor and friendship, to be used in an interstate journey by one who is not within the exceptions of the Interstate Commerce Act, is guilty of a violation of the provisions of that act against unjust discrimination. Re charge to Grand Jury 7 I. C. C. App. LIV.

(p) The prohibition of the Interstate Commerce Act against the issuance of railway passes does not apply to passes issued for money or other valuable consideration. Curry v. Kans., & Colorado Pacific Ry. Co., 7 I. C. C. XCI.

(q) Land and immigration agents not entitled to passes. Re Transportation of Land and Immigration Agents, 12 I. C. C. 7.

(qa) Immigration agents only as bona fide employees to have passes. Re Transportation of Land & Immigration Agents, 12 I. C. C. 7.

(r) Land and Immigration Agents not to be transported free or at reduced rates unless bona fide and actual employees of carriers. Re Transportation of Land & Immigration Agents, 12 I. C. C. 7.

(s) Land and immigration agents, unless they are bona fide and actual employees of carriers subject to the Act to Regulate Commerce, are not within the excepted classes specified in that statute, and providing transportation for such agents free or at reduced rates over lines of such carriers is, and since the act was originally passed has been, unlawful. Ruling in Tariff Circular No. 5-A reaffirmed. Transportation of Land and Immigration Agents v. 12 I. C. C. 8.

(t) Land and immigration agents, unless they are bona fide and actual employees of carriers subject to the Act, are not within the excepted classes specified in that statute, and providing transportation for such agents free or at reduced rates over lines of such carriers is, and since the act was originally passed has been, unlawful. Complaint of I. C. R. R. as set forth in statement of J. C. Stubbs, Chairman of western lines. 12 I. C. C. 8, 9.

(u) Effects of employes may be moved free. Re Railroad-Telegraph Contract, 12 I. C. C. 10.

(v) As a telegraph service along its right of way is essential to the safe operation of its trains, a railroad company or a group of separately incorporated roads generally recognized as a "railway system," may lawfully contract to furnish free or reduced-rate transportation to a telegraph company for such of its officers, men, materials, and supplies as are required in connection with the construction, maintenance, and operation of such a telegraph line and service upon its own right of way; and the legality of such free or reduced-rate transportation is not affected by the fact that the telegraph company may also use such telegraph line in connection with its telegraph service to the public; but such company or system can not lawfully contract, in consideration of free telegraph service or services at reduced rates over wires beyond its own right of way, to furnish free or reduced-rate transportation in connection with the construction, maintenance, or operation of a telegraph line and service off the line of such company or system and upon the line or lines of another carrier or system. Re Railroad Telegraph Contracts, 12 I. C. C. 10.

(w) The mere fact that carriers, as a means of securing traffic make agreements with shippers, tracing their freight cars on the rails of other carriers, communicating with their agents in distant localities, frequently find it convenient to telegraph to points beyond their own right of way and are allowed by the telegraph companies to do so free or at reduced rates, does not make it lawful for a railroad company to grant to a telegraph company free or reduced rate carriage for its officers, employees, materials or supplies destined for use in a telegraph service on the right of way of

other carriers. Railroad-Telegraph contracts. 12 I. C. C. 10, 13.

(x) The provisions of the Act relative to the issuance of free tickets, free passes, free transportation, or free carriage to employees of carriers apply only to persons who are actually in the service of the carriers and who devote substantially all of their time to the work or business of such carriers. Land and immigration agents, unless they are bona fide and actual employees, representatives of correspondence schools, agents of accident or life insurance companies, agents of oil or lubricating companies, etc., are not within the classes to which free or reduced-rate transportation can be lawfully furnished. But the Commission does not construe the law as preventing a carrier from giving necessary free transprotation to a person traveling over its line solely for the purpose of attending to business of, or performing a duty imposed upon, the carrier, nor from giving free carriage over its line to the household and personal effects of an employee who is required to remove from one place to another at the instance of, or in the interest of, the carrier by which he is employed. Nor does the Commission construe the law as preventing a carrier from giving free or reduced-rate carriage over its line to contractors for material, supplies, and men for use in construction, improvement, or renewal work on the line of that carrier, provided such arrangements for free or reduced-rate carriage are made a part of the specifications upon which the contract is based and of the contract itself. Railroad-Telegraph Contracts 12 I. C. C. 11.

(y) Telegraph or telephone expert may be hired and passed. Re Free Transportation of Newspaper Employees, 12 I. C. C. 15.

(z) Newspaper messengers, caretakers, not entitled to passes. Re Free Transportation of Newspaper Employees, 12 I. C. C. 15.

(aa) Contractors may be hired and passed by carrier. Re Transportation of Newspaper Employees, 12 I. C. C. 15.

(bb) Clock makers in employ of carrier, may be transported free. Re Transportation of Newspaper Employees, 12 I. C. C. 15.

(cc) Employees of newspapers, may be carried only at regular published rates. Re Transportation of Newspaper Employees, 12 I. C. C. 15.

(dd) Caretakers on special newspaper trains may not be carried free or at commodity rates. Re Free Transportation of Newspaper Employees, 12 I. C. C. 15.

(ee) Where the Congress has expressly enumerated special classes of persons or things that may be exempted and excepted from the operation of general provisions in a law, this Commission cannot enlarge the excepted classes by mere construction and include in them persons or things not thus expressly named in the statute itself. The so-called caretakers of newspaper companies whose duty it is to assort newspapers on special newspaper trains and to make them up into packages for delivery as the train arrives at the several points along the line of the run, may not lawfully be granted the free transportation that is permissible under the act to the caretakers of certain other kinds of traffic specifically enumerated in the act. In the matter of the free transportation of newspaper employees on special newspaper trains. 12 I. C. C. 16, 19.

(ff) The Commission does not understand that the employees or socalled messengers of the newspaper companies while on special newspaper trains are in any sense employees of the carrier. The duty of the carrier as such is confined to the transportation of the newspapers. It is no part of its duty to assort the newspapers on the train or to prepare them in parcels containing the required number of papers at each station; that is a duty pertaining wholly to the newspaper companies. Transportation of newspaper employees. 12 I. C. C. 16, 18.

(gg) Free transportation of some passengers places greater burden on others. Re Right of Railroad Company to Exchange Free Transportation with Transfer and Baggage Express Companies, 12 I. C. C. 39.

(hh) Transfer companies may not receive passes. Re Right of Railroad Companies to Exchange Free Transportation with Transfer and Baggage Express Companies, 12 I. C. C. 39.

(hha) While the petitioner, Frank Parmelee Company, not being subject to the regulating statute, may doubtless give free transportation on its omnibus and baggage express wagons to whomsoever it wishes, no common carrier subject

to the jurisdiction of that act can lawfully grant free transportation to the officers, agents, or employees of petitioner. Specific exceptions noted in the act as to "baggage agents" entering trains near large terminals to arrange for baggage transfer. Exchange of Free Transportation 12 I. C. C. 40.

(ii) Section 1 of the Act to Regulate Commerce, amended June 29, 1906, provides: "No common carrier subject to the provisions of this act, shall . . . directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, . . . : Provided, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families." The proviso clearly modifies the main clause and is to be construed strictly. The words "common carriers" relate only to those referred to in the main clause, namely, common carriers subject to the act. Exchange of Free Transportation 12 I. C. C. 40.

(jj) Petitioner is a common carrier engaged in the city of Chicago in transferring passengers and baggage between railroad stations and between such stations and hotels and private residences and performs a service connected with interstate passenger traffic, but is nevertheless not a carrier subject to the provisions of the Act. HELD, while the petioner, Frank Parmalee Company, not being subject to the regulating statute, may doubtless give free transportation to whomsoever it wishes, no common carrier subject to the jurisdiction of the act can lawfully grant free transportation to the officers, agents, or employees of petitioner. This does not apply to the baggage agents of petitioner and other transfer and baggage express companies whose duty it is to meet passenger trains at some point near the larger terminals and go through the trains to arrange for the transfer of passengers and their baggage. In the matter of the right of railroad companies to exchange free transportation with local transfer and baggage companies 12 I. C. C. 40.

(kk) It must be borne in mind that every extension of the privilege of free transportation casts an appreciable additional burden upon those who pay for their transportation and thus contribute to the earnings that carriers are entitled to as just return upon the capital invested. The whole spirit of the act is that this burden should be distributed as equally and equitably as possible. Manifestly, therefore, and especially in view of the discussion accompanying its enactment, the antipass provision should receive a narrow rather than a liberal construction. In the matter of the right of railroad companies to exchange free transportation with local and transfer and baggage companies, 12 I. C. C. 45.

IMPORTANT CASES SINCE 1908

(ll) The anti-pass provision of section 1 of the Interstate Commerce Act as amended, relates only to interstate passes. State passes are not referred to in the Act at all. Colorado Free Pass Investigation, 26 I. C. C. 491, 494.

(mm) And carriers' practices in granting free transportation under section 22 must not result in undue preference or prejudice under section 3. Dairymen's Supply Co. v. P. R. R. Co., 28 I. C. C. 406, 408.

(nn) The gift by interstate carriers of state passes to public officials and others not shippers is an evil not directly within the power of the Commission to redress, but the Commissoin will not lose sight of the practice when the rates of such companies are called in question. Montana Pass Situation, 29 I. C. C. 411.

(oo) Proposed withdrawal of free transportation of attendants accompanying empty fish cars, found justified. Express Charges on Empty Fish Cars, 50 I. C. C. 24, 27, 28.

(pp) The free carriage of persons or of property is contrary to the general principles to be found in the Act to regulate commerce, as amended. The same provides . . . . . for the punishment of those who offend its provisions. Any free carriage of passengers that is now lawful is authorized in the form of exceptions to the general principle to be found in the so-called antipass provision of section 1 of the Act. Any free carriage of property that is lawful is to be found in the exceptions noted in section 22 of the Act. While the free carriage of certain of the excepted classes of passengers has thus been authorized even when traveling for pleasure or for their personal benefit, the spirit of the whole Act for-

bids the free carriage of property except where public interests are involved under the conditions specified in section 22. Legality of Express Franks, 50 I. C. C. 599, 603.

(qq) Any free carriage of passengers that is now lawful is authorized in the form of exceptions to the general principle to be found in the so-called antipass provision of section 1 of the Act. Legality of Express Franks, 50 I. C. C. 599, 603.

(rr) Complainant attacked as unreasonable charges collected for the transportation of 21 carloads of live poultry from Oklahoma, Texas, South Dakota, Kansas, Missouri and Iowa to points in New York, Illinois, Kansas, Ohio and Iowa, and the return transportation of the caretakers. In 49 I. C. C. 96, the Commission found that the cancellation of the western trunk line shipments of live poultry was justified as applicable before, but not after January 10, 1915, the date on which the rating of live poultry, in carloads, was increased from fourth to third class. When the rating was increased the Commission took into consideration in allowing the increase that the charges on the outward movement of the cars covered the return transportation of caretakers, 49 I. C. C. 228 and 32 I. C. C. 380. HELD, cancellation of the rule providing for free return transportation of caretakers in charge of live poultry not justified. Reparation with interest awarded. Swift & Co. v. S. A. & A. P. Ry., 53 I. C. C. 515.

(ss) A common carrier, subject to the provisions of the Act to Regulate Commerce, cannot accept any compensation other than money for the services which it renders, and a pass issued for a nonmonetary consideration, though valid when made, becomes invalid under the provisions of that act. Shrader v. Steubenville, East Liverpool & B. V. T. Co., (W. Va., 1919), 99 S. E. 207.

(tt) A pass issued by a carrier for the transportation of the wife of an employe must be deemed to be issued gratuitously, since the statute applies to it the term "free pass," and since section 2 of the Act of June 29, 1906, forbids the charging by a carrier of "a greater or less or different compensation" for the transportation of passengers from that in its published rates. C. & W. C. Ry. Co. v. Thompson, 34 S. Ct. 964; 234 U. S. 576; 58 L. ed.

(uu) The right of a carrier which is subject to the Interstate Commerce Act, to issue passes to the officers, agents, and employees of carriers not subject to that Act, such as trans-Atlantic steamship companies and foreign railway companies, is recognized in the proviso in §1 of that Act, that the prohibition against free transportation "shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers and their families." United States v. Erie R. Co., 35 Sup Ct. 396 U. S. 259; 59 L. ed. 567.

ALL OTHER CITATIONS

L. & N. R. R. Co. v. Mottley, 133 Ky., 652, 657, 118 S. W. 982; Reversed, 219 U. S. 467, 31 Sup. Ct. 265, 55 L. ed. 297; Schuyler v. S. P. Co., 37 Utah 581, 606 109 P. 458; Gill v. Erie R. R. Co. (N. Y., 1912), 135 N. Y. Sup. 355, 359; Cowley v. Northern P. Ry. Co. (Wash., 1912), 123 P. 998, 999, 1000, 1001; S. P. Co. v. Schuyler, 33 Sup. Ct. 277, 280; 227 U. S. 601; Colorado Free Pass Investigation, 26 I. C. C. 491, 493, 495, 496, 497, 501; Ream v. S. P. Co., 25 I. C. C. 107, 109, 110, 111; Johnson v. A. T. & S. F. Ry. Co., 25 I. C. C. 207, 209; Western Classification Case, 25 I. C. C. 442, 445; C. & W. C. Ry. Co. v. Thompson (Ga., 1913), 80 S. E. 1097, 1099; affirming, 79 S. E. 242; Wentz v. C. B. & Q. R. R. Co., (Mo., 1914), 168 S. W. 1166, 1172; Financial Relations, etc., of Certain Carriers, 31 I. C. C. 261; The Tap Line Case, 31 I. C. C. 490, 494; Financial investigation of N. Y. N. H. & H. R. R. Co., 31 I. C. C. 32, 34; Five Per Cent Case, 31 I. C. C. 351, 410; United States v. Erie R. Co., 35 Sup. Ct. Rep. 396, 397; Fruit Dispatch Co. v. T. & P. Ry. Co., Unrep, Op. A-936; Morris v. West Jersey & S. R. Co. (N. J., 1915) 94 Atl. 593; Best Co. v. G. N. Ry. Co., 33 I. C. C., 1, 2; Commutation Fares to and from Washington, D. C., 33 I. C. C., 428, 435; McArthur Bros. Co. v. E. P. & S. W. Co., 34 I. C. C., 30, 31; Miller & Co. v. N. P. Ry. Co., 34 I. C. C. 154, 155, 156; Norfolk Southern R. Co., v. Chatman, 222 Fed. 805, 806; Clark v. Southern Ry., (Ind., 1918), 119 N. E. 539; Boston & M. R. R. v. Great Falls Mfg. Co., (N. H., 1920), 111 Atl. 691; Van Zant v. Kansas City Southern Ry. Co. (Mo., 1921), 232 S. W. 696: Bergerson v. Great Northern Ry. Co., (Minn., 1924) 196 N. W. 670.

§12a. Land Settlers.

CASES 1887-1908

(a) A carrier may sell its lands at such prices as it may seem fit to establish therefor, and may accept whatever it sees fit in payment; and when it makes a discount from the selling price of an amount equal to the whole or to any part of the fare paid by the purchaser in inspecting or emigrating to said lands, it does not appear to violate any of the provisions of the Act. Smith v. N. P. R. R. 1 I. C. C. 611, 620.

§13. Stations.

CASES 1887-1908

(ab) The defendant having the lawful right, in the public interest as well as in its own interest, to move its station to the new point, it can not be held liable for damages alleged to have been sustained as a consequence of such action. Jones et. al. v. St. L. & S. F. R. R. Co. 12 I. C. C. 144.

(cd) The obligation to provide station facilities at a given point along the line of a railroad may arise under the terms of the charter of a company or may be imposed by statute, and some authorities assert that the duty exists also at common law; but the Commission is not the proper forum to which to appeal for the enforcement either of a charter, statutory or common law obligation, as it has no authority to issue the writ of mandamus, and possesses no common law jurisdiction. C. J. Jones v. St. L. & S. F. Ry. 12 I. C. C. 144, 147.

(ef) Removal of station at Chase, Ind Terr., having three stores, postoffice, two churches, two schoolhouses, and, within a circle of four miles, a population of from 300 to 400, which was located on low lands subject to overflow, and where there was a general lack of business, to a junction point with another carrier 2½ miles west, which may be reached as conveniently by farmers, does not materially impair the interests of the general public. Jones v. St. Louis & S. F. R. Co., 12 I. C. C. 144.

(g) Not liable for damages resulting from removal of station to new point. Jones v. St. L. & S. F. R. R. Co., 12 I. C. C. 144.

(h) Complainant attacked the action of defendant in moving its freight station. In the fall of 1905 defendant moved its station at Chase, Ind. T., 3½ miles west to a junction point with another carrier also called Chase; old Chase has three stores, postoffice, two churches, and two schoolhouses and within a circle of 4 miles has a population of from 300 to 400; the passenger receipts of defendant at old Chase averaged about $47 a month, and for a few months in 1904 and 1905 its freight receipts averaged, owing to cattle for grazing having been shipped there, about $418 a month, but the cattle have since ceased; in addition to this lack of business there, old Chase is located on lowlands subject to overflow by water; prepared freight is now received and delivered at old Chase; defendants passenger trains do not stop at old Chase; defendants passenger trains do not now stop at old Chase, but farmers can reach the station at new Chase as conveniently as they were able to use the station at old Chase. HELD, the record does not show that the interests of the general public have been materially impaired by the removal of the station to the new point, and that under the circumstances complainants are not entitled to an order requiring defendant to re-erect and maintain a station at old Chase. Defendant having the lawful right, in the public interest as well as in its own interest, to move its station to the new point, it can not be held liable for damages alleged to have been sustained as a consequence of such action. C. J. Jones v. St. L. & S. F. Ry. 12 I. C. C. 144.

(i) A railroad is constructed and operated primarily in order to serve the shipping and traveling public. The publication and posting of its schedules of freight and passenger rates may be said to establish a sort of privity between the railroad company and the shippers and travelers of a given community, and to create certain obligations on the part of the company to the shippers and travelers of that community. The Commission does not understand that such a relation exists between a railroad company and the owners of real estate in such a community, or that a railroad company, in the absence of some contract with them for the location and erection of a station at a given point, owes any obligation to the real estate owners, as such, of that community. But even if it be assumed that this Commission has jurisdiction over claims of the character presented, it follows that, having the lawful right, in the public interests as well as in its

own interest, to move its station to the new point, the defendant can not be held liable for damages alleged to have been sustained as a consequence of such action. Jones v. St. L. & S. F. R. Co., 12 I. C. C. 144, 150.

IMPORTANT CASES SINCE 1908

(j) A carrier cannot justify unreasonable discrimination between localities in refusing to stop its passenger trains at a particular place on certain days by a contract not to do so. A controversy involving a question of such discrimination must be determined independent of the contract. Loch Lynn Construction Co. v. B. & O. R. R. Co., 17 I. C. C. 396.

(k) Carriers have the right, and it is their duty, in the operation of their roads, reasonably and practically to adjust the same as to stopping at stations, particularly with reference to the number and speed of passenger trains, frequency of stops and the like, with reasonable adaptation to all of the varying circumstances and conditions existing along their lines at different places. There is a large field for the exercise by them of reasonable discretion respecting the many details of operation and adjustment to varying conditions, particularly with regard to through or limited trains, local or accommodation trains, and stops ranging all the way from what is suitable and reasonable with respect to mere flag stations where, upon signal from the passenger, a local or accommodation train may stop, up to the fastest trains for long distances in through travel, stopping only at important cities or junction points. Loch Lynn Construction Co. v. B. & O. R. R. Co., 17 I. C. C. 396, 399.

(l) A contract between a religious association and a carrier by which the latter agrees not to stop trains on Sunday cannot in any degree justify undue or unreasonable discrimination between stations on its line. Loch Lynn Construction Co. v. B. & O. R. R. Co., 17 I. C. C. 396, 399.

(m) The suitable location of a passenger terminal within a great city is a matter which can best be determined locally rather than by a commission sitting in Washington, and a referendum vote is entitled to great weight in this connection. Cleveland Passenger Terminal Case, 70 I. C. C. 342, 350.

(n) A carrier which has accepted a passenger for a destination beyond its own lines does not discharge its duty by delivering him at the junction point during a heavy rain, with no other shelter than that afforded by a "switch shanty," where he could have reached a through coach attached to the train by merely passing through other cars had he been informed that there was such a coach. Texas & P. R. Co. v. Bigger, 36 Sup. Ct. 127, 129; 239 U. S. 330; 60 L. ed. 310.

ALL OTHER CITATIONS

Eddleman v. Midland Valley R. R. Co., 13 I. C. C. 103, 104; Snook v. Central R. R. Co. of N. J. 17 I. C. C. 375, 378; Mattison v. Penn. R. R. Co., 23 I. C. C. 233; C. R. I & P. Ry. Co. v. State (Okla., 1923) 217 P. 147.

§13½. Stopovers.

CASES 1887-1908

(a) The sale of a ticket limited, not as to time, but only as to the privilege of a stopover, at the reduced price named for limited tickets in the published schedules filed with the Interstate Commerce Commission, which do not specify what is meant by the word "limited," is not a violation of the Act to Regulate Commerce. United States v. Egan (D. C. E. D. Mo.), 3 I. C. R. 582.

(b) A state statute making railroad tickets good for six years and giving the holder of one the right to stop off at as many stopping places as he pleases, before reaching his destination, cannot, in view of the power of Congress over commerce, be applied contrary to their terms to tickets sold beyond the limits of the state and entitling their holders to passage from a point in a foreign state or country to one in the state which enacted the statute. Lafarier v. Grand Trunk R. Co., 4 I. C. R. 198.

IMPORTANT CASES SINCE 1908

(c) Complainant bought transportation for himself and wife from El Paso Tex., to San Francisco, Cal., via Portland, Ore., and return. The tariff and tickets provided that the going time limit should be Oct. 20, 1909. Under privileges lawfully extended by the carrier, complainant and his wife stopped off at Boise, Idaho, to visit a sick daughter and did not resume their journey until Oct. 22nd. The agent at Portland refused to honor the tickets and complainant was obliged to buy two tickets of $20 each from Portland to San Francisco, for which he seeks to recover reparation. The tariff provided that in

case of illness of a holder of a ticket, or accompanying member of the family of the holder, stopover might be granted and the limit of the ticket extended by exchange or otherwise after the passenger had sufficiently recovered to resume the journey. HELD, complainant was not entitled to reparation. The provision recited related to a sick passenger and not to some third party not a passenger and the extra fares were properly collected. Parker v. S. P. Co., 24 I. C. C. 681.

§14. Through Routes and Rates.

See Through Routes and Joint Rates.

CASES 1887-1908

(a) In the absence of statutory authority one railroad company can sell tickets and check baggage over the road of another company only by agreement; and the Act to Regulate Commerce does not in terms require one railroad company to sell through tickets over the road of another company. Chicago & A. R. R. Co., v. Penn. Co., 1 I. C. R. 357.

(b) The Act does not require one company to sell through tickets over road of another. Chicago etc. R. R. Co. v. Pennsylvania Co. 1. I. C. R. 357.

(ba) Complainants charge violation of section 3 of the Act in refusing certain facilities for receiving, forwarding, and delivering passengers to complainants lines, consisting of through or coupon tickets, which being afforded to other and competing companies, give, the complainants alleged, undue and unreasonable preference to those companies. HELD, In the absence of statutory authority one railroad company can sell tickets and check baggage over the road of another carrier only by agreement; and the Act does not in terms require one railroad company to sell through tickets over the road of another company . Railroad companies may, under their right to control the official conduct of their own agents, forbid their agents to receive commissions from other companies for the sale of tickets over such other companies roads, and may direct them not to sell tickets over roads of companies which refuse to recognize this corporate authority but which insist on subsidizing such agents. One person or corporation has no right to interfere with the employees of another, and the act does not disturb this principle. The practice of one companys paying the agents of another company a commission for selling tickets over the formers road is not reasonable or proper. The defendant companies in prohibiting their agents from receiving commissions and in refusing to sell through tickets over the roads of complainants while the latter insists on paying commissions to defendants agents, have not contravened the third section of the Act, which require that railroad companies shall afford all reasonable, proper and equal facilities to connecting line. Chicago & Alton R. R. v. Pennsylvania Co., 1 I. C. C. 357.

(bb) Railroad companies may, under their right to control the official conduct of their own agents, forbid their agents to receive commissions from other companies for the sale of tickets over such other companies roads, and may direct them not to sell tickets over roads of companies which refuse to recognize this corporate authority but which insist on subsidizing such agents, Chicago & Alton R. R. v. Pennsylvania Co. 1 I. C. C. 357, 360.

(bc) The defendant companies in prohibiting their agents from receiving commissions and in refusing to sell through tickets over the roads of complainants while the latter insist on paying commissions to defendants agents, have not contravened the third section of the Act, which requires that railroad companies shall afford all reasonable, proper and equal facilities to connecting lines. Chicago & Alton R. R. v. Pennsylvania Co. 1 I. C. C. 357, 361.

(c) Reduction of passenger rates without consent of connecting lines over which tickets are sold, and without filing schedules thereof with Commission, HELD, to be in violation of section 6 of the Act to Regulate Commerce. Re Passenger Tariffs and Rate Wars 2 I. C. R. 341.

(d) When there is no joint rate in effect from a station on the line of one carrier to a station on another carrier's line to which a ticket is applied for, it is competent to name a through rate made up of the sums of rates prevailing on the several roads or parts of roads made use of in the journey; using for such a through rate local rates where there are no joint rates in combination with locals, where they are in effect for any part of the distance. When no joint rates are announced, it is understood

that the local rates are employed in arriving at the through rate. Re Passenger Tariffs (Com.), 2 I. C. R. 445.

(e) A railroad company is under no obligation to honor tickets for passage over its line issued by another company, in the absence of an arrangement between them. Oregon Short Line v. U. N. R. Co. v. Northern Pacific R. Co. 4 I. C. R. 250.

(f) In making contracts for through transportation of passengers the initial carrier may lawfully prefer a road going through to the point of destination to one going only part of the way, an arrangement with which would necessitate further arrangements to reach the desired point. Little Rock Memphis R. Co. East Tennessee, Virginia & Georgia R. Co. 4 I. C. R. 201.

(fa) No unlawful discrimination against a railroad is effected by the traffic arrangement of a rival road running parallel with it for a considerable distance from their common initial point by which through tickets are sold to points on the rival road beyond the point of divergence exclusively over the latter without granting the former any facilities for securing a share of the traffic to such points for the distance which it could carry it. Little Rock-Memphis R. Co., East Tennessee, Virginia & Georgia R. Co. 4 I. C. R. 261.

(g) Defendant charged one fare of 5 cents for the ride in Maryland and another for the ride in the District of Columbia, selling, however, six tickets for 25 cents, good for passage in either the District or State, making a through fare of 10 cents, or two such tickets for a continuous ride between Maryland and the District, the total length of its road being about 7½ miles. HELD, That unreasonableness cannot be presumed from the amount of fare so charged and the other facts incidentally appearing, no direct evidence upon that question having been presented. Wilkon v. Rock Creek R. Co., 7 I. C. C. 83.

(h) A charge of 5 cents over the portion of a railway in Maryland, and a like charge over that portion in the District of Columbia, making a through fare of 10 cents for 7½ miles, cannot be presumed unreasonable in the absence of any direct evidence to that effect. Wilson v. Rock Creek R. Co., 7 I. C. C. 83.

(ha) The provision of New York Laws 1897, chap. 506, that no person except an authorized agent shall sell any ticket for conveyance on any vessel or railway train, is a mere police regulation to prevent fraud on passengers, is not a "regulation" of interstate commerce within the meaning of the United States Constitution, although it entitles the holder to transportation without the State. People of the State of N. Y. ex. rel. Tyrolu v. Warden of City Prison, 8 I. C. C. App. LI.

(i) Complainant attacked passenger fares charged from Washington, D. C., via Richmond, Va., to Moseley, Va., as unreasonable. Through rate $4.65, rate to Richmond $3.50. beyond 65c, combination on Richmond $4.15. The evidence shows that the local fares to and from Richmond applied to and from different stations and that the extra 50c covered a transfer charge. HELD, as the complainant was not subjected to unjust discrimination and the reasonableness of the transfer charge was not attacked, complaint dismissed. Behrend v. Washington Southern Ry. 9 I. C. C. 637.

(j) Complainant alleged unlawful discrimination in the matter of passenger rates and tickets to and from Yellowstone National Park. The defendant railway company publishes rates entitling passengers to transportation over its line from St. Paul, Minn., and other points, including eastern cities, to Gardiner, Mont., and return, via Gardiner through the Yellowstone Park, a Government reservation, by stages of the defendant transportation company and return, and also, if desired, to accomodations at hotels in the Park conducted by the defendant association. Complainant also operates a stage line through the Yellowstone Park and has established permanent camps where hotel accommodations are furnished. Licensed camping parties are conducted through the Park by the intervenors. Tickets issued by the defendant railroad company providing both railroad and stage transportation, and those also including hotel accommodations are coupon tickets, covering the service by rail, by stage, and at the hotels, and the rates charged therefor are divided between the railway company and the stage company or between the railway company the stage company and the hotel company, as the case may be, in such manner that the railway company receives for its rail service less than its established rate to Gardiner and return. The joint rate and ticketing arrange-

ment is solely between the railway company and other defendants. The railway company admittedly controls the policy and operations of the other defendants. Excellent facilities for touring the Park are furnished by complaint. HELD, that the defendant railway company, stage transportation company, and hotel associates, are not competent in law to form through routes and establish joint rates as provided in section 6 of the Act, and the circular or tariff under which rates and tickets in question are provided can not be regarded as a joint tariff established by connecting carriers under that act. That, the charging of a given sum for rail transportation to Gardiner and return only, and the acceptance of a smaller sum for the rail transportation when the passenger goes by stage to points in or through Yellowstone Park, with or without hotel accommodations therein, the service performed by the railway company being the same in each case, constitutes unlawful discrimination. That the arrangements between defendants under which the through tickets are issued and sold and the proceeds divided, and the joint operations of defendants as actually carried on, constitute an effort and undue and unreasonable preference and advantage to the transportation company and hotel association, and subject complainant and others in like situation, as well as passengers traveling to and from Yellowstone Park, to undue and unreasonable prejudice and disadvantage; and while it is not decided that a carrier subject to the Act may not in some cases provide for transportation beyond its own line by stage or other similar conveyance, the facts shown in this case establish a discrimination forbidden by law. It is the duty of the defendant railway company to so conduct and control its operations relating to the transportation of passengers to Yellowstone Park as to afford such passengers full and equal opportunity at the terminus of its line at Gardiner and elsewhere to select the stage line or other agency they may desire to use for touring the Park, and the places and manner of entertainment therein. Wylie v. N. P. Ry. 11 I. C. C. 145.

(k) A railway company, stage transportation company, and a hotel association which furnishes accommodations to passengers are not competent in law to form through rates and establish joint rates as provided in section 6 of the Act to regulate commerce; and the circular or tariff under which the rates and tickets in question are provided cannot be regarded as a joint tariff established by connecting carriers under that Act. Wylie v. Northern P. R. Co., 11 I. C. C. 145.

(l) Ordinarily the through interstate passenger fare should not exceed the sum of local fares, but there is no specific requirement in the regulating statute to that effect, and the only question for determination is whether the fare complained of is unreasonable. Artz v. Seaboard Air Line Railway, 11 I. C. C. 458.

IMPORTANT CASES SINCE 1908

(m) Circumstances can rarely exist which would justify charging a passenger more for a through ride between two points than the combination of locals between the same points, where the locals have been voluntarily established. U. S. v. B. & O. R. R. Co., 15 I. C. C. 470, 471.

(n) If carriers maintain through passenger fares made up of the sums of locals they should use the lowest scale available, especially when the higher local includes privileges not directly pertaining to the transportation and of which the through passenger does not care to avail himself. U. S. v. B. & O. R. R. Co., 15 I. C. C. 470, 472.

(o) The caprice, or even a proper desire, of an occasional passenger should not govern, but if any considerable part of the traveling public reasonably prefer to use some other route rather than the one existing, then the existing route cannot be called a reasonable and satisfactory through route. In the Matter of Through Passenger Routes via Portland, Ore., 16 I. C. C. 300, 303.

(p) While in some cases a higher through passenger fare may be maintained than the sum of the local fares, such fare can only be so maintained under peculiar circumstances and for special reasons. Kurtz v. Penn., Co., 16 I. C. C. 410, 415.

(q) Through checking of baggage and through sleeping accommodations and other through passenger accommodations may properly be accorded, under tariff authority, upon presentation to the initial carrier of a combination of tickets covering the entire journey, in which may be included mileage, excursion and commutation tickets, but it is unlawful to check baggage beyond the point to which

a ticket is presented upon a mere declaration of intention to go farther. In Re Mileage, Excursion and Commutation Tickets, 23 I. C. C. 95, 96.

(r) The through routes over which some of the joint fares apply embrace substantially less than the entire length of the lines of railroad of the defendants which lie between the termini would not be unreasonably long as compared with other practicable through routes which could otherwise be established. Western Pacific R. R. v. S. P. Ry., 55 I. C. C. 71, 73.

(s) Failure of the Louisiana & Arkansas Ry. Co., to extend to Natchez, Miss., its through passenger-train service, now terminating at Vidalia, La., not shown to result in undue prejudice in favor of Alexandria and Shreveport, La., which cities it also serves and the establishment of such service to all points on that line not shown to be in the public interest or to be practicable. Natchez Chamber of Commerce v. L. & A. Ry. Co. 59 I. C. C. 678.

(t) The courts in determining whether a satisfactory through route for passenger service already exists will, in complex and delicate cases, attach great weight to the judgment of the Commission. I. C. C. v. N. P. Ry. Co., 216 U. S. 538, 544, 30 Sup. Ct. 417, 54 L. ed. 608.

(u) The Commission has no power to make an order establishing a through route for passenger traffic if a reasonable and satisfactory one already exists. I C. C. v. N. P. Ry. Co., 216 U. S. 538, 544, 30 Sup. Ct. Rep. 417, 54 L. ed. 608.

(v) Whether a reasonable and satisfactory through route for passenger service already exists so as to prevent the Commission from establishing another such route may be inquired into by the courts. I. C. C. v. N. P. Ry. Co., 216 U. S. 538, 544, 30 Sup. Ct. Rep. 417, 54 L. ed. 608.

ALL OTHER CITATIONS

In Re Mileage, Excursion and Commutation Tickets, 23 I. C. C. 95, 96, 97; In Re Through Passenger Routes, 16 I. C. C. 300, 303, 310; Kurtz v. Penn. Co., 16 I. C. C. 410, 414, 413, 415; Railroad Com. of Arkansas v. M. & N A R. R. Co., 30 I. C. C. 448, 491; S. A. L. Ry. Co. v. Patrick (Ala. 1914), 65 So. 437, 439; Burford v. L. & N. R. R. Co., 31 I. C. C. 182; Pacific Nav. Co. v. S. P. Co., 31 I. C. C. 472; Lipman v. A. C. L. R. R. Co., Unrep. Op. A-896; Beaham v. N. Y. C. & H. R. R. Co. (Mo., 1915) 174 S. W. 150, 153; International Paper Co. v. D. & H. Co., 33 I. C. C. 270, 273; Damon v. Crosby Transp. Co., 33 I. C. C., 448, 451; The Ogden Gateway Case, 35 I. C. C. 131, 143; Passenger Fares from Milwaukee, Wis., 38 I. C. C. 98; Texas & P. R. Co. v. Bigger, 127 Sup. Ct. 127, 130; Jackson Chamber of Commerce v. N. Y. C. R. R. Co., 42 I. C. C. 155; .C M. & St. P. Ry. v. G. N. Ry., 49 I. C. C. 302, 307; Colonial Nav. Co. v. N. Y. N. H. & v. Patrick (Ala. 1914), 65 So. 437, 439; H. R. R., 50 I. C. C. 625, 633; Washington, B. & A. Electric R. Co. v. Waller, 289 Fed. 598.

§14½. Tourist Cars.

CASES 1887-1908

(a) A railroad company which transports immigrants in unfit cars will be required to provide better accommodations, and to ascertain their fitness the Commission will make its own inspection. Savery & Co. v. N. Y. Central & Hudson River R. Co. 2 I. C. R. 210.

IMPORTANT CASES SINCE 1908

(b) There is no necessity to order the railway companies to provide for the reservation of seats during the daytime in their tourist cars. These tourist cars are really second-class sleepers. They are chiefly used by those who are taking a long journey and cannot afford to pay for accommodation in the first class sleeping cars. The suggestion is made that a person traveling a short distance might for a few hours be permitted to reserve a seat in a tourist car. There is no necessity for this. The first-class cars are more comfortable than the tourist cars, and often less crowded. The tourist cars are used chiefly by those taking a long journey, and, if seating accommodation was reserved during the daytime, it might prevent those for whom the cars were intended securing proper accommodation. A large number of women and children are usually to be found on tourist cars, and it seems undesirable that they should be disturbed by the class of passengers that one sometimes finds traveling short distances on a second-class ticket on a railway. (Can. Ry. Com. 1914), Day Seats in Tourist Sleepers. File 22694.

IV. CLAIMS FOR DAMAGES.

§14¾. In General.

See Claims; Reparation.

CASES 1887-1908

(a) The Commission declines to proceed on the plaintiff's claim for damages, for injuries done in his violent removal from car, leaving him his remedy in the courts. Heard v. Georgia R. Co., 1 I. C. R. 314, 719. Council v. Western & Atlantic R. Co. 1 I. C. R. 292, 355, 638.

(aa) Complainant charged unjust discrimination in violation of section 2 and 3. HELD, where a railroad ticket broker having no apparent interest in the transaction, presented a complaint alleging unjust discrimination on the part of a railroad company in permitting a certain person to transfer to another the return portion of a passage ticket, while it refused to grant the same privilege to a third person holding a ticket alleged to be similar (but which was not so in fact) HELD, person aggrieved should complain in his own name, and that the complaint by the ticket broker would not be entertained. The Act does not afford a remedy for transactions which occurred before it took effect. Ottinger v. S. P. R. R. 1 I. C. C. 607.

(b) The complainant purchased what the respondent termed a quarterly commutation ticket on the 13th day of June, specifying the number of trips that might be taken thereon as 180, but it provided that the term should expire on the 31st day of the following August, and this was known to the complainant when he made the purchase. It was similarly stated on each one of such quarterly tickets when it was to expire viz.: at the end of the third calendar month after it was issued. HELD, that the complainant was not entitled to recover any portion of the purchase price for the thirteen days less than a full quarter. Sidman v. Richmond & Danville R. Co., 2 I. C. R. 766.

IMPORTANT CASES SINCE 1908

(c) Reparation awarded for unlawful charges on account of an error in the issuance of a ticket for transportation from Omaha, Neb., to Portland, Oregon. Chambers v. C. G. W. R. R. Co., Unrep. Op. 1904.

(d) Complaint seeking reparation in amount of additional passenger fares assumed by complainant from stop-over-point to enable connection for completion of excursion trip within time limit, upon defendants' train from such point being reported late, dismissed. Summer-excursion tickets granted certain definite rights within definite times. If, for own convenience, complainant elected to assume that defendants' train from stop-over point would be on time when he chose to leave for completion of passage, and when that assumption failed, or threatened to fail, purchased other tickets, defendants are not liable in damages under the act. Jurisdiction of commission does not extend to claims arising from anticipated delay of passenger trains. Hohfelder v. D. & R. G. W. R. R. Co., 83 I. C. C. 587.

(e) A "gatekeeper", to whom the plaintiff presented her ticket, after having purchased it from an agent of the Central of Georgia Railway Company and who accompanied her to the train and assisted her in boarding the same, and who was the keeper of the gate leading to the tracks of that railway company at the station where the ticket was purchased, is inferentially the agent of the Central of Georgia Railway, and an allegation of these facts is a sufficient allegation as to such agency. Ryle v. Central of Georgia Ry. Co. (Ga., 1923) 119 S. E. 342.

ALL OTHER CITATIONS

Kennedy v. N. Y. C. & H. R. R. R. Co., Unrep. Op. A-776; Sanders v. A. C. L. R. Co. (S. C. 1915), 85 S. E. 167, 168; Gallo v. L. V. R. R. Co., Unrep. Op. 2022; Johnson v. A. T. & S. F. Ry., 38 I. C. C. 294; Hartley v. C. & N. W. Ry. Co., Unrep. Op. 2246; Secoulsky v. Oceanic Steam Nav. Co. (Mass. 1916), 112 N. E. 151, 152; May v. Seaboard Air Line Ry., (S. C., 1918), 96 S. E. 482; Parsons v. C. B. & Q. R. R. Co., 59 I. C. C. 130.

§14¾a. Burden of Proof.

IMPORTANT CASES SINCE 1908

(a) Where an existing rate is attacked, the burden is on the complainant to establish that it is unreasonable in fact. This is especially so where the rate has been in force for a long period during which time the traffic greatly increased in volume. L. & N. R. Co. v. United States, 35 Sup. Ct. 696, 698; 238 U. S. 1, 59 L. ed.

§15. Errors of Ticket Agents.

See Erroneous Rate; Tariffs § 3 (2).

CASES 1887-1908

(a) A misapprehension under which a party has paid for one journey in two sections, whereby the cost of the transportation has been made more than it would have been had a through ticket

been purchased, may lawfully be corrected by return of the excess, though the carriers were without fault and only charged for each portion of the journey the regular rates. Major J. P. Sanger v. The Southern Pacific Co., 2 I. C. R. 548.

IMPORTANT CASES SINCE 1908

(b) Damages may be awarded where additional charges accrue as a result of the error of the carrier's agent in indorsing an excursion ticket. Gorman v. C. & O. Ry. Co., 21 I. C. C. 613.

(c) A carrier is liable for the negligent act of its agent in not permitting a passenger to take advantage of lawfully published interstate rates or facilities. Sanders v. A. C. L. R. Co. (S. C., 1915), 85 S. E. 167, 169.

(d) Through error of initial carrier, complainant purchased a 7-day limited ticket instead of a 30-day limited one; connecting carriers collected cash from complainant because time limit had expired, and therefore exempt from joining in making refund. Burden solely upon the initial carrier. Dierks v. S. P. Co., Unrep. Op. A460.

ALL OTHER CITATIONS

Ballin v. S. P. Co., 19 I. C. C. 503; Allender v. C. B. & Q. R. R. Co., 16 I. C. C. 103, 105; I. C. R. R. Co. v. Fleming (Ky., 1912), 146 S. W. 1110, 1111; Melody v. G. N. Ry. Co., 25 S. D. 606, 610, 127 N. W. 543; Chambers v. C. G. W. R. R. Co., Unrep. Op. 1904; Waber v. U. & D. R. R. Co., Unrep. Op. 2204; Johnson v. A. T. & S. F. Ry. Co., 38 I. C. C. 294; Curl v. S. P. L. A. & S. L. R. R. Co., 40 I. C. C. 65, 66.

§16. Lost Tickets.

IMPORTANT CASES SINCE 1908

(a) Complainant lost a commutation ticket issued under a tariff that provided refund would be made only when the lost ticket was found and returned to the proper officer of the issuing company. The ticket was never used apparently by the finder and defendant refused to make refund on account of the tariff. HELD, that the condition in the tariff is unreasonable and discriminatory, because many cases exist in which recovery of a lost ticket is impossible. Reparation awarded. Moore v. N. Y. & L. B. R. R. Co., 20 I. C. C. 557.

(b) Where complaint demanded a refund or further service on a lost commutation ticket of the "punch-cancellation" variety, which ticket was lost by complainant when only a part of the rides had been used, and at his request was "outlawed" by defendants. HELD, that it is clear that to allow redemption on alleged lost and unrecovered "punch-cancellation" commutation tickets, where the carrier has no check on the number of rides used, would afford ready means for violation of law and perpetration of fraud; complaint dismissed. Hill v. P. R. R. Co., 25 I. C. C. 650.

(c) Complainant demanded defendants refund the value of the unused portion of a ticket from Albany, Ga., to Philadelphia, Pa., lost by him enroute. The ticket called for passage by rail to Savannah, and thence by ocean carrier to destination. While enroute to Savannah he lost the portion of the ticket entitling him to ocean transportation, promptly notified the ocean carrier of his loss and purchased another ticket to Philadelphia. The issuing carrier's tariff provided against the redemption of mislaid, lost, destroyed or stolen passenger tickets, and stated that requests for redemption of unused portions of tickets would be honered only when accompanied by the unused transportation. The carrier contended that if compelled to make refund on tickets alleged to have been stolen it would be obliged to adopt burdensome practices and records to protect itself against fraudulent demands. Even an accounting system conducted at enormous expense would not fully protect against fraudulent claims. HELD, that it would be unjust and unfair to carriers, and involve them in additional expense out of all proportion to the results to be obtained, to require them to make refunds of the value of lost passenger tickets. Complaint dismissed. Miller v. A. C. L. R. R. Co., 29 I. C. C. 526.

(d) And where mileage book cover was lost, and presentation was made more than 18 months after book was issued the refusal to make refund of $5 was not found unreasonable. Jaeger v. A. R. R. Co., 34 I. C. C., 28.

§16½. Redemption of Tickets.

IMPORTANT CASES SINCE 1908

(a) Complainant alleged unlawful discrimination by reason of the carrier's failure to redeem three unused tickets for accommodation on its sleeping cars from certain New Hampshire points to New York and Boston. The tickets had

not, contrary to the carriers requirements, been presented for redemption prior to the departure of the trains on which the accommodations were reserved; though notice by telephone had been given two days before departure of the trains. HELD, the evidence was insufficient to sustain the complaint. Reinert v. Pullman Co., 36 I. C. C. 304.

(b) By the Transportation Act, Feb. 28. 1920, Congress has undertaken to appropriate the field as to the redemption of unused tickets, and Pen. Code 1911, arts. 1527-1529. relating to redemption of unused railway tickets and providing a penalty for failure to make refund. do not apply to interstate commerce. in view of Const. U. S. art. 1. § 8. Neubert v. Chicago, R. I. & G. Ry. Co., (Tex., 1923), 248 S. W. 141.

(c) There was no duty on a carrier at common law to redeem an unused ticket or part thereof. Neubert v. Chicago, R. I. & G. Ry. Co., (Tex., 1923), 248 S. W. 141.

(d) Where a passenger, on the day he purchased a ticket, presented it to the carrier's agent for redemption, the fact that he signed no receipt or statement of facts concerning the ticket or its purchase was no defense, in a suit to recover the amount paid, unless he was requested to do so. Thompson v. New York Cent. R. Co., 195 N. Y. S. 954.

V. OPERATION.

§17. In General.

See Evidence §18; Operation.

CASES 1887-1908

(a) It would be directly at war with the rights and safety of the traveling public, as well as of the railroad company, if the line of the carrier should become an arena over which it should be compelled to make a contract of some sort with every car company or inventor of cars, and transport the public in trains of which such cars were part. Worcester Excursion Car Co. v. Pennsylvania R. Co., 2 I. C. R. 792.

(aa) The extraordinary liability imposed by law upon a railroad company as a common carrier for the sufficiency and safety of its passenger cars and the competency of its employes in operating such cars is a highly important protection to the public; but such company might very reasonably claim that it was not responsible for a passenger car of a private car company, or the consequences of that passenger car being transported as part of its train in causing a wreck, collision or delay, when it had no volition in accepting or rejecting such car, but was forced to transport it by order of a civil tribunal. Worcester Excursion Car Co. v. Pennsylvania R. Co., 2 I. C. R. 792.

(ab) Cost of passengers less in slow than high speed trains. Re Party Rate Tickets, 12 I. C. C. 95.

IMPORTANT CASES SINCE 1908

(b) In part because of conditions growing out of the war the passenger traffic has become relatively more profitable during the last three years. A reduction in the number of passenger trains occurred simultaneously with a substantial increase in the number of passengers carried, resulting in heavier loading of passenger cars and trains. Ex Parte 74 Application for Increase in Rates, 58 I. C. C. 220, 240.

(c) Attempts to evade the plain requirements of the fourth section of the act in matter of passenger fares, by annexing different conditions relating to the amount of baggage carried, or to the time for which tickets are good, will receive no countenance by the commission. Fares between New York and Points West of Newark, 74 I. C. C. 520.

(d) Complainant attacked refusal of defendant to accord baggage car service on passenger trains for the movement of condensed skim milk from Richmond, Petersburg and Suffolk, Va., to Rocky Mount and Wilson, N. C., and to receive shipments of milk, cream, and condensed skim milk from connecting lines for transportation in baggage cars, as unjust and unduly prejudicial. Passenger trains are provided for the transportation of passengers and baggage. Milk, cream and buttermilk are daily necessities, and this fact in connection with their perishable nature has compelled an extraordinary expedited service to be accorded to these commodities. Defendants should not be compelled to extend this service to other commodities simply because they are somewhat similar in character where the same compelling reasons do not exist. It is not shown that the present means of transportation accorded complainant are inadequate. HELD, refusal of defendant to transport condensed skimmed milk in passenger trains in baggage cars not unreasonable or unduly prejudicial,

complaint dismissed. Chapin Sacks Corp. v. A. C. L. R. R., 80 I. C. C. 255.

ALL OTHER CITATIONS

The New England Investigation, 27 I. C. C. 560, 562; C. M. & St. P. Ry. Co. v. G. N. Ry., 49 I. C. C. 302, 307; Railway-Mail Pay, 56 I. C. C. 1, 65; Minnesota Fares and Charges, 62 I. C. C. 198.

§18. Publication and Tariffs.

CASES 1887-1908

(a) Neglect to publish rates for mileage tickets is violation of Act. Larrison v. Chicago, etc. R. Co., 1 I. C. R., 369.

(b) Reduction of passenger rates without consent of connecting lines over which tickets are sold, and without filing schedules thereof with the Commission, held to be in violation of section 6 of the Act. Re Passenger Tariffs and Rate Wars, 2 I. C. C. 340, 343.

(c) New individual or joint passenger tariffs must be posted at stations to which they apply, and tickets can legally be sold on combination of initial or terminal locals therewith. Re Passenger Tariffs (Com.), 2 I. C. R. 445, 447.

(de) Passenger excursion rates are required to be published according to the provisions of section 6 of the Act Party rate tickets are not commutation tickets and when party rates are lower than contemporaneous rates for single passengers they constitute discrimination, and are illegal. P. C. C. & St. L R. Co. v. B. & O. R., 2 I. C. C. 729, 732.

IMPORTANT CASES SINCE 1908

(f) Practice of complainant of absorbing in part or in whole the local fares of the Great Northern Ry., from stations on its line north of Seattle, to Seattle, for the purpose of establishing through rates, is unlawful, as the tariff provisions and the practices thereunder conform to requirements of section 6. C. M. & St. P. Ry. v. G. N. Ry., 49 I. C. C. 302, 305, 307.

(g) A passenger is bound to proceed upon the assumption that the carrier's published tariffs as to the transportation and care of baggage are conclusive until such tariff is altered by the carrier or competent legal authority. Borden v. N. Y. C. R. R., 162 N. Y. S. 1099.

ALL OTHER CITATIONS

Brown v. Terre Haute, I. & E. Traction Co., 113 N. E. (Ind. 1916), 313; M. K. & T. Ry. v. Ashinger (Okla. 1917), 162 Pac. 814.

§19. Procedure.

See Procedure Before Commission.

CASES 1887-1908

(a) HELD, that applications averring that the railroad companies do not now violate the law and do not wish to do so, and asking the ruling of the Commission (in advance of any action by the railroads) as to the effect of the Act in reference to the granting of free passes to railroad employees and their families, and in reference to an additional allowance of free baggage to commercial travelers, cannot be entertained. Re Order of Ry Conductors 1 I. C. R. 18.

(b) Where a railroad ticket broker, having no apparent interest in the transaction, presented a complaint alleging unjust discrimination on the part of a railroad company in permitting a certain person to transfer to another the return portion of a passage ticket, while it refused to grant the same privilege to a third person holding a ticket alleged to be similar (but which was not so in fact), HELD, that the person aggrieved should complain in his own name, and that the complaint by the ticket broker would not be entertained. Ottinger v. Southern Pac. R. R. Co., 1 I. C. R. 607.

(c) Complaint by ticket broker, having no apparent interest in transaction, alleging discrimination in allowing transfers of return tickets, will not be entertained. Ottinger v. Southern Pac. R. Co., 1 I. C. R. 607.

(d) Complainant attacked passenger fares charged immigrants from New York, N. Y., to Chicago, Ill., as unreasonable. Subsequent to the hearing the rates were reduced. HELD, complaint dismissed. Savery & Co. v. N. Y. C. & H. R. R., 2 I. C. C. 210.

PASSES

See Crimes III; Free transportation.

PAST RATES

See Evidence §29, §43; Reasonableness of Rates §25.

PEDDLER CAR

See Cars and Car Supply §9¾.

PEDDLER CAR SERVICE

IMPORTANT CASES SINCE 1908

(a) The operation of the peddler car is as follows: The car is iced, for the

service must in all cases be under refrigeration, and loaded by the packer with fresh meats and packing house products, in whatever quantity and proportion may be desired. The car is then transported to the first unloading point, where it is opened and a portion of the contents removed. From thence it goes to the next unloading point, and so on to its final destination. The work of unloading is performed by the employes of the carrier in the same manner that local freight is unloaded at the various stations, no special or additional storage facilities being provided. The initial icing is by the packer and if any subsequent icing is needed the packer pays for the ice actually used. In Re Investigation of Unreasonable Rates on Meats, 23 I. C. C. 656, 670.

(b) Carriers should publish tariffs according peddler car service on packing house products and fresh meats from Oklahoma City and Wichita to various points in Oklahoma, Texas and New Mexico; the rate upon packing house products should be 130 per cent and upon fresh meats 150 per cent of the carload rate and a minimum may be required equivalent to the earnings upon 10,000 lbs. of fresh meat to the most distant point. Refrigeration should be provided or paid for by the shipper in addition to the above rates. In Re Investigation of Unreasonable Rates on Meats, 23 I. C. C. 656, 670.

(c) The Commission considered a proposed increase in the minimum weight applicable generally to packing house products and other commodities to be shipped in peddler cars at the fouth class rate between points in Western Trunk Line territory, from 10,000 to 12,000 pounds. The existing rule governing peddler cars was also amended by inserting the words "and other freight," after the list of commodities which might be included in making up the minimum. The movements of peddler cars was a special service, which could only be used by a few of the larger packers, and the routes selected by the packers often passed through junctions through which ordinary traffic did not pass; but the peddler car routes averaged less than 280 miles, the service was not greater than that rendered in connection with ordinary less-than-carload traffic, the packer paid the regular less-than-carload rates, guaranteed a minimum per car earning, and saved the carrier the expense of refrigeration. Car-mile earnings ranged from 17.55c to 20.1c. The carriers' earnings were largely increased by penalties exacted, where the deficit in weight was way-billed at the fourth class rate; the larger packers paying deficits on from 25 to 35 per cent of the cars handled for them. From 66 2-3 to 75 per cent of peddler cars were loaded to 10,000 pounds, and on most shipments 12,000 pounds could not be loaded, because orders could not be secured for sufficient quantities. HELD, that the proposed increased minimum had not been justified. Rule under suspension cancelled. Rules Governing Shipments of Freight in Peddler Cars, 32 I. C. C. 428.

PENALTY RATES

See Demurrage §7½.

IMPORTANT CASES SINCE 1908

(a) The system of rates known as "penalty rates" (whereby a relatively high rate is charged on cotton from point of origin to compressing point, and if handled to the port by the same carrier such charge applied on the through rate) is wholly out of line with the ethics of modern ratemaking. One rate should be established from the point of origin to the compress point, and this rate should be no more than the reasonable local rate. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 275.

(b) Penalty rates is a system wholly out of line with the ethics of modern rate making. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 275.

(c) So-called "penalty rates" on cotton to compress points are condemned by the Commission. It is intended that the rate to the compressing point shall be so fixed that the shipper may direct his shipment to any desired port without incurring any penalty or having to pay more than the reasonable through rate from originating point to port. Mobile Chamber of Commerce v. M. & O. R. R., 32 I. C. C. 272, 276.

(d) No valid reason for "penalty rate system." Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 276.

(e) Complainant attacked the sixth-class rate of 6½c per 100 lbs. charged on two carloads of logs shipped from

Cambridge City, Indiana to Dayton Ohio. There was via the same route a commodity rate of 5c, limited, however, to apply on logs manufactured at Dayton when the products were shipped out over the carrier's line. HELD, that the rate charged was unreasonable to the extent that it exceeded 5c, it being improper to impose an additional sum as a penalty against a shipper because different carriers move his raw material to a transit point and his manufactured product out. Reparation awarded. Hossofous v. P. C. C. & St. L. Ry., 37 I. C. C. 575.

(f) It is unreasonable for carriers to impose any additional sum as a penalty against a shipper because different carriers move his raw material to a transit point and his manufactured product out. Hossafous v. P. C. C. & St. L. Ry., 37 I. C. C. 575, 576

(g) New storage charges proposed on grain in elevators at Atlantic ports are in nature of penalties, by which carriers hope to expedite movement of grain but it is not shown that such penalties can stimulate the exporters to obviate causes beyond their control contributing to congestion. Export Grain Storage Charges 42 I. C. C. 530, 533, 537.

(h) Manufacturers and dealers in lumber, constructing a railroad in connection with their mill, and making shipments of lumber direct from their mills, were not legally injured by order of Interstate Commerce Commission requiring carriers to cease charging a penalty for holding cars at reconsignment points because subjected to more effective competition, or because it might be difficult to secure cars in time of future car shortage, in the absence of a showing that carriers desired to impose such charges, and could not maintain suit to set the order aside. Hines v. United States, (1923), 44 Sup. Ct. 72.

ALL OTHER CITATIONS

Elimination of Terminal Lines from Perishable Tariff, 78 I. C. C. 745; Chestnut Lumber Co. v. Director General, 89 I. C. C. 236; Tilley v. Southern Ry. Co. (N. C., 1916), 90 S. E. 309.

PER CAN RATES

See Leased Cars.

CASES 1887-1908

(a) Complainant attacked rates on milk and cream from all stations on the defendant's lines to Weehawken, Hoboken, and Jersey City, N. J., or through Jersey City to New York, as unreasonable and unjustly discriminatory. A uniform or blanket rate offered on milk and cream from these stations of 32c on milk and 50c on cream per can of 40 quarts, regardless of distance or difference in amount of service rendered. HELD, to be unreasonable, unjustly and unduly prejudicial. Instead of the present method of charging uniform rates per 40 quart can of 32c on milk and 50c on cream there should be at least four divisions or groups of stations, the first group extending 40 miles from the terminal in New Jersey; the second, covering a distance of 60 miles and ending about 100 miles from such terminal; the third embracing stations within the next 90 miles and extending about 190 miles from the terminal; and the fourth, comprising stations beyond 190 miles from the point of delivery, rates charged not to exceed 23c from the first group, 26c from the second, 29c from the third, 32c from the fourth; the rate on cream to be 18c higher than on milk. Milk Producers Protective Asso. v. D. L. & W. R. Co., 7 I. C. C. 92.

(b) Upon all the facts and circumstances, including the peculiarities of defendants' milk and cream transportation service, HELD, that instead of the present method of charging uniform rates per 40 quart can of 32 cents on milk and 50 cents on cream from all interstate shipping stations on the defendant lines west of the Hudson River to the respective points of delivery in Weehawken, Hoboken and Jersey City, N. J., there should be at least four divisions or groups of stations, the first group extending 40 miles from the terminal in New Jersey; the second, covering a distance of 60 miles and ending about 100 miles from such terminal; the third, embracing stations within the next 90 miles and extending about 190 miles from the terminal; and the fourth, comprising stations beyond 190 miles from the point of delivery. That the rates charged on milk in 40 quart cans should not exceed 23 cents from the first or 40 mile group of stations, 26 cents from the second or 60 mile group, nor 29 cents from the third or 90 mile group, and that the present rate of 32 cents from stations more distant than 190 miles is not unreasonable; that a

rate on cream in cans which is 18 cents higher than the rate on milk in 40 quart cans, the present difference, is not unreasonable or unjust; that such group distances and rates should apply on the branches as well as on the main lines, and that the resulting relations of rates should be maintained; that any reduction that may be made in the present rate per quart on milk or cream in bottles should be followed by a corresponding change in the rate for each group on milk or cream in 40 quart cans. That the distance on the Ulster & Delaware road covered by the third group should be limited to 30 miles, and stations on that road more than 130 miles from Weehawken via the West Shore road should constitute its fourth group; that by short line distances all points on the Wallkill Valley and Lehigh & Hudson River roads are within the second group, and rates from such stations should not exceed those applicable for the second group; that the Erie Railroad Company should charge third group rates from points on its Carbondale branch which can be reached over distances less than 190 miles via the Scranton branch of the Ontario & Western, and such relief from the operation of the 4th section is granted to the Erie Company as may be necessary to enable it to lawfully make such charges effective; that the defendant, the New York, Susquehanna & Western Railroad Company is entitled on shipments of milk and cream from New York points which it carries through New Jersey and delivers in New York City to charge such an addition to its rate to Jersey City, N. J., as is reasonably warranted by the greater cost of delivery in New York City. Milk Producers' Protective Asso. v. Delaware, L. & W. R. Co., 7 I. C. C. 92.

IMPORTANT CASES SINCE 1908

(c) Provision should be made for mixed shipments of milk and cream in carloads; rates to be made on the basis of the per can rates for each commodity in carloads, subject to the minimum provided for milk. New England Milk Case, 40 I. C. C. 699, 737.

(d) Complainant attacked rate charged on cream, carloads, from Concordia, Kans., to Crete, Neb., between March 1, 1920, and May 27, 1920, as unreasonable Prior to March 1, 1920, defendant maintained a proportional rate of 25c on single consignments of not less than 150 cans between April 1 and Sept. 30, and not less than 100 cans between Oct. 1 and March 31. This rate was cancelled and from March 1, 1920, to May 26, 1920, the only rates applicable were any quantity distance rates, which were 40c for 123 miles. On May 27, defendant established proportional rate of 25c on single consignments of not less than 200 cans, and provided that the gross charge for single consignments of a less number of cans should not exceed the gross charge for 200 cans. No evidence was offered by defendant, which admitted in its answer that the rate charged was unreasonable to extent is exceeded the subsequently established rate. HELD, rate charged unreasonable to extent it exceeded 25c, reparation awarded. Fairmont Creamery Co. v. C. B. & Q. R. R., 68 I. C. C. 319.

PER CAR RATES

CASES 1887-1908

(a) A practice had existed on the part of certain carriers of live cattle to make a carload rate irrespective of weight, leaving the shipper to load into the car as many cattle as he pleased and was able to put into it. The carrier substituted for this practice the rule that while naming a carlot rate they prescribed a minimum weight for a carload and then charged by the hundred pounds in proportion to the carlot rate for any excess over the minimum. HELD, that this rule was not unlawful. Prima facie the new rule is more just and reasonable than the practice it supplanted since the charge is more in proportion to the service rendered. Leonard v. C. & A. R. Co., 2 I. C. C. 599, 602.

(b) The fact that by the action of certain state commissioners a car is permitted to be loaded by the shipper at discretion without the carlot rate being affected thereby is not a reason for adopting the like rule in interstate traffic if that course is found not to be most just and politic. Leonard v. C. & A. R. Co., 2 I. C. C. 599, 603.

(c) An arbitrary charge of $80 per car imposed by the New York, New Haven, & Hartford Railroad Company for the transportation from New York to Boston of peaches and other fruit shipped from Georgia points to Boston, its haul being part of the through service between the points of shipment and

destination, is unreasonable and unjust; and $50 per car would be a just and reasonable charge for such transportation. Georgia Peach Growers' Asso. v. Atlantic Coast Line R. Co., 10 I. C. C. 255.

(d) Complainant attacked as unreasonable minimum weight and rate charged on peaches from Georgia points to northern and eastern markets. Upon all the facts and circumstances, including on the one hand the difficulties and liability of loss attending the production and shipment of peaches, and on the other hand the large percentage of cars loaded above the prescribed minimum weights for carloads for which excess no charge is made by the carriers, the exceptional character of the service which involves fast time and prompt delivery at destination, the carriage of a large amount of non paying freight, return of cars without loads, and many other conditions relating to the highly perishable nature of the traffic, HELD, neither the minimum carload weight nor the transportation charge established by the defendants based on a rate of 81c from Atlanta to New York, is unreasonable or unjust. HELD, further, an arbitrary charge of $80 per car imposed by the New Haven for the transportation from New York to Boston, its haul being part of the through service from Georgia points to Boston, is unreasonable and unjust and $50 per car would be a just and reasonable charge. Georgia Peach Growers' Asso. v. A. C. L. R. R., 10 I. C. C. 255.

(e) Upon all the facts and circumstances, including on the one hand, the difficulties and liability of loss attending the production and shipment of peaches, and, on the other hand, the large percentage of cars loaded above the prescribed minimum weights for carloads, for which excess no charge is made by the carriers, the exceptional character of the service, which involves fast time and prompt delivery at destination, the carriage of a large amount of nonpaying freight, return of cars without loads, and many other conditions relating to the highly perishable nature of the traffic,—HELD, that neither the minimum carload weight nor the transportation charge established by the defendants engaged in the carriage of peaches in refrigerator cars from Georgia points to New York, based upon a rate of 81 cents from Atlanta to New York, is unreasonable or unjust. Georgia Peach Growers' Asso. v. Atlantic Coast Line R. Co., 10 I. C. C. 255.

(ea) Complaint attacked rates charged on beef cattle, carloads from Fort Worth Tex., to New Orleans, La., as unreasonable and discriminatory. Defendants rate was 42 ½ per 100 pounds and $15 per car additional when shipment is made in lots of less than ten carloads HELD, the charge of $15 per car in addition to the rate of 42½c per 100 pounds is unreasonable when applied to single carload shipments. New Orleans Livestock Exchange v. T. & P. R. R. 10 I. C. C. 327.

IMPORTANT CASES SINCE 1908

(f) Per car rates established by the Director General under general order No. 28, on bituminous coal and charged on shipments moving between yards of complainant in Philadelphia, Pa., not found unreasonable as compared with lower per car rates applicable on other commodities or with those subsequently established. Atlantic Refining Co. v. Director General, as Agent, 60 I. C. C. 355.

(g) Director general canceled the "per car" rates on live stock and established rates in cents per 100 pounds. After termination of Federal control carriers restored the "per car" basis. HELD While transportation characteristics of live stock are different from those on lumber and grain, the earnings per car and per car mile on the latter were substantially higher than those on live stock which comparison tends to show that the charges assessed during the interim were not unreasonably high. Carstens Packing Co. v. Director General, as Agent 68 I. C. C. 125.

ALL OTHER CITATIONS

Birmingham Packing Co. v. Director General, as Agent, 69 I. C. C. 44.

PERCENTAGE RATES

See Advanced Rates § 7 (8): Evidence § 43 ¼; Express Companies §23.

CASES 1887-1908

(a) Complainant alleged unjust discrimination in rates charged against Detroit on grain in that rates to the Seaboard are 78% of the Chicago rate instead of 70% claimed, and that the carriers operating east from Detroit accept a division on freight originating west of Detroit lower than the local

rate from Detroit, Mich. When freight, for example, grain, is hauled to the seaboard for export or to New England points, from the northwestern points and territories; through Detroit and Chicago, the rule invoked by the petitioners in this case as a basis of relief, namely; that an estimated portion of this through rate as between the points of origin of the freight and Detroit must not be lower in proportion to distance than the rate upon the freight from such points or origin destined to Detroit, is one that connot be sustained. Detroit Board of Trade v. G. T. Ry. of Canada, 2 I. C. C. 199.

(b) Complainant attacked class rates from Chicago, Ill., to Sioux Falls, S. D., as unreasonable and unjust as well as unduly discriminatory as compared with the rates to Sioux City. The distance from Chicago to Sioux Falls is 108% of the short line distance to Sioux City, although via the defendants line the distance is less to Sioux Falls than to Sioux City. The amount of freight transported between Chicago and Sioux City, in either direction, is largely in excess of the amount carried between Chicago and Sioux Falls. The Commission is convinced that relative equality requires a substantial modification of the present disparity and indicates with a degree of certainty the measure of appropriate reduction in rates to Sioux Falls. HELD, rates to Sioux Falls should be made 104% of the rates to Sioux City from Chicago. The location of Sioux Falls, its shorter distance from Duluth, and the conditions under which transportation from that point is effective, seems to require as low rates to Sioux Falls as to Sioux City. The reasonableness of the rates attacked is not now determined but the decision is confined to the relation of rates from Chicago and Duluth to Sioux Falls and Sioux City. Daniels v. C., R. I. & P. R. Co., 6 I. C. C. 458.

(c) Rates from Cincinnati and Louisville to Norfolk are much lower than those from St. Louis and Chicago to Norfolk, and the competitive conditions governing the rates from Cincinnati and Louisville appear to be of the same general character as those which apply to rates from Chicago and St. Louis. The same is true of rates to Wilmington from Cincinnati, Louisville, Chicago and St. Louis. No substantial difference appears to exist in the really forceful conditions governing rates from these points of supply, except that of distance, which favors Cincinnati and Louisville. Carriers north of Cincinnati, Louisville and other Ohio River points obtain in most instances shares of the rates to Wilmington which equal their local charges while they accept much less than their local rates on traffic destined to Norfolk and other Virginia cities, and the rates charged by carriers south of Norfolk, Richmond, or other Virginia gateways on Wilmington business are upon a high basis. HELD, that what constitutes just rate relations from Cincinnati and Louisville to Norfolk and Wilmington is a fair basis for relative rates from St. Louis and Chicago, and that basis should be adopted, with the modification in favor of the carriers that the readjustment may be made on the basis of East St. Louis rates and the established practice of charging practically the same rates from St. Louis and Chicago to Wilmington continued. HELD, further, that substantial compliance with such rule of adjustment would result by making the rates from Chicago, St. Louis and East St. Louis to Wilmington 135 per cent of the rates in force from East St. Louis to Norfolk. Wilmington Tariff Asso. v. C. P. & V. R. Co. et al, 9 I. C. C. 118.

(d) Complainant attacked as unreasonable rates on cement plaster, carloads, from Quanah, Tex., to Kansas City and St. Louis, Mo., as compared with the rates from Cement, Okla., Cement being intermediate. Rate from Quanah to St. Louis, 728 miles, is 18c and to Kansas City, Mo., 571 miles, 13c, while from Cement to St. Louis, 602 miles rate is 10c and to Kansas City, 445 miles rate is 8c. It appeared that the Frisco made the rates from Cement to enable plaster from that point to compete with other plasters in the St. Louis and Kansas City markets, that the cost of transportation is not greater over the line from Quanah to Cement than from Cement to St. Louis, and that defendants would make the same profit if they hauled Quanah plaster at the same rate per ton mile that is applied from Cement. HELD, rates attacked unreasonable to extent they exceed 128 per cent of the rate from Cement to Kansas City and 120 per cent of the rate from Cement to St. Louis, repara-

tion awarded. Texas Cement Plaster Co. v. St. L. & S. F. R. R., 12 I. C. C. 68.

IMPORTANT CASES SINCE 1908

(e) The Commission has long realized the desirablity of establishing some standard scale of percentage relation which all classes should bear to the first class rate, but because of the great variety in percentages which now exists, and the many conflicts which would result between existing scales and any percentage scale which it might prescribe has not yet seen its way to establishing such a scale for general use. Tulsa Traffic Asso. v. A. T. & S. F. Ry. Co., 40 I. C. C. 9, 11.

(f) There are certain practical reasons why rates applied under any given classification should bear a percentage relation one to another. Railroad Commission of Louisiana v. A. H. T. Ry. Co., 41 I. C. C. 83, 92.

(g) Under the formula used in making these percentage group rates, the desired percentage is obtained by deducting a fixed terminal charge of 6 cents per 100 pounds from an assumed rate from Chicago to New York of 25 cents per 100 pounds; the remainder is divided by the short line distance from Chicago to New York; the result is multiplied by the short line distance of the point from which the percentage is sought from New York, the terminal allowance is again added and the percentage which the resulting rate bears to the 25 cent rate is the percentage to be used. South Bend Chamber of Commerce v. Director General, 57 I. C. C. 215, 218.

(h) The mere showing of the fact that in making effective the increases provided in general order No. 28 of the Director General, a slight disturbance was created in the percentage relationship which a specific rate bore to other rates between the same points, and the subsequent voluntary restoration of that relationship does not warrant a condemnation of the rate in effect during the interim. Ault & Wiborg Co. v. Director General, as Agent, 64 I. C. C. 443.

(i) It does not necessarily follow that because the percentage relationship between proposed commodity rates and the commodity rates applicable in other territories is less than the percentage relation which the class rates in the territory under consideration bear to the class rates in other territories, the proposed commodity rates are reasonable. Memphis-Southwestern Investigation, 77 I. C. C. 501.

(j) Failure of defendant to establish c. l. rates on refrigerator-car service for strawberries from Louisville & Nashville R. R. points while maintaining such rates and service from certain points in Louisiana and other states on other roads, found not unduly prejudicial to complainants at such I. & N. points. Unlike carrier in Louisiana, the L. & N. has at no time authorized the express company to furnish c. l. refrigerator service on strawberries; having handled such traffic by freight on December 27, 1917, and since. Hence, there is substantial difference in circumstances surrounding traffic from Louisiana as compared with traffic from points on the L. & N. Furthermore, the railroads are not parties to this proceeding. Oyler & Son v. Amer. Ry. Exp. Co., 83 I. C. C. 160.

ALL OTHER CITATIONS

Pennsylvania Smelting Co. v. N. P. Ry. Co., 19 I. C. C. 60; Empson Packing Co. v. Colorado Midland Ry. Co., 22 I. C. C. 268, 270, 271; Eastern Shore of Virginia Produce Exchange v. N. Y. P. & N. R. R. Co., 40 I. C. C. 328, 333; Railroa Commission of Louisiana v. A. H. T. Ry. Co., 41 I. C. C. 83, 92; Kosse, Shoe & Schleyer Co. v. C. C. C. & St. L. Ry. Co., 41 I. C. C. 602, 603; Eastern Export Iron and Steel Case, 43 I. C. C. 5, 10; R. R. Com'rs. of Iowa v. A. A. R. R. Co., 46 I. C. C. 20, 38; Buffalo Grain Cases, 46 I. C. C. 570, 580; Michigan Percentage Cases, 47 I. C. C. 409, 425; Proposed Increases in New England, 49 I. C. C. 421, 452; West Virginia Rail Co. v. C. & O. Ry., 50 I. C. C. 110, 115, 116; Toledo Produce Exchange v. N. Y. C. R. R., 50 I. C. C. 515, 518, 521; Kaufman & Sons Co. v. C. R. R. Co. of N. J., 51 I. C. C. 521; West Virginia Rail Co. v. B. & O., 53 I. C. C. 652; Consolidated Classification Case, 54 I. C. C. 1, 12; Memphis-Southwestern Investigation, 55 I. C. C. 515, 535, 538, 571, 577; Dow Chemical Co. v. Director General, 56 I. C. C. 672; South Bend Chamber of Commerce v Director General, 57 I. C. C. 215, 216, 218; Colorado Fuel & Iron Co. v. Director General, 57 I. C. C. 253; Jobbers & Manufacturing Bureau of the Chamber of Commerce of Huntington, W. Va. v. Director General, 57 I. C. C. 64, 76; Board of Trade of Portsmouth

v A. C. R. R. Co., 77 I. C. C. 78; Colorado Fuel & Iron Co. v. Director General, 57 I. C. C. 253; Galveston Commercial Asso. v. Director General, 57 I. C. C. 390, 397; Natchez Chamber of Commerce v. St. L. I. M. & S. Ry. Co., 58 I. C. C. 148 150; Ex Parte 74, 58 I. C. C. 489; Inland Empire Shippers' League v. Director General, 59 I. C. C. 321, 345; Independent Home Oil Co. v. Director General, as Agent, 58 I. C. C. 398, 403; Du Pont de Nemours & Co. v. Director General, 60 I. C. C. 221; Grain from River Crossings to Arkansas, 60 I. C. C. 586; South Bend Chamber of Commerce v. Director General, 61 I. C. C. 67; Boldt Paper Mills v. Director General, as Agent, 62 I. C. C. 471, 472; Watson Co. v. Director General, as Agent, 61 I. C. C. 719; Certain-Teed Products Corp. v. A., T. & S. F. Ry. Co., 63 I. C. C. 65, 71; R. R. Comm'rs. of Iowa v. M. & St. L. R. R. Co., 64 I. C. C. 673; La Crosse Shippers' Asso. v. A. A. R. R., 66 I. C. C. 371; Healy & Co. v. Director General, as Agent, 68 I. C. C. 45; National Paving Brick Mfg. Asso. v. A. & V. Ry. Co., 68 I. C. C. 213, 246, 252; West Virginia Rail Co. v. B. & O. R. R. Co., 73 I. C. C. 149; National Refining Co. v. Director General, as Agent 73 I. C. C. 668; Decker & Sons v. Director General, as Agent, 74 I. C. C. 171, 177; Anson, Gilkey & Hurd Co. v. S. P. Co., 78 I. C. C. 495. 513; Perishable Freight 81 I. C. C. 155, 159, 161; Central Refining Co. v. Director General, 81 I C. C. 597; B. Lissberger & Company v. Pennsylvania R. R., 81 I. C. C. 645 Klein-Simpson Fruit Co. v. A., T. & S. F. Ry. Co., 83 I. C. C. 285; General Chemical Co. v. B. & O. R. R. Co., 83 I. C. C. 582.

PER DIEM CHARGES

See Cars and Car Supply $11¾ §11⅞; Switching Reclaims.

PERISHABLE FREIGHT

See Inspection; Protective Service.

CASES 1887-1908

(a) Complainant attacked rates on peaches from the Delaware district to Boston, Mass., as unreasonable. The rate from Wyoming, Del., to Boston was $220.00 per car subsequently reduced $30.00 per car. HELD, a reasonable maximum rate would be $14.00 per ton. in cars of fifteen tons capacity and $16.00 per ton in cars of twelve tons capacity and $18.00 per ton in cars of nine tons capacity. Boston Fruit & Produce Exchange v. N. Y. & N. E. R. Co., 3 I. C. C. 493.

(b) For a special service by a carrier, such as the transportation of perishable freight, requiring quick movement, prompt delivery at destination, special fitting up of cars, their withdrawal from other service and their return empty on fast time, all involving greater expense to the carrier, a higher rate than for the carriage of ordinary freight is warranted by the conditions of the service and is reasonable and just. Delaware State Grange v. N. Y. P. & N. R. Co., 3 I. C. C. 554.

(c) Where a special service is required of the carrier, such as rapid transit and speedy delivery in cases of perishable freight, a higher rate than for the carriage of ordinary freight is warranted, and, if a carrier charging the rate based on such special service fails to render it, to the damage of the shipper, and without legal excuse, the remedy of the latter would seem to be a proper proceeding in a court of law. Loud v. South Carolina R. Co., 4 I. C. C 205, 211.

(d) On complaint that rates charged by defendant for the transportation of melons in carloads from shipping points in South Carolina to New York and other points in northern and northwestern states were unjust and unreasonable, it appeared that the rates were lower than those in force between the same points on cotton and general merchandise, although greater speed and some other exceptional facilities are involved in the transportation of melons from South Carolina, and that the rates per ton per mile afforded by the melon rates ranged from 7.6 mills to 1.1c, and for most of the defendants roads were less than the average receipts per ton per mile from all freight. The evidence was insufficient to warrant an estimate of the cost of production or the results of sales during the shipping season. HELD, rates complained of not unjust or unreasonable, complaint dismissed, Board of Railroad Commissioners of South Carolina v. Florence R. Co., 8 I. C. C. 1.

(e) The regulation by a carrier whereby the freight rate on perishable fruit is increased in proportion to the carload valuation fixed by the shipper is unreasonable and unjust. Georgia Peach

Growers' Asso. v. Atlantic Coast Line R. Co., 10 I. C. C. 255.

(f) Peaches from Macon and Atlanta Ga., to Philadelphia, New York, Washington, and Baltimore. Rate of 81 cents per 100 pounds to Philadelphia and New York, and 78 to Philadelphia and Washington, with a refrigeration charge of 12½ cents per crate of 42 pounds, minimum carload 550 crates, reduced to 76 cents per hundred for transportation to New York and Philadelphia and to 73 cents to Philadelphia and Washington. such rates to apply on a carload minimum of 20,000 pounds for 36-foot cars and 22,500 pounds for 40-foot cars, with refrigeration charge not to exceed 11 cents per crate, to apply on a carload minimum of 476 crates for 36-foot cars and 535 crates for 40-foot cars. Waxelbaum & Co. v. Atlanta C. L. R. Co., 12 I. C. C. 178.

(g) Rates on peaches generally higher than strawberries. American Fruit Union of Cincinnati v. C. N. O. & T. P. Ry. Co., 12 I. C. C. 411.

IMPORTANT CASES SINCE 1908

(h) Commission has no doubt that a single tariff governing the transportation of perishable freight is desirable on grounds of simplicity, convenience, and utility. Perishable Freight Investigation 56 I. C. C. 499, 461.

(i) Carriers have frequently cited the special cost of protective service in defending the level of line-haul rates upon perishable freight. Perishable Freight Investigation, 56 I. C. C. 449, 462.

(j) Not unlawful to secure compensation for all or any part of the protective service through the line-haul rate on perishable freight and no presumption exists that compensation is not secured in this way. Perishable Freight Investigation, 56 I. C. C. 449, 465.

(k) Neither desirable nor practicable to analyze whether or not the line-haul rates include compensation for protective service. In dealing with proposals to establish separate charges best means is to consider the level of the corresponding line-haul rates at the same time. Perishable Freight Investigation, 56 I. C. C. 449, 466.

(l) Carriers are not equipped to furnish initial ice for shipments of fresh meats and packing house products. It can probably be furnished with maximum economy by the packers. Perishable Freight Investigation, 56 I. C. C. 449, 470.

(m) Carriers are better equipped to furnish initial ice for fruits and vegetables where cost-of-ice basis now prevails, but having so long given shippers the option of furnishing their own ice, it may be doubted whether carriers are prepared to provide the entire supply. It seems certain that they can not now do so without some injustice or sacrifice of economy. Perishable Freight Investigation, 56 I. C. C. 449, 470, 471.

(n) No specific evidence that cost-of-ice basis results in favoritism or discrimination between shippers, or that loss and damage claims are greater than when stated charges apply, or that it is impracticable to follow the re-icing instructions which shippers give. Perishable Freight Investigation, 56 I. C. C. 449, 471.

(o) No convincing evidence offered that where shippers of fruits and vegetables are permitted to furnish their own ice the carriers are unable to gauge the demands for ice in normal seasons or that wastage results because of their inability to do so. Perishable Freight Investigation, 56 I. C. C. 449, 471.

(p) Proposed tariff does not give sufficient encouragement to the precooling of fruits and vegetables, except in California and Florida. Perishable Freight Investigation, 56 I. C. C. 449, 471.

(q) Movement of fruits and vegetables is not wholly seasonal and is becoming less so with the increasing use of cold-storage facilities, and the need for refrigeration varies widely during the period in which fruits and vegetables commonly move. Perishable Freight Investigation, 56 I. C. C. 449, 471.

(r) On shipments which are moved without reicing in transit, switching and supervision costs are less and reach a minimum when the shipper furnishes his own ice. Perishable Freight Investigation, 56 I. C. C. 449, 473.

(s) No reason why stated charges should apply on vegetables from southern territory, while shipments from New Orleans switching districts have the cost-of-ice basis; nor to apply stated charges on certain lines in Michigan and the cost-of-ice basis on others. Method of dealing with these sistuations must depend upon conclusions reached in re-

gard to line-haul rates. Perishable Freight Investigation, 56 I. C. C. 449, 473.

(t) If it be found that cost-of-ice basis should be employed where traffic moves on class rates, but stated charges where it moves on commodity rates, adjustments in accordance with such conclusions should uniformly be made. Perishable Freight Investigation, 56 I. C. C. 449, 473.

(u) No reason why carriers should not equip themselves to furnish protective service against cold in all the northern territory where perishable freight may suffer through lack of such protection. Steps should be taken to procure the equipment which will make possible a correction of this defect. Perishable Freight Investigation, 56 I. C. C. 449, 476, 613.

(v) No opinion expressed as to whether line-haul rates include compensation for protective service, but the radical nature of the change from no charge at all to charges of the extent proposed makes it desirable that the Director General be assured that the increase in the aggregate charge for the total transportation performed can be justified. Perishable Freight Investigation, 56 I. C. C. 449, 480.

(w) Carriers entitled to reasonable compensation for protective service they furnish, and if the conclusion be reached that such compensation is not now afforded by the line-haul rates, the only two ways in which it can be obtained are by increasing these rates or establishing separate charges. The latter system is deemed more equitable. Perishable Freight Investigation, 56 I. C. C. 449, 480, 481.

(x) No way in which the shipper could be permitted to control the amount of ice used in refrigerating l. c. l. freight or any means of applying the cost-of-ice basis to such shipments. Perishable Freight Investigation, 56 I. C. C. 449, 481.

(y) Where l. c. l. shipments move by short hauls to concentrating points and thence direct in consolidated cars to more distant destinations, lower refrigeration charges would seem justified for movement from concentrating point than for other l. c. l. movements. Such consolidated cars greatly increase the average loading and make refrigeration more efficient and economical. Perishable Freight Investigation, 56 I. C. C. 449, 481, 548, 616.

(z) Tariff rule found objectionable because it conveys the impression that carriers do not undertake in any way to control the natural tendency of perishable freight to deteriorate or decay, although this is the purpose of protective service. Perishable Freight Investigation, 56 I. C. C. 449, 483.

(aa) Where insulated cars are required for safe transportation throughout the year, or the greater part of the year, compensation should be secured through the line-haul rates. Where this is not the case, a special charge is preferable, but should be fairly proportioned to the extent and cost of the service furnished. Perishable Freight Investigation, 56 I. C. C. 449, 486, 487, 614.

(bb) Carriers should collectively establish an effective "Perishable freight section" to oversee and coordinate action in the direction of efficiency in protective service. Perishable Freight Investigation, 56 I. C. C. 449, 489, 614.

(cc) Hazard arising from loss and damage, due to delays or other deficiencies in the transportation service or to the use of unsuitable equipment, has always been taken into consideration in determining the rates or ratings on perishable freight. Perishable Freight Investigation, 56 I. C. C. 449, 539.

(dd) "Pickles, in glass or in jars," "Fruits, fresh, n. o. i. b. n.," "Vegetables, fresh or green", "Sauerkraut," and onion sets" should be classified under items which may be protected against cold only, and which are susceptible to damage by artificial heat. Perishable Freight Investigation, 56 I. C. C. 449, 551.

(ee) Description, "Packing house products, as specified herein," in which reference is made to the "freight tariffs applicable," has the result of leaving the matter in entire uncertainty. Prefatory statement in lieu thereof suggested. Perishable Freight Investigation, 56 I. C. C. 449, 551.

(ff) Rule 25, under which charges for protective service are not to be included in the line-haul rates, approved subject to comment. Perishable Freight Investigation, 56 I. C. C. 449, 552.

(gg) Rule 120, providing when shipments of vegetables or fruit, in stock or box cars with side doors open, that

transportation will be at owner's risk of loss or damage by heat or cold not the result of carrier's negligence, should be eliminated. Perishable Freight Investigation, 56 I. C. C. 449, 559, 561.

(hh) Rule 90, providing for charge of $5 per car for transfer of perishable freight into refrigerator or other fully insulated cars to protect against heat or cold, approved with modifications. Perishable Freight Investigation, 56 I. C. C. 449, 563, 564.

(ii) Rule 100, providing that wherever sampling or inspection is permitted the carriers do not assume any liability for shortage of or loss or damage by reason of such inspection, should be eliminated. Perishable Freight Investigation 56 I. C. C. 449, 564, 565.

(jj) Rule providing that wherever sampling or inspection of perishable freight is permitted the carriers do not assume any liability for shortage of or loss or damage by reason of such inspection should be eliminated. Perishable Freight Investigation, 56 I. C. C. 449, 564, 565.

(kk) Rule 105, governing the handling of bananas, under which carriers undertake no responsibility for icing, reicing ventilation, or protection beyond compliance with instructions as may be given in writing by the shipper, owner or caretaker in charge, should be eliminated. Perishable Freight Investigation, 56 I C. C., 449, 565.

(ll) Rule 110, governing the transportation of caretakers with bananas, approved with modifications. Perishable Freight Investigation, 56 I. C. C. 449, 563, 566.

(mm) Rule 110 governing charges for disinfecting refrigerator, insulated or others cars, modified and approved. Perishable Freight Investigation, 56 I. C. C. 449, 566.

(nn) Rule 145, governing shipments stored in transit, should be revised so as to provide for the application of protective service charges into and out of storage, respectively, applicable under the tariff at the time of the respective movements. Perishable Freight Investigation, 56 I. C. C. 449, 566, 568

(oo) Rule 200, clause (A), of special rules and regulations applicable to c. l. shipments under stated refrigeration charges should be revised to provide that shippers of fruits, vegetables, or other perishable freight should have the option where no reicing in transit is required, of shipping under the modified cost-of-ice basis. Perishable Freight Investigation, 56 I. C. C. 449, 568, 569.

(pp) Rule 200, clause (B) and (E), of special rules and regulations applicable to c. l. shipments under stated refrigeration charges should be revised in such manner as to permit of their country-wide application. Perishable Freight Investigation, 56 I. C. C. 449, 569, 573.

(qq) Rule 200, clause (C), of special rules and regulations applicable to c. l. shipments under stated refrigeration charges providing that when one or more commodities are loaded in car under refrigeration, stated refrigeration charges will be on basis of the highest refrigerationn charge on any of commodities in car approved. Perishable Freight Investigation, 56 I. C. C. 449, 569, 570.

(rr) Rule 225, clause (D), governing charges for icing at intermediate stop, hold, or reconsigning point, should be amended to provide that when cars are held between origin and final destination, a charge will be made for ice supplied at such intermediate point in addition to other charges, except when point at which car is stopped is an established icing station. Perishable Freight Investigation, 56 I. C. C. 449, 571, 572.

(ss) Rule 225, clause (E), governing charges for reicing at final destination, should be amended to provide that a charge for all ice supplied after arrival of cars at final destination and after tender to consignee for delivery, without allowance for free time, will be made in addition to all other charges. Perishable Freight Investigation, 56 I. C. C. 449, 571, 573.

(tt) Rule 200, clause (F), should be amended by eliminating therefrom provision that carriers will not assume any liability for loss or damage due to absence of refrigeration before car reaches point at which first placed under refrigeration when shipments are loaded in refrigerator cars without ice and subsequently placed under refrigeration at any point. Perishable Freight Investigation, 56 I. C. C. 449, 573.

(uu) Rule 200, clause (G), providing that when shippers elect to tender freight loaded in cars the bunkers, tanks or body of which contain ice with in-

structions "Not under refrigeration, do not ice" (or when shipper neglects to give any refrigeration instructions) such instructions will be ignored and full stated refrigeration charges will be applied and bunkers and tanks will be given the necessary icing. or reicing should be eliminated. Perishable Freight Investigation, 56 I. C. C. 449, 574.

(vv) Rule 200, clause (I), providing that carriers will not supply or place ice or salt in the body of refrigerator cars equipped with ice bunkers or tanks, should be amended by adding "except in case of emergency and, or on request of shipper." Ice furnished under such circumstances will be charged for in accordance with section 4. Perishable Freight Investigation, 56 I. C. C. 449, 575.

(ww) Rule 200, clause (J), providing that stated refrigeration charges do not include the cost of ice used in packages or in body of cars, found unnecessary. Perishable Freight Investigation, 56 I. C. C. 449, 575, 576.

(xx) If salt is provided without extra charge for fresh meat, packing house products, dairy products, etc., the shippers of fruits and vegetables should have the same privilege. Perishable Freight Investigation, 56 I. C. C. 449, 576.

(yy) Rule 200, clause (M), providing that the terms fruits, apples, berries, vegetables, and melons, means fresh fruits, apples, etc., and providing that when crushed fruits, apples, etc., and, or fruit juices (not beverages), are transported under refrigeration, the lowest rated charge from point of origin to destination will apply, approved. Perishable Freight Investigation, 56 I. C. C. 449, 576.

(zz) Rules 245 and 250, governing precooled and preiced cars of citrus fruit from California and Florida. Recommended that clause (D), in which the giving and acceptance of special instructions from the shipper releases carriers from all liability for loss and damage caused by non-icing in transit or at destination, be eliminated. Perishable Freight Investigation, 56 I. C. C. 449, 582, 586.

(3a) Rule 255, limiting half-tank refrigeration service to citrus fruits from Florida, should be revised to include apples from Virginia and fruits from Michigan, formerly afforded; and clause B), providing that shipments will be transported solely at owner's risk of loss and damage resulting from insufficient refrigeration not caused by carrier's negligence, should be eliminated. Perishable Freight Investigation, 56 I. C. C. 449, 586.

(3b) It costs practically as much to refrigerate a car loaded with 100 pounds of perishable freight as one carrying 20 000 pounds, and carriers are fairly entitled to take this into consideration in formulating their rules and charges. Perishable Freight Investigation, 56 I. C. C. 449, 607.

(3c) Respondents proposed (1) to amend paragraph G or rule 200 C in perishable protective tariff No. 2, I. C. C. 1, on fruits and vegetables, so as to provide specifically that only in the case of cars moving under full standard refrigeration will ice and salt be supplied by the carriers in the body of refrigerator cars equipped with ice bunkers or tanks, in case of emergency and or on request of shippers, and (2) to amend paragraph H of the same rule to provide new charges for the furnishing of salt by the carriers in connection with refrigeration charges on fresh fruits and vegetables. At the hearing, respondents stated that, insofar as the tariff provision covering the charges for salt was concerned an agreement had been reached with all the interested parties whereby a modified basis of charges for this service would be imposed in lieu of the suspended charges, and the agreed charges were made effective March 10, 1924. While section 2 of the tariff does provide stated charges for refrigeration of carload shipments of the commodities previously mentioned therein from and to various points in this and adjacent countries, it provides, also that under certain circumstances, as in connection with shipments which have been precooled or preiced by the shippers, charges will be assessed which are in some instances substantially less than those contained in the tables of "stated refrigeration charges." Under respondent's interpretation of the present rule shippers would be entitled, logically, to have ice placed by the carriers within the car upon such shipments, if shippers so request, upon the same terms as cars moving under stated refrigeration charges. The suspended rule, by restricting this privilege to cars moving under full standard refrigeration would exclude such shipments if, as stated by respondents, the effect would be to limit the

service to cars moving under the stated refrigeration charges. No evidence to justify the increased charges has been submitted. HELD, suspended schedule providing that ice and salt will be supplied by the carriers in the body of refrigerator cars equipped with ice bunkers or tanks only when the cars are moving under full standard refrigeration not justified. Furnishing ice and salt, 88 I. C. C. 361.

PERSONAL INJURIES

See Employer's Liability Act; Telephone and Telegraph Companies IV; Safety Appliance Act.

CASES 1887-1908

(a) The complainant having offered evidence of pecuniary damages as a basis for an award for injuries done in his violent removal from the car and for reasonable fees of attorneys he has been compelled to employ and the defendant railroad company under the Seventh amendment of the Constitution of the United States being entitled to a trial by jury, the Commission, because it could not give such a trial, declined to go into that question leaving the complainant to his appropriate remedy in the courts for the alleged trespass and assault upon him, in which, under section 8 of the Act to Regulate Commerce, the defendant may be held liable for counsel or attorneys' fees "to be fixed by the court." Council v. Western & Atlantic R. R. Co., 1 I. C. R. 638.

IMPORTANT CASES SINCE 1908

(b) Under the Employers' Liability Act, §34, the remedy afforded by that act excludes all other remedies, including the right of action for death given by the Louisiana Law, giving a right of action for wrongful acts. Thaxton v. Louisiana Ry. & Nav. Co., (La. 1923), 95 Sou. 773.

(c) Under the federal Employers' Liability Act, contributory negligence does not bar recovery, but minimizes the damages. Thornhill v. Davis, (S. C. 1922), 113 S. E. 370.

(d) Where plaintiff, caretaker of stock, was injured while in caboose, by violent starting of train, failed to give notice of injury within 60 days, as required by bill of lading in case of "injury to property," was immaterial. Davis v. Adkins, (Texas. 1923) 251 S. W. 285.

(e) A news agent employed by a news agency, which, under contract with defendant railway company, had agreed to indemnify the latter against personal injuries to its employees and by contract with its news agents has required the latter to assume all risk of accident or injury, cannot recover for personal injuries received by him while riding free in the course of his employment and business as news agent on one of defendant's trains. Neville v. Gulf, C. & S. F. Ry. Co., (Tex., 1923), 252 S. W. 483.

(f) Where plaintiff, a newsboy in the employ of a news agency, had entered into a contract whereby he assumed all risk of accident and injuries of every kind that he might sustain in the course of his employment, and the news agency in turn had contracted with the defendant railway company to manage and operate railway hotels, lunch stands, dining cars, and the business of selling newspapers, periodicals, and other articles of merchandise, in consideration of which, among other things, the railway company agreed to transport such goods, merchandise, and employees of the news agency free, and the news agency agreed to idemnify the railway company for sums paid out on account of personal injuries sustained by employees, HELD, that the provisions of plaintiff's contract with the news agency insured to the benefit of defendant railway company in an action by such news agent for personal injuries. Neville v. Gulf, C. & S. F. Ry. Co., (Tex., 1923), 252 S. W. 483.

(g) A railroad company, though a common carrier, when acting outside the performance of its legal duties, may contract as a private carrier and stipulate against liability for injury to persons caused by its negligence. M'Cree v. Davis, 280 Fed. 959.

(h) The remedy given to an employee of the United States for an injury incurred through negligence of Panama Railroad Company, under federal employees' Compensation Act, is not exclusive, and he may at his election maintain an action against the company. Panama R. Co. v. Strobel, 282 Fed. 52.

(i) Where a caretaker in charge of stock was told by a railroad employee that the train would stop, so he could get on board, the employee's subsequent query as to whether he could not board the train while it was moving slowly,

without any express or implied threat that he would miss the train, if he refused to board it while moving, was not a waiver of requirement of contract, under which he was carried, that he should remain in the caboose while the train was in motion. Hulet v. Payne, 282 Fed. 401.

(j) Where claimant, suing for injuries sustained while being transported as caretaker of stock under contract requiring him to remain in caboose while train was moving, pleaded that he was a passenger by virtue of such contract, and did not plead waiver, he could not claim a waiver of such requirement by reason of conductor's alleged direction to him to board car while moving. Hulet v. Payne 282 Fed. 401.

(k) The tracks, bridges, roadbed, and equipment of a carrier in actual use in interstate commerce have a definite interstate character as instruments of such commerce, and give such character to those employed on them. Industrial Accident Commission of State of California v. Payne. 42 Sup. Ct. 489.

(l) The test of employment in interstate commerce, which determines the application of the federal Employers' Liability Act, is whether the employe at the time of the injury was engaged in interstate transportation, or in any work so closely related to it as to be practically a part of it. Industrial Accident Commission of State of California v. Payne, 42 Sup. Ct. 489.

ALL OTHER CITATIONS

C. & W. C. Ry. Co. v. Thompson, 34 Sup. Ct. 964; 234 U. S. 576; 58 L. ed.—; Voris v. C. M. & St. P. Ry. Co. (Mo. App., 1913), 157 S. W. 835; Wilcox v. E. R. R. Co. (1914), 147 N. Y. S. 360, 366; Ligon v. St. L. & S. F. Ry. Co. (Mo. App. 1914), 168 S. W. 647, 649; St. L. & S. F. Ry. Co. v. Coy (Ark., 1914) 168 S. W. 1106, 1111; Buckley v. Bangor & A. R. Co. (Me., 1915), 93 Atl. 65, 66; Texas & P. R. Co. v. Bigger, 36 Sup. Ct. 127, 129; 239 U. S. 330; 60 L. ed. 310; Wiley v. Grand Trunk Ry. of Canada, 227 Fed. 127, 129; St. L. & S. F. R. Co. v. Kerns, 41 Okl. 167, 136 Pac. 169 folled Lusk v. McBride, 160 Pac. (Ala., 1916), 595; Gerin v. Chicago, M. & St. P. Ry. Co., 158 N. W. (Minn., 1916) 630; C. & W. Ry. Co. v. Thompson, 13 Ga. App. 528, 80 S. E. 1097 (1); Wright v. Central of Ga. Ry. Co., (Ga., 1916), 89 S. E. 457, 458; Northern R. Co. v. Adams, 192 U. S. 441, 24 Sup. Ct. 408, 48 L. Ed. 513; Boering v. Chesaapeake Beach R. Co., 193 U. S. 442, 24 Sup. Ct. 515, 48 L. Ed. 742; Hutto v. Southern R. Co., 75 S. C. 295, 55 S. E. 445; Turman v. Seaboard Air Line Ry. (S. C., 1916), 89 S. E. 655; Nevill v. Gulf C. & S. F. Ry. Co., (Tex., 1916) 187 S. W. 388; Tripp v. Michigan Cent. R. R., 238., Fed. 449, 458; Adams v. C. R. I. & P. Ry., (Ia., 1917), 161 N. W. 295; M. K. & T. Ry. v. Lynn, (Okla., 1916), 161 Pac. 1058; Teeter v. So. Exp. Co. (N. C., 1916), 90 S. E. 761; N. S. R. Co. v. Chatham, 37 Sup. 499, 244 U. S. 276, 61 L. Ed.; Pittsburg, C. C. & St. L. R. R. v. Miller, (Ind. 1918), 119 N. E. 801; Clark v. Southern Ry., (Ind., 1918), 119 N. E. 539; Gray v. Colorado Southern Ry., (Tex., 1918), 204 S. W. 347; Chicago, R. I. & P. Ry. Co. v. Gage, (Ark. 1918), 206 S. W. 141; Achen v. Atchison T. & S. F. Ry., (Kans., 1918), 175 Pac. 980; Kearines v. Chicago, M. & St. P. Ry., (S. D., 1919), 171 N. W. 86; McGregor v. Great Northern Ry. Co., (N. Dak., 1919), 172 N. W. 841; Wall v. Great Northern Ry. Co. (N. D., 1919), 175 N. W. 705; Beasley v. Hines (Ark.), 219 S. W. 757; Gooch v. Oregon Short Line R. Co. 264 Fed. 664; Nashville, C. & St. L. Ry. v. Hopper, (Tenn., 1919), 217 S. W. 661; Gainer v. Hines, 184 N. Y. S. 768; Wintermute v. Oregon-Washington R. & Nav. Co. (Ore., 1921), 194 Pac. 420; Bee v. Davis, 275 Fed. 326; Gooch v. Oregon Short Line R. Co., 42 Sup. Ct. 192, 193; St. Louis-San Francisco Ry. Co. v. Conly (Ark., 1922), 241 S. W. 365; Missouri Pac. R. Co. v. Hanna, (Ark., 1923), 247 S. W. 1044; Dierick v. Davis, (Ind., 1922), 137 N. E. 685; Vulgamott v. Payne, (Mo., 1922), 245 S. W. 592; McGrath v. Payne (Mo., 1922), 245 S. W. 1061; Nevill v. Gulf, C. & S. F. Ry. Co., (Tex., 1922) 244 S. W. 980; Southern Pacific Co. v. Schuyler, 227 U. S. 601, 612, 33 Sup. Ct. 227, 43 L. R. A. (N. S.) 901, 57 L. ed. 662; Davis v. Adkins (Tex., 1923), 251 S. W. 285; Hodgert v. Delaware, L. & W. R. Co., 202 N. Y. S. 793; Sullivan v. Booth & Flinn, 202 N. Y. S. 807; Sims v. Pennsylvania R. Co., (Penn., 1924) 123 Atl. 676; Ebell v. Oregon-Washington R. & Nav. Co., (Ore., 1924), 221 Pac. 1062.

PHYSICAL VALUATION

See Advanced §10½; Evidence §49.

§50; Interstate Commerce Commission §8; Reasonableness of Rates §39½.

IMPORTANT CASES SINCE 1908

(a) There can be no doubt of the power of Congress to devise and provide for carrying into effect a plan for assuring to the nation's interstate railroads a fair return upon the value of their property; and the full control by Congress of this matter is not to be denied on the ground that the carriers' aggregate earnings are a commingling of intrastate and interstate revenue. Rates, Fares and Charges of N. Y. C. R. R. Co., 59 I. C. C. 290, 294.

(b) The act requires the Commission to determine upon a valuation for the total property of the carriers and not for the property that might by some necessarily arbitrary method or formula be assigned to interstate traffic, and in arriving at the estimated value used in Increased Rates, 1920, 58 I. C. C. 220, that course was followed. Interstate Rates within Illinois, 59 I. C. C. 350, 364.

(c) The Commission understands the Interstate Commerce Act to require it to determine upon a valuation for the total property of the carriers and not for the property that might by some necessarily arbitrary method or formula be assigned to interstate traffic, and that is the course the Commission followed in arriving at the estimated value used in Increased Rates, 1920, 58 I. C. C. 220. Interstate fares within Illinois, 59 I. C. C. 350, 364.

(d) The law requires the Commission to fix rates, fares and charges so that the carriers shall, under specified conditions, earn, as nearly as may be, a certain return upon the aggregate value of the railway property held for and used in the service of transportation, and it follows that to the extent that intrastate rates, free and charges do not contribute their proportionate share to such return they unjustly discriminate against interstate commerce. South Carolina fares and charges, 60 I. C. C. 290, 297.

(e) Neither the value of property nor the reasonableness of rates can be determined with mathematical exactness. The final test to be applied is a matter of informed judgment. Differences in judgment as among the several state commissions, if each could and would create a rate group of its own, would obviously nullify the fundamental purpose of the Transportation Act. Nebraska rates, fares and charges. 60 I. C. C. 305, 313.

(f) The valuation of railroad land for rate making purposes can not be increased beyond the fair average market value of similar land in the vicinity because of conjectural cost of acquisition and consequental damages. Switching and absorption at Minneapolis, 61 I. C. C. 646, 652.

(g) While the valuation of the railroads under section 19a of the act is still incomplete, it has progressed to such an extent that the commission may accept the results with fuller assurance, both as to particular roads and as showing general trends and principles. Reduced Rates. 1922 68 I. C. C. 676, 684-685.

(hi) That the ascertainment by the Interstate Commerce Commission of the present cost of condemnation and damages, or of purchase of the property of common carriers, in excess of the original cost or present value, as required by Act March 1, 1913, c. 92, §19a, amending Act Feb. 4, 1887, c, 104, will necessarily open a wide range of proof, and call for the exercise of close scrutiny and scrupulous analysis in its consideration and application, affords no basis for the refusal of the commission to hear evidence and ascertain such present cost. U. S. v. I. C. C. 40 Sup. Ct. Rep. 187.

(j) As Congress had authority to require the Interstate Commerce Commission, in ascertaining the value of the property of common carriers, under Act March 1, 1913, c. 92 §19a, amending Act Feb. 4, 1887, c. 104 to ascertain the present cost of condemnation and damages, or of purchase in excess of the original cost or present value, it is its duty to do so, even assuming that the Supreme Court decides in a railroad rate case that such matters were beyond the possibility of rational determination. U. S. v. I. C. C. 40 Sup Ct. Rep. 187.

ALL OTHER CITATIONS

Increased Rates, 1920, 58 I. C. C. 220, 228.

PIPE LINES

I. CONTROL AND REGULATION
- §1. In general.
- §2. Constitutionality of Act.

II. AS COMMON CARRIER.

§3. In general.
§4. As Interstate carrier.
III. TARIFFS AND REGULATION.
§5. In general.
§6. Reasonableness of rates.
VI. OPERATION.
§7. In general.

I. CONTROL AND REGULATIONS.

§1. In General.

See Control and Regulation.

IMPORTANT CASES SINCE 1908

(a) If an oil company owns common carrier pipe lines which do or may compete with its steamers, such situation is within the Panama Canal Act. S. P. Co. Ownership of Oil Steamers, 34 I. C. C. 77, 82.

(b) The Act as amended in 1906, conferred upon the Commission authority to examine the accounts, records, and memoranda of common carriers engaged in the transportation of oil by pipe lines. Conditions Affecting Crude Petroleum, 36 I. C. C. 429.

(c) The Commission may not require rail carriers to reduce rates not shown unreasonable in and of themselves in order that the users may better compete with others who are in a position to utilize the less costly service of pipe lines. Winona Oil Co. v. Director General, 57 I. C. C. 152, 154.

(d) Natural gas, procured by a company or its receiver in one state and piped into and sold in another state, is an article of interstate commerce, and does not lose that character because it is mixed in the pipes with a small quantity of gas (probably not exceeding 40 per cent of the total) procured in the state in which it is sold. The company, or its receiver, conducting such business, is engaged in "interstate commerce," and the enforcement by the state in which the sales are made of any law or regulation which substantially burdens the business, or renders it impossible to conduct it at a fair profit, is an undue interference with interstate commerce, in violation of the commerce clause of the federal Constitution. Landon v. Public Utilities Commission 234 Fed. 152, 164.

(e) The clause of the federal Constitution, prohibiting impairment of the obligation of contracts by state action, does not interpose any obstacle to exertion by the state of its power to regulate the rates and practices of a common carrier, as a petroleum pipe line, after the carrier has made contracts for future transportation, mortgaged its property, or pledged its income. Producers' Transp. Co. v. Railroad Commission 40 Sup. Ct. 131.

ALL OTHER CITATIONS

Prairie Oil & Gas Co. v. U. S., 204 Fed. 798, 806, 819; In re Pipe Lines, 24 I. C. C. 1, 3, 8; Gulf Sulphur Co. v. Ryman et al. (Tex., 1920), 221 S. W. 310; Peirce Oil Corporation v. Phoenix Refining Co., 42 Sup. Ct. 440; Clear Creek Oil & Gas Co. v. Ft. Smith Spelter Co., (Ark., 1923) 255 S. W. 903.

§2. Constitutionality of Act.

See Constitutional Law.

IMPORTANT CASES SINCE 1908

(a) Construing the provisions of the Act of June 29, 1906, relative to corporations and persons engaged in the transportation of oil by pipe lines as intended to include existing pipe lines controlled by that combination of companies carrying practically all oil offered between the oil fields east of California and the Atlantic seaboard provided the offerer first sells it to them on their own terms, it cannot be said that Congress has in, enacting the Act, exceeded its powers. United States v. Ohio Oil Co., 34 Sup. Ct. 956, 958; 234 U. S. 548; 58 L. ed.—.

(b) If a petroleum pipe line was constructed solely to carry oil for particular producers under strictly private contracts and never was devoted by its owner to public use, that is, to carrying for the public, a state could not, by mere legislative flat or any regulating order of a commission, convert it into a public utility, or make its owner a common carrier, for so to do would be taking private property for a public utility without just compensation, in violation of the due process of law clause of the Forteenth Amendment of the federal Constitution. Producers' Transp. Co. v. Railroad Commission 40 Sup. Ct. 131.

ALL OTHER CITATIONS

Prairie Oil & Gas Co. v. U. S., 204 Fed. 798, 808, 811, 813; Eureka Pipe Line Co. v. Hallanan (W. Va., 1921), 105 S. E. 506.

II AS COMMON CARRIER.

§3. In General.

See Common Carrier.

IMPORTANT CASES SINCE 1908

(a) The Standard Oil Co., having of

itself and through its subordinates, obtained control of practically all the pipe lines east of California with a view to avoiding the amendment to the first section declaring pipe lines to be common carriers, refused to carry any oil except such as was sold to it or its subordinates on terms dictated by the company. HELD, that the provisions of the Act applied to anyone engaged in the transportation of oil by means of pipe lines. It would not only be a sacrifice of fact to form, but would nullify the Act if the carriage to the seaboard of nearly all the oils east of California were held not to be transportation within its meaning, because by the exercise of their power these carriers imposed as a condition to the carriage a sale to themselves. As applied to them, while the amendment does not require them to continue in operation, it does require them not to continue except as common carriers. United States v. Ohio Oil Co., 34 Sup. Ct. 956; 234 U. S. 548; 58 L. ed.—., reversing in part 204 Fed. 798, enjoining the enforcement of the Commission's order in 24 I. C. C. 1.

(b) The Act to Regulate Commerce, as amended in 1906, conferred upon this Commission authority to examine the accounts, records, and memoranda of common carriers engaged in the transportation of oil by pipe lines. Conditions Affecting Crude Petroleum, 36 I. C. C. 429.

(c) A pipe line company which had equipped its line for that business, and was holding itself out as ready to transport for hire oil for all persons who might tender oil to it for transportation, and was exercising such calling as a public business, was a common carrier. Hall v. Cumberland Pipe Line Co. (Ky., 1922), 237 S. W. 405.

(d) A pipe line company having a pipe line used only in conveying oil from its oil wells in one state to its refinery in another state is not a common carrier within the provisions of the act of June 29, 1906, declaring pipe lines to be common carriers in certain cases. United States v. Ohio Coal Co., 34 Sup. Ct. 956, 959; 234 U. S. 548; 58 L. ed.—.

ALL OTHER CITATIONS

Prairie Oil & Gas Co. v. U. S., 204 Fed. 798, 819, 821; In the Matter of Pipe Lines, 24 I. C. C. 1, 3, 4, 6, 8, 9, 10, 11; Hall v. Cumberland Pipe Line Co. (Ky., 1922), 237 S. W. 405.

§4. As Interstate Carrier.

See Common Carrier.

IMPORTANT CASES SINCE 1908

(a) The conveyance of oil in pipe lines is interstate commerce, where the owners of such lines are carrying all oil offered, if only the offerers will sell it at their price. United States v. Ohio Oil Co., 34 Sup. Ct., 956, 958; 234 U. S. 548; 58 L. ed. —.

(b) The gathering within the state by a pipe line company of oil which it is required to hold in storage for the owners until it receives directions for shipment, but which it was authorized to mingle with the general mass of oil in its pipes and tanks, is interstate commerce as to such oils as it subsequently sends out of the state, regardless of whether it is merely a bailor of the oil or becomes the owner thereof and indebted to the producer for the value Eureka Pipe Line Co. v. Hallanan, 42 Sup. Ct. 101, 102.

(c) Oil transported by pipe line from state to state, is in interstate commerce, though, as incidental to such commerce, quantities of the oil accumulate temporarily in collecting tanks which are part of the pipe line system. West Virginia Pipe Line Co. v. State (W. Va., 1923), 120 S. E. 759.

ALL OTHER CITATIONS

In the Matter of Pipe Lines, 24 I. C. C. 1, 7; Eureka Pipe Lines Co. v. Hallanan, (W. Va., 1921), 105 S. E. 506.

III TARIFFS AND REGULATIONS.

§5. In General.

See Tariffs.

IMPORTANT CASES SINCE 1908

(a) It is not one of the common carrier functions of a pipe line to protect the unwary from the irresponsible or unscrupulous, and where such protection is afforded through a rule which deprives legitimate shippers of the privilege of using their facilities, the rule can not be sanctioned. Brundred Brothers v. Prairie Pipe Line Co., 68 I. C. C. 458, 465.

ALL OTHER CITATIONS

In re Pipe Line, 24 I. C. C. 1.

§6. Reasonableness of Rates.

See Reasonableness of Rates.

IMPORTANT CASES SINCE 1908

(a) Respondents proposed to cancel their joint rate for the transportation

by pipe line of crude oil from Kansas and Oklahoma to Lacy Station, Pa., leaving no rate in effect. At the hearing the issuing carrier stated that the attempted cancellation was due to the withdrawal by the National Transit Company of its concurrences in the rate; that the National Transit Company had subsequently renewed its concurrence, and that respondents were willing to continue the rate in effect, subject to the blanket increases that had been made in their rates subsequent to the suspension. No objection to this was offered by protestants. HELD, the proposed schedule not having been justified an order will be entered requiring its cancellation. Crude oil from Kansas and Oklahoma to Lacy Station, Pa. 59 I. C C. 483.

(b) Complainant attacked defendants rates on crude oil from Kansas, Oklahoma and Texas to Franklin and Lacy Station, Pa., and their tariff rule requiring that shipments be tendered in quantities of not less than 100,000 barrels as unreasonable. Defendants are pipe lines. Pipe line service is of two parts. The first, known as gathering service, is performed entirely by the Prairie Pipe Line Co. and consists of gathering the oil from the producers tanks at the wells and transporting it by gravity or propulsion to trunk line stations. It also includes the measuring of the oil, which in turn includes the measuring and strapping of the tanks and computation of their capacity. At time complaint was filed gathering charge was 12c, but it was increased to 20c, Sept. 20, 1920. The gathering charge is a flat charge for whatever service may be entailed, whether of 1 mile or of 50 or more miles. Frequent extensions of the pipes to new producing properties and withdrawals from exhausted properties must be made. Second part is trunk line transportation which is performed by a series of pumpings, pumping stations being located about every 40 miles along the line. It does not appear that there has ever been a shipment of midcontinent crude to Lacy Station. Moreover, the gallonage delivered at Franklin, is but a small percentage of the total gallonage transported by defendants. Defendants have shown that the increased rates in issue are reasonable as compared with other rates for pipe line service. If defendants earnings are excessive such fact might require a general reduction in all of their rates, but the Commission would not be warranted in requiring any reduction in these particular rates below the level of other rates. Under the minimum tender rule the initial line will not accept oil for transportation unless the shipper has 100,000 barrels above ground ready for transportation. Having 100,000 barrels above ground, he may, after tender, hold it in storage, and defendants will accept the current runs from his wells or his current purchases until the tender is filled. If the shipper desires to continue shipping, he makes further tenders from time to time as the preceding tenders near completion, and defendants will continue to take his oil in small lots as produced or purchased. The identity of midcontinent oil is not preserved-that is, there is no assurance that the consignee will receive at destination the same oil which comprised the shipment at points of origin. It is permissible under the minimum tender rule for different shippers to combine their gallonage to meet the minimum. While this would reduce the cost to each shipper, it does not generally constitute a satisfactory way of shipping, as it conditions shipment by any one operator on his ability to find other operators who have the required amount of oil which they are willing to ship to the same point to which he desires to ship. There is considerable loss from evaporation where oil is held in storage for any great length of time. There is also present in the case of the small operator danger of irreparable loss through falling prices on oil stored to meet the minimum. As an operating matter midcontinent oil is at present received in small lots and delivered as the refiners can use it. A reduction in the minimum would not seem to necessitate radical charges in the operating practices of the carriers. While the Commission must, in dealing with questions of the character here presented, give careful consideration to the interests of the general public as well as those of the litigating parties, there is nothing of record in this case to justify the conclusion that a reduction of the minimum will react to public detriment. The transportation of oil by pipe line is essentially a bulk business, and that fact must not be lost sight of in determining the issue. The pipe lines

can not be successfully operated on a driblet basis, and there is a reasonable minimum below which they should not be required to accept oil for transportation. But the minimum must be reasonable, and it is clear that fixed by defendants does not square with the law in this respect. Rather it reserves the pipe lines to a few large shippers and essentially deprives the lines of the common carrier status with which they were impressed by the act. HELD, increased rates reasonable, but minimum tender of 100,000 barrels unreasonable to extent it exceeds tender of 10,000 barrels. Brunder Brothers v. Prairie Pipe Line Co. 68 I. C. C. 458.

(c) The transportation of oil by pipe line is essentially a bulk business, and that fact must not be lost sight of in determining the minimum which will be accepted for transportation. The pipe lines can not be successfully operated on a driblet basis and there is a reasonable minimum below which they should not be required to accept oil for transportation; but the minimum must be reasonable. Brundred Bros. v. P. P. L. Co. 68 I. C. C. 458, 466.

VI OPERATION

§7. In general.

IMPORTANT CASES SINCE 1908

(a) Rule requiring shipments of crude oil for transportation by pipe line to be tendered in quantities of not less than 100,000 barrels found unreasonable to extent that it requires tenders in excess of 100,000 barrels. Minimum fixed by carriers reserves the pipe lines to a few large shippers and essentially deprives the lines of the common carrier status with which they were impressed by the act. Minimum herein fixed should be sufficiently low to enable all producers and refiners to utilize the pipe lines and should be sufficiently high to mitigate operating difficulties. Brundred Bros. v. P. P. L. Co., 68 I. C. C. 458.

(b) A pipe line usually recives its greatest gallonage from any district when first laid, the supply of oil thereafter gradually diminishing until exhausted. This is in contrast with rail transportation, where the tonnage usually increases as time elapses. A pipe line may, at great outlay of money, extend its pipes into a new field that has the brightest prospects only to have the venture prove a disappointing failure. Brundred Bros. v. P. P. L. Co., 68 I. C. C. 458, 461.

(c) It is not one of the common-carrier functions of pipe lines to protect the unwary from the irresponsible or unscrupulous, and where such protection is afforded through a rule which deprives legitimate shippers of the privilege of using their facilities the rule can not be sanctioned. Brundred Bros. v. P. P. L. Co., 68 I. C. C. 458, 465.

ALL OTHER CITATIONS

Brundred Bros. v. P. P. L. Co., 68 I. C. C. 458, 466.

PLEADING AND PRACTICE

See Commerce §9; Courts §13 VI; Procedure Before Commission I; Undercharges.

POOL CARS

See Cars and Car Supply §10¾ §16.

POOLING

See Cars and Car Supply §16; Demurrage §8½.

POOLING OF TRAFFIC

CASES 1887-1908

(a) An agreement for the pooling of traffic between a carrier by rail subject to the Act to Regulate Commerce and a carrier by pipe line does not fall within the description of contracts prohibited by section 5 of that Act. Independent Refiners' Asso., v. Western New York & P. R. Co., 4 I. C. R. 162, 180.

(b) The agreement of the Trans-continental Association on file with the Commission is not on its face a "contract, or agreement or combination," for the "pooling of freights" or "division of earnings" between different and competing railroads, such as is declared unlawful by section 5 of the Act to Regulate Commerce. Duncan v. Atchison T. & S. T. R. Co. 4 I. C. R. 385.

(c) It is illegal for a railroad company to enter a "pool" whereby a parallel railroad has preference over it in rates, where its charter, granted by Congress, forbids discrimination against any connecting or intersecting road, and a state land grant to the railroad forbids it to enter into any combination with any parallel road in the state that will allow the latter to control rates on it. Missouri Pac. R. Co. v. Texas & P. R. Co., 4 I. C. R. 428.

(d) A Federal court will not refuse

to abrogate an illegal pooling contract of a railroad in the hands of its receiver, upon the prayer of the representatives of other lines connected with it, because the receiver is willing to enter into such combination with such objecting lines, and they may also be willing. Missouri P. R. Co. v. Texas & P. R. Co. (C. C. E. D., La.), 4 I. C. R. 428.

(e) A pooling contract between several railroad companies which control the business of a large section of country by which all their roads are to be run as one so far as through business is concerned, and each company is to receive certain proportion of the gross earnings, by either a diversion of business or of receipts, is void as against public policy. Chicago, M. & St. P. R. Co. v. Wabash, St. L. & P. R. Co., 4 I. C. R. 578.

(f) An action will not lie to compel a railroad company to pay over its earnings in excess of its share under an illegal pooling contract by which several companies agree to divide the earnings from a certain class of business by either giving each its share of business or of the earnings, since it is not a suit merely to compel an accounting ot moneys received, but is one to compel specific performance of the contract. Chicago, M. & St. P. R. Co. v. Wabash, St. L. &. P. R. Co. (C. C. App. 8th C.), 4 I. C. R. 578.

(g) The "fines" or "penalties" imposed by the provisions of the agreement of the Southern Railway & Steamship Association on members for violation of association rules appear on the face of that agreement to be available as substitutes for payment which would be exacted under a regular pooling system, and the arrangement under which they are imposed is tantamount to a combination, contract, or agreement "for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads or any portion thereof," which are forbidden by the statute. Cincinnati Freight Bureau v. Cincinnati, N. O. & T. P. R. Co., (Com.) 4 I. C. R. 592.

(h) The requirement of the agreement of the Southern Railway & Steamship Association that its members apply "full local rates upon all traffic subject to the Association Agreement coming from or going to" connecting lines which do not maintain Association rates, while to traffic from other connecting lines conforming to such rates full local rates are not applied, is repugnant to that clause of section 3 of the Act to Regulate Commerce which forbids carriers to "discriminate in their rates and charges between connecting lines." Freight Bureau v. Cincinnati, N. O. & T. P. R. Co., 4 I. C. R. 592.

(ij) The agreement of the Trans-Continental Association on file with the Commission is not on its face a "contract, or agreement or combination," for the "pooling of freights" or "division of earnings" between different and competing railroads, such as is declared unlawful by section 5 of the Act to regulate commerce. Blanton Duncan v. A. T. & S. F. R. R. Co., et al. 6 I. C. C. 85.

(k) A contract between competing railroads relating to traffic rates for the transportation of articles of commerce between the States, the direct effect of which is to produce a restraint of trade or commerce, is within the provision of the act of Congress of July 2, 1890, declaring that every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations is illegal. U. S. A. v. Trans—Mo Freight Asso. 7 I. C. C. App. CI.

(l) The question whether defendants pool their citrus fruit traffic or divide the earnings therefrom, whether the blanket rate of 1.25 per 100 pounds upon oranges and other citrus fruits from southern California to points on and east of the Missouri River, and the minimum carload weight of 26,000 pounds, are unjust or unreasonable, and whether the statute applies to the charges for refrigeration, and if so, whether such charges are unjust or unreasonable, are retained by the Commission for further hearing and investigation. Consolidated Forwarding Co. v. Southern P. Co. et al. 9 I. C. C. 182.

(m) There is no discrimination against localities by an arrangement among carriers dividing the traffic of transporting immigrants from Atlantic ports westward in agreed proportions, where the immigrants are transported at domestic published rates. Re Transportation of Immigrants from New York, 10 I. C. C. 13.

(n) It is at least doubtful whether section five of the Act to Regulate Commerce, which forbids the pooling of

freights, applies to a practice whereby the transportation of immigrants from Atlantic ports westward is divided between the carriers in agreed proportions based upon the proportion of the domestic passenger traffic done by each line, where such a practice cannot be made effective in respect to any other class of passenger business, and the immigrants are carried at domestic published rates, and the arrangements adopted by the carriers in connection with the immigration authorities of the United States have efficiently promoted the protection and greatly improved the treatment and comfort of immigrants. Re Transportation of Immigrants from New York, 10 I. C. C. 13.

(o) Defendants are unlawfully engaged in pooling the traffic in citrus fruits originating in southern California and carried by them and their connections to eastern markets, but further action upon this branch of the proceeding is reserved by the Commission, in view of the pendency in the United States Supreme Court of an appeal from a like decision of the circuit court for the southern district of California, in a suit brought by this Commission, to enforce its order herein prohibiting the defendants from continuing to apply and enforce a provision in their tariff reserving to themselves the routing of this traffic to eastern destinations, and depriving the shippers of their right to determine which of various established routes shall be used for the transportation of their property. Consolidated Forwarding Co. v. Southern P. Co. 10 I. C. C. 590.

IMPORTANT CASES SINCE 1908

(p) Upon investigation, pursuant to paragraph (1) of section 5 of the Act, proposed contract providing for the division between the Orange & Northwestern R. R. and the Gulf, Colorado & Santa Fe Ry., of traffic originating at and destined to points on the Gulf & Northern Ry., approved. The proposed division will be in the interest of better service to the public, will promote economy of operation, and will not unduly restrain competition, and the terms and conditions are just and reasonable. Division of Traffic G. & N. Ry. and Connections, 72 I. C. C. 444.

ALL OTHER CITATIONS

Division of traffic G. & N. Ry. and connections, 72 I. C. C. 444.

PORT DIFFERENTIALS

IMPORTANT CASES SINCE 1908

(a) Port differentials have been upheld repeatedly, though in cases embracing principally export and import business. See 7 I. C. C., 612; 11 I. C. C., 13; 24 I. C. C., 55; 27 I. C. C., 238; 24 I. C. C. 78; 47 I. C. C., 643. Sugar Cases of 1922, 81 I. C. C., 448, 471.

ALL OTHER CITATIONS

Sugar Cases of 1922, 81 I. C. C., 448, 462, 472.

PORT HANDLING CHARGES

IMPORTANT CASES SINCE 1908

(a) Respondents proposed to restrict their proportional rates on rough lumber, in carloads, shipped interstate between points in Arkansas; from Arkansas and Louisiana points to Memphis, Tenn.; and between points in Arkansas, Louisiana, Missouri and Oklahoma on traffic "moving interstate from a point in one state to a point in another state," for manufacture at points on their lines and reshipment therefrom. In the tariffs now in effect the application of the inbound proportional rates on the rough lumber is conditioned upon the outbound tonnage of finished articles being not less than specified percentages of the weight of inbound material. As to certain articles, including ceiling, flooring, moldings, and partitions, it is provided that the outbound tonnage shall be not less than 40 per cent of the weight of inbound lumber or rough lumber. In the suspended schedule it is provided that the outbound tonnage shall be not less than 40 per cent of the weight of inbound rough green lumber. If these schedules become effective, under other provisions of respondent's tariffs, the weight required will be 60 per cent of that of inbound dry lumber. The proportional rates are lower than the rates applicable if the outbound tonnage does not equal the required percentage of the inbound lumber proposed schedules have not been justified and must be canceled. Absorption of handling charges at New Orleans, La., 59 I. C. C. 597.

PORT TO PORT RATES

See Barge Line; Coastwise traffic.

IMPORTANT CASES SINCE 1908

(a) Contention that the Commission's suspension power is limited to an increase in rates previously on file and subject to its jurisdiction, and that it has no

authority to suspend the port-to-port rates, New Orleans to New York, under investigation. HELD, Commission's jurisdiction is full and complete. Cotton from New Orleans, 49 I. C. C. 751, 752.

(b) Port to port rates filed prior to those filed by the Director General not subject to the jurisdiction of the Commission. New Bedford Board of Commerce v. Director General, 55 I. C. C. 274, 275.

(c) All-water rates applying locally between Norfolk and Richmond, Va., on the one hand, and Philadelphia, Pa., New York, N. Y., and Boston, Mass., on the other, are not subject to the act. Corporation Commission of N. C. v. Director General, 62 I. C. C. 64, 83.

(ca) Port-to-port rates were filed with the Shipping Board but not with the commission. Water lined formed part of a combined rail-and-water system of transportation taken into Federal control by proclamation of the President, and thus came under the provisions of the Federal control act, and was under Federal control and operation during the period of movement. HELD: Charges were collected "by or through the President" as contemplated by section 206 (c) of the Transportation Act, 1920, and are within the commission's jurisdiction. New Bedford Board of Commerce v. Director General, as Agent 68 I. C. C., 85, 86.

(cb) Contention that in the exercise of the commission's undoubted jurisdiction over interstate rail-and-water transportation, it may protect such transportation against injury from port-to-port rates of participating water carriers upon somewhat the same theory as in the Shreveport cases, wherein jurisdiction was exercised over rail carriers engaged in both interstate and intrastate commerce, in order to protect interstate traffic from injury by the intrastate rates, not sustained. Corona Coal Co. v. Secretary of War, 69 I. C. C. 389, 391, 392.

(cc) In the transportation act, 1920, Congress set forth explicitly the commission's power and duty to deal with intrastate rates which unjustly discriminate against, or unduly prejudice persons or localities engaged in interstate commerce. Wherever specific mention is made of local port-to-port rates the intent is disclosed to exclude them from the commission's jurisdiction. The commission is not warranted in deducing such a power merely from a fine spun web of inference. Corona Coal Co. v. Secretary of War, 69 I. C. C. 391, 392.

(d) Conference rates maintained by water carriers operating in transcontinental service from the north Atlantic and Gulf ports and established at a conference under a "gentlemen's agreement." Appendix 1, Transcontinental Cases of 1922, 74 I. C. C. 48, 55, 96.

(e) Complaint attacking failure of Pacific Ocean carriers to comply with routing instructions shown in through prepaid bills of lading in connection with shipments from Australia and New Zealand to Boston, Mass., in that shipments were forwarded all-water instead of water-and-rail as routed; assessment of failure to refund amounts in excess of charges on such shipments in addition to those collected at point of origin; charges applicable over route of movement; and seeking establishment of through routes and joint rates on such shipments; dismissed, for want of jurisdiction. Complainant's members must seek recourse against Pacific Ocean steamship companies under their contracts of carriage elsewhere than before this commission. Boston Wool Trade Asso. v. A., T. & S. F. Ry. Co., 83 I. C. C. 445.

ALL OTHER CITATIONS

Central Vermont Boat Lines, 40 I. C. C. 589, 593; S. P. Co. Ownership of Atl. S. S. Lines, 43 I. C. C. 168, 175, 176.

PORTO RICO

IMPORTANT CASES SINCE 1908

(a) New Organic Act of Porto Rico, March 2, 1917, §38 (Comp. St. 1918, §3803p), declaring that the Interstate Commerce Act and its amendments shall not apply to Porto Rico, means the local and intra-island affairs and rates, and not rates by cable lines with other countries, over which otherwise, the Interstate Commerce Commission has jurisdiction. Benedicto v. West India & Panama Telegraph Co., 256 Fed. 417.

(b) Where a carrier threatened to tear up complainant's private switches and side tracks, and refused to receive and deliver cars there, unless complainant paid illegal greasing charges, not included in any tariff of rates filled with the Public Service Commission, Laws Porto Rico 1917, No. 70, § 28, prohibiting an action to recover because of wrongful collection of an alleged excessive

rate, in the absence of a previous decision of the commission that the rate was excessive, does not prevent equitable relief. American R. Co. of Porto Rico v. South Porto Rico Sugar Co. 293 F. 671.

POSTING

See Tariffs III.

POTENTIAL COMPETITION

See Competition; Evidence §14 (1½) (2) (2½).

PRECOOLING

See Interstate Commerce Commission, I; Refrigeration.

IMPORTANT CASES SINCE 1908

(a) A carrier's entire duty is discharged when it places the precooled car on its train and hauls it to destination. Arlington Heights Fruit Exchange v. S. P. Co., 20 I. C. C. 106, 116.

(b) When shipments are precooled by the shipper at the packing houses the car is delivered sealed to the carrier with instructions not to open nor reice until destination is reached. HELD, that the carrier under such circumstances assumes no liability for defective refrigeration, and if it handles the precooled car with due diligence it is not liable for any damage due to deterioration of the shipment. Arlington Heights Fruit Exchange v. S. P. Co., 20 I. C. C. 106, 117.

(c) A carrier may insist upon furnishing all equipment needed for movement of precooled shipments and might decline to use equipment furnished by shippers. Arlington Heights Fruit Exchange v. S. P. Co., 20 I. C. C. 106, 118.

(d) A shipper is not obliged to submit fruit to the hazard of a system of precooling by the carrier which the carrier declines to guarantee, but a shipper has the right himself to precool and preice his shipment. Arlington Heights Fruit Exchange v. S. P. Co., 20 I. C. C. 106, 119, 120.

(e) Precooling is of two kinds: that furnished by the carriers and that which is furnished by the shippers. That furnished by the shipper is performed immediately after the fruit is picked; that furnished by the carriers can only be done after the cars are loaded and hauled to the precooling stations at San Bernardino or at Colton, when whole train loads and carloads are precooled at once, whereas the shippers precool each box separately. After being precooled by the carriers the shipments must be reiced before reaching destination, which does not appear to be the case when precooled by the shippers. HELD, that the precooling system of the shipper is superior to that used by the carriers and that the shippers have a right to precool and preice their shipments. Arlington Heights Fruit Exchange v. S. P. Co., 20 I. C. C. 106, 120.

(f) The car used for the shipment of oranges and lemons from California is exactly the same whether the movement is under ventilation or refrigeration, or is precooled and preiced. The use of this special car is taken account of in the rate. Carriers are not, therefore, in case of shipments precooled by the shipper, entitled to additional compensation by reason of the fact that a car of this type is necessary and furnished. Arlingon Heights Fruit Exchange v. S. P. Co., 20 I. C. C. 106, 120.

(g) The system of refrigeration known as precooling is essentially different from the standard form of refrigeration. In actual practice it takes two forms. Precooling by the shipper and precooling by the railroad. In precooling by the shipper the basic idea is to bring the fruit under the influence of a low temperature at the earliest possible moment. The oranges are brought from the tree to the packing house, packed in a box, which is immediately deposited in a cold room. At the end of twenty-four to forty-eight hours all parts of the fruit and all parts of the box have been reduced to a uniform temperature of from 33 degrees to 35 degrees F. The box remains in the cold room until it is loaded. The box is taken directly to the car and packed solid and not with air space between, as in case of ordinary refrigeration or ventilation. The bunkers of the car are filled with large blocks of ice, especially intended for that purpose, and the bunkers and vents sealed up so as to make the car as nearly airtight as possible. This is all done by the shipper, and the car is then delivered to the railroad with instructions to transport to destination without reicing and without breaking the seal. By this method an additional tier of boxes can be loaded, thereby increasing the paying load of the car one-sixth. Under this system the fruit is in cold storage from the beginning and can be held without danger, and thereby minimizes the effect

of car shortage. The cost of precooling and preicing a car in this manner, including interest on the investment and depreciation of the plant on a fair average, is about $32.50. There is an expense in repairing the ice bunkers of about $5.00 per car per trip. The average weight of the ice during the entire journey is about 5,000 lbs. The extra tier which can be loaded when precooled by the shipper adds a revenue in the case of the Santa Fe lines of $53, and in case of the S. P. Co., $55 on a haul from California points to Chicago, while the actual additional cost of moving the car does not exceed half these sums. HELD, that the shippers who have devised and perfected this system of precooling should not be compelled to pay for the privilege of using it more than the fair cost to the carrier of providing the additional facilities which are not included in the ventilated rate, with a fair profit, and that the precooling charge of $30.00 per car charged by defendants when car is precooled by the shipper is unreasonable to the amount that it exceeds $7.50 per car. Arlington Heights Fruit Exchange v. S. P. Co., 20 I. C. C. 106, 121.

(h) Precooled shipments, without additional compensation, are more desirable traffic than either the ventilated or refrigerated movement. Arlington Heights Fruit Exhange v. S. P. Co., 20 I. C. C. 106, 121.

(i) Discrimination, it seems, will not result in favor of the larger shipper from allowing shippers to precool their own shipments. Arlington Heights Fruit Exchange v. S. P. Co., 20 I. C. C. 106, 122.

(j) The public is not required to make good a carrier's blunders in erecting facilities. Arlington Heights Fruit Exchange v. S. P. Co., 20 I. C. C. 106, 122.

(k) Complainants attacked the minimum weight on peaches from Georgia to markets east of the Mississippi and north of the Ohio and Potomac rivers in refrigerator cars, of 22,500 lbs., which compels complainants to load peach crates five tiers high. HELD, that the ordinary refrigeration method will not perfectly cool the two top tiers, because Georgia peaches are picked and packed in very hot weather and moved through hot regions of the country; that the proper method of shipping these peaches would be to precool the crates before loading into the car; that comparisons cannot be made with the transportation of California peaches (these peaches being cooled by exposure to the cool night air or in precooling stations, and subject to a cool mountain haul shortly after moving), nor in the northern states, where there is a short haul. Complaint dismissed. Georgia Fruit Exchange v. S. Ry. Co., 20 I. C. C. 623.

(l) Fruit may be safely transported under the precooling method. Arlington Heights Fruit Exchange v. S. P. Co., 20 I. C. C. 106, 113; Georgia Fruit Exchange v. S. Ry. Co., 20 I. C. C. 623, 626.

(m) Shippers, being entitled to precool upon a reasonable charge, the Commission has authority to determine that reasonable charge and require carriers to file tariffs establishing it. In Re Regulations and Practices With Regard to Precooling and Preicing, 23 I. C. C. 267, 268, 271.

(n) Carriers involved herein, complying with an order of the Commission in Arlington Heights Fruit Exchange v. So. Pac. Co., 20 I. C. C. 106, filed tariffs establishing the rate of $7.50 per car for precooling oranges shipped from points in southern California to the east, and immediately thereafter filed other tariffs canceling these tariffs and withdrawing the privilege of precooling altogether. Upon protests from interested shippers the Commission suspended the tariffs canceling the precooling privilege. HELD, that shippers have the right to precool; that $7.50 per car is a reasonable charge to be made by the carriers for their service in that connection; that the tariffs withdrawing this charge are unlawful; and that the present tariffs or their equivalent, granting this privilege, should be continued in effect. In Re Regulations and Practices with Regard to Precooling and Preicing, 23 I. C. C. 267, 271.

(o) Where a precooling service is maintained in connection with traffic moving under refrigeration, and such service is furnished only upon request of those desiring it, it seems proper that the additional expense involved in the maintenance of such service should be charged only to the shippers who request the service, and not be imposed as a burden upon those who do not require and are not given it. R. R. Com. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 22.

(p) Complainants attacked the rule that on shipments of lettuce from San Benito and Mercedes, Tex., to St. Louis,

Mo., standard refrigeration charges would be assessed though the lettuce was precooled, initially iced by the shipper, and tendered with the instructions not to reice in transit, as unreasonable. Whether precooling was necessary to the safe transportation of vegetables, and whether precooled vegetables loaded in fully iced refrigerator cars would carry safely without reicing in transit, were controverted points. When shipments were moved under refrigeration the carriers furnished pre-iced refrigerator cars, which were reiced at all regular icing stations enroute, regardless of instructions to the contrary. In the re-icing of precooled shipments to St. Louis about 3,000 pounds less ice was required then in the case of non-precooled shipments. The charge for precooling lettuce ranged from $52 to $90 per car; while the cost of initially icing a car varied from $21 to $27. HELD, that the rules and practices attached were not shown to be unreasonable. Complaint dismissed. Unit Marketing System v. St. L. B. & M. Ry., 48 I. C. C. 510.

(q) Rules 245 and 250, governing precooled and preiced cars of citrus fruit from California and Florida. Recommended that clause (D), in which the giving and acceptance of special instruction from the shipper releases carriers from all liability for loss and damage caused by nonicing in transit or at destination, be eliminated. Perishable Freight Investigation, 56 I. C. C. 449, 582, 586.

(r) Rules 246, governing precooling by carrier of shipments from California moving under full refrigeration, should be eliminated. Perishable Fruit Investigation, 56 I. C. C. 449, 583, 586.

(s) In 20 I. C. C. 106, the Commission found that standard refrigeration charges on oranges from California were not unreasonable, but that the precooling charge of $30 should not exceed for the future $7.50 per car. Reparation denied. Rehearing granted on request of complainant. In order that there may be no misapprehension as to the principles upon which the conclusions of the Commission herein are based, complainant was entitled to a finding as to the reasonableness of the charges in the past; and upon a finding that the charges attacked had been shown to have been unreasonable, to an award of reparation on shipments on which it paid and bore the charges. The fair inference to be drawn from the decision of the Commission of June 20, 1917, was that the then prevailing charge had not been proved to have been unreasonable. It does not appear that any additional evidence that complainant might offer would modify the essential facts upon which our conclusions are based. HELD, the charges attacked have not been shown to have been unreasonable prior to the effective date of the order establishing the $7.50 charge. Reparation denied. Arlington Heights Fruit Exchange v. S. P. 57 I. C. C. 580.

(t) In the exercise of "the flexible limit of judgment which belongs to the power to fix rates," finding in former reports 39 I. C. C. 88 and 45 I. C. C. 248, denying reparation on precooled and pre-iced oranges from California points to destinations in other states and in Canada, reaffirmed on reargument. Arlington Heights Fruit Exchange v. S. P. Co., 57 I. C. C. 580.

(u) Because the shipper voluntarily loaded the cars in excess of the minimum loading requirements on which the charge is based, it by no means follows that the higher charge with the lower minimum should be found to have been unreasonable. Futhermore, in establishing the $7.50 for the future with the requirements that the cars must be loaded seven tiers wide, the Commission was prescribing a new rate and minimum for a new service, a method of shipment which up to that time had been in a largely experimental state. Arlington Heights Fruit Exchange v. S. P., 57 I. C. C. 580, 582.

(v) The withdrawal of the right from the shipper to pre-cool and pre-ice is a practice which affects rates and which the Commission under section 15 of the Act has the right to suspend. A. T. & S. F. Ry. Co. v U. S., 204 Fed. 647, 650.

(w) Under section 1 of the Hepburn Act the carrier has the exclusive right to furnish such refrigeration as may be required in connection with the transportation of fruits, but this does not mean that because a carrier has ice on hand it can compel the shipper to have it refrigerated, where the shipper prefers to precool his fruit and have it forwarded under ventilation only. A. T. & S. F. Ry. Co. v. United States, 34 Sup. Ct. 291, 294; 232 U. S. 199; 58 L. ed. —.

(x) Under section 15 of the Interstate Commerce Act, as amended by the Hepburn Act authorizing the Commission to determine what practices, in respect to rates, are unreasonable, to determine what practices, in respect to transportation, are just, and to require the carriers to conform to those prescribed by the Commission, that body has power to cancel a tariff withdrawing a precooling privilege previously recognized by it, and to require the carrier to conform to its order establishing a certain charge on precooled shipments. A. T. & S. F. Ry. Co. v. United States, 34 Sup. Ct. 291, 296; 232 U. S. 199; 58 L. ed. —.

(y) Where shipments of citrus fruits from California to eastern points were precooled by the shippers so as to require no reicing en route, the order of the Commission fixing $7.50 per car as the charge which carriers might make for services rendered in connection with the shipment will not be disturbed on the ground that the carrier is entitled to pay for hauling the ice placed in the bunkers by the shipper, where the Commission evidently proceeded upon the theory the charge for hauling the ice might be considered as absorbed by the carrier in view of the fact that where the shipper precooled the fruit cars are loaded heavier than where standard refrigeration is employed. A. T. & S. F. Ry. Co. v. United States, 34 Sup. Ct. 291, 296; 232 U. S. 199; 58 L. ed. —.

PREPAY STATIONS

See Non-Agency Stations.

IMPORTANT CASES SINCE 1908

(a) If, without notifying the initial carrier to collect the full prepay charges, or requesting instructions, the terminal carrier assumes the responsibility of forwarding the shipment to a station beyond the named destination, a prepay station, it must accept the resulting liability for increased charges. Young v. P. C. C. & St. L. Ry. Co., 42 I. C. C. 183, 185.

(b) On a shipment consigned to a non-agency station, carrier's agent was instructed to forward to destination without prepayment, if possible, otherwise, to bill to a point short of destination, At Bristol the Southern refused to accept because charges had not been prepaid, whereupon destination was changed to Bushnell, later reconsigned to Judson. Rate charged found legally applicable, although a lower through combination rate was in effect. Western Carolina Lumber & Timber Asso. v. V. C. Ry. Co., 48 I. C. C. 445.

(c) In a typical case the shipper was notified by telephone that the destination specified was a prepay station and that charges would have to be paid. The shipment held pending settlement of charges and demurrage accrued. The shipper contends that check was sent the day following such notice. HELD, demurrage legally applicable, and the mere mailing of the check, which was not received, did not satisfy the tariff obligation to prepay charges. Ruddock Orleans Cypress Co. v. Director General, 55 I. C. C. 236, 238.

ALL OTHER CITATIONS

Fifer Lumber Co. v. G. N. Ry. Co., 42 I. C. C. 13; Waco Texas, Switching, 46 I. C. C. 647.

PREPAYMENT OF CHARGES

See Demurrage §8.

PRESUMPTIONS

See Advanced Rates §8 §8 (1); Evidence IV; Loss and Damage §11½; Reasonableness of Rates §16.

PREVIOUS DECISION OF COMMISSION

See Advanced Rates §14¾; Blanket Rates §19¼; Differential §6; Equalization §4; Evidence V §44¼ §44⅞; Reasonableness of §26½; Reparation §8½.

PRIOR ADJUDICATION

See Reasonableness of Rates §26½; Procedure Before Commission §17.

PRIORITY OF SHIPMENTS

See Cars and Car Supply §12½.

IMPORTANT CASES SINCE 1908

(a) Paragraph (15) of section 1 of the interstate commerce act, as amended by section 402 of the Transportation Act, 1920, authorizes the Commission to direct priorities in transportation. Assignment of Freight Cars, 57 I. C. C. 760, 766.

PRIVATE CARS

See Cars and Car Supply §4 §10½ §12½ §13 §31 §32; Demurrage 10; tank Cars.

PRIVATE SIDINGS

See Side Tracks.

IMPORTANT CASES SINCE 1908

(a) If the carrier recognizes the right of a track owner to accord the use of its siding to one shipper the carrier must treat alike all users of the siding; but it is not intended to declare the existence of the right asserted by defendants or to approve the practice of owners of industrial tracks throwing open their tracks in such a way as to make them general terminal facilities, thus investing owners with power to foster discrimination between shippers. Bartlett Hayward Co. v. B. & O. R. R. Co., 40 I. C. C. 151, 155.

PROCEDURE BEFORE COMMISSION

I. PRACTICE.
§1. In general.
§1a. Investigation by Commission.
II. COMPLAINT.
§2. Form and issues tendered.
§3. Notice of complaint.
§4. Amendment.
§4a. Answer.
§5. Hearing.
§6. Briefs.
§7. Oral argument.
§8. Rehearing.
§9. Costs, attorney's fees, etc.
III. MOTIONS.
§10. Dismissing complaint.
(1) In general.
(2) Adjustment since filing.
(3) Interveners.
(4) Moot cases.
IV. ORDERS OF COMMISSION.
§11. Modification, valiidity and effect.
§12. Review.
§12a. Suspension rates.
V. PARTIES.
§13. Necessary and proper parties.
VI. SET-OFF.
§14. In general.
VII. EFFECT OF EVIDENCE.
§14½. In general.
§14½a. Burden of proof.
§14¾. Depositions.
§15. Equities of cause.
§15¼. Exparte affidavits.
§15½. Reports by examiners.
§16. Judicial notice.
§17. Res adjudicata.
§18. Requesting information of carrier.
§18½. Reparation statements and pleadings.
§19. Tests of revenue.
§19½. Unreported opinions.
VIII. DEFENSES AND EVIDENCE.
§20. In general.
§21. Immunity.
§21a. Moot question.
§22. Witnesse and subpoena Duces Tecum.
§23. New Procedure.
(1) Evidence in writing.

CROSS REFERENCES

See Advanced Rates VI; Allowances I; Blanket Rates VI; Cars and Car Supply VI; Claims; Classification §19; Commerce Court III; Courts VI; Crimes IX; Differentials VI; Discrimination IV, V; Divisions §10; Express Co. XIII; Interstate Commerce Commission III; Long and Short Hauls V; Reasonableness of Rates §1½; Reconsignment V; Routing and Misrouting §10½; Reparation V §23; Switch Tracks and Switching IV; Tap Lines V; Through Routes and Joint Rates §23.

I. PRACTICE.

§1. In General.

See Reasonableness of Rates §1½.

CASES 1887-1908

(a) Practice and proceedings shall be as simple as possible. Associated Wholesale Grocers v. Missouri P. R. Co. 1 I. C. R. 321.

(b) It is the desire of the Commission that the practice and proceedings shall be as simple as possible, and that final hearings be had forthwith, without the interposition of dilatory motions, etc. Associated Wholesale Grocers of St. Louis v. Missouri Pac. R. Co., 1 I. C. R. 321.

(c) The Interstate Commerce Act contemplates that when a complaint is made against a carrier on the ground of exorbitant rates, the carrier may change its rates before a hearing is had, so as to remedy the matter complained of, if it shall see proper so to do. Fulton v. Chicago, St. Paul, M. & O. R. R. Co., 1 I. C. R. 375.

(d) Letter of Chairman Cooley in response to communication expressing desire that Commission would go to certain State and there hear testimony in certain cases then pending at issue, and

such other cases as may have arisen in that state; suggestion in letter that facts be put in writing and that counsel make diligent effort to bring within smallest possible compass the necessity for oral evidence. Rice v. Louisville & Nashville R. R. Co., 1 I. C. R. 446.

(e) When an important question is raised by the pleadings, but the parties neither by evidence nor by argument supply the Commission with information as to it, it will not be decided. Rice v. Louisville & N. R. Co. 1 I. C. R. 722.

(f) The Commission will not order a rehearing involving expenses to parties, unless satisfied that the result might be changed. Riddle v. Pittsburg & L. E. R. Co. 1 I. C. R. 773.

(g) Answers, verified, must be filed with the Commission within twenty days from notice, unless a shorter time is prescribed, and a copy served upon complainant. Rule 5, Appendix I, 1 I. C. R. 841.

(h) Upon failure to answer, the Commission will take proof and make order. Rule 8. Appendix I, 1, I. C. R. 842.

(i) Copies of petition, opinion, etc., will be furnished upon payment of expense thereof. Rule 11. Appendix I, 1 I. C. R. 842.

(j) Affidavits may be taken before any officer authorized to administer oath. Rule 12, Appendix 1, 1 I. C. R. 842.

(k) Carrier deeming complaint insufficient may serve notice for hearing on it without answer; facts stated are admitted. Motion to dismiss for insufficiency may be made at hearing. Rule 6 Appendix 1, 1 I. C. R. 842.

(l) Adjournment and extension of time is within discretion of Commission. Rule 7. Appendix 1, 1 I. C. R. 842.

(m) Upon issue being joined, time and place of hearing will be assigned; witness examined orally before Commission, except where otherwise ordered; petitioner has burden of proof. Rule 8. Appendix 1, 1 I. C. R. 842.

(n) A case cannot be decided on a theory which is neither presented by the complaint nor advanced in the taking of the testimony. Martin v. Chicago, Burlington & Quincy R. Co., 2 I. C. R. 32.

(na) When, in a proceeding, evidence is introduced by a party and he is permitted to do so for the single purpose of the bearing it may have upon the reasonableness of the rate, which would be inadmissible for any other purpose, and it tends to show a difference of rates of the carrier by which a combination could be made of those rates upon the different tariffs that would be improper and unjust, the carrier not being allowed to controvert it upon the hearing, as to any other feature, except so far as it had a bearing upon the reasonableness of rates, because it would involve a collateral inquiry, the Commission will not determine this collateral inquiry or question it presents until an opportunity has been furnished the parties to be heard in a proceeding such as is provided for by the Statute. For example: where the complaint of the petitioner makes no allegation that under the tariffs of the carrier freight may be shipped from Chicago to St. Peter at one rate, there unloaded, and then subsequently reshipped from St. Peter to each of the stations between St. Peter and Pierre at a rate which added to the rate from Chicago to St. Peter in considerably less than the direct rate from Chicago to each of these stations, but on the hearing the complainant is allowed to introduce evidence upon this subject simply for the purpose of showing that the rates between St. Peter and Pierre are unreasonable and for no other purpose, the carrier having at the time the complaint was made a number of tariffs, as follows: a distance tariff for the State of Illinois, a distance tariff for the State of Wisconsin, a distance tariff for the State of Minnesota, a distance tariff for the Territory of Dakota, local tariffs to and from all points on its line in each of the States through which it passes and the Territory of Dakota, and a tariff from and to Chicago and all points along its line, extending to Pierre, a distance of 781 miles. Business Men's Asso. v. Cg. & N. W. R. Co., 2 I. C. R. 48.

(o) A case involving local rates was ordered to be heard before the Interstate Commerce Commission at a central point in the territory immediately affected by the rates. Delaware State Grange v. New York, P. & N. R. Co. (Com.) 2 I. C. R. 187.

(oa) Where it is obvious that there are many parties interested as directly as is the complainant in the question before the Commission, opportunity will be given them to appear on the taking of evidence. Spartanburg Board of Trade v.

Richmond & Danville R. R. Co. 2 I. C. R. 193.

(p) A complaint made for the purpose of retaliation for a fancied wrong —as, to get even with a carrier for the revocation of complainant's pass—does not commend itself to the Commission. Slater v. Northern Pacific R. Co., 2 I. C. R. 243.

(q) When a question of general interest is involved, the Commission, in its own discretion, and in furtherance of justice, may open a case to give parties the benefit of a more extended investigation of the same subject matter in other pending cases. Rice Robinson & Witherop v. W. N. Y. & P. R. 2 I. C. C. 496.

(r) Where a case involving the reasonableness of rates has been disposed of by the carrier assenting to the rates demanded no opinion will be expressed on the rates which have been abandoned, even though the parties request it. Pennsylvania Co. v. Louisville, New Albany & Chicago R. Co., 2 I. C. R. 603.

(ra) The Commission does not give opinions on abstract questions. Pennsylvania Co. v. Louisville, New Albany & Chicago R. Co., 2 I. C. R. 603.

(s) The Rules of Practice of the Commission not only do not provide for a replication to the answer, but in effect, though not in terms, exclude it. Oregon Short Line R. Co. v. Northern Pacific R. Co. 2 I. C. C. 639.

(t) Under the rules of practice issued by the Commission, a replication to an answer is not required or allowed. Oregon S. L. R. Co. v. Northern P. R. Co., (Com.) 2 I. C. R. 639.

(u) An averment that parties are interstate common carriers subject to the Act to Regulate Commerce is not sufficient to warrant an inference, under a motion to dismiss the complaint for insufficiency, that wheat delivered to their elevator was for interstate commerce. White v. Michigan C. R. Co. (Com.) 2 I. C. R. 641.

(v) When applied to by petition, the Commission must investigate matters complained of, and must, to enforce the Act, make investigations and prosecute inquiries instituted on its own motion. Re Rates & Charges on Food Products (Com.) 3 I. C. R. 151.

(w) No question is presented in this case as to whether the rates charged by the all-rail carriers at intermediate points are just and reasonable or not, but, on the contrary, the case was so presented and tried as to distinctly indicate to the Commission that no decision was desired in regard to this matter, for no evidence was offered concerning it by either side; and the case being one that is inter parties, commenced, prosecuted and defended by able counsel for the respective parties, the Commission has heard, considered and determined it as presented by the parties and their counsel. Rice v. Atchinson, Topeka & Santa Fe R. Co. 3 I. C. R. 263.

(x) A special finding must be considered as a whole, and cannot be assailed in parts; and if, taken as a whole, the finding legitimately supports the judgment, it will be upheld. A finding containing more facts than necessary is not objectionable, if such facts do not establish another cause of action. Cleveland C. C. & Q. R. Co. v. Closser 3 I. C. R. 387.

(y) Special proceedings applicable to specified subject matter, and conformable to the rules requiring notice and the acquisition of jurisdiction, and which affect all persons alike whose property or rights come within the lawful scope of the proceedings, are prosecuted with "due process of law." Burlington, Cedar Rapids & N. R. Co. v. Dey 3 I. C. R. 585.

(z) The complaint was that the defendants' charges for the transportation of specified perishable articles of truck-farming from stations on their lines of railroad to Jersey City and Philadelphia were excessive and unreasonable, and that the charges were higher for the shorter distances from their stations on the Peninsula in Delaware and Maryland than for the longer distance from Norfolk, Virginia. It was found that the charges on certain articles specified from stations on the Peninsula were excessive and a reduction was ordered. The reduced rates are, however, in many cases still considerably above the rates on the same articles from Norfolk, and, the showing not being sufficient to enable the Commission to determine satisfactorily how far the lower Norfolk rates were justified by the differences in the conditions and circumstances, that subject is left for future consideration. Delaware State Gauge v. N. Y. & N. R. Co. 3 I. C. R. 554.

(aa) When a carrier fails to answer a

complaint filed under action 13 of the Act, the Commission will take such proof of the facts as may be deemed proper and reasonable, and make such order thereon as the circumstances of the case appear to require. Tecumseh Celery Co. v. C. J. & M. R. Co. 4 I. C. C. 318, 320.

(bb) Where a complainant has invoked the aid of the law to secure what he, with the acquiescence of the carrier had previously obtained in apparent contravention of the law, the carrier cannot plead violations of the law by complainant in bar of a decision on the merits, nor will the individual interests of the complainants be taken into consideration; but the Commission will examine the evidence and make such report thereon as, under the provisions of the law, the rights of other shippers and the public generally may require. Page v. Delaware, L. & W. R. Co. (Com.) 4 I. C. R. 525.

(cc) It was the intention of Congress that the procedure before the Commission should substantially conform to that before a court charged with the duty of finding the facts, and giving judgment thereon, or to the investigation and report of a referee or special master in chancery, passing on both facts and law. Interstate Commerce Commission v. L. & N. R. Co., 5 I. C. R. 656.

(dd) It appearing that the discrimination and preferences complained of in these proceedings would be removed through compliance, by carriers operating in the same territory, with the decision and order of the Commission in other cases (The Chicago & Cincinnati Freight Bureaus Cases, 4 Inters. Com. Rep. 592, 6 I. C. C. Rep. 195), and that suits are pending in the courts for the enforcement of such order, the proceedings herein were stayed until final determination by the courts in such other cases. Southern Paint & G. Co. et al v. Lake E. & N. R. Co. et al. 6 I. C. C. 284.

(ee) In a case before the Commission, instituted by complaint and strictly inter partes, matter not expressly put in issue by the pleadings or necessarily involved in issues so presented, cannot be authoritatively determined by the Commission. Commercial Club of Omaha v. Chicago R. I. & P. Ry. Co. 6 I. C .C. 647.

(ff) The question whether on traffic from the Middle West the present rates to intermediate points which are higher than those to Pacific Coast terminals are lawful was not litigated at the hearing, and while the Commission will not of its own motion proceed in that branch of the case complainants are granted leave to do so if they desire. Business Men's League v. A. T. & S. F. Ry. Co. et al. 9 I. C. C. 318.

(gg) This proceeding is in the form of a general investigation, and although the respondent carriers were fully heard by their traffic representatives, and in some instances through their attorneys, the proceeding is in a manner ex parte, and facts not brought out in this inquiry, with further discussion of the subject, might lead to a different conclusion. No order, therefore, can be made upon this record, but further proceedings will be commenced unless the respondent carriers readjust their rates on grain and grain products in accordance with the views herein expressed on or before May 15, 1903. Re Proposed Advances in Freight Rates 9 I. C. C. 382.

(hh) Analogy of interstate commerce Commission to court of equity. Railroad Commission of Ohio v. Hocking Valley Ry. Co. 12 I. C. C. 398.

(ii) Interstate Commerce Commission is without authority to issue mandumus. Jones v. St. Louis & S. F. R. Co. 12 I. C. C. 144.

(iia) The Commission is not the proper forum to which to appeal for the enforcement either of a charter, statutory, or a common law obligation to maintain a station at a given point. The Commission has no authority to issue the writ of mandamus, nor has it any common law jurisdiction. While it may draw upon the wisdom of the common law for guidance in the consideration of many questions, its jurisdiction as an administrative and quasi-judicial body rests wholly upon the provisions of the act. Jones v. St. L. & S. F. R. Co. 12 I. C. C. 144, 148.

(jj) The Commission is essentially an administrative body, and in the examination of formal complaints ought to get at the real substance of the issue presented unembarrassed by technical considerations. Missouri & Kansas Shippers Asso. v. M. K. & T. Ry. 12 I. C. C. 483, 484.

IMPORTANT CASES SINCE 1908

(kk) Complaints may be filed even where there is no direct damage to the

complainant. Washer Grain Co. v. M. P. Ry., 15 I. C. C. 147.

(ll) The Commission is an administrative body, created to effect substantial justice in the matters under its control, and is not bound or limited by the strict rules of pleading. Nollenberger v. M. P. Ry. Co., 15 I. C. C. 595, 598.

(mm) It is not the proper course of procedure for complainants to file complaint and proceed no further. Some obligation rests upon a complainant who seeks reparation to prosecute his case with due diligence. Advance Thresher Co. v. Orange & N. W. R. R. Co., 15 I. C. C. 599, 600.

(nn) However strongly the Commission might feel inclined to relieve conditions complained of, its actions must be within the provisions of law and with due and proper regard for the rights of every affected interest. Commercial Club of Hattiesburg v. Alabama Great Southern R. R. Co., 16 I. C. C. 534, 545.

(oo) It is improper practice for a carrier to decline to make application for the informal adjustment of an unreasonable charge, thereby compelling the shipper to file formal complaint, and then, by answer and stipulation, admit the allegations of the complaint and agree to submission of the case on the pleadings. Davenport Pearl Button Co. v. C. B. & Q. R. R. Co., 17 I. C. C. 193, 194.

(pp) The Commission is given a reasonable discretion in entertaining and refusing to entertain complaints that are presented to it. Even if it had the power to entertain a complaint seeking general damages, that discretion is reasonably exercised when it declines in the general public interest and in deference to the other important work before it to deal with matters about which it can know but little, and which the courts, where such matters properly belong, can deal with much more efficiently. Joynes v. Penn. R. R. Co., 17 I. C. C. 361, 367.

(qq) The practice rule of the Commission, while not overlooking the definite requirements of the law in respect to filing complaints, were intended to relieve complainants, so far as possible, from observance of the technical rules of pleading, in order that shippers unskilled in such matters might bring their troubles to the Commission in their own proper persons. Memphis Freight Bureau v. St. L. S. W. Ry. Co., 18 I. C. C. 67, 69.

(rr) The Commission has endeavored to simplify its practice and procedure, without permitting technical matters to interfere with substantial results. Cincinnati & Columbus Traction Co. v. B. & O. S. W. R. R. Co., 20 I. C. C. 486, 489.

(ss) Liberal rules of pleading are applied by the Commission. Stonega Coke & Coal Co. v. L. & N. R. R. Co., 23 I. C. C. 17, 25.

(tt) No order should be made until after a full hearing as provided in section 15. Augusta & Savannah Steamboat Co. v. O. S. S. Co. of Savannah, 26 I. C. C. 380, 382.

(uu) The Commission does not hold itself bound by the technical rules of evidence, but the law requires that its findings must be based on evidence of record. It is entitled to the submission of such facts as will enable it to properly decide the matter before it. Commercial Club of Omaha v. A. & S. R. Ry. Co., 27 I. C. C. 302, 310.

(vv) The burden of proof as to reasonableness of rates rests with complainants as to all rates increased prior to the effective date of the amendmnt of 1910. As to those increased subsequent to that date, the burden is with the carrier. Crawford & Bunce v. P. C. C. & St. L. Ry. Co., 32 I. C. C. 12, 13.

(ww) A copy of the transcript of the evidence in a former case is inadmissible, where no copy has been furnished defendants in compliance with rule 13 of the Commission's Rules of Practice, by express provisions of the Act it was contemplated that the Commission should make rules of practice and compliance with the rules is in the interest of justice to all parties. Paducah Board of Trade v. I. C. R. R., 43 I. C. C. 537, 542.

(xx) When a party feels that evidence is being introduced beyond the scope of the issues, it is not only his right but his duty to object, even though he feels that such objections will be unavailing if made. Utah Idaho Millers and Grain Dealers Assn. v. D. & R. G. R., 44 I. C. C. 714, 717.

(yy) Hearsay evidence objected to. The Commission does not require a strict adherence to the rules of evidence in its proceedings and hearsay evidence may

be considered. Western Trunk Lines Iron and Steel, 47 I. C. C. 109, 122.

(zz) Complainants having failed to name carriers over whose lines rates applied as parties defendant in addition to the Director General, although opportunity afforded, no order for the future entered. Inland Steel Co. v. Director General, 57 I. C. C. 339, 342.

(3a) In every case which puts in question intrastate rates, the decisive factor is whether or not they affect interstate commerce injuriously to a considerable extent. If they do they are brought under the Commission's jurisdiction and control, even though the whole rate structure of a state should be involved. Rates, Fares and Charges of N. Y. C. R. R. Co., 59 I. C. C. 290, 292.

(3b) Action of carriers in bringing a matter involving state rates before the Commission in advance of filing an application with the state commission, deprived the Commission of the benefit of such investigation and findings as the state authorities might have made; furthermore, the Commission is not vested with appellate power under which carriers might be remanded to the state tribunals. Arkansas Rates and Fares, 59 I. C. C. 471, 473, 474.

(3c) And a mere comparative statement of charges unsupported by a showing of the conditions under which they are maintained can not be accepted as proof that charges at a given point are unreasonable. Holly Ridge Lumber Co. v. Director General, as Agent, 60 I. C. C. 121, 122.

(3d) Because the act requires the Commission to give preference to suspension proceedings over all other questions pending before it and to decide such proceedings as speedily as possible, the Commission proceeded to a disposition of such a proceeding in advance of other cases with which it had been consolidated. Coal from Detroit, Toledo & Ironton R. R. Mines, 64 I. C. C. 564, 565.

(3e) Amendment of February 24, 1922, to limitations provision of interstate commerce act made no change in the provision that complaints for causes arising out of Federal control might be filed with commission within one year after termination thereof. Lay Fish Co. v. Director General, as Agent, 80 I. C. C., 4, 5.

(3f) The act gives party injured through carrier's violation of its provisions election to make complaint to the commission or bring suit for recovery of damages in a Federal court; and, as said by Supreme Court in L. & N. R. R. Co. v. Ohio Valley Tie Co., 242 U. S. 288, 291, "the rule of damages in one hardly can be different from that proper for the other." Proctor & Gamble Co. v. Director General as Agent 81 I. C. C., 361, 363.

(3g) Complainant introduced no evidence in support of contentions that rules, regulations, and practices relating to weighing and reweighing of anthracite and bituminous coal and coke are unreasonable and otherwise unlawful; but relied upon section 15 (7) of the act, placing burden upon carriers to justify any rate, fare, or charge increased since January 1, 1910. Defendants explained establishment of rule which they contended was only greater burden imposed on shippers since that date. HELD, as basis for entry of order directing changes in tariffs and practices of carriers the commission must have some reasonable ground upon which it can be satisfied that the law is being violated. In so far as burden rests upon defendants, it has been sustained. Coal Merchants' Asso. v. B. & O. R. R. Co., 83 I. C. C. 328.

ALL OTHER CITATIONS

St. Louis Blast Furnace Co. v. Va. Ry. Co., 24 I. C. C. 361; Western Cement Rates, 48 I. C. C. 201, 252; Taylor v. M. P. Ry. Co., 15 I. C. C. 165; Grand Junction Chamber of Commerce v. D. & R. G. R. R. Co., 23 I. C. C. 115, 117; Brunswick-Balke Collender Co. v. Goodrich Transit Co., Unrep. Op. A-83; Transit Case, 24 I. C. C 340, 346; Flour City S. S. Co., v. L. V. R. R. Co., 24 I. C. C. 179, 186; Marian Coal Co. v. D. L. & W. R. R. Co., 24 I. C. C. 140, 148; In re Advances in Class Rates, 25 I. C. C. 268, 271; Commercial Club of Omaha v. A. & S. R. Co. 27 I. C. C. 302, 311; I. C. C. v. L. & N. R. R. Co., 33 Sup. Ct. 185, 187, 227 U S. 88; Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 95; In re Express Rates, 28 I. C. C. 132, 138; Clinton Sugar Refining Co. v. C. & N. W. Ry. Co., 28 I. C. C. 364, 367; Omaha Grain Exchange v. C. R. I. & P. Ry. Co., 28 I. C. C. 680, 681; Stuart's Draft Milling Co v. S. Ry. Co., 31 I. C. C. 623; Class Rates between Stations in Louisiana, 33 I. C. C. 302, 306; Curry & White v. D. & I. R. R. R. Co., 32 I. C. C. 162, 170; Hayden Bros. Coal Corporation v.

D. & S. L. R. R. Co., 39 I. C. C. 94, 112; Stonega Coal & Coke Co. v. L. & N. R. R. Co., 39 I. C. C. 523, 535; Interstate Packing Co. v. C. M. & St. P. Ry. Co., 41 I. C. C. 396, 399; I. & S. W. Ry. v. C. B. & O. R. R. 42 I. C. C. 389, 391; Bituminous Coal to Central Freight Asso Territory, 46 I. C. C. 66, 109; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 46 I. C. C. 558, 561; Southwestern Millers League v. A. T. & S. F. Ry., 46 I. C. C. 299, 300; Atchison, T. & S. F. Ry. v. Spiller 246 Fed 1; Berg Distilling Co. v. P. R. A. Co., 48 I. C. C. 11, 78; Lunham & Moore v. C. R. R. Co. of N. J., 48 I. C. C. 611, 612; Proposed Increases in New England 49 I. C. C. 421; Morgantown Kingwood Divisions, 49 I. C. C. 540, 548; Youngblood, Inc. v. C. R. R., of N. J., 50 I. C. C. 217, 220; Mount Pleasant Fertilizer Co. v. L. & N. R. R., 50 I. C. C. 253, 258; Felder v. S. Ry., 51 I. C. C. 124, 125; Northern Potato Traffic Asso. v. C. N. W. Ry. Co., 53 I. C. C. 100, 101, 102; Mason v. M., K. & T. Ry. Co., 77 I. C. C. 683; Koenig Co. v. B. & O. R. R. Co., 81 I. C. C. 683; Ohio Refining Co. v. L. & N. R. R. Co., 81 I. C. C. 688.

§1a. Investigation by Commission.

See Interstate Commerce Commission §6.

CASES 1887-1908

(a) The Interstate Commerce Commission has authority to institute investigations and to deal with violations of the Law independently of a formal complaint, or direct damage to a complainant. Matter of Grand Trunk Railway Co. 2 I. C. R. 496.

(b) No order will be entered at the time by the Interstate Commerce Commission in an investigation instituted by it on its own motion upon a complaint against a given railroad company, where it manifests a disposition to remove just cause of complaint by materially reducing the rates of freight complained of, although it appears that there should be a further revision as to certain points. Re Alleged Unlawful Transportation Charges, 6 I. C. C. 624.

II. COMPLAINT.

See Blanket Rates §15; Claims §7; Discrimination §18; Long and Short Hauls §11; Reparation §21; Switch tracks and Switching IV.

§2. Form and Issues Tendered.

See Discrimination §18.

CASES 1887-1908

(a) A complaint, no reasonable ground for investigation of which appears, will not be filed. La Crosse, M. & J. Union v. Chicago, M. & St. P. R. Co. (Com.) 2 I. C. R. 9.

(ab) Applications for the official action of the Commission shall be made by petition, which shall set forth the facts on which they are founded, and be verified by the oath of the applicants or some authorized agent or attorney. Rule as to Applications for the action of the Commission, 1 I. C. C. 15.

(b) Application for exception under Act will only be granted after investigation upon verified petition. Re Southern Pac. R. R. Co. 1 I. C. R. 16.

(c) Complaint under Section 13 must be by petition, stating facts claimed to be a violation of the Act, and verified; as many written or printed copies of the complaint must be presented as there may be respondents; names and addresses must be set forth and indorsed upon the writ; and a copy is to be served upon each respondent by mail or personally with notice, to satisfy the complaint or answer within the time specified. Rule 4, Appendix I, 1 I. C. R. 841.

(d) Where the complaint does not state a case within its jurisdiction, the Commission will not express an opinion. Re Iowa Barb Steel Wire Co. 1 I. C. R. 605.

(e) When an important question is raised by the pleadings in a case, the determination of which will affect others quite as much as the parties before the Commission, but the parties give their attention almost exclusively to other questions, and neither by the evidence nor in argument supply the Commission with the information to enable it to be understandingly determined, the Commission will decline to decide it, and leave the parties to bring it forward again as they may be advised. Rice v. Louisville & Nash R. R. Co., 1 I. C. R. 722.

(f) The Commission will not make any ruling where petitioner alleges legality of practice sought to be authorized. Re export Trade of Boston I. I. C. R. 25.

(g) Applications must be made by petition stating relief desired and points

between which authority is asked to charge less; and verified by officer or agent of petitioner. Rule 2, Appendix I; 1 I. C. R. 841.

(h) Carrier deeming complaint insufficient may serve notice for hearing on complainant without answer, and facts stated are admitted. Motion to dismiss for insufficiency may be made at hearing. Rule 6, Appendix I, 1 I. C. R. 842.

(i) A complaint, of which no reasonable ground for investigation appears, will not be filed. La Crosse etc. v. Chicago etc R. Co. 2 I. C. R. 9.

(j) Where a petition alleges that a contract was made with the agent of a railroad company regarding the shipment of grain, states its terms, avers a breach thereof, and states the amount of damages claimed, the defendant is not entitled, under Mo. Rev. Stat. § 3529, to require the petition to be made more definite. Christie v. Missouri P. R. Co. (Mo.) 2 I. C. R. 22.

(ja) A complaint made for the purpose of retaliation for a fancied wrong —as, to get even with a carrier for the revocation of complaint's pass—does not commend itself to the Commission. Slater v. Northern P. R. Co. (Com.) 2 I. C. R. 243.

(jb) Under the rules of practice issued by this Commission a replication to an answer is not required or allowed. Oregon Short Line R. Co. v. Northern Pacific R. Co. 2 I. C. R. 639.

(jc) When a complaint charged that the respondent Railroad Companies, which were common carriers subject to the Act to Regulate Commerce, were accustomed to make deductions of from five to ten pounds of wheat per load from the true weight when delivered by the farmer to the buyer at the elevators of the respondents, and gave receipt to the farmer for the amount as thus diminished, upon which the latter was paid by the buyer, thereby suffering a loss to the extent of such reduction, but failed to charge that the wheat was delivered for interstate transportation, or, indeed, for transportation anywhere, it was HELD, that the complaint was insufficient in substance to show violation of the Act to Regulate Commerce, and that the respondents were entitled to have it dismissed on their motions to that effect, but that the dismissal should be without prejudice. White v. Michigan Central R. Co., 2 I. C. R. 641.

(k) An averment that the respondents were interstate common carriers subject to the Act is not of itself sufficient to warrant an inference, under a motion to dismiss a complaint for insufficiency, that wheat delivered at an elevator of the respondents was for interstate commerce. White v. M. C. R. Co. 2 I. C. C. 641, 642.

(l) The fact that a complaint fails to show that plaintiff is entitled to all the relief asked does not make it demurrable as failing to state facts sufficient to constitute a cause of action. Bayles v. Kansas P. R. Co. (Colo.) 2 I. C. R. 643.

(la) A demurrer will not be sustained upon the ground that the complaint does not state facts sufficient to constitute a cause of action, if there are facts well pleaded sufficient to entitle the party to any relief; and the fact that the complaint fails to show that plaintiff is entitled to all the relief asked is immaterial. Bayles v. Kansas Pacific R. Co., 2 I. C. R. 643.

(m) Complainants though brought in the name of an individual, may challenge the entire schedule of rates to competing towns, and such cases, as distinguished from those involving grievances only, are peculiarly public in their nature, since they embrace in one proceeding the various business and industrial interests centered in cities and towns, as those interests may be affected by the charge of public carriers whose facilities are employed in the interchange of commerce. Daniels v. Chicago R. I. & P. R. Co. et al., 6 I. C. C. 458.

(n) Matter which is not expressly in issue by the pleadings or necessarily involved in issues presented in a strictly inter partes case instituted by complaint before the Interstate Commerce Commission cannot be authoritatively determined by it. Commercial Club v. Chicago, R. I. & P. R. Co., 6 I. C. R. 647.

(o) In a case before the Commission, instituted by complaint and strictly "inter partes," matter not expressly put in issue by the pleadings or necessarily involved in issues so presented, cannot be authoritatively determined by the Commission. Commercial Club of Omaha v. C. R. I & P. R. Co. 6 I. C. C. 647, 676.

(p) An averment that the fixing or naming of Turner and Rochelle as the pretended termini of shipment under

joint tariffs when destined to New York, Boston, Philadelphia, or Baltimore was a device to evade the law, and that the property was in fact transported to Chicago and there sold on the market or delivered to connecting roads for eastern points, without stating what evasion was intended or how the device operated to make an evasion of the law, and without denying that there was a joint tariff established or alleged that the tariff itself was a pretense,—is not sufficient to show a violation of the Act to Regulate Commerce. Parsons v. Chicago & Northwestern Ry. Co. 7 I. C. C. App. XCI.

(q) A petition against a carrier for making unreasonable charges under the Interstate Commerce Act must aver either that the carrier failed to publish its schedule of rates, or charged in excess of the rates as published and then in force. Kinnavey v. Terminal R. Asso. of St. L. 8 I. C. C. App. XXVI.

(r) Although the allegations concerning reparation contained in the original petition asking the Commission to order the defendants to desist from imposing an unreasonable and unjust terminal charge are plainly sufficient to constitute the basis for an award of damages, the defendants are entitled, before the hearing, to a specification showing in detail the amounts for which recovery is sought. Cattle Raisers' Asso. v. Chicago, B. & Q. R. Co. 10 I. C. C. 83.

(s) Where the statute establishes a method of procedure for the enforcement of a right of action which finally results in bringing that matter by the prescribed course before a court for determination, the principle established by leading cases is that the first step which must be taken in the proceeding to enforce the claim should be treated as the beginning of the suit which finally results. Therefore when a party elects to proceed before this Commission for the recovery of damages his petition filed with the Commission should be considered the beginning of his action in all its subsequent stages. Cattle Raisers' Asso. of Texas v. C. B. & Q. R. R. 10 I. C. C. 83, 104.

IMPORTANT CASES SINCE 1908

(t) The Commission has little doubt that where the defendants are before it upon notice of the matter which will be examined into, where a full hearing is had and a conclusion reached, it may in its sound discretion establish rates to points not referred to by any intended complaint. Florida Fruit & Vegetable Ass'n v. A. C. L. R. R. Co., 17 I. C. C. 552, 556.

(uv) Where three omnibus complaints involving class rates and commodity rates on over 100 commodities from Trunk Line and Central Freight Association territories via all-rail, acrosslake and rail-lake-and-rail, and including some 63 defendants, makes comparisons of rates drawn from tariffs, but presents specific testimony in reference to only a few commodities, the Commission is confronted with insuperable difficulties, and is justified in determining the scope of the issues by the evidence introduced at the hearing. Escanaba Business Men's Ass'n v. A. A. R. R. Co., 24 I. C. C. 11, 19.

(w) The complaint must state the facts with sufficient clearness so that the commission may apprehend the point in issue and so that the defendant may be adequately advised of the thing which it is called upon to answer and defend. Augusta & Savannah Steamboat Co. v. O. S. S. Co., 26 I. C. C. 380, 382.

(x) A prayer for general relief can hardly be construed as permitting complainants to present an issue entirely different from that explicitly stated in the pleadings. Wisconsin & Arkansas Lumber Co. v. G. R. & I. Ry. Co., 33 I. C. C. 33, 35.

(y) Where the question of differentials is not properly presented by the pleadings, no opinion can be expressed. Class Rates Between Stations in Louisiana, 33 I. C. C. 302, 306.

(z) The Commission can not grant relief where there is no prayer in the complaint for it. Michigan Bean Jobbers' Asso. v. G. R. & I. Co., 33 I. C. C. 318 320.

(aa) The Commission's rules of practice do not require strict conformity to the technical rules of pleading. They do require, however, that complaints shall conform to the more elementary requirements of pleading; that they shall be so sufficient, clear, and certain in their averments that the Commission may be informed of the issues and the carriers fully advised of the nature and

extent of the case they are called upon to defend. Brooks Coal Co. v. Wabash R. R. Co., 39 I. C. C. 426, 428.

(bb) Where no violation of section 3 is alleged and the complaint nowhere indicates in respect of what person or persons section 2 is contravened, the complaint is too general to appraise carrier of what discrimination it must defend. Major Stave Co. v. M. D. & G. R. R., 39 I. C. C. 573, 574.

(cc) Where the complaint and answers put in issue reasonableness of rates, but this allegation is not referred to in subsequent proceedings, the record affords no basis for any conclusion upon this point and it will not be decided. Brown v. Vandalia R. R. Co., 41 I. C. C. 317, 320.

(dd) Neither as to form of complaint nor as to parties thereto are the rules of the Commission technical; but complainants should not omit to join as defendants carriers directly and immediately interested in the rates attacked or the rates necessarily resulting from a granting of complainant's petition. Sioux City Com. Club v. C. B. & Q. R. R. Co., 41 I. C. C. 518, 521.

(ee) It is the view of the Commission that the issues should be clearly stated and definitely determined not later than the opening of the hearing. With that end in view it has instructed its examiners to state the issues when the case is called for hearing, and to request the parties to agree at that time as to the matters specifically presented for determination. This plan was adopted because it was found that no procedure could be successful, or result in substantial fairness to all parties, which permitted a complainant to shift his position after the evidence was submitted. The New York Harbor Case, 47 I. C. C. 643, 647.

(ff) The Commission has held in a number of cases that it can not sanction unwarranted broadening of issues or the fashioning of a case along lines not so explicitly stated at the outset as to enable defendants to come before the Commission with reasonable certainty of the things to be defended. Gazette Publishing Co. v. B. F. & I. F. Ry., 58 I. C. C. 503, 504.

(gg) Where matters apparently outside of issues are presented at the hearing, and the complaint is broad enough to include them, and evidence thereon introduced without objection on part of defendants, the Commission thinks it is proper to dispose of the questions thus raised. Railroad Commissioners of Florida v. Director General, 61 I. C. C. 438, 451.

(hh) Where the pleadings put in issue only the inbound rates to specific points, the outbound rates from those points can be considered in the proceeding only for the purpose of determining whether there is any maladjustment of the inbound rates in issue. Certain-Teed Products Corp. v. A. T. & S. F. Ry. Co., 63 I. C. C. 65, 67.

(ii) Where question in issue is whether a charge was just and reasonable, it is immaterial, so far as this question is concerned, whether the service be designated a line haul or switching movement if the charge was on file with the Commission as a legal charge. Swift & Co. v. Director General, as Agent, 63 I. C. C. 389, 390.

(jj) The Commission must look to the substance of a complaint rather than to its form. Wasatch Coal Co. v. Director General, 68 I. C. C. 118, 120.

(kk) One of the essential elements of a complaint before the Commission is allegation of violation of a law which the Commission has jurisdiction to administer. Wasatch Coal Co. v. Director General, 68 I. C. C. 118, 120.

(ll) Complainant attacked the reasonableness of through charges but showing of unreasonableness was largely as to the factor maintained by an electric line. HELD, since the electric line was not under Federal control, the director general not named as a party defendant, and no violation of the Federal control act alleged, shipments which moved during the Federal control period can not be considered. Buckeye Pipe Line Co. v. B. & O. R. R. Co., 73 I. C. C. 19, 22.

(mm) The Commission must look to the substance of the complaint rather than the form. Standard Rail & Steel Co. v. M. P. R. R., 73 I. C. C. 219, 220.

(nn) Complaints alleged that rates "are unjust and unreasonable in violation of section 4 of the Interstate Commerce act, in violation of the aggregate of intermediate rates." Contention that since this presents an issue under the fourth section it is incumbent upon complainant

to prove damage in order to entitle it to reparation. HELD, the commission must look to the substance of a complaint rather than to its form. The fourth section makes it unlawful "to charge any greater compensation as a through rate than the aggregate of the intermediate rates." although such a through rate might otherwise be reasonable per se. By its averment that these rates were unreasonable complainant alleges a violation of section 1 of the Act. Standard Rail & Steel Co. v. M. P. R. R. Co., 73 I. C. C. 219, 220.

(oo) Complaint clearly designated destination territory, the rates to which were in issue as "trunk line territory." Fact that carriers serving New England were named as defendants did not of itself enlarge the issue to include rates to that territory since eastern trunk-line territory, as that expression is generally understood ,does not embrace New England. Peoria Board of Trade v. A. T. & S. F. Ry. Co., 73 I. C. C. 532, 534, 535.

(pp) Complainant stated that its primary object in bringing its complaint is to restore a relative adjustment previously existing, or to better that adjustment so that shippers may again compete upon a fairly equal basis, so far as transportation charges are concerned, with competitors situated at other points HELD, in so stating, complainant is not understood as abandoning its allegation that the rates attacked are unreasonable. South Dakota R. R. Commrs. v. Director General, 73 I. C. C. 347, 351, 352.

(qq) An issue cannot be considered or disposed of in a proceeding where it was not raised in the complaint but was stressed by intervenor, and by complainant at the hearing and upon brief. South Dakota R. R. Commrs. v. Director General, 73 I. C. C. 347, 360.

(rr) Contention that transportation service was a switching movement and that increases in switching charges were not contemplated by General Order No. 28 of the Director General. HELD, whether or not charges assessed were authorized by that order, the fact is that they were published and were the applicable charges, and it is immaterial, so far as the issue of their justness and reasonableness is concerned, whether the movement be designated a switching or line-haul service. Minnesota Steel Co. v. Director General, as Agent, 73 I. C. C. 571, 573.

(ss) In determining what are reasonable maximum rates, the issue is whether the rates prescribed are just, reasonable, nonprejudicial and nonpreferential. Farley & Loetscher Mfg. Co. v. Director General, 73 I. C. C. 704, 705.

(tt) Following Schlicher case, 62 I. C. C. 181, contention that a general allegation of undue prejudice does not properly raise an issue of undue prejudice between particular points, sustained. Green Felt Shoe Co. v. Director General, as Agent, 74 I. C. C. 363, 365.

(uu) Evidence was admitted at hearing as to various commodities not specifically mentioned in complaints, over objection of defendant that the commission's Rules of Practice require commodities to be specifically named in complaints seeking reparation. HELD, in view of the fact that complaint named certain commodities and "various other commodities," stating that detailed information would be furnished by complainants; that reparation is sought on basis of a rate which applied irrespective of contents of cars; and that informal correspondence preceded one of complaints; defendant was sufficiently advised of the issues raised. New Orleans Board of Commissioners v. Director General, as Agent, 77 I. C. C. 664, 666.

(uua) On complaint attacking reasonableness of rates for short-haul movements, conflict presented by record as to whether they were switching or line-haul movements. HELD: Question for determination is not description of service but reasonableness of charge for service. Midvale Steel & Ordinance Co. v. Director General, as Agent, 78 I. C. C. 721, 723.

(uub) Where complaint places in issue alleged undue prejudice against interstate commerce in favor of intrastate commerce, reasonableness of interstate rates must necessarily be determined before determination of issue of preference and prejudice can be made notwithstanding the complaint may contain no specific allegation with regard to reasonableness of interstate rates. Atlas Portland Cement Co. v. C. B. & Q. R. R. Co., 81 I. C. C., 1, 3.

(vv) The Commission has repeatedly held that allegations in complaints filed with it need not be technically pleaded,

and the courts have sustained this position. If a complaint is filed within the statutory period and contains the essential elements of a complaint, that is sufficient. E. A. Tovrea v. Director General, 81 I. C. C. 583.

(ww) The commission has repeatedly said that complaints filed with it need not be technically pleaded, and the courts have sustained this position. Williams v. U. S., 168 U. S. 382, at 389. Therefore, if complaint is filed within statutory period and contains essential elements of a complaint, that is sufficient. Wasatch Coal Co., 68 I. C. C. 118. Tovrea & Co. v. Director General, as Agent, 81 I. C. C., 583, 584.

ALL OTHER CITATIONS

Acme Cement Plaster Co. v. U. P. R. R. Co., Unrep. Op. 41; Chicago Sash and Door Ass'n v. N. & W. Ry. Co., 14 I. C. C. 594, 595; Baker v. Cumberland Valley R. R. Co., 14 I. C. C. 568, 570; Thompson Lumber Co. v. I. C. R. R. Co., 14 I. C. C. 566; Crutchfield & Woolfolk v. L. & N. R. R. Co., 14 I. C. C. 558, 560; Hayden Westcott Lumber Co. v. G. & S. I. R. R. Co., 14 I. C. C. 540; Gamble-Robinson Commission Co. v. N. P. Ry. Co., 14 I. C. C. 523, 524; National Petroleum Ass'n v. Ann Arbor R. R. Co., 14 I. C. C. 272, 282, 284, 286; Oshkosh Logging Tool Co. v. C. & N. W. Ry. Co., 14 I. C. C. 109, 110, 111, 113; City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 389; Morse Produce Co. v. C. M. & St. P. Ry. Co., 15 I. C. C. 334, 338; Cohen & Co. v. S. Ry. Co., 16 I. C. C. 177, 178; Florida Fruit & Vegetable Ass'n v. A. C. L. R. R. Co., 17 I. C. C. 552, 554; West Texas Fuel Co. v. T. & P. Ry. Co., 17 I. C. C. 491, 492; Murphy Bros. v. N. Y. C. & H. R. R. Co., 17 I. C. C. 457, 459; Kiser Co. v. Central of Georgia Ry. Co., 17 I. C. C. 430, 441, 442; Davies v. L. & N. R. R. Co., 18 I. C. C. 540, 544; Jennison Co. v. G. N. Ry. Co. v. M. C. R. R. Co., 18 I. C. C. 247, 248; Ullman v. American Express Co., 19 I. C. C. 354, 355; City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 170; Freeman Lumber Co. v. St. L. I. M. & S. Ry. Co., 20 I. C. C. 612, 613; Advance in Rates Western Case, 20 I. C. C. 307, 315; Mountain Ice Co. v. D. L. & W. R. R. Co., 21 I. C. C. 45, 47, 48, 49; Douglas & Co. v. C. R. I. & P. Ry Co., 21 I. C. C. 97, 102; Douglas & Co. v. C. R. I. & P. Ry. Co., 21 I. C. C. 541, 545; In Re Advance in Rates on Locomotives and Tenders, 21 I. C. C. 103, 112; United States Leather Co., v. So. Ry Co. 21 I. C. C. 323, 324; Sinclair & Co. v. C. M. & St. P. Ry. Co. 21 I. C. C. 490, 494; Chattanooga Feed Co. v. A. O. S. R. R. Co. 22 I. C. C. 480, 485; Chamber of Commerce of Augusta v. S. Ry. Co., 22 I. C. C. 233, 238; Milburn Wagon Co. v. L. S. & M. S. Ry. Co., 22 I. C. C. 93, 101; Thropp v. P. R. R. Co., 23 I. C. C. 497, 499; Reno Grocery Co. v. S. P. Co., 23 I. C. C. 400; N. & W. Ry. Co. v. U. S., 195 Fed. 953, 958; In re Advances on Lumber, 24 I. C. C. 686, 696; Lesinsky v. A. T. & S. F. Ry. Co., 24 I. C. C. 620, 621; East St. Louis Cotton Oil Co. v. A. T. & S. F. Ry. Co., 24 I. C. C. 588, 592; R. R. Com. of Oregon v. S. P. Co., 24 I. C. C. 273, 279; Cresent Coal and Mining Co. v. C. & E. I. R. R. Co., 24 I. C. C. 149, 157; Marian Coal Co. v. D. L. & W. R. R. Co., 25 I. C. C. 140, 141; Holland Blow Stave Co. v. A. C. L. R. R. Co., 24 I. C. C. 81, 85, 88; Greenbaum Co. v. C. & O. Ry. Co., 25 I. C. C. 352; Fels & Co. v. P. R. R. Co., 25 I. C. C. 154; Union Tanning Co. v. S. Ry. Co., 25 I. C. C. 112, 113; Marion Coal Co. v. D. L. & W. R. R. Co., 25 I. C. C. 14; R. R. Com. of Montana v. N. P. Ry Co., 26 I. C. C. 407, 409; Eastern Wheel Mfrs. Ass'n. v. A. & V. Ry. Co., 27 I. C. C. 370, 372; Refuge Cotton Oil Co. v. St. L. I. M. & S. Ry. Co., 27 I. C. C. 117; Michigan Hardwood Mfrs. Assn. v. Transcontinental Freight Bureau, 27 I. C. C. 32; Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., 29 I. C. C. 28, 29; Board of Trade of Carrollton v. C. of G. Ry. Co., 28 I. C. C. 154, 164; Board of Trade of Chicago v. A. T. & S. F. Ry. Co., 29 I. C. C. 438, 444; Omaha Grain Exchange v. C. R. I. & P. Ry. Co., 28 I. C. C. 680, 681; Metropolis Commercial Club v. I. C. R. R. Co., 30 I. C. C. 40, 43; Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 632; Break-Bulk Rates on Grain, 30 I. C. C. 357, 361; Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 416; Gulf Lumber Co. v. M. L. & T. R. R. & S .S. Co., Unrep. Op. A-574; Hoyt & Bergen v. C. & N. W. Ry. Co., 32 I. C. C. 319, 322; Crowdus Bros. v. A. T. & S. F. Ry. Co., 32 I. C. C. 355, 358; Cement Rates from Points in Illinois, 32 I C. C. 368; Salt Lake Mattress & Mfg. Co. v. A. T.

& S. F. Ry. Co., 32 I. C. C. 417, 421; City of Nashville v. L. & N. R. R., 33 I. C. C. 76, 90; Freight Rates from Minnesota Points, 32 I. C. C. 361, 367; Des Moines Poultry & Butter Co. v. C. & N. W. Ry. Co., Unrep. Op. A-910; Moore & Thompson Paper Co. v. B. & M. R. R., 34 I. C. C. 323; City of Nashville v. L. & N. R. R. 33 I. C. C. 76, 90. Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C. 332, 334; Lake Line Applications Under Panama Canal Act, 33 I. C. C. 699, 709; Holland Blow Stave Co. v. L. & N. R. R. Co., Unrep. Op. 2077; City Ice & Supply Co. v. C. & N. W. Ry. Co., 36 I. C. C. 514, 518; Brooks Coal Co. v. Wabash R. R. Co., 39 I. C. C. 426, 429; City of Memphis v. C. R. I. & P. Ry. Co., 39 I. C. C. 256, 274; Oklahoma Cottonseed Crushers' Asso. v. M. K. & T. Ry. Co., 39 I. C. C. 497, 500; Western Grocer Co. v. B. & O. R. R. Co., 40 I. C. C. 53, 55; The Missouri River-Nebraska Cases, 40 I. C. C. 201, 254; Poteau Coal & Mercantile Co. v. A. & S. Ry. Co., 40 I. C. C. 459, 464; Frankfield & Co. v. N. Y. C. R. R. Co., 40 I. C. C. 555, 559; Graham & Gila County Traffic Asso. v. A. E. R. R. Co., 40 I C. C. 573, 574; Philadelphia Screen Mfg. Co. v. P. R. R. R. Co., 42 I. C. C. 487, 489; Connor Lumber & Land Co. v. G. N. Ry. Co., 43 I. C. C. 243, 246; Fruits and Vegetables, 43 I. C. C. 291, 314; Dolan Fruit Co. v. C. B. & Q. Ry., 43 I. C. C. 353, 356; New England Lumber Rates No. 2, 43 I. C. C. 641, 645, 646; Green Fire Brick Co. v. C. & A. R. R. Co., 44 I. C. C. 448, 454; Wisconsin Rates Cases, 44 I. C. C. 602, 627; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 46 I. C. C. 558, 560; Western Cement Rates, 48 I. C. C. 201, 252; Lourie Mfg. Co. v. C. N. R. R., 49 I. C. C. 64, 67; Car Float Service, New York Harbor, 49 I. C. C. 259, 261; Minneapolis Traffic Asso. v. C. B. & Q. R. R., 49 I. C. C. 308, 310; Blackman & Griffin Co. v. A. C. Y. Ry., 49 I. C. C. 649, 651; Live Poultry & D. S. Ass'n. v. A. T. & S. F. Ry., 49 I. C. C. 230; Chamber of Commerce of Montgomery v. Director General, 57 I. C. C. 605, 619; Michigan Paper Mills Traffic Asso. v. N. Y. C. R. R., 55 I. C. C. 679, 682; National Council, Farmers' Asso. v. Director General, 56 I. C. C. 399, 409; Plymouth Coal Co. v. P. R. R. 56 I. C. C. 699, 707; Anaconda Copper Co. v. Director General, 57 I. C. C. 723, 724; Goss v. Director General, 58 I. C. C. 169, 173; Lodwick-White Coal Co. v. Director General, 58 I. C. C. 530, 536; Wheeler Lumber Bridge & Supply Co. v. Director General, as Agent, 59 I. C. C. 6, 10; Natchez Chamber of Commerce v. Director General, 60 I. C. C. 397; Rudy-Patrick Seed Co. v. St. L. S. F. Ry. Co., 60 I. C. C. 411, 413; G. B. Markle Co. v. Lehigh Valley R. Co., 271 Fed. 989, 994; Barber Co. v. Director General, 61 I. C. C. 23, 24; Schlicher v. Director General, 62 I. C. C. 181, 184, 185; Boldt Glass Co. v. Director General, 64 I. C. C. 619, 620; Omaha Packing Co. v. A. T. & S. F. Ry. Co.. 66 I. C. C. 44, 46; State of Idaho, ex rel. v. Director General, 66 I. C. C. 330, 332; Riverside Coal Co. v. Director General, as Agent, 68 I. C. C. 205, 209; Glencoe Lime & Cement Co. v. Director General, as Agent, 69 I. C. C. 243, 244; Armour & Co. v. E. R. R. Co., 69 I. C. C. 250, 251; Corona Coal Co., v. Secretary of War, 69 I. C. C. 389, 390; Maine Power Sales Co. v. Director General, as Agent, 78 I. C. C. 207; Graham & Gila Counties Traffic Asso. v. A. E. R. R. Co., 81 I. C. C. 134, 135; Southern Arizona Traffic Asso. v. Director General, as Agent, 81 I. C. C. 609; Pacific Grain Co. v. Director General, as Agent, 81 I. C. C. 679, 682; Abbott v. Director General, as Agent, 83 I. C. C. 508; Northwestern Clay Mfg. Co. v. R. I. S. Ry., 88 I. C. C. 131, 132; International Harvester Co. v. N. Y. C. R. R., 88 I. C. C. 368, 370.

§3. Notice of Complaint.

See Notice.

CASES 1887-1908

(a) Where a complaint was filed against the company owning a certain railroad, stating that the road had previously been in the hands of a receiver but was then in possession of the company, and that the former receiver was then president of such company, and such complaint was served on the receiver as president, and the company answered, and on the case coming on for hearing it appeared that the receivership was still in existence and that the receiver was not president of the company, leave was given to amend the complaint so as to show the existence of the receivership. Reynolds v. Western N. Y. & Pa. R. Co., 1 I. C. R. 685.

(b) The Commission having entered

upon inquiry and investigation as to the reasonableness of transportation rates on food products, and given notice of the time and place of taking testimony, and afforded opportunity for calling and cross-examination of witnesses, HELD, that such proceeding was a substantial compliance with the statute. Re Rates & Charges on Food Products (Com.) 3 I. C. R. 151.

(c) A railroad company succeeding another within a few days after the order of the Interstate Commerce Commission forbidding unlawful charges by the latter and its receiver, and receiving a copy of the opinion and order of the Commission, is bound by such order. Behlmer v. Louisville & Nashville R. R. Co., 8 I. C. C. App. XXXIV.

(d) While the service of a complaint upon a controlling company may not be legal service upon a subsidiary company, it does in fact, for all practical purposes, inform the other company of the proceedings. Mayor and City Council of Wichita v. Atchison, T. & S. F. R. Co., 9 I. C. C. 534.

(e) The St. Louis, Iron Mountain & Southern Railway Company would have been a proper but it is not a necessary party in this case, and while service of complaint upon the Missouri Pacific, the controlling company, may not be legal service upon the St. Louis, Iron Mountain & Southern, a subsidiary company, it does, in fact, for all practical purposes, notify the latter company of this proceeding. Mayor, etc. of Wichita v. A. T. & S. F. Ry. Co., et al., 9 I. C. R. 534.

IMPORTANT CASES SINCE 1908

(f) Proceedings before Commission given wide publicity, and any interested carriers are given opportunity to defend the rate or provision in a classification, either by intervention or by request of original defendant that such carriers may be made defendants. Bennett v. M. St. P. & S. Ste. M. Ry. Co., 15 I. C. C. 301, 303.

(g) The decision in the present case was based on a decision as to hard wood lumber rates made in a former case. Some of the defendants in the present case were not defendants in the former case, but were duly notified of the hearing in that case, and full opportunity was given them to make a showing why reparation should not be awarded against them, but none of them appeared. HELD, they had had their day and could not be heard to say that reparation based on the decision of the former case could not be awarded against them in the present case. Kindlon v. S. P. Co., 17 I. C. C. 251, 255.

(h) Full publicity attends every step of all proceedings before the Commission and it must be assumed that parties interested will take notice of what is going on. Lum v. G. N. Ry. Co., 21 I. C. C. 558, 561.

(i) Section 13 requires that any carrier complained of shall be supplied by the Commission with a copy of the charges and be given an opportunity to answer. Fels & Co. v. P. R. R. Co., 23 I. C. C. 483, 486.

(j) Section 13 of the Act requiring the Commission, when a complaint stating the facts is filed, to forward the same "to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission," requires that notice should be given to the party immediately interested and not to those remotely concerned. L. & N. R. R. Co. v. I. C. C., 184 Fed. 118, 127.

§4. Amendment.

CASES 1887-1908

(a) Complaint against railroad company stating that it had been previously in the hands of a receiver who was now president, was allowed to be amended so as to show existence of receivership which it appeared on hearing was still in existence. Reynolds v. Western New York & P. R. Co., 1 I. C. R. 685.

(b) Amendments to a complaint, seeking to introduce new grievances and charges not allowed. Riddle, Dean & Co. v. Baltimore & Ohio R. R. Co., I I. C. R. 701.

(c) Practice of the Commission in allowing amendments is to be limited under rules of law; amendments to complaint, introducing new charges, not allowed. Riddle v. Baltimore & O. R. R. Co., 1 I. C. R. 701.

(d) Although the practice of the Commission in allowing amendments to complaints and answers is liberal, it is still to be limited under the rules of law. Amendments to a complaint, seeking to introduce new grievances and

charges not allowed. Riddle Dean & Co. v. B. & O. R. R., 1 I. C. C. 701, 702.

(e) Pleadings may be amended in discretion of Commission. Rule 10, Appendix I, 1 I. C. R. 842.

(f) Amendments of pleadings are in discretion of Commission. Rule 10, Appendix I, 1 I. C. R. 842.

(g) Amendment is not necessary to bring in matters that would have been the subject of proof under the complaint as originally filed. Delaware State Grange v. N. Y. P. & N. R. R., 2 I. C. C. 187, 188.

(h) The Commission is liberal in allowing amendments to complaints, but will not allow one that would be in effect making a new case. Delaware State Grange v. N. Y. P. & N. R. R., 2 I. C. C. 187, 188.

IMPORTANT CASES SINCE 1908

(ha) If a question of discrimination in rates is not specifically alleged in the complaint, but is actually tried upon the hearing, the Commission may allow an amendment upon such terms as would properly protect the defendants, but cannot decide that question when raised for the first time in the briefs. The remedy of complainants is to file a separate complaint to that specific end. United States Leather Co. v. S. Ry. Co., 21 I. C. C. 323, 324.

(i) When the two-year period has elapsed the jurisdiction of the Commission cannot be restored by amendment. Michigan Hardwood Mfrs. Assn. v. Transcontinental Freight Bureau, 27 I. C. C. 32, 37.

(j) Amendment of complaint may be permitted at hearing. Town of Pelham v. A. C. L. R. R. Co., 28 I. C. C. 433, 437; Bryant Co. v. Ft. W. & D. C. Ry. Co., 28 I C. C. 594.

(k) Complainant at the hearing asked leave to amend its complaint to include a prayer for reparation on additional shipments. HELD, claim, at the time amendment presented, found barred by the statute of limitations and can not be considered. Lackawana Steel Co. v. Director General, as Agent, 77 I. C. C. 465, 468.

(l) Complainant was not real party in interest but overcharges were paid and borne by an allied corporation. Complainant asked leave to amend so as to include such corporation as party complainant. Objection by defendant that cause of action of real party in interest was barred by the statute of limitations. HELD, not sustained, since amendment filed within statutory period as provided under amendment of February 24, 1922, to section 206 of the Transportation Act, 1920. Amendment permitted. Terre Haute, Indianapolis & E. T. Co. v. Director General, as Agent, 77 I. C. C. 658, 662.

(m) Request for leave to amend complaint, to seek reparation to basis of declared values during period when there were no "declared-value" or released rates in effect between points involved, denied. Question of what value might have been declared if such rates had been in effect with permission or authority of commission under section 20 of the act, would be hypothetical. Arlington Silver Mining Co. v. Director General, as Agent, 80 I. C. C. 753, 755.

(ma) Amendment to complaint, introducing new basis to which reparation is sought, allowed, over the objection by defendant that claim for greater amount of money than claim originally enlarges issues raised by original complaint. In 15 I. C. C. 595, at 598 it was said, "The commission is an administrative body created to effect substantial justice in matters under its control and is not bound or limited by strict rules of pleading," and "in our view actual damage sustained is a matter for determination by commission from facts before it." Taylor Co. v. Director General, as Agent, 81 I. C. C. 663, 665.

(mb) Permission to amend complaint to substitute Director General James C. Davis, as Agent, for John Barton Payne, against whom complaint was filed, granted over objection by defendant that substitution was not within statutory period. Answer to complaint was filed by Director General Davis, admitting himself to be agent under transportation act and as such exercising powers vested in him and his predessor, John Barton Payne. There was duly filed in record herein copy of commissioner's order substituting James C. Davis, as Agent, by his consent and at this request, for John Barton Payne in all procedings pending at termination of Federal control or which might thereafter be filed with commission as provided in section 206 of transportation act, 1920. Taylor Co. v. Director General, 81 I. C. C., 663, 665.

(n) Where a complaint to the Interstate Commerce Commission was filed January 12, 1910, and dealt only with transactions prior to that date, the Commission had power to permit an amendment of the complaint so as to incorporate transactions occurring to the date of the hearing and to make findings and orders, including such transactions as fully as if a new complaint had been filed to cover the same. Lehigh Valley R. Co. v. American Hay Co., 219 Fed. 539, 540.

ALL OTHER CITATIONS

La Salle and Bureau County Railroad Co. v. C. & N. W. R. R. Co., 13 I. C. C. 610, 613; East St. Louis Walnut Co. v. St. L. S. W. Ry. Co. of Tex., 17 I. C. C. 582, 584; Werner Sawmill Co. v. I. C. R. R. Co., 17 I. C. C. 388, 389, 391; Virginia-Carolina Chemical Co. v. St. L. I. M. & S. Ry. Co., 18 I. C. C. 1, 2; Same v. C. R. I. & P. Ry. Co., 18 I C. C. 3, 4; Same v. St. L. & S. F. R. R. Co. 18 I. C. C. 5, 6; Peoples Fuel & Supply Co. v. G. T. W. Ry. Co. 27 I. C. C. 24, 27; Blackburn & Griffin Co. v. A. C. & Y. Ry., 49 I. C. C. 649, 651; City of Springfield v. L. & N. Ry., 57 I. C. C. 337; G. B. Markle Co. v. L. V. Ry., 57 I. C. C. 375, 376; Oden & Elliott v. S. A. L. Ry., 57 I. C. C. 698; Gazette Publishing Co. v. B. F. & I. F. Ry. Co., 58 I. C. C. 503.

§4a. Answer.

ALL CITATIONS

Koenig Co. v. B. & O. R. R. Co., 81 I. C. C. 683.

§5. Hearing.

CASES 1887-1908

(a) Final hearing shall be had forthwith without dilatory motions, etc. Associated Wholesale Grocers v. Missouri Pac. R. Co., 1 I. C. R. 321.

(b) Investigation will be made by Commission at time and place designated where testimony will be received. Rule 3. Appendix I, 1 I. C. R. 841.

(c) Upon the question of the reasonableness of the uniform milk rate complained against, the petition is retained by the Commission to enable the complainants to produce evidence of additional facts, if they so desire.. Howell v. New York, Lake Erie & Western R. Co., 2 I. C. R. 162.

(d) On failure of the petitioner to appear at the hearing, though duly notified thereof or to offer proof in support of the information and belief upon which his allegations were made, the complaint must be dismissed. Rice v. St. Louis S. W. R. Co. (Com.), 4 I. C. R. 321.

(e) While the Commission will not, of its own motion, proceed in a branch of the case not litigated at the hearing, it will grant leave to the parties to do so if they so desire. Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co., 9 I. C. C. 318.

(f) Complainant was granted leave to apply within a limited time for a further hearing, where its proof failed to indicate with any degree of certainty the damage caused by the wrongful discrimination, and the amount which it was entitled to recover by way of reparation. Richmond Elevator Co. v. Pere Marquette R. Co., 10 I. C. C. 629.

(g) Evidence relating to damages found unsatisfactory and inconclusive, and complainants allowed until May 20, 1905, to apply for further hearing in respect thereto. Gallogy & Firestone v. Cincinnati, H. & D. R. Co., 11 I. C. C. 1.

(h) Complainants allowed to apply for further hearing, where the evidence relating to damages was found to be unsatisfactory and inconclusive. Gallagly v. Cincinnati, H. & D. R. Co., 11 I. C. C. 1.

(i) This case was decided in favor of complainant August 16, 1905. Subsequently complainant's motion for additional and more specific findings was granted, and the case again taken under advisement. The Act to Regulate Commerce was amended June 29, 1906, and thereafter complainant filed its petition praying in substance that the Commission proceed in the case with a view to making an order therein under the new fifteenth section in said act. The new section 15 confers upon the Commission power to enforce what has always been required in the statute, namely, just and reasonable rates, by the application of a new remedy, and, as applied to cases like this, in that way alone has the jurisdiction of the Commission been enlarged. The new section provides as conditions that there shall be formal complaint and full hearing. Both of these prerequisites have been practically complied with in this proceeding, but both complainant and defendants should

have leave to submit whatever additional testimony they desire, and thereupon it is not only the right, but the imperative duty of this Commission, to make an order for or against the defendants under the new fifteenth section. To hold otherwise, this case and many others in which large sums of money and much time have been expended must fail, since the old section is superseded by the new, and the amending act contains no provision continuing the old section in force as to cases previously brought before the Commission; the law should not be so interpreted in the absence of explicit provision to that effect. Case set down for further hearing, re-examination of the whole record by the Commission, and procedure under the new fifteenth section. Cattle Raisers' Asso. v. M. K. & T. R. Co., 12 I. C. C. 1.

(jk) When an order has been made, the case before the Commission should be treated as closed, and ought not to be reopened except upon a showing that some wrong or injustice has been or will be effected. Cattle Raisers' Asso. of Tex. v. C. B. & Q. R. Co., 12 I. C. C. 6.

(l) Parties must appear on day of hearing. Producers' Pipe Line Co. v. St. L. I. M. & S. Ry. Co., 12 I. C. C. 186.

(m) In formal proceedings before the Commission, complaints must be prosecuted with reasonable diligence, and the Commission particularly insists that when a case has been formally assigned for hearing on a day certain, the parties shall appear and present such evidence as they may wish to offer in support of their contentions, or, in advance of the date set, request postponement on stated grounds, showing good and sufficient cause for delay. Producers' Pipe Line Co. v. St. L. I. M. & S. Ry., 12 I. C. C. 186, 187.

IMPORTANT CASES SINCE 1908

(n) Where a case is set for hearing and the parties notified by mail and telegraph, and complainant fails to appear by reason of his absence in another state and failure to receive notice until a few days before the date set, his complaint will not be dismissed for want of prosecution and opportunity will be given him to present, in the form of a written communication, evidence bearing upon the unreasonableness of the rate in question. William Patten v. Wisconsin entral Ry. Co., 14 I. C. C. 189.

(o) While the Act does not presume to cast the burden of proof upon the complainant to establish the unreasonableness of a rate complained of, as would be the case in a court of law, nevertheless a complainant is not relieved of all responsibility as to his case upon the mere filing of a complaint, and where after due notification he appears neither in person nor by counsel, at the hearing and his application is primarily one for reparation, his complaint must be dismissed. Taylor v. M. P. Ry. Co., 15 I. C. C. 165.

(p) Carriers notified of hearing and failing to appear have had their day in court and cannot now be heard to say that no order can be made against them to share in the reparation awarded. Kindelon v. S. P. Co., 17 I. C. C. 251, 255.

(q) The Commission cannot be expected to supervise the conduct of cases before it to the extent of reminding the parties of the necessity of following up their complaint, and may fairly dismiss a complaint for lack of diligent prosecution. Ocheltree Grain Co. v. T. & P. Ry. Co., 18 I. C. C. 412, 413.

(r) The Commission is not vested with authority to find any rate unreasonable except after full hearing. Douglas & Co. v. C. R. I. & P. Ry. Co., 21 I. C. C. 541, 543.

(s) As the complainants allege specifically a violation of sections 1 and 2 of the Act to Regulate Commerce and section 10 of the federal control act, and no evidence whatsoever has been submitted tending to show a violation of either of these acts, and the propriety of the allowances as tested by section 15 of the Act to Regulate Commerce is not before the Commission, the complaint should be dismissed. Richardson Co. v. Director General, 56 I. C. C. 731, 733.

ALL OTHER CITATIONS

Foster Brothers Co. v. D. S. S. & A. Ry. Co., 14 I. C. C. 232, 234; Isbell-Brown Co. v. M. C. R. R. Co., 15 I. C. C. 616, 617; Maxwell v. Adams Express Co., 15 I. C. C. 609; Wakita Coal & Lumber Co. v. A. T. & S. F. Ry. Co., 15 I. C. C. 533; Guthri v. C. R. I. & P. Ry. Co., 16 I. C. C. 425; Roper Lumber-Cedar Co. v. C. & N. W. Ry. Co., 16 I. C. C. 397; Quammen & Austad Lumber Co. v. C. M. & St. P. Ry. Co., 19 I. C. C. 110, 111; Loftus v. Pullman Co., 19 I. C. C. 102, 104; Anadorko

Cotton Oil Co. v. A., T. & S. F. Ry. Co., 20 I. C. C. 43, 50; Railroad Commission of Montana v. N. P. Ry. Co., 26 I. C. C. 407; Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 416, 424; Minneapolis Civic & Commerce Assn. v. C. M. & St. P. Ry. Co., 30 I. C. C. 663, 669, 670; Gulf Lumber Co. v. M. L. & T. R. & S. S. Co., Unrep. Op. A-574.

§6. Briefs.

IMPORTANT CASES SINCE 1908

(a) Cases before the Commission are not like private lawsuits; parties do not stand like litigants before courts, and the Commission cannot upon the agreement of parties grant applications for continuances and extensions of time to accommodate parties and their counsel. Ullman v. Adams Express Co., 14 I. C. C. 585, 586.

(b) Statement contained in a brief of alleged facts of which there is no proof, and which are entirely outside the record cannot be accepted as contradicting testimony furnished by a party at the hearing. Break-Bulk Rates on Grain, 30 I. C. C. 357, 362.

§7. Oral Argument.

IMPORTANT CASES SINCE 1908

(a) Although it is probable the Commission may, in its discretion, require the submission of a case upon the testimony taken by a single Commissioner, or an examiner, and upon written briefs, the application of a party to be heard orally will not be refused except under peculiar and unusual circumstances, but such application for oral argument must be made when the testimony is concluded and not after the expiration of the time for filing briefs. Ullman v. Adams Express Co., 14 I. C. C. 585.

(b) Under ordinary circumstances oral argument will be permitted in proceedings before the Commission in which an order reducing a rate or changing a regulation or practice is prayed for, but requests for such argument should be made not later than at the close of the taking of the testimony. Ullman v. Adams Express Co., 14 I. C. C. 585, 586.

§8. Rehearing.

CASES 1887-1908

(a) Rule stated in reference to applications for rehearing; The Commission will promptly and carefully examine an application for a rehearing with a view to the immediate correction of any error of law or fact found to exist, but will not direct a rehearing involving the expense to parties of appearing before the Commission for a reargument, unless satisfied that such reargument might have the effect of changing the result of what the Commission has already done. The statute is construed as dealing with the substance of things, and as contemplating as far as this is possible, methods of procedure that are speedy and which come at once to the very right of questions arising in the transportation of persons and freight. Riddle, Dean & Co. v. Pitts. & Lake Erie R. R. Co., 1 I. C. R. 773.

(aa) Rule stated in reference to applications for rehearings: The Commission will promptly and carefully examine an application for a rehearing with a view to the immediate correction of any error of law or fact found to exist, but will not direct a rehearing involving the expense to parties of appearing before the Commission for a reargument, unless satisfied that such reargument might have the effect of changing the result of what the Commission has already done. The statute is construed as dealing with the substance of things, and as contemplating, so far as this is possible, methods of procedure that are speedy and which come at once to the very right of questions arising in the transportation of persons and freight. Where relation of any carrier to the matter complained of is such that it is in whole or in part materially responsible for alleged grievance and has direct interest in any investigation of the subject matter involved, and the merits of the controversy can not be determined in the absence of such carrier as a party, then that carrier should be made a party to the proceeding and if not a party, no relief may be had against it. The report and findings of the Commission upon the evidence relate only to the ascertainment and presentation of all the material facts necessary to fairly and justly present the merits of the controversy, and the Commission does not report evidence which is only cumulative, or which is immaterial or irrelevant,, or mere details of evidence already embraced in substantial facts stated, upon which the findings and conclusions of the Comission are made. Riddle, Dean

& Co. v. Pittsburg & Lake Erie R. R. Co., 1 I. C. C. 773, 774.

(b) After a complaint upon elaborate pleadings and proofs has been heard and determined by the Commission, an application for a rehearing, made only by those who were not parties to the proceeding, will not be granted, although, if upon a new or different complaint, it should appear that any conclusion in the case so decided has been erroneous, the Commission would feel it to be a duty to correct such conclusion. Re Petition of Toledo Produce Exchange (Com.), 2 I. C. R. 412.

(c) After a complaint upon elaborate pleadings and proofs has been heard and determined by the Commission, and no party to the proceeding has applied for a rehearing, an application for a rehearing made by others who were not parties to the proceeding will not be granted. Re Produce Exchange of Toledo, 2 I. C. C. 412.

(d) After a case has been decided by the Interstate Commerce Commission, a petition to open it for further testimony and a rehearing should be verified, and should indicate the nature of the new testimony and its purpose. Rice v. Western New York & P. R. Co., (Com.), 2 I. C. R. 496.

(da) When a question of general public interest is involved, the Commission, in its own discretion, and in furtherance of justice, may open a case to give parties the benefit of a more extended investigation of the same subject matter in other pending cases. Rice, Robinson & Witherop v. Western N. Y. & Pa. R. Co., 2 I. C. R. 496.

(e) Where an application for rehearing is insufficient in these respects, and only asks for a rediscussion of the facts and law already considered, with no offer of new evidence that can change the result, the application will be denied. Myers v. Pennsylvania Co. (Com.) 2 I. C. R. 544.

(f) A petition to reopen a case that has been decided, and for a rehearing, should show prima facie that some material testimony has been overlooked or misapprehended, or some error in the findings of fact or conclusions of law. When the application is insufficient in these respects, and only asks for a rediscussion of the facts and law already considered, with no offer of new evidence that change the result, the application will be denied. Myers v. Pennsylvania Co., 2 I. C. C. 544, 545.

(fa) Such a course is particularly advisable and proper when it is apparent that other parties than the one complained of are interested in the question and have not had the opportunity to be heard upon it. Pennsylvania Co. v. Louisville, New Albany & Chicago R. Co., 2 I. C. R. 603.

(g) If upon a rehearing of a case before the Interstate Commerce Commission, additional evidence warrants a finding contrary to what appeared and was found in the original hearing, the former order may be vacated. Bates v. Pennsylvania R. Co. (Com.), 3 I. C. R. 296.

(h) A petition or motion for rehearing cannot be granted on mere allegation of error in the findings of fact, and such a petition or motion must be supported by proof showing prima facie at least that there was such error. The affidavits in this case fail to make such showing. Proctor & Gamble v. Cincinnati, Hamilton & Dayton R. Co., 3 I. C. R. 374, 375.

(i) Error. None claimed in facts or order. Rehearing denied. Cattle Raisers' Ass'n of Texas v. C. B. & Q. R. R. Co., 12 I. C. C. 6.

(j) In this case final order was entered by the Commission November 16, 1905, but has not been obeyed by defendant carriers. Complainants' petition to set aside such order and reopen the case for further proceedings with a view to decision and order under the act of June 29, 1906, denied. Cattle Raisers' Asso. v. C. B. & Q. R. Co., 12 I. C. C. 6.

(k) A rehearing is discretionary with the Commission. City Council of Atchison v. Missouri Pac. Ry. Co., 12 I. C. C. 254.

IMPORTANT CASES SINCE 1908

(l) When full opportunity for hearing has been accorded, carriers must show as ground for a rehearing that the evidence which they now offer either could not or ought not to have been introduced upon the first hearing, and also that this evidence, if introduced, would probably lead to a reversal of the previous conclusion. It is no hardship to require carriers in the trial of their cases before the Commission to observe

to a very moderate degree the same rules which would obtain in a trial at law. Whenever the Commission is convinced that its order works substantial injustice it will unhesitatingly set aside that order, but cannot continually retry cases upon the mere statement of the carrier that it desires to introduce some further testimony and believes that the decision of the Commission is wrong. Whiteland Canning Co. v. P. C. C. & St. L. Ry. Co., 23 I. C. C. 92, 94.

(m) A rehearing is not denied merely because of the form of the petition. Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 266, 267.

(n) Where a complaint was not in the form of a motion for rehearing, but amounted to that in all respects, since the Commission observes the substance and not the form of pleadings, it was considered as a motion for rehearing. Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 266, 267.

(o) Failure of the Commission in taking notice of the results reached by it in other cases to enumerate such cases in the record, so that matters of law may be saved, is cured by the enumeration of such cases on rehearing. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 425.

(p) From section 16a it is plain that the Commission may grant a rehearing in a case in which no order is made, there being only a "decision." In such a case no time limit upon a rehearing could be contemplated. No provision is made for any different treatment of a rehearing on a "decision" and a rehearing of a case where an order is made, and no distinction can be drawn under this language. This being true it can not be said that this section contemplated necessarily that the rehearing and reconsideration of a case in which an order is made must be completed before that order expires. Again, under this section, an application for a rehearing may be made "at any time." A case in which an order is made might therefore be reopened, and reheard after the effective period of the order had expired. Incidently, the Commission, may, on rehearing, make just such an order giving effect to its views on rehearing as it may make on an original hearing. This must be held to confer upon the Commission the power to fix the period during which its supplemental order shall be effective as well as conferring the power to draft supplemental orders in other particulars. Stonega Coke & Coal Co. v. L. & N. R. R. Co., 39 I. C. C. 523, 535.

(q) Inasmuch as no order issued, contention that petition for rehearing filed too late, under rule XV of Rules of Practice, is not well founded. Lamb-Fish Lumber Co. v. Y. & M. V. R. R., 51 I. C. C. 6, 7.

(r) On rehearing, original report 57 I. C. C. 170, reversed, and rates on fresh meats and packing-house products, in mixed carloads, from Waterloo, Iowa, to Galesburg and Macomb, Ill., found unreasonable as compared with rates to Chicago, Ill., between numerous points in western trunk-line territory, to Galesburg and Macomb from many points at which packing-houses are located, from some of which traffic moves through Waterloo, and as compared with commodity rates established after shipments moved. Reparation awarded. Rath Packing Co. v. Director General, as Agent,, 73 I. C. C. 203.

(s) Since the application to the Interstate Commerce Commission for a rehearing does not operate to stay the execution of the Commission's order, unless the Commission, by special order, grants a stay, carriers objecting to an order for division of joint rates are entitled to regard it as final, for the purpose of bringing suit to enjoin its enforcement, without first making application for a rehearing. Abilene & S. Ry. Co. v. United States, 288 Fed. 102.

ALL OTHER CITATIONS

Hussey v. C. R. I. & P. Ry. Co., 14 I. C. C. 215; Hitchman Coal & Coke Co. v. B. & O. R. R. Co., 17 I. C. C. 473, 474; Whiteland Canning Co. v. P. C. C. & St. L. Ry. Co., 23 I. C. C. 92, 93; Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 308; Rates and Rules on Shipments of Packing-House Products, 36 I. C. C. 62, 64, Reeves Coal Co. v. C., M. & St. P. Ry., 37 I. C. C. 707; Michigan Seating Co. v. G. T. W. Ry. Co., 40 I. C. C. 503, 505; Friedlander & Co. v. C. of G. Ry. Co., 40 I. C. C. 506; Rates on Grain and Grain Products, 56 I. C. C. 689. Memphis Freight Bureau v. St. L. & S. F. R. R. Co., 57 I. C. C. 212; Inland Steel Co. v. Director General, 57 I. C. C. 339; Live Stock Loading and Unloading Charges,

58 I. C. C. 164, 166; Goss v. Director General, 58 I. C. C. 169, 173; Northern Potato Traffic Asso. v. A. T. & S. F. Ry. Co., 58 I. C. C. 592; Rath Packing Co. v. Director General, 59 I. C. C. 427; Natl. Wholesale Grocers Asso. v. Director General, 69 I. C. C. 669, 674, 675.

§9. Costs, Attorney's Fees, etc.

See Attorney's Fees.

CASES 1887-1908

(a) No costs are taxable before Commission. Johnston-Larimer Dry Goods Co. v. Wabash R. R. Co., 12 I. C. C. 51.

(b) The Commission does not assess costs; nor does it allow attorney's fees. Washer Grain Co. v. M. P. Ry. Co., 15 I. C. C. 147, 154.

III. MOTIONS.

§10. Dismissing Complaint.

CASES 1887-1908

(a) The Interstate Commerce Commission is not precluded from rehearing a particular case and modifying its original order therein, by refusal of a Federal court to embrace such order against the carriers affected thereby,—especially when the reasons assigned for such refusal do not relate to the principal question in controversy, and are consistent with an approval of the modified order. Page v. Delaware, L. & W. R. Co., 6 I. C. C. 548.

ALL OTHER CITATIONS

Baker Commercial Club v. O. W. R. R. & N. Co., 25 I. C. C. 281, 283.

§10 (1). In General.

CASES 1887-1908

(a) Leave should be granted to withdraw petition when petitioner alleges legality of practice sought to be authorized. Re Export Trade of Boston, 1 I. C. R. 25.

(b) The Commission will not make any ruling where petitioner alleges legality of practice sought to be authorized. Re Export Trade of Boston, 1 I. C. R. 25.

(c) A motion to dismiss a complaint denied because no notice of motion had been given and the object of the motio was to reach the merits of the case and to have them passed upon summarily instead of at final hearing. Associated Wholesale Grocers v. Missouri P. R. Co., 1 I. C. R. 321.

(d) Where no overt acts of misconduct on the part of a defendant railroad company, which could support any judgment of the Commission or any mandatory order, are made to appear, the Commission has no discretion but to dismiss the complaint. Holbrook v. St. Paul, M. & M. R. Co., 1 I. C. R. 323.

(e) If, at hearing, defendant company avows purpose to comply with law, the Commission must act upon the assumption that defendant will do so, until it has evidence that the purpose is not lived up to. Holbrook v. St. Paul, M. & M. R. Co., 1 I. C. R. 323.

(f) Carriers charged with exorbitant rates may change rates before hearing. Fulton v. Chicago etc. R. Co., 1 I. C. R. 375.

(g) A petition charging that the rates on twine for harvesters, from Chicago to Hudson, was unreasonable, dismissed without prejudice, where the answer denied that the rate was unreasonable, and showed that it had been reduced, and neither party offered any evidence. Harding v. Same, 1 I. C. R. 375.

(ga) The Act to Regulate Commerce provides that no complaint shall at any time be dismissed because of the absence of direct damage to the complainant. Boston & Albany R. R. v. B. & L. R. R. Co., 1 I. C. C. 571, 576.

(h) Upon failure of complainant to appear at hearing, complaint will be dismissed. Jackson v. St. Louis, A. & T. R. Co., 1 I. C. R. 599.

(i) Complaint alleging the demand of an unreasonable charge for the transportation of hewed ties dismissed, where the answer (a copy of which had been sent to complainant) denied the allegation and showed that the defendant had fixed a rate lower than that stated in the complaint, and complainant failed to appear at the hearing after notice thereof. Jackson v. St. L., Arkansas & Texas R. Co., 1 I. C. R. 599.

(ia) The Commission will not express an opinion where neither by complaint nor by application for relief is a case stated which will come within its jurisdiction. Re Iowa Barb Steel Wire Co. 1 I. C. R. 605.

(j) The pleadings presenting issues of fact and no evidence being presented,

the case will be dismissed. Leonard v. Union Pac. R. Co., 1 I. C. R. 627.

(k) Where the pleadings present issues of fact which cannot be disposed of by a decision which shall reach the merits without some evidence, and no evidence is presented, the case must be dismissed. Leonard v. Union Pac. R. Co., 1 I. C. R. 627.

(l) Where after the examination of the evidence upon a complaint charging unjust discrimination and unlawful preference in tariff of rates but before the announcement of the opinion, the respondent conceded the relief sought and published a tariff of rates in accordance with the complaint, the Commission only made a report to complete the record of the case. Manufacturers & Jobbers Union v. Minneapolis & St. L. R. Co., 1 I. C. R. 630.

(m) If respondent makes satisfaction before answering, the written acknowledgment thereof must be filed and may be set forth in answer; if made after service of answer, a supplemental answer may be filed. Rule 5, Appendix I, 1 I. C. R. 842.

(n) Complainant alleged unjust discrimination against Spartanburg, S. C. Petitioner failed to appear at hearing. Complaint dismissed. Spartanburg Board of Trade v. R. & O. R. R. 2 I. C. R. 193.

(na) A case finally submitted without evidence ordered adjourned to a future day for the purpose of taking evidence on the principle above stated. Spartanburg Board of Trade v. Richmond & Danville R. R. Co., 2 I. C. R. 193.

(nb) Where a case involving the reasonableness of rates has been disposed of by the carrier assenting to the rates demanded, no opinion will be expressed on the rates which have been abandoned, even though the parties request it. Lincoln Board of Trade v. Union P. R. Co. (Com.) 2 I. C. R. 101; Harris v. Duval (Com.) 2 I. C. R. 514; Pennsylvania Co. v. Louisville, N. A. & C. R. Co. (Com.) 2 I. C. R. 603; Rawson v. Newport News & M. V. R. Co. (Com.) 2 I. C. R. 626.

(nc) The Act to Regulate Commerce makes it the duty of this Commission "to investigate any complaint forwarded by the Railroad Commissioner or Railroad Commission of any State or Territory at the request of such Commissioner or Commission." The complaint in this case was brought by and in the name of the Railroad Commission of Florida, but the real parties in interest are large classes of growers, buyers and shippers in the State of Florida. Since the complaint was filed the nominal complainant has ceased to exist. HELD, that the repeal of the law creating the Railroad Commission of Florida could not operate as a withdrawal or dismissal of the complaint, that Commission having been only an instrument for the transmission of the complaint to this Commission, and having fully performed that function before an end was put to its existence. To abate or dismiss the proceeding on that ground would be to sacrifice substance to form in contravention of the spirit and letter of the Act to Regulate Commerce and of the rules of courts of law in analogous cases. HELD FURTHER, that under the provision of the Act to Regulate Commerce authorizing this Commission to "institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made," neither complaint nor complainant is necessary to confer jurisdiction. Railroad Commission of Fla. v. Savannah F. & W. R. Co., 3 I. C. R. 688.

(nd) The statute provides that "no complaint shall at any time be dismissed because of the absence of direct damage to the complainant," and defendants are therefore not entitled to a dismissal of the complaint on the ground that the petitioners, being merely commission merchants, can sustain no direct or material damage under the rates in question. James & Abbott v. Canadian Pacific R. Co., 4 I. C. R. 274.

(o) Defendants are not entitled to a dismissal of a complaint of unlawful rates, on the ground that the petitioners, being merely commission merchants, can sustain no direct or material damage under the rates in question. James v. Canadian P. R. Co., (Com.), 4 I. C. R. 274.

(oa) Some of the grievances alleged in the complaint were subsequently removed by defendants as a result of the Commission's order in other cases. The other charges were denied by the defendants in their verified answers, and that denial was fortified by the positive testimony of witnesses. The petitioner did not appear at the hearing, though duly

notified thereof, and offered no proof in support of the information and belief upon which his allegations were made. HELD, that as to these charges the complaint must be dismissed. George Rice v. St. Louis Southwestern R. Co., 4 I. C. R. 321.

(ob) That persons complaining before the Interstate Commerce Commission of the violation by a certain railroad company of the provisions of the Interstate Commerce Act had no real grievance, but were instigated to their prosecution by a rival of the company, will not cause the dismissal of a suit brought by the Commission to enforce an order which it has made in the cause. Interstate Commerce Commission v. Detroit, G. H. & M. R. Co., 4 I. C. R. 722.

(oc) After complaint and investigation, but before decision by the Commission, the carriers complained against the reduced rate to the extent that it was alleged to be excessive. HELD, that any order in respect of the rate of charges is unnecessary now that they are no longer excessive. Michigan Box Co. v. Flint & P. M. R. Co., et al., 6 I. C. C. 335.

(p) The Interstate Commerce Commission will dismiss without order a complaint of discriminating rates where, since the hearing, the control of the road has been changed and the cause of complaint removed so that the statute is substantially complied with. Boyer v. Chesapeake, O. & S. W. R. Co., 7 I. C. C. 55.

(q) A defendant carrier is not entitled to have a complaint dismissed as to it because of the absence of direct damage to the complainant, and it is the duty of the Commission under direction of the act, to execute and enforce the provision of the statute. Milk Producers' Protective Asso. v. D. L. & W. R. Co., 7 I. C. C. 92, 163.

(r) The Interstate Commerce Commission dismissed an investigation before it as to freight rates charged during a rate war, where such war had been discontinued and the prior rates restored. Re Tariffs & Classifications of Pa. R. Co., 7 I. C. C. 177.

(s) A combination rate of 72 cents on potatoes in carloads from Cadillac, Michigan, via Grand Rapids, Michigan, to Texas common points, made effective since this proceeding was instituted, was a reduction of 5 cents in the rate complained of, and was a substantial satisfaction of the complaint; but it appeared that local rates in force to and from the Mississippi River were charged on shipments from Cadillac, while defendants, operating west of that river, accepted less than their said charges west of the river on like shipments which originated at Grand Rapids, Michigan, and other points in so-called Detroit-Cleveland territory. HELD, That without approving defendant's system of shrinking rates, the complaint should be dismissed without prejudice. Freeman v. Atchison, T. & S. F. R. Co., 7 I. C. C. 202.

(t) Complaint against discrimination in rates will be dismissed without prejudice by the Interstate Commerce Commission, notwithstanding substantial satisfaction of the complaint, where it appears that less charges are accepted by defendants west of the Mississippi River on shipments originating at other points than from the complaining point. Freeman v. Atchison, T. & S. F. R. Co., 7 I. C. C. 202.

(u) On complaint of violation by defendants of sections 3 and 4 of the Act to Regulate Commerce, through charges on coal in carloads from Cumberland, Md., which were greater for the shorter distance to North Garden, Va., than for the longer distance over the same line to Lynchburg, Va., it appeared at the hearing that defendants had withdrawn and discontinued the lower rate to the longer-distance point. HELD, That such action by defendants obviated the infractions of the law so complained of. Montell v. Baltimore & Ohio R. Co., 7 I. C. C. 412.

(v) Discontinuance by carriers of a lower rate to a longer distance point obviates the previous infraction of the law. Montell v. Baltimore & O. R. Co., 7 I. C. C. 412.

(w) Complainant alleged defendant had unjustly discriminated in rates on sand from Dock Siding, McCool and Willow Creek, Ind., to Chicago, Ill., but the evidence was not sufficient to show breach of legal duty on the part of defendant, complaint dismissed. Castle v. B. & O. R. Co., 8 I. C. C. 333.

(x) Complainant's claim for reparation having been settled by defendants, the case was, in view of the limited tes-

timony presented by the complainant, dismissed without prejudice. Sayles v. N. Y., N. H. & H. R. Co., 9 I. C. C. 492.

(y) The defendants having removed the cause of complaint by establishing rates on sugar from Sugar City and Rocky Ford, Colo., to Wichita and Hutchinson, Kans., no higher than those in effect from the same points to Kansas City, Mo., no order is necessary in this proceeding. Wichita v. Atchison, T. & S. F. Ry. Co., et al, 9 I. C. C. 507.

(z) No order was deemed necessary, and none was made, where the defendants had removed the cause of complaint, by establishing rates on sugar from Sugar City and Rocky Ford, Colorado, to Wichita and Hutchinson, Kansas, no higher than those in effect from the same points to Kansas City, Mo. Mayor and City Council of Wichita v. Atchison, T. & S. F. R. Co., 9 I. C. C. 507.

(aa) Complainant attacked as unreasonable commodity rates on sugar from Sugar City and Rocky Ford, Colo., to Wichita and Hutchinson, Kans., higher than those in effect to Kansas City, Mo. HELD, inasmuch as the defendants removed the cause of complaint by establishing rates to Wichita and Hutchinson no higher than those to Kansas City, Mo., no order is necessary, complaint dismissed. Mayor and City Council of Wichita, Kansas v. A., T. & S. F. Ry., 9 I. C. C. 507.

(aab) Where a proceeding as to the legality of a transaction was merely one of inquiry, the Commission contented itself with expressing an opinion, and did not make an order in the premises. Re Transportation of Salt from Hutchinson, 10 I. C. C. 1.

(bb) The defendant, the Atchison, Topeka & Santa Fe Ry. Co., removed the discrimination complained of as to its lines, and it appeared that the defendant, the St. Louis & San Francisco Railroad Co., does not participate in the rates in question. Complaint as to those lines dismissed. Chicago Live Stock Exchange v. C. G. W. R. Co., et al, 10 I. C. C. 428.

(cc) Neither the International & Great Northern Railroad Company nor the Missouri, Kansas & Texas Railway Company was a party to the transportation here in question, and as to those carriers the complaint is dismissed. H. B. Pitts & Son v. Atchison, T. & S. F. R. Co., et al, 10 I. C. C. 691.

(dd) This case, involving the reasonableness and justice of freight rates from Chicago, St. Louis, Louisville, and other Ohio River and Mississippi River points, is similar to, and was held to await the final disposition of, the case of Wilmington Tariff Asso. v. Cincinnati, P. & V. R. Co., et al, 9 I. C. C. Rep. 118, in which proceeding the Commission entered an order requiring correction of rates from the same points to Wilmington, N. C., but such order the United States Circuit Court declined to enforce. During the present year the rates from Chicago to Ohio River crossings have been materially reduced on shipments destined to southeastern points, resulting in reduction of through rates from Chicago to Charleston and Wilmington. HELD, That in view of the decision of the Circuit court in the Wilmington case, no enforceable order of relief can be predicated upon the facts shown in this case, and the complaint must be dismissed. Bureau of Freight & Transportation v. Norfolk & W. R. Co., 11 I. C. C. 235.

(ee) Case retained with the expectation that the defendants will make a substantial readjustment of the rates in accordance with the views expressed in the opinion. A. J. Phillips Co. v. Grand Trunk W. R. Co., et al, 11 I. C. C. 659.

(ff) Complainant attacked as unjust and unreasonable rates on commodity basis charged on coal from St. Louis, Mo., to Oklahoma City, Okla., as compared with rates from mines in West Virginia. The case is held to present no question of practical importance in view of the proximity of coal fields in Oklahoma, Arkansas and Kansas, and also the much shorter distance from Colorado and Missouri, but in case the unreasonableness of the rate should become of actual consequence hereafter, the complaint is dismissed without prejudice. J. B. Harrell v. M. K. & T. Ry., 12 I. C. C. 28.

(gg) Complainant attacked as unreasonable and unduly discriminatory rates charged on oil originating at Pittsburgh, Pa., from East St. Louis, Ill., and St. Louis, Mo., to Joplin, Mo., as compared with rate from St. Louis to Joplin on oil originating at St. Louis.

Rate charged from St. Louis to Joplin locally was prescribed by the Missouri Commission and was then in litigation in the courts. In view of this situation complainant was willing to withdraw the complaint. HELD, complaint dismissed. E. M. Wilhoit v. M. P. Ry., 12 I. C. C. 138.

(gga) Complaint alleged that rate on shipments of oil originating at Pittsburgh, Pa., from East St. Louis, Ill., and St. Louis, Mo., to Joplin, Mo., is excessive and discriminatory as compared with rate from St. Louis to Joplin on shipments of oil originating at St. Louis. Upon request of complainant, on defendant suggesting probability of rate adjustment, complaint dismissed. Wilhoit v. Missouri Pacific Ry. Co., et al, 12 I. C. C. 138.

(hh) Complainant having abandoned the case, complaint dismissed for want of prosecution. Producers' Pipe Line Co. v. St. L. Iron Mt. & So. Ry. Co., 12 I. C. C. 186.

(ii) Complainant attacked commodity rates on oil from Nowata, Ind. T., to points in Texas as unjust and unreasonable. Case was set for hearing but complainant failed to appear, stating that his complaint was being adjusted direct with defendant. HELD, complaint dismissed. Producers' Pipe Line Co. v. St. L. I. M. & S. Ry., 12 I. C. C. 187.

(iia) The facts, circumstances, and conditions bearing upon the question of the reasonableness of the rates in issue have not been sufficiently developed to afford a proper basis for satisfactorily determining that question. Complaint dismissed. R. R. Shiel & Co. v. Ill. Cent. R. R. Co., et al, 12 I. C. C. 211.

(jj) At hearing of complaint it was disclosed that substantial reductions in rates on all classes and commodities from Chicago and Omaha to Lead (about which complaint was made) were made in tariffs in press. It also appeared that the building of new lines had injected into the situation a competition which would probably affect further reduction. Tariffs filed subsequent to the hearing and prior to rendering decision contained the reductions referred to, and in view of them and the probable effect of the new competition, it is held that under the circumstances and upon the record in this case no order changing the rates will now be made. Complaint dismissed. Lead Commercial Club v. C. & N. W. and C. B. & Q. Ry. Co., 12 I. C. C. 460.

IMPORTANT CASES SINCE 1908

(kk) No complaint shall at any time be dismissed because of the absence of direct damage to the complainant. Burford v. L. & N. R. R. Co., 31 I. C. C. 182, 185.

(llmm) The Act provides that "no complaint shall at any time be dismissed because of the absence of direct damage to the complainant." Car Float Service, New York Harbor, 49 I. C. C. 259, 261.

(nn) A complainant before the Commission can not, as a matter of right, withdraw his complaint and the undesirable consequences of permitting a complainant to terminate a proceeding whenever in his opinion his interests would thus be served than by having it proceed to a conclusion, are obvious and require no exposition. Royster Guano Co. v. A. C. L. R. R., 50 I. C. C. 34, 40.

ALL OTHER CITATIONS

Arrow Lumber & Shingle Co. v. M. St. P. & S. Ste. M. Ry. Co., Unrep. Op. 145; Weis Mfg. Co. v. L. S. & M. S. Ry. Co., Unrep. Op. 142; Indianapolis Freight Bureau v. P. R. R. Co., 15 I. C. C. 567, 571; City of Spokane v. N. P. Ry. Co., 23 I. C. C. 454, 455; Alan Wood, Iron & Steel Co. v. P. R. R. Co., 24 I. C. C. 27; Baker Commercial Club v. O. W. R. R. & N. Co., 25 I. C. C. 281, 283; Humboldt S. S. Co. v. White Pass & Yukon Route, 25 I. C. C. 136, 141; Lewis Mfg. Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-819; Rapson Coal Mining Co. v. K. C. M. & O. Ry. Co., Unrep. Op. A-824; Wallis v. T. & N. O. R. R. Co., Unrep. Op. A-852; Freight Rates from Minnesota Points, 32 I. C. C. 361, 367; Phillips Coal Co. v. S. A. & A. P. Ry., 38 I. C. C. 340; Joseph Bros. & Co. v. M. C. R. R., 38 I. C. C. 719; National Pickle & Canning Co. v. P. M. R. R., 44 I. C. C. 502; The Alaska Investigation, 44 I. C. C. 680, 712, 713; Producers Sales Co. v. N. Y. N. H. & H. R. R. Co., 48 I. C. C. 438, 440; Stephens v. St. L. & S. F. R. R., 48 I. C. C. 649; Harrison v. St. L. B. & M. Ry., 49 I. C. C. 140; McCormick & Co. v. S. P. Co., 49 I. C. C. 324; Wise v. Penn. R. R., 50 I. C. C. 268; Commission of Washington v. A. & V. Ry. Co., 53 I. C. C. 1; Middlesboro Kentucky Coal Operators

Asso. v. L. & N. R. R. Co., 53 I. C. C. 269, 274; Richardson Co. v. Director General, 56 I. C. C. 731; Petroleum and Petroleum Products, 81 I. C. C. 71.

§10 (2) Adjustment since filing.

CASES 1887-1908

(a) Complaint for over charge withdrawn where complainants receipt in full settlement for over charges was shown by respondent. Stahl v. Oregon R. & Nav. Co., 1 I. C. R. 314.

(b) Complainant attacked rates charged on freight from Chicago to St. Paul and Minneapolis, Minn., as unreasonable. HELD, the Act contemplates that when a complaint is made against a carrier on the ground of exorbitant rates, the carrier may change its rates before a hearing is had, so as to remedy the matter complained of, if it shall see proper so to do. Petition dismissed without prejudice, where it appeared from a reply filed by the complainant to defendants answer, that the rates originally complained of had been reduced, and no complaint was made against such reduced rates. Fulton v. C. St. P. M. & O. R. R., 1 I. C. C. 375.

(c) Petition charging exorbitant rates will be dismissed where rates are reduced before hearing. Fulton v. Chicago, etc. R. R. Co., 1 I. C. R. 375.

(d) Petition dismissed without prejudice, where it appeared from a reply filed by the complainant to the defendant's answer, that the rates originally complained of had been reduced, and no complaint was made against such reduced rates. Fulton v. Chicago, St. Paul M. & O. R. R. Co., 1 I. C. R. 375.

(e) Where after the examination of witnesses and documentary evidence upon a petition to require the respondent to so adjust its tariffs on freights from the City of Chicago, that its rate to the City of Mankato, Minnesota, and to all other points west of Waterville and between Waterville and Mankato, on its line of railroad on all classes of freight, shall hereafter be no higher than the rates established by said Company from the City of Chicago to said Village of Waterville and points east on said line of railroad between Waterville and the City of Red Wing and points north on said main line, between Waterville and the City of Minneapolis, and after submissions upon the petition, answer and evidence and full consideration of the matters involved, but before the announcement of the report and opinion, the respondent railroad company conceded the relief sought and made, and published a tariff of rates in accordance with the prayer of the petition, the Commission only deemed it necessary to make the report to complete the record of the case. Manufacturers & Jobbers' Union v. Minneapolis & St. L. Ry. Co., 1 I. C. R. 630.

(f) Complainant attacked as unreasonable rates from Chicago to Mankato, Minn., as compared with class rates from Chicago to Waterville, Minn. HELD where after the examination of witnesses and documentary evidence upon a petition to require the respondent to so adjust its tariffs on freight from Chicago that its rate to Mankato, Minn., and to all other points west of Waterville and between Waterville and Mankato on its line of railroad on all classes of freight, shall hereafter be no higher than the rates established from Chicago to Waterville and points east between Waterville and Red Wing and points north on said main line between Waterville and Minneapolis, and respondent company conceded the relief sought and made, and published a tariff of rates in accordance with the prayer of the petition, the Commission only deemed it necessary to make the report to complete the record. Manufacturers & Jobbers' Union of Mankato v. M. & St. L. Ry., 1 I. C. C. 630.

(g) When, pending a proceeding begun to test the reasonableness of rates, the rates are reduced and made satisfactory to the complainants, the Commissions will not consider the question whether the rates before reduction were or were not excessive;—that question having by the reduction made become purely abstract and speculative. Bishop v. Duval, 2 I. C. R. 514.

(ga) Where a case involving the reasonableness of rates has been disposed of by the carrier assenting to the rates demanded no opinion will be expressed on the rates which have been abandoned, even though the parties request it. Such a course is particularly advisable and proper when it is apparent that other parties than the one complained of are interested in the question and have not had the opportunity to be

heard upon it. Pennsylvania Co. v. L. N. A. & P. R. Co., 2 I. C. C. 603, 604.

(gb) Where a tariff complained of was abandoned by the carriers for a long period of time before the complaint was made and shortly after the tariff was put in force, the Commission will not make an order requiring the carriers to cease and desist from enforcing such tariff, because such an order would be vain and useless. The amendment of March 2, 1889, expressly provides that it shall have no application to pending proceedings. Rawson v. N. N. & M. V. Co., 2 I. C. C. 626, 630.

(h) It has been the well known and established practice of this Commission in administering the provisions of the Act, that, in cases where a carrier has abandoned a practice deemed unlawful or questionable prior to the commencement of proceedings against it, or at any time even before the hearing of such proceedings when commenced, and is obeying the law as construed by the Commission, the Commission will make no order against it to cease a practice which it had already abandoned, because such order would be vain and useless, and the statute does not require it. New York Board of Trade & Transportation v. Pennsylvania R. Co., 3 I. C. C. 417, 446.

(i) Where a carrier corrects the inequality of rates complained of and thus makes all the reparation asked in the complaint, or that the Commission could afford, no order is required, and none will be issued. New Orleans Cotton Exchange v. L. M. O. & T. R. R. Co., 3 I. C. C. 523, 526.

(j) The rates on melons complained of in this case having been materially reduced by the defendant carriers since the commencement of this proceeding and there being no satisfactory evidence that the rates so reduced are unreasonable or excessive, the complaint is dismissed. Laud v. South Carolina R. Co., 4 I. C. R. 205.

(k) No order in respect to excessive charges by railroad companies on certain products is necessary where, after the commencement of the action and before its decision, the rate is reduced to that asked by the complainant. Michigan Box Co. v. Flint & P. M. R. Co., 6 I. C. C. 335.

(l) Upon complaint forwarded by the Railroad Commission of Mississippi, and investigation thereon instituted by the Commission on its own motion, respondent materially reduced its rates of freight between Memphis, Tenn., and Coldwater, Miss., and other stations on its Memphis division, such rates having been the principal subject of testimony in the proceeding, but it also appearing that such rates should be further revised as to certain points and traffic specified,—HELD, upon such action of respondent, and the disposition thus manifested to remove just cause of complaint and make the further revision required, that no order be entered at this time, and that all the matters involved be held open for such further action or investigation, as upon the application or petition of any interested party, may appear necessary. Alleged Unlawful Transportation Charges By I. C. R. Co., 6 I. C. C. 624.

(m) The defendant carriers charged 29 cents per 100 pounds on cotton-seed meal from Memphis to Philadelphia, and 34 cents from Dyersburg, a shorter-distance intermediate point on the same line. After hearing, the line or road of one of the companies complained against passed into the control of, and was being operated by, a company not a party to the proceeding. This company on being made a party answered that it had put in effect the same rate, 26 cents, from both Memphis and Dyersburg, which on further investigation was found to be the fact. HELD, the cause of complaint being removed, the statute substantially complied with, reparation was made. No order was necessary, and the case was dismissed. Boer & Co. v. Chesapeake, O. & S. R. Co., 7 I. C. C. 55.

(n) The defendants having removed the cause of complaint by establishing rates on sugar from Sugar City and Rocky Ford, Colorado, to Wichita and Hutchinson, Kansas, no higher than those in effect from the same points to Kansas City, Missouri, no order was made in the proceeding. Mayor and City Council of Wichita v. Atchison, T. & S. F. R. Co., 9 I. C. C. 507.

(o) The respondents having removed the differential of 5 cents on corn meal, no order is considered necessary. Re Rates on Corn and Corn Products from

Missouri River Points to Points in Louisiana, 11 I. C. C. 227.

(p) Complainant attacked commodity rates charged on scrap iron, carloads, from Cedar Rapids, Iowa to Chicago and East St. Louis, Ill., and St. Louis, Mo., as compared with rates to the same destinations from St. Paul and Minneapolis, Minn., as unreasonable, Cedar Rapids being intermediate via some lines. During the pendency of the proceedings rates from St. Paul, Minneapolis and Cedar Rapids were changed, with the result that the rates from those points to Chicago were made the same and rates to St. Louis were made 20c less from Cedar Rapids than from St. Paul. HELD, complaint dismissed on request of complainant. Ohsman & Effron v. C. R. I. & P. Ry., 12 I. C. C. 63.

(q) This case involves rates on scrap iron, carloads, from Cedar Rapids, Iowa, to Chicago and East St. Louis, Ill., and St. Louis, Mo., as compared with rates to the same destinations from St. Paul and Minneapolis, Minn. During the pendency of the proceeding, rates from St. Paul and Minneapolis and from Cedar Rapids were changed, with the result that the rates from those points to Chicago were made the same and the rates to St. Louis were made 20 cents less from Cedar Rapids than from St. Paul and Minneapolis, East St. Louis taking St. Louis rates. Upon complainants' request the complaint is dismissed without prejudice. Ohsman & Effron v. C., R. I. & P. R. Co., 12 I. C. C. 64.

(r) Complainant attacked rates charged on all classes of merchandise to McRae and Helena, Ga., from New York, Boston, Philadelphia, Baltimore and points in adjacent territory, as unreasonable and as compared with rates to Cordele and Fitzgerald, Ga. HELD, complaint having been satisfied through the readjustment of tariffs, showing considerable reductions in the rates satisfactory to complaints. Complaint dismissed. McRae Grocery Company v. Southern Ry., 12 I. C. C. 84.

(s) This case having been settled through the readjustment of tariffs, showing considerable reductions in the rates complained of, and to the satisfaction of complainants, the complaint is dismissed. McRae Grocery Co. v. W. B. Folsom v. So. Ry. Co., 12 I. C. C. 84.

(sa) Complainant alleged that defendants' rate on sugar in carloads from New Orleans, La., to McAlester, Ind. T., of 38 cents per 100 pounds, was unreasonable and unduly discriminatory because their rate on sugar from New Orleans to Muskogee, Ind. T., a nearer point over the same line, was only 35 cents. Defendants having reduced their rate to McAlester to 35 cents, the Muskogee rate, the complaint is dismissed. Hale-Halsell Co. v. Mo., Kans., & Tex. Ry. Co., 12 I. C. C. 136.

(t) Complainant alleged that rates on petroleum and its products from certain points in Pennsylvania and Ohio to Pacific coast terminals are unreasonable and discriminatory, and that the charge of $105 each for the return of empty cylinder oil cars from Pacific coast terminals to Missouri River points should be abrogated. After answers were filed and case assigned for hearing defendants made considerable reduction in the rates and abrogated the empty-car charge. Upon request of complainant, complaint dismissed without prejudice. National Petroleum Association v. Penn. R. R. Co., 12 I. C. C. 151.

(u) Complainant alleged that the through rate on petroleum and its products over defendants' lines from Oil City, Pa., to Freeport, Ill., via Chicago, was 25½ cents per 100 pounds, whereas the combination rate on Chicago was only 23 cents. Defendants in their answers signified willingness to reduce the rate to 23 cents and subsequently put this rate in effect. Upon request of complainant, after case had been assigned for hearing, complaint dismissed without prejudice. National Petroleum Association v. Penn. R. R. Co., 12 I. C. C. 153.

(v) Complaint that rates on hogs and cattle from Bliss, Okla., to Kansas City and St. Joseph, Mo., were unreasonable, upon request of complainants and showing of satisfactory rate adjustment, dismissed. Miller Bros. v. A. T. & S. F. Ry. Co., 12 I. C. C. 157.

(w) Complaint alleged that rates on coke from Kentucky and Virginia ovens to Terre Haute, Ind., were unreasonable as compared with rates on coke from said points of origin to Chicago and other specified points, but after the complaint was filed defendants made the rates to Terre Haute the same as those

to Chicago. Upon complainant's motion complaint dismissed. Manufacturers' Club of Terre Haute v. L. & N. R. R. Co., 12 I. C. C. 157.

(x) Complainant attacked as unreasonable commodity rates charged on hogs and cattle from Bliss, Okla., to Kansas City and St. Joseph, Mo. Subsequently the carriers published rates which were satisfactory to complainant who requested that complaint be withdrawn. HELD, complaint dismissed. Miller Bros. v. A. T. & S. F. Ry., 12 I. C. C. 158.

(y) Complaint alleged that rates on hogs and cattle from Bliss, Okla., to Kansas City and St. Joseph, Mo., were unreasonable. Upon request of complainants and showing of satisfactory rate adjustment, complaint dismissed. Miller Bros. v. A. T. & S. F. Ry. Co., 12 I. C. C. 158.

(z) Complaint alleged that the rate on refined oil from Erie, Kans., to Springfield, Mo., was unreasonable of itself and also as compared with the rate on such commodity from Erie to St. Louis, Mo., and from Neodesha, Kans., to Springfield; but after the hearing defendants made the rate from Erie to Springfield the same as the rate from Neodesha to Springfield and from Erie to St. Louis. The relief demanded by complainant having been conceded, the complaint is dismissed. E. M. Wilhoit v. Mo., Kans., & Tex. Ry. Co., 12 I. C. C. 159.

(aa) Complainant attacked as unreasonable commodity rates charged on refined oil from Erie, Kans., to Springfield, Mo., as compared with rates to St. Louis, Mo., Subsequently rates satisfactory were published by defendant. HELD, complaint dismissed. E. M. Wilhoit v. M. K. & T. Ry., 12 I. C. C. 159.

(bb) Complaint alleged that defendant's carload rate on apples from Kansas City, Missouri, to El Paso, Texas, was unreasonable in that an arbitrary weight greater than the actual weight was imposed, but subsequently defendant amended its tariff so as to make it apply to only actual weights on such apples. Complaint dismissed. Payne v. Atchison, Topeka & Santa Fe Railway Co., 12 I. C. C. 190.

(cc) A carrier charged a rate of $1.05 per ton on coal in carloads from Mineral, Kans., to Freeman, Mo., while it had in force a rate of 80 cents per ton from Mineral to Harrisonville, Mo., a longer distance point by its line. At the hearing it was agreed that defendant should make the 80-cent rate effective to Freeman and that complainant should withdraw its claim for reparation. Order is entered accordingly. Geo. D. Hope Lumber Co. v. Mo., Kans., & Tex. Ry. Co., 12 I. C. C. 191.

(dd) Complainant attacked commodity rates charged on crude petroleum and fuel oils of 39 and 49 cents from Indian Territory and Kansas points, to Amarillo, Tex., as unreasonable. Before the hearing defendant agreed to put in force a rate of 19 cents. HELD, upon request of complainant, complaint dismissed. Amarillo Gas Company v. A. T. & S. F. Ry., 12 I. C. C. 209.

(dda) Complaint alleged that the rates on crude petroleum and fuel oils of 39 cents and 49 cents per 100 pounds from Indian Territory and Kansas points respectively, to Amarillo, Texas, were unreasonable; but before hearing defendants agreed to put in force a rate of 19 cents per 100 pounds upon the said commodities from certain points in Kansas and Indian Territory to Amarillo. Upon request of complainant complaint dismissed. Amarillo Gas Co. v. A. T. & S. F. Ry. Co., et al, 12 I. C. C. 209.

(ee) Complaint bringing in question the reasonableness of defendants' rates from Chicago to Sioux City, in themselves, and as compared with rates from Chicago to Sioux Falls dismissed upon motion of complainant, on the ground that defendants had given notice of compliance with prayer of complaint, so far as same refers to the relation of rates from Chicago to Sioux City and Sioux Falls. Sioux City Commercial Club v. C. M. & St. P. Ry. Co., 12 I. C. C. 253.

(eea) Complaint in this case brought in question the reasonableness of defendants' rates from Chicago to Sioux City, in themselves, and as compared with rates from Chicago to Sioux Falls; upon motion of complainant for dismissal of complaint, on the ground that defendants had given notice of compliance with prayer of complaint, so far as same refers to the relation of rates from Chicago to Sioux City and Sioux Falls, complaint dismissed. Sioux City Com.

Club v. Chi., Mil., & St. P. Ry. Co., et al, 12 I. C. C. 253.

(ff) Complainant attacked class rates as unreasonable from Chicago, Ill., to Sioux City, Iowa, and as compared with rates to Sioux Falls, S. D. Complainant made motion for dismissal on the ground that defendants had given notice of compliance with prayer of complaint, so far as same refers to the relation of rates from Chicago to Sioux City and Sioux Falls. HELD, complaint dismissed. Sioux City Commercial Club v. C. M. & St. P. Ry., 12 I. C. C. 253.

(ffa) Complaint drew in question the reasonableness of rate on coal of $1.25 per ton from Centerville district, Iowa, to Albany, Mo., in itself and as compared with coal rate to St. Joseph, Mo. After case was submitted the rate to Albany was reduced to $1 per ton. As the record failed to show that the $1.25 rate was unreasonable in itself, or that the present rate of $1 is excessive, or that the facts and circumstances disclose unjust discrimination, the complaint is dismissed. Albany Produce Co. v. C. B. & Q. Ry. Co., 12 I. C. C. 434.

(gg) Complainant attacked class rates from Chicago and Omaha to Lead, S. D., as unreasonable. At hearing it was disclosed that substantial reductions in rates on all classes and commodities from Chicago and Omaha to Lead were made in tariffs in press. It also appeared that the building of new lines had injected into the situation a competition which would probably affect further reduction. Tariffs filed subsequent to the hearing and prior to rendering the decision contained the reductions referred to, and in view of them and the probable effect of the new competition, it is held that no order changing the rates will now be made. HELD, complaint dismissed. Lead Commercial Club v. C. & N. W. Ry., 12 I. C. C. 460.

IMPORTANT CASES SINCE 1908

(hh) Where after a hearing a general outline of rates is agreed upon between complainant and defendant, the complaint will, at the request of the complainant, be dismissed without prejudice. Oklahoma v. A. T. & S. F. Ry. Co., 14 I. C. C. 147, 149.

(ii) The Commission dismisses a complaint where the carrier has voluntarily done all that the Commission would order it to do. Alan Wood Iron & Steel Co. v. P. R. R. Co., 24 I. C. C. 27.

(jj) Where a complaint has been satisfied, an order requiring a continuance of present nondiscriminatory practices is not necessary. Humboldt S. S. Co. v. White Pass & Yukon Route, 25 I. C. C. 136, 141.

(kk) Where the conclusions of the Commission in a certain case have been complied with, no order is necessary. Sinclair & Co. (Ltd.) v. C. M. & St. P. Ry. Co., 48 I. C. C. 295, 296.

(ll) The Commission is not inclined to render judgment on matters voluntarily withdrawn from a proceeding by the complaining parties. Minneapolis Tariff Asso. v. C., B. & Q. R .R., 49 I. C. C. 308, 310.

(mm) Carriers having adjusted rates on pears from Delaware division of the P. R. R. to Hinton, W. Va., via Potomac Yard, Va., complaint will be dismissed. Hinton Fruit & Produce Co. v. C. & O. Ry. Co., Unrep. Op. A-312.

ALL OTHER CITATIONS

Learned-Haynes Co. v. St. L. & S. F. Ry. Co., Unrep. Op. 152; Louis v. C. R. I. & F. Ry. Co., 13 I. C. C. 138; Butters Lumber Co. v. A. C. L. R. R. Co., 13 I. C. C. 521, 522; Lewis v. C. R. I. & P. Ry., 13 I. C. C. 377; Kansas Millers Commercial Club v. C. R. I. & P. Ry. Co., 15 I. C. C. 605, 607; Southern Kansas Millers' Commercial Club v. A. T. & S. F. Ry. Co., 15 I. C. C. 604; Joice & Co. v. I. C. R. R. Co., 15 I. C. C. 239, 243; Montgomery Freight Bureau v. W. Ry. of Ala., 15 I. C. C. 199; Rentz Brothers v. C. B. & Q. R. R. Co., 15 I. C. C. 7; Masurite Explosive Co. v. N. & W. Ry. Co., 16 I. C. C. 530; Indianapolis Freight Bureau v. C. C. C. & S. F. Ry. Co., 16 I. C. C. 142, 143; Zellerbach Paper Co. v. A. T. & S. F. Ry. Co., 16 I. C. C. 128; Watson Co. v. L. S. & M. S. Ry. Co., 16 I. C. C. 124, 125; Gay Coal & Coke Co. v. C. & C. Ry. Co., 23 I. C. C. 471; City of Spokane v. N. P. Ry. Co., 23 I. C. C. 454; Freight Bureau of Merch. & Mfrs. Assn. v. A. C. L. R. R., 38 I. C. C. 516; Davis Milling Co. v. A. T. & S. F. Ry. Co., 39 I. C. C. 198, 199; Interstate Packing Co. v. C. M. & St. P. Ry., 45 I. C. C. 365, 370; Arizona Corporation Commission v. A. T. & S. F. Ry., 46 I. C. C. 297, 298; Chamber of Commerce, Houston, Tex. v. M. L. T.

R. R. & S. S. Co., 51 I. C. C. 663, 655; Fritz v. N. C. O. Ry., 55 I. C. C. 389; Beaumont Chamber of Commerce v. A. & W. Ry. Co., 66 I. C. C. 544; Oklahoma Rates and Charges, 69 I. C. C. 635; Cotton and Cotton Linters, 69 I. C. C. 735; Greater Des Moines Committee (Inc.) v. Director General, 77 I. C. C. 303; Brier Hill Steel Co.v. B. & O. R. R. Co., 83 I. C. C. 709.

§10 (3) Interveners.

See Interveners.

CASES 1887-1908

(a) Persons having an interest in a question pending before the Commission may appear when the case is submitted, without being made formal parties. Hurlburt v. Lake Shore & M. S. Ry Co., 2 I. C. R. 81; Spartanburg Board of Trade v. Richmond & D. R. Co. (Com.) 2 I. C. R. 193.

IMPORTANT CASES SINCE 1908

(b) To extent petition of intervention goes beyond issues raised by original complaint it can not be considered Moore & Thompson Paper Co. v. B. & M. R. R., 34 I. C. C. 323.

(c) There is no provision in the Act for compelling any party to intervene in a proceeding before the Commission. R. R. Comm. of La. v. A. H. T. Ry. Co., 43 I. C. C. 45, 48.

(d) Original complaint brought to recover reparation for account of complainant only, and not as agent for vendors. Amending of complaint by permitting intervention of the latter who paid and bore the freight charges can have no effect as they were not joined as parties within the statutory period. Intervener's claim for reparation found barred. Oden & Elliott v. S. A. L. Ry., 57 I. C. C. 698, 699.

(e) Complaint filed by parent company in its own name. Subsidiary company which paid and bore freight charges as such out of funds furnished by the parent company filed informal complaint covering shipments within the period of limitation, and petition of intervention, which was equivalent to presenting the claim formally, within six months after notification that adjustment on the informal docket was declined. HELD, intervener found party damaged and entitled to reparation. Lackawana Steel Co. v. Director General, as Agent, 77 I. C. C. 465, 469.

ALL OTHER CITATIONS

Boise Lumber Co. Ltd. v. P. & I. N. Ry. Co., 33 I. C. C. 109, 110; Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C. 332, 333; Cotton Mfrs. Asso. of S. C. v. C. & O. Ry., 64 I. C. C. 633; Omaha Packing Co. v. A., T. & S. F. Ry. Co., 66 I. C. C. 44, 46; Swift & Co. v. A. T. & S. F. Ry. Co. 68 I. C. C. 157; Zion Institutions v. E. S. & N. Ry. Co., 77 I. C. C. 375; Adriatic Mining Co. v. C. & N. W. Ry. Co., 78 I. C. C. 611,641; National Petroleum Asso. v. Director General, as Agent, 78 I. C. C. 711, 712; Pittsburgh Coal Producers Asso v. P., C. C. & St. L. R. R. Co., 83 I. C. 145. 146.

§10 (4) Moot Cases.

CASES 1887-1908

(a) The Commission will not undertake to say in advance what rates railroad companies shall or shall not make for any class or organization of persons. Re Theatrical Rates 1 I. C. R. 18.

(b) The Commission has no power to construe, interpret or apply the Interstate Commerce Act in advance of an actual act or omission on the part of a common carrier in contravention of the provisions of the Act. Re Order of Ry. Conductors 1 I. C. R. 18.

(c) Application of the National Amusement Protective Association as to what rates will be applicable to their members. HELD, the Commission will not undertake to say in advance what rates railroad companies shall or shall not make for any class or organization of persons. Re Theatrical Rates, 1 I. C. C. 18.

(d) The Commission can not construe the Act before violation thereof charged. Re Order of Railway Conductors, 1 I. C. C. 18; Re Inmates of Nat. Homes, 1 I. C. C. 73, 75.

(e) **The Commission cannot make an** order or give an opinion in advance of an actual complaint and hearing. So HELD, in the case of an application on behalf of the inmates of the national homes for disabled volunteer soldiers and sailors, for a ruling as to whether the granting to them of half rate fares by railroads would be "unjust discrimination" within the meaning of section 2 of the Act. Re Inmates of National Homes 1 I. C. R. 75.

(f) The Commission does not give

opinions on abstract questions. Pennsylvania Co. v. Louisville, N. A. & C. R. Co. (Com.) 2 I. C. R. 603.

(g) Complainant attacked the publication of an unreasonable rate for the transportation of iron ore from Grand Rapids, Minn., to Allouez Bay in the city of Superior, Wis. Complainant and his associates had spent about $50,000 in work preliminary to the opening of ore mines owned by them at Grand Rapids. The actual opening and operation of them would require an expenditure of hundreds of thousands of dollars. Defendants published a distance-tariff rate of 8.1c per 100 lbs., which complainant alleged depressed the value of his lands so that it was impossible for him and his associates to sell, lease or develop the same. Defendant moved to dismiss the complaint at the close of complainant's case, principally because it contended it could not be required to publish a rate until ore should actually be offered for shipment, and also because complainant had ulterior motives in the filing of the complaint and could not be in a position to ship ore within the maximum order the Commission could enter, namely two years. Defendant claimed it would publish a suitable rate when ore was offered it for shipment. HELD, a difference in the rate of transportation may determine whether certain ore lands have commercial value or not; whether they shall be developed or lie idle. Without in the least questioning the good faith of the statement, the promise of the defendant to publish a rate in line with the then established rate from common territory, when complainant's mine shall have actually been opened and ore offered for shipment, can scarcely be regarded as sufficiently definite and certain to warrant hundreds of thousands of dollars being invested upon the strength of it. If it is necessary under the Act to have the freight actually upon the ground before the Commission can assume jurisdiction and prescribe a just and reasonable rate, what is there to prevent a railway company, if its agents should see fit, to resort to such perversity, from refraining to publish a rate on potatoes, for instance, until the potatoes are actually within sight, and from refusing to publish such a rate before the potatoes are planted, or while they are being cultivated and growing, and after they have been dug, but not yet brought to the station. Any man who is situated as is the complainant has a right to know what the lawful published rate on his proposed product is and will be for a reasonable period of time in the future. The fact that complainant could not possibly ship within two years of the effective period of an order of the Commission is not a material point. If the Commission prescribes a reasonable rate to-day for the movement of traffic which possibly may not move within two years, and the railway company refuses voluntarily to continue that rate for a period longer than two years, it becomes the plain duty of the Commission to institute a new investigation at the proper time, and prescribe a rate which shall be just an reasonable, under the circumstances and conditions prevailing at such time. The fact that all the carriers operating in the Mesaba district, and all of the carriers and parties interested in the ore rates are not made parties to this proceeding is immaterial, in its bearing upon the legality of this complaint. A complainant cannot be expected to search public and private records, with the view of discovering all parties that may be interested in a certain proceeding. Full publicity attends every step of all proceedings before the Commission, and it must be assumed that parties interested will take notice of what is going on. The complainant in the present proceeding was clearly within his legal rights when he filed his complaint, and it is the duty of the Commission after full hearing and investigation to render a decision with reference to the reasonableness of the rate under attack. If the complainant has ulterior motives or hopes for indirect benefits not directly arising out of the rate in controversy, that is a matter which should not restrain this Commission from performing its plain duty under the law. Motion overruled. Lum v. G. N. Ry. Co., 21 I. C. C. 558, 560, 561, 562.

IV. ORDERS OF COMMISSION.

See Advanced Rates §21½; Interstate Commerce Commission §17.

§11. **Modification, Validity and Effect.**

See Commerce Court §2; Interstate Commerce Commission §5 §17.

CASES 1887-1908

(a) Any order for suspension must be based upon investigation. Jurisdiction of the Commission v. 1 I. C. R. 73.

(bc) The report and findings of the Commission upon the evidence relate only to the ascertainment and presentation of all the material facts necessary to fairly and justly present the merits of the controversy, and the Commission does not report evidence which is only cumulative, or which is immaterial or irrelevant, or mere details of evidence already embraced in substantial facts stated, upon which the findings and conclusions of the Commission are made. Riddle, Dean & Co. v. Pitts. & Lake Erie R. R. Co., 1 I. C. R. 773.

(d) The Commission does not report cumulative evidence or mere details of evidence already embraced in substantial facts stated, upon which its findings are made. Riddle v. Pittsburgh & L. E. R. Co., 1 I. C. R. 773.

(da) The Commission does not report evidence which is only cumulative, or which is immaterial or irrelevant, or mere details of evidence already embraced in substantial facts stated, upon which the findings and conclusions of the Commission are made. Riddle, Dean & Co. v. Pittsburgh & Lake Erie R. R. Co., 1 I. C. C. 773, 774.

(e) Where a tariff complained of was abandoned by the carriers for a long period of time before the complaint was made and shortly after the tariff was put in force, the Commission will not make an order requiring the carriers to cease and desist from enforcing such tariff, because such an order would be vain and useless. Rawson v. Newport News & Mississippi Valley Co., 2 I. C. R. 627.

(f) When carriers other than the respondents of record are committing the same violations of the Act to Regulate Commerce as the respondents, an order may issue against the respondents, and the cause be held open for the purpose of bringing such other carriers into it to be proceeded against unless they comply with the order. Bates v. Pennsylvania R. Co. (Com.) 2 I. C. R. 715.

(g) The final judgment in a suit or proceeding before the Interstate Commerce Commission, unreversed and remaining of record in full force and effect, is a bar to an action in the United States circuit court brought to recover damages from the same violation of the Act to Regulate Commerce. Riddle v. New York, L. E. & W. R. Co. (C. C. W. D. Pa.) 3 I. C. R. 230.

(h) The gist of the present complaint is that the rate on peaches from the Delaware district to Boston is unreasonably high and oppressive, and, the fact being so found, a reduction is ordered. Boston Fruit & Produce Exch. v. New York & N. E. R. Co., 3 I. C. R. 493.

(i) Upon finding that the defendant's rates are in many instances unreasonably high, the defendant is required to submit within thirty days a revised schedule and put the same in force as provided by law; and the case is retained for such further order as may become necessary. Re Freight Rates between Memphis and Points in Arkansas, 11 I. C. C. 180.

(j) It is not only the right, but the imperative duty, of the Commission to make an order under the new 15th section as revised by the amendment of June 29, 1906, in cases brought before the Commission before the enactment of the new 15th section, since the new section simply gives a new remedy, and the amending act contains no provision continuing the old section in force as to cases previously brought; but both complainant and defendants should have leave to submit whatever additional testimony they desire. Cattle Raisers Asso. of Tex. v. M. K. & T. R. Co., 12 I. C. C. 6.

IMPORTANT CASES SINCE 1908

(k) The Commission is an administrative body. The rates, regulations, and practices which it establishes within its jurisdiction become rules of action which may and must enter into the business dealings of the court. It may be necessary to change from time to time these rulings as varying conditions require, but they should never be changed except upon due notice to the public, which is affected by them, and it would be altogether intolerable if the change could be made retroactive. Nebraska-Iowa Grain Co. v. U. P. R. R. Co., 15 I. C. C. 90, 93.

(l) An order of the Commission for the payment of money does not have the effect of an order, decree or judgment of a court, nor is it enforceable by pro-

cess, nor does it become a lien upon the property of the defendant. Washer Grain Co. v. M. P. Ry. Co., 15 I. C. C. 147, 155.

(m) The Commission has complete power to suspend or modify its orders. Loftus v. Pullman Co., 19 I. C. C. 102, 104.

(n) While it has great respect for the official actions of state commissions the Interstate Commerce Commission cannot withhold proper action in an Interstate situation because it is anticipated that some opposing or retaliatory action will be taken by a state body. In Re Advances in Rates by Carriers Operating Between the Mississippi and Missouri Rivers, 21 I. C. C. 546, 552.

(o) The Commission can at any time recall and amend its order, and it ought to do so whenever it appears that an order is erroneous, but it must also be assumed that judgment of Commission was correct upon facts as presented. Traugott Schmidt & Sons v. M. C. R. R. Co., 23 I. C. C. 684, 685.

(p) While in certain cases the courts have held that where the affairs of two or more corporations are so intermingled as to obscure their separate existence except in name, the corporate fiction should be disregarded, the authority of the Commission to issue orders in a proceeding is nevertheless limited to the defendants before it, and since if this ruling of the courts were construed to mean that an order against a parent company could run against all its subsidaries, endless confusion would result. It is the practice of the Commission to definitely name each corporation to which its orders are intended to apply, regardless of the intercorporate relations which may exist between the parties to an order, and therefore no reparation can be awarded against a railroad which is a subsidiary to a carrier named as a defendant. Fels & Co. v. P. R. R. Co., 25 I. C. C. 154, 155.

(q) The authority of the Commission to issue orders in a proceeding is limited to those defendants that are then before it. Fels & Co. v. P. R. R. Co., 25 I. C. C. 154, 155.

(r) The findings of the Commission must be based on evidence of record. Commercial Club of Omaha v. A. & S. R. Ry. Co., 27 I. C. C. 302, 310.

(s) The interests of the public can not go by default in any proceeding before the Commission. They must be considered as fully those of the parties. Unlike the decision of a court, which ordinarily is conclusive only of the rights of the interested parties, a report and order of the Commission prescribing rates, regulations, or practices for the future must effect many who are not directly represented before it. Jewelers' Protective Union v. Penn. R. R., 36 I. C. C. 71, 75.

(t) Parties seeking to have original order set aside should assume the burden of sustaining the attack. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 46 I. C. C. 558, 561.

(u) Counsel for defendant entered an objection at the hearing to the Commission's power to correct an error in its report or order except upon formal application for rehearing. As defendant did not avail itself of opportunity afforded for filing brief in opposition to a correction of the Commission's former report the objection was not well taken. Dodson & Co. (Inc.) v. C. R. R. Co. of N. J., 57 I. C. C. 381, 383.

(v) An order of the Interstate Commerce Commission is not invalid because it fails to correct the more serious discrimination found to exist by the Commission. If it removes one discrimination it is not inoperative because it fails to remove others. N. Y. C. & H. R. R. R. Co. v. I. C. C., 168 Fed. 131, 137.

(w) But an order of the Interstate Commerce Commission is not invalid from the fact that it goes beyond the issues technically presented by the pleadings where the parties in interest appear and the situation is fully considered so as to cover the ground involved in the order entered. N. Y. C. & H. R. R. R. Co. v. I. C. C., 168 Fed. 131, 139.

(x) Commission not without power to issue an order merely because the Pennsylvania Company has never been a party to any case in which the rate on condensed milk, Geneva to Pittsburgh, has been found unreasonable. Reymer & Bros. v. C. & N. W. Ry. Co., Unrep. Op 2056.

ALL OTHER CITATIONS

Ocheltree Grain Co. v. C., R. I. & P. Ry. Co., 13 I. C. C. 238, 239; East St. Louis Walnut Co. v. M. P. Ry. Co., 14

I. C. C. 553, 554; Traffic Bureau Merchants' Exchange v. C. B. & Q. R. R. Co., 14 I. C. C. 551, 552; Forster Bros. Co. v. D. S. S. & A. Ry. Co., 14 I. C. C. 232, 236; Oshkosh Logging Tool Co. v. C. & N. W. Ry. Co., 14 I. C. C. 109, 113; Press Brick Co. v. Vandalia R. R. Co., 15 I. C. C. 175, 176; City of Spokane v. N. P. Ry. Co., 16 I. C. C. 179, 181; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 16 I. C. C. 56, 71; Sanford v. Western Express Co., 16 I. C. C. 32, 36; Stone-Ordean-Wells Co. v. C. B. & Q. R. R. Co., 30, 31; Tully Grain Co. v. F. S. & W. R. R. Co., 16 I. C. C. 28, 29; Douglas & Co. v. C. R. I. & P. Ry. Co., 21 I. C. C. 541, 544; Willamette Pulp & Paper Co. v. B. & A. R. R. Co., 21 I. C. C. 178, 180; Douglas & Co. v. C. R. I. & P. Ry. Co., 21 I. C. C. 97, 98; Webster Grocer Co. v. C. & N. W. Ry. Co., 21 I. C. C. 20, 21; Switzer Lumber Co. v. A. & M. R. R. Co., 22 I. C. C. 471, 474; Fels & Co. v. P. R. R. Co., 23 I. C. C. 483, 486; City of Spokane v. N. P. Ry. Co., 23 I. C. C. 454, 456; Eagle Pass Lumber Co. v. National Railways of Mexico, 25 I. C. C. 5; Mfrs. & Merchants' Ass'n. v. A. & A. R. R. Co., 25 I. C. C. 116, 117, 118; Louisville Board of Trade v. I. C. & S. R. Co., 27 I. C. C. 499, 506; Wallingford v. A. T. & S. F. Ry. Co., 30 I. C. C. 19, 20; National Coal Co. v. B. & O. R. R. Co., Unrep. Op. A-617; Acme White Lead & Color Works v. N. P. Ry. Co., Unrep. Op. 2060; Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co., 39 I. C. C. 224, 248; Cities of Marshall and Jefferson, Tex. v. T. & P. Ry. Co., 39 I. C. C. 249, 255; City of Memphis v. C. R. I. & P. Ry. Co., 39 I. C. C. 256, 274; Greater Des Moines Committee v. C. St. P. M. & O. Ry. Co., 42 I. C. C. 65, 74; Missouri Pac. Ry. Co. v. C. E. Ferguson Saw-Mill Co., 235 Fed. 474; Southeastern Lumber, 42 I. C. C. 548, 566; Wistar, Underhill & Nixon v. C. & O. Ry. 43 I. C. C. 254, 256; Holmes & Hallowell Co. v. G. N. Ry. Co. 69 I. C. C. 11, 17; Procter & Gamble Co. v. Director General, as Agent 78 I. C. C. 47.

§12. Review.

See Courts §5; Commerce Court I A; Forwards I.

IMPORTANT CASES SINCE 1908

(a) One possible defect in the Act is that complainants have no recourse to the courts in order to test the soundness of the rulings of the Commission. Field v. Southern Ry. Co., 13 I. C. C. 298, 299.

(b) While the orders of the Commission, if resisted by carriers, may be reviewed before a jury in courts of common law. Washer Grain Co. v. M. P. Ry. Co. 15 I. C. C. 147, 154.

ALL OTHER CITATIONS

Field v. Southern Ry. Co., 13 I. C. C. 298, 299.

§12a. Suspension of Rates.

See Suspension of Rates.

CASES 1887-1908

(a) The Interstate Commerce Law contemplates that the cases in which the Commission is authorized to make orders for suspension of its operation are exceptional cases, and that where only general reasons operate, the general law shall be left to its general course, however serious the consequences in particular cases. Jurisdiction of the Commission, 1 I. C. C. 73.

(b) Any order for suspension must be based upon investigation. Jurisdiction of the Commission, 1 I. C. C. 73, 74.

(c) The mere probability that injury will result from the operation of the act will not authorize the Commission to direct a suspension. Jurisdiction of the Commission, 1 I. C. C. 73, 74.

V. PARTIES.

See Association; Crimes §24; Parties; Procedure Before Commission V.

§13. Necessary and Proper Parties.

See Association; Loss and Damage §17; Parties.

CASES 1887-1908

(a) The Vermont State Grange may file a complaint and a proceeding is maintainable upon its petition. Boston & A. R. Co. v. Boston & L. R. R. Co., 1 I. C. R. 571.

(b) It is not held, however, that a complainant must necessarily have a pecuniary interest in order to entitle him to be heard; and it seems, under the provisions of the Act, that when an infraction of the Act would constitute a public grievance, it may be the duty of the Commission to investigate it,

when brought to its attention by a responsible party in a duly authenticated form. Boston & A. R. R. Co. v. Boston & L. R. R. Co., 1 I. C. R. 571.

(c) Through business over the defendant companies' roads was done by the National Dispatch Line (a fast freight line, neither a corporation nor an association of persons, but a name under which business was done), the several roads paying milage for the cars used, furnished to such line by a car company, and the earnings of such line being divided among the roads in agreed proportions. The tariff for the long haul traffic in question was made by the manager of the Dispatch Line, who was the agent for all the roads over which it did business and was acquiesced in by them. HELD, that the defendant companies were responsible for the long haul rates. Boston & A. R. R. Co. v. Boston & L. R. R. Co., 1 I. C. R. 571.

(d) The person aggrieved should complain in his own name; a complaint by a ticket broker having no interest in the transaction will not be entertained. Ottinger v. Southern Pac. R. Co., 1 I. C. R. 607.

(e) To test the reasonableness of a through rate, all the roads responsible for it should be made defendants. Allen v. Louisville, N. A. & C. R. Co., 1 I. C. R. 621.

(f) When complainants desire to test the justice or legality of through rates, the necessity of bringing in the parties who make the rates, is obvious. They have a right to be heard because an order made and purporting to control their action when they were not parties would be improper on its face, and in a legal sense ineffectual. Allen & Allen v. L. A. N. & C. R. R. Co. 1 I. C. C. 621, 627.

(g) Where the relation of any carrier to the matter complained of is such that it is in whole, or in part, materially responsible for the alleged grievance, and has direct interest in any investigation of the subject matter involved, and the merits of the controversy cannot be investigated and determined in the absence of such carrier as a party, then that carrier should be made a party to the proceeding and if not a party, no relief can be had against it. Riddle, Dean & Co. v. Pitts. & Lake Erie R. R. Co., 1 I. C. R. 773.

(h) Carrier must be made a party where merit of controversy cannot be determined without it. Riddle v. Pittsburg & L. E. R. Co., 1 I. C. R. 773.

(i) The Memphis and Little Rock Railroad Company, as reorganized by the purchasers in 1877, at the sale under mortgage foreclosure, if a lawful corporation of Arkansas, was not the same corporation as that chartered by the Legislature in 1853, but was a new corporation, subject to the Constitution and laws in force when it came into existence. Dow v. Beidelman, 2 I. C. R. 56.

(j) In a proceeding to correct a classification by the initial carrier of freight which, before reaching its destination, must pass over the roads of several carriers, all such carriers should be made parties; but if the initial carrier alone is made defendant, the proceeding is not therefore defective. Hurlburt v. Lake Shore & M. S. R. Co. (Com.), 2 I. C. R. 81.

(k) Persons having an interest in a question pending before the Commission will be allowed to appear and be heard when the case is being submitted, without their being made formal parties. Hurlburt v. L. S. & M. S. R. 2 I. C. C. 81, 83.

(l) When a question of rates as between two carriers is involved, the Commission will express no opinion upon it in a case in which one of the carriers is not a party. In such a case, if upon a new or different complaint it should appear that any conclusion of the Commission in the case so decided has been erroneous, the Commission would feel it to be a duty to correct such conclusion. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 102, 112.

(m) The reasonableness of rates cannot be fairly determined in a proceeding to which some of the parties responsible for such rates are not parties. New Orleans Cotton Exch. v. Cincinnati, N. O. & T. P. R. Co., (Com.), 2 I. C. R. 289; Michigan Congress Water Co., v. Chicago & G. T. R. Co. (Com), 2 I. C. R. 428; Kentucky & I. Bridge Co. v. Louisville & N. R. Co. (Com.), 2 I. C. R. 102.

(n) The reasonableness of rates can not be determined in a proceeding to which some of the parties responsible

for such rates are not parties. New Orleans Cotton Exchange v. N. O. & T. P. R. R., 2 I. C. C. 289, 293.

(o) Where a complaint is made against the reasonableness of through rates agreed upon by several connecting lines, it is necessary to make all of such connecting lines parties defendant. Michigan Congress Water Co. v. C. & G. T. R., 2 I. C. C. 428, 430.

(p) The Commission can make no order on a question of rates where the necessary parties are not before it. Michigan Congress Water Co. v. C. & G. T. R. Co., 2 I. C. C. 428, 430.

(q) The Interstate Commerce Commission will not enter upon the consideration of the question of raising rates by railroad companies which are not parties to the proceeding, and which affect localities that have no opportunity to be heard. Poughkeepsie Iron Co. v. New York C. & H. R. R. Co., (Com.), 3 I. C. R. 248.

(r) All the carriers participating in the traffic, the rates for which were questioned in this proceeding, were not made parties, and the case, while showing that the through rates were discriminatory and unjust, failed to disclose sufficient facts upon which an accurate decision could be based, and accordingly it was held that the carriers who were parties to the proceeding be required to adjust their respective tariffs so as to avoid discrimination against Kramer, and that the carriers who were not parties be summoned to appear and show cause why a like order be not issued as to the business in which they participate, unless their tariffs are voluntarily adjusted so as to avoid the discrimination complained of. Hamilton & Brown v. Chattanooga, Rome & Columbus R. Co., 3 I. C. R. 482.

(sa) The Boston Fruit and Produce Exchange is a merchantile society, such as is described in the thirteenth section of the Act, and as such has the right to maintain a proceeding like the present, without showing special damage to itself. Boston Fruit & Produce Exch. v. New York & N. E. R. Co., 3 I. C. R. 493.

(s) The repeal of the law creating the railroad commission of Florida does not operate as a withdrawal or dismissal of a complaint brought in its name before the Interstate Commerce Commission for the real parties in interest. Railroad Commission of Florida v. Savannah, F. & W. R. Co., (Com.), 3 I. C. R. 688.

(t) One who appeared before the Interstate Commerce Commission in a representative capacity as a member of a committee of a complaining mercantile society, in proceedings which were dismissed, is not thereby estopped in a similar case brought by him as an individual. Toledo Produce Exch. v. Lake Shore & M. S. R. Co. (Com.), 3 I. C. R. 830.

(u) Defendants are not entitled to dismissal of a complaint because complainants are commission merchants, and can sustain no direct or material damage under the rates in question. James & Abbott v. C. P. R. Co., 4 I. C. C. 274, 276.

(v) A railroad company which participated in through rates is not a necessary, even if it is proper, party to a proceeding by the Interstate Commerce Commission against another company for disobedience of an order of the Commission in the matter of such rates. Texas & P. R. Co. v. Interstate Commerce Commission, 5 I. C. R. 405.

(w) Complaining parties are not bound to include as defendants in proceedings before the Interstate Commerce Commission all carriers maintaining the rates or indulging in the practices complained of, but may proceed against the particular carrier whose line is used by them. Page v. Delaware, L. & W. R. Co., 6 I. C. C. 548.

(x) In a proceeding before the Commission complaining parties are not bound to include all carriers maintaining the rates or indulging in the practices complained of, but may proceed against the particular carrier or carriers whose lines are used or required by complainants; nor can such carriers excuse disobedience of a lawful order of the Commission because other carriers, members of an association with them, were not made parties to the proceeding and have failed or refused to take action in conformity with the order. Page v. D. L. & W. R. Co., 6 I. C. C. 548, 555.

(y) While a railroad company operating its road as part of a through line, in connection with other carriers defendants, in a case brought to test the le-

gality of a through charge over such line, is a proper party, it is not a necessary party to the proceeding. Warren-Ehret Company v. C. R. R. of N. J. R. Co., 8 I. C. C. 598, 603.

(z) The St. Louis, Iron Mountain & Southern Railway company, although a proper, is not a necessary, party to proceedings against the Missouri Pacific Railway Company, the controlling company, to redress grievances in the matter of freight rates. Mayor and City Council of Wichita v. Atchison, T. & S. F. R. Co., 9 I. C. C. 558.

(aa) While carriers participating in the through rate would be proper parties, they are not necessary parties. Cattle Raisers' Asso. v. C. B. & Q. R. Co., 10 I. C. C. 83, 110.

IMPORTANT CASES SINCE 1908

(bb) Only carriers that are before the Commission are bound by findings of the Commission in a particular case. Fels & Co. v. P. R. R. Co., 23 I. C. C. 483, 486.

(cc) While a shippers' association attacked a rate and asked reparation, and expressly alleged that it did so in behalf of certain members of the association who were specifically named, and also in behalf of certain other individuals, not members of the association, who were named, HELD, these members and individuals were, for purposes of reparation, and as far as the statute of limitations was concerned, entitled to be considered as the real complainants. Michigan Hardwood Mfrs'. Assn. v. Freight Bureau, 27 I. C. C. 32, 35.

(dd) Where a rate adjustment is found to result in undue prejudice by reason of separately established factors, the carriers parties to the components of the through rates which are not attacked and which do not in any way contribute to the undue prejudice found to exist, are proper but not necessary parties. Indianapolis Chamber of Commerce v. C. C. C. & St. L. Ry., 46 I. C. C. 547, 556.

(ee) Where a carrier is under federal control and an opportunity has been afforded to make the Director General of Railroads a party but no amendment has been filed, no finding or order for the future can be made. Sun Co. v. T. & O. C. Ry., 52 I. C. C. 12, 14.

(ff) But where a complaint was filed by a chamber of commerce, and shoe dealers in behalf of whom reparation is sought are not named, the prayer for reparation is nugatory. E. A. Wexelbaum & Co. v. Ocean Steamship Co., 59 I. C. C. 480, 482.

(gg) After complaint was filed, powers of attorney were executed by certain consignors, who were not named as parties in the complaint, in favor of a complainant who was so named. HELD, Introduction of such powers of attorney in evidence at the hearing over objection of defendants can not be treated as equivalent to amendment of the complaint, and such consignors, who bore the freight charges, have filed no complaint within the statutory period, reparation as to them must be denied. Tanners' Council v. Director General, as Agent, 66 I. C. C. 415, 419.

(hh) The fact that one company may be a subsidiary of another does not ipso facto entitle the latter to bring an action in its own name for a damage suffered by the former. American Agricultural Chemical Co. v. Director General, as Agent, 66 I. C. C. 650, 651.

(ii) Complainant attacked the reasonableness of through charges but showing of unreasonableness was largely as to the factor maintained by an electric line. HELD, since the electric line was not under Federal control, the director general not named as a party defendant, and no violation of the Federal control act alleged, shipments which moved during the Federal control period can not be considered. Buckeye Pipe Line Co. v. B. & O. R. R. Co., 73 I. C. C. 19, 22.

(jj) Where a carrier is not named as defendant in a complaint, though it is the delivering line when shipments move over the shortest practicable route, it would be unjust to require a reduction in the rate via that route. Paragraphs (c) and (d) of Rule II of Rules of Practice. Silica Sand Producers' Asso. v. C. B. & Q. R. R. Co., 73 I. C. C. 588, 592.

(kk) Where shipments moved during Federal control, over railroads under Federal control, and the Director General is not made a party defendant, such shipments will not be considered by the Commission. International Paper Co. v. M. C. R. R. Co., 74 I. C. C. 385

(ll) In C. G. W. Ry. Co. v. First Meth-

odist Episcopal Church, 102 Fed. 85, it was held that the fact alone that an action was brought in the name of the wrong party as plaintiff is not ground for reversal but the appellate court will direct the substitution of the proper party. Tanners Council of the United States of America v. Director General, 78 I. C. C. 27, 29.

ALL OTHER CITATIONS

Carpenter v. St. L. I. M. & S. Ry. Co., Unrep. Op. 529; Merchants Traffic Ass'n v. N. Y. N. H. & H. R. R. Co., 13 I. C. C. 225, 228; Forest City Freight Bureau v. Ann Arbor R. R. Co., 13 I. C. C. 109, 114; Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co., 14 I. C. C. 606, 608; National Petroleum Ass'n v. C. M. & St. P. Ry. Co., 14 I. C. C. 284, 285; George's Creek Basin Coal Co. v. B. & O. R. R. Co., 14 I. C. C. 127, 134; Beekman Lumber Co. v. St. L. I. M. & S. Ry. Co., 15 I. C. C. 301. 303; Washer Grain Co. v. M. P. Ry., 15 I. C. C. 147; Cedar Hill Coal & Coke Co. v. A., T. & S. F. Ry. Co., 15 I. C. C. 73, 77; Beekman Lumber Co. v. St. L. I. M. S. Ry., 15 I. C. C. 274; Cedar Hill Coal & Coke Co. v. A. T. & S. F. Ry. Co. 16 I. C. C. 402, 403; Ocheltree Gr. Co. v. T. & P. Ry. Co., 18 I. C. C. 412, 413; Roach & Seeber Co. v. C. M. & St. P. Ry. Co., 18 I. C. C. 172; Barr Chemical Works v. P. & R. R. R. Co., 20 I. C. C. 77, 78; O'Brien Commercial Co. v. C. & N. W. R. R. Co., 20 I. C. C. 68; Memphis Freight Bureau v. St. L. S. W. Ry. Co., 20 I. C. C. 33, 36; Lum. v. G. N. Ry. Co., 21 I. C. C. 558, 560, 561, 562; In Re Advances in rates on Locomotives and Tenders, 21 I. C. C. 103, 112; Mountain Ice Co. v. D. L. & W. R. R. Co., 21 I. C. C. 45, 51, 52; Reno Grocery Co. v. S. P. Co., 23 I. C. C. 400, 401; Grand Junction Chamber of Commerce v. D. & R. G. R. R. Co., 23 I. C. C. 115, 117; Byrnes v. A. C. L. R. R. Co., 23 I. C. C. 251, 252; Whiteland Canning Co. v. P. C. C. & St. L. Ry. Co., 23 I. C. C. 92, 93; Globe Milling Co. v. C. M. & St. P. Ry. Co., 24 I. C. C. 594; Grenada Oil Mill v. I. C. R. R. Co., 24 I. C. C. 318, 319; Holland Blow Stave Co. v. A. C. L. R. R., 24 I. C. C. 81, 87; In re Advances in Class Rates, 25 I. C. C. 268, 271; Griffing v. C. & N. W. Ry. Co., 25 I. C. C. 134, 135; Board of Trade of Chicago v. I. C. R. R. Co., 26 I. C. C. 545, 551; United States v. U. P. Ry. Co., 28 I. C. C. 518, 520; Graham & Co. v. C. I. Ry. Co., Unrep. Op. A256; Rock Spring Distilling Co. v. I. C. R. R. Co., 29 I. C. C. 18, 19; Freight Rates from Minnesota Points, 32 I. C. C. 361, 367; Cement Rates from Points in Illinois, 32 I. C. C. 369, 371; Atchison, Topeka & Santa Fe Ry. Co., v. Kansas City Stock Yards Co., 33 I. C. C. 92, 98; Lindsay & Co. v. N. P. Ry. Co., 33 I. C. C. 150, 151; Michigan Bean Jobbers' Asso. v. G. R. & I. Ry. Co., 33 I. C. C. 318, 320; Meech & Stoddard v. G. T. Ry. of Can., 34 I. C. C. 39, 40; Atlas Portland Cement Co. v. C. B. & Q. R. R. Co., Unrep. Op. 2047; McCormick & Co. v. S. P. Co., 37 I. C. C. 234, 235; Malone v. New York Telephone Co., 40 I. C. C. 185, 189; Broderick & Bascom Rope Co. v. L. & N. R. R. Co., 39 I. C. C. 213, 214; Henderson Cotton Mills v. L. & N. R. R. Co., 39 I. C. C. 399, 405; Major Stave Co. v. M. D. & G. R. R. Co., 39 I. C. C. 573, 578; Lake Superior Paper Co. (Ltd.) v. M. St. P. & S. S. M. Ry. Co., 42 I. C. C. 109, 113; Lehigh Portland Cement Co. v. B. & O. S. W. R. R. Co., 42 I. C. C. 406 413; Cottrell v. C. T. H. & S. E. Ry. Co., 43 I. C. C. 195; Dupont de nemours Powder Co. v. P. R. R. Co., 43 I. C. C. 227; La Crosse Shippers' Asso. v. C. I. & L. Ry. Co., 43 I. C. C. 520, 522; Hearon v. I. C. R. R., 43 I. C. C. 577, 578; McDavitt Bros. of Brownsville, Tex., v. St. L. B. & M. Ry. Co., 43 I. C. C. 695; Smith & Co. v. S. Ry. Co., 48 I. C. C. 647; Alliance Coal & C. Co. v. C. & S. Ry., 51 I. C. C. 392, 394; Lumbermen's Assn. of Chicago v. A. A. R. R., 51 I. C. C. 431, 435; Du Pont de Nemours Powder Co. v. P. R. R., 50 I. C. C. 203; Byrd Matthews Lumber Co. v. G. & N. W. R. R., 51 I. C. C. 456, 458; Butterworth-Judson Corp. v. Adams Express Co., 51 I. C. C. 386, 389; Independent Cooperative Lumber Co. v. L. W. R. R., 51 I. C. C. 557, 560; Chamber of Commerce, Houston, Tex. v. M. L. T. R. R. & S. S. Co., 51 I. C. C. 653, 656; Public Service Commission of Washington v. A. & V. Ry. Co., 53 I. C. C. 1, 4; Cameron & Co. (Inc.) v. A. T. & S. F. Ry. Co., 53 I. C. C. 147; Michigan Paper Mills Traffic Asso. v. N. Y. C. Ry. Co., 53 I. C. C. 344, 351; United States v. S. V, Ry., 53 I. C. C. 607, 610; Campbell v. Southern Exp. Co., 55 I. C. C. 633; Inland Steel Co. v. Director General, 57 I. C. C. 339, 342; Heider Mfg. Co. v. B. & O. R. R. Co., 58 I. C. C. 184, 185; City of New Albany v. L. & N. Ry. & L. Co., 64 I. C. C. 468,

476; Gulf City Manufacturing Co. v. Director General, 66 I. C. C. 763, 764; Texas State Highway Dept. v. Director General, as Agent, 69 I. C. C. 220, 222; Kissel Motor Car Co. v. G. T. Ry. Co., 74 I. C. C. 45, 47; Phoenix Chamber of Commerce v. Director General, as Agent, 74 I. C. C. 31, 33; Purity Extract & Tonic Co. v. Director General, as Agent, 74 I. C. C. 263, 270; Murray v. Director General, as Agent, 78 I. C. C. 465, 468; Taylor Co. v. Director General, 81 I. C. C. 663, 665.

VI. SET-OFF.

§14. In General.

IMPORTANT CASES SINCE 1908

(a) The Commission has no authority in a proceeding by a shipper to recover reparation to award a set-off to the carrier for unpaid freight bills due from the shipper, since to award set-off amounts to the same thing as adjudicating the claim of a railroad company against a shipper, whereas, the only authority of the Commission is to adjudicate a claim of a shipper against a railroad company for violation of the interstate commerce law. Laning-Harris Coal & Grain Co. v. St. L. & S. F. R. R. Co., 15 I. C. C. 37, 38.

ALL OTHER CITATIONS

Becker v. P. R. R. Co., 39 I. C. C. 739.

VII. EFFECT OF EVIDENCE.

§14½. In General.

See Evidence.

CASES 1887-1908

(a) A complaint of the unreasonableness of a rate on coal from St. Louis, Mo., to Oklahoma City, Okla., as applied to shipments originating in W. Virginia, covering a total distance of over 1,200 miles, held to present no question of practical importance in view of the proximity of coal fields in Oklahoma, Arkansas, and Kansas, and also the much shorter distance from Colorado and Missouri, and dismissed without prejudice in case the unreasonableness of the rate should become of actual consequence hereafter. Harrell v. M. K. & T. Ry. Co., 12 I. C. C. 27.

(b) In view of substantial reductions in rates on all classes of commodities from Chicago and Omaha to Lead, S. Dak., and the probable effect of new competition, it is held that under the circumstances and upon the record in this case no order changing the rates will now be made. Lead Commercial Club v. C. & N. W. Ry. Co., 12 I. C. C. 460.

IMPORTANT CASES SINCE 1908

(c) In some cases the testimony of shippers is essential. This is especially true where reparation is to be awarded. However, comparison with rates in nearby territory or elsewhere where the same general conditions exist may often suffice without other showing to indicate that the rates complained of are discriminatory or excessive. Minneapolis Civic & Commerce Assn v. C. M. & S. P. Ry. Co., 30 I. C. C. 663, 669.

(d) When a complainant challenge reasonableness of rates on a commodity from only one point and it appears that because of competitive or other practical trade or transportation considerations, a number of points of origin are grouped under common rates, and also that there is a relationship between two or more groups, the commission must give due consideration to other factors than rate comparisons. Atlas Portland Cement Co., 44 I. C. C. 416 422; Ohio-Michigan Coal Cases, 80 I. C. C. 715.

ALL OTHER CITATIONS

International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391, 396; Commercial Club of Joplin, Mo., v. M. P. Ry. Co., 32 I. C. C. 226, 227; Marshalltown Buggy Co. v. Wabash R. R. Co., 39 I. C. C. 633, 634; Utah-Idaho Millers and Grain Dealers Asso. v. D. & R. G. R. R., 44 I. C. C. 714, 717; Harrison v. St. L. B. & M. Ry., 49 I. C. C. 140; Wise v. P. R. R., 50 I. C. C. 268; Willamette Valley Lumbermen's Asso. v. S. P. Ry. 51 I. C. C. 250, 257, 258; Schlicher v. Director General, 62 I. C. C. 181, 185.

§14½a. Burden of Proof.

See Burden of Proof.

CASES 1887-1908

(a) Complainant attacked rates on twine from Chicago, Ill., to Hudson, Wis. as unreasonable. HELD, on a petition charging the exaction of unreasonable rates, the burden of proof is on the petitioner to sustain the charges by evidence which shows with reasonable certainty that they are in substance true. Petition dismissed, where the answer denied that the rate was unreasonable, and showed that it had been reduced, and neither party offered any evidence. Harding v. C. St. P. M. & O. R. R., 1 I. C. C. 375.

(b) On a petition charging the ex-

action of unreasonable rates, the burden of proof is on the petitioner to sustain the charges by evidence which shows with reasonable certainty that they are in substance true. Harding v. C. St. P. M. & O. R. R., 1 I. C. C. 375, 376.

(c) The Interstate Commerce Commission will not determine the relative reasonableness of rates at many stations and in a large extent of territory, upon the mere face of tariffs and without further proof. Spartanburg Board of Trade v. Richmond & D. R. Co. (Com.) 2 I. C. R. 193.

§14¾. Depositions.

CASES 1887-1908

(a) Depositions may be taken as provided by U. S. R. S., § § 863, 864, without application to Commission. Rule 9 as amended. Appendix II., 1 I. C. R. 843, 410.

(b) There are several modes of procedure by which the inconvenience to the defendant carriers of producing books and the delay and labor of going over their entries, might be avoided by petitioner. For example: If one or more witnesses should be subpenaed from the different companies proceeded against and a notice should be served with the subpena requiring the witnesses to furnish the published rates and tariffs of such company, for a specified period and also requiring them to furnish statements of the actual charges made and car facilities furnished, during such period, to the Standard Oil Trust and the other named in the application if different from the published tariffs and schedules, it would probably be sufficient for all the purposes of these proceedings; or if the parties would take depositions, by consent, in advance of the hearing, it would answer the same purpose. Rice v. Cincinnati, Washington & Baltimore R. Co. 2 I. C. R. 584.

(c) This case was heard solely upon the respondent's motion to dismiss the complaint for insufficiency of its allegations to show violations of the Act to Regulate Commerce; but the complainant having filed some depositions taken before the hearing of said motions, the Commission looked into this evidence with a view of seeing what light it shed upon the general claim of unlawful practice by the respondents and upon the duty of the Commission to proceed against them on its own motion. White v. Michigan Central R. Co., 2 I. C. R. 641.

(d) Defendants offered to waive objection to depositions taken without notice on behalf of complainant, the Toledo Produce Exchange, if all the evidence taken in certain proceedings which involved questions similar to those herein should be treated and considered as evidence in this case, and the offer was accepted, but complainant's agent afterwards sought to rescind the agreement although complainant had leave to put in whatever additional evidence it desired. HELD, that the case should be considered according to the original agreement. Toledo Produce Exchange v. Lake Shore & M. S. R. Co., 3 I. C. R. 830.

(e) The records of the Interstate Commission may be proved by the deposition of the secretary of such Commission, as such records cannot be reached by the process of the court, and there is no statutory provision authorizing certified copies to be used in evidence. Gulf Colorado & Santa Fe Ry. Co. v. Dimitt, 8 I. C. C. App. II.

IMPORTANT CASES SINCE 1908

(f) Where depositions authorized by section 12 are not in accordance with Commission's Rules of Practice, they may not be received in evidence. Boston Potatoe Receivers' Asso. v. B. & A. R. R. Co., 42 I. C. C. 454, 456.

§15. Equities of Cause.

IMPORTANT CASES SINCE 1908

(a) There are cases in which "tainted hands" unquestionably compel a peremptory dismissal; but the Commission does not inquire into equities not connected with the issue before it. Lum v. G. N. Ry. Co., 21 I. C. C. 558, 562.

ALL OTHER CITATIONS

Siligo Iron Store Co. v. A. T. & S. F Co., 17 I. C. C. 139, 142.

§15¼. Ex Parte Affidavits.

SeeAffidavits .

IMPORTANT CASES SINCE 1908

(a) Where affidavits offered in evidence by certain complainants to a proceeding to show that they made shipments and paid and bore the charges thereon were objected to by the carriers upon ground that they were not accorded the right of cross examination it was HELD, as to such complainants reparation must be denied. Stewart-Warner Speedometer Corp. v. Director General,

as Agent, 64 I. C. C. 541, 544; United Iron Works v. Director General, as Agent, 64 I. C. C. 601, 604.

§15½. Reports by Examiners.

IMPORTANT CASES SINCE 1908

(a) Exhibits compiled by Commission's examiners of accounts, offered in evidence at a duly appointed hearing, without objection from interested parties, properly identified by the official stenographer and filed in the record along with all the other evidence in the case, are lawfully a part of the record Stonega Coke & Coal Co. v. L. & N. R. R. Co., 39 I. C. C. 523, 539.

(b) The Commission can not allow a disregard of the rule providing for the time and manner in which exceptions to its examiners' proposed reports may be filed. Fidelity Cotton Oil Co. v. A. & V. Ry., 47 I. C. C. 542, 543.

(c) If the proposed examiners' report is contrary to the evidence submitted, it is the complainant's duty to point out in exceptions specifically and clearly where in the evidence submitted differed from the facts as stated in the proposed report. The only evidence before the Commission, that submitted by complainants, shows no violation of the act to regulate commerce or federal control act and discloses no damage to complainants flowing from any shown violation of either of such acts. Richardson Co. v. Director General, 56 I. C. C. 731, 733.

(d) The rule of the Interstate Commerce Commission regulating the offer in evidence of reports and tariffs, part of which only is relevant, does not make the annual reports of carriers filed with the Commission evidence to be considered by the Commission at a hearing on the division of joint rates, where no attempt was made to bring the relevant parts of such reports before the Commission in the manner prescribed by the rule. Abilene & S. Ry. Co. v. United States, 288 Fed. 102

ALL OTHER CITATIONS

Galion Iron Works & Mfg. Co. v. B. & O. R. R., 47 I. C. C. 136, 140.

§16. Judicial Notice.

See Evidence III;

CASES 1887-1908

(a) Contracts and tariffs filed with the Commission under the Act to Regulate Commerce, § 6, may be considered although not specifically introduced in evidence on the hearing. Boston Fr & P. Exch. v. New York & N. E. R. Co., (Com.), 3 I. C. R., 493.

IMPORTANT CASES SINCE 1908

(b) In the general adjustment of rates, individual instances of seeming discrepancy are noticed, which are inexplainable from a cursory examination, but often when such instances are made the subject of specific complaint, circumstances and conditions before unknown are brought out tending to justify the apparently unreasonable relation. The Commission consequently moves with great caution in condemning a rate or practice, and does so only when the facts before it amply warrant such action. Sanford v. Western Express Co., 16 I. C. C. 32, 36.

(c) In reaching a decision which cannot be limited in application to the claim in controversy, but must necessarily affect all rail carriers, the Commission may refer to the evidence of record in other cases bearing upon the general question in dispute. Miller v. C. L. R. R. Co., 29 I. C. C. 526, 528.

(d) The Commission is not confined in its consideration to the facts and figures specifically stated pertaining to matters referred to in the record, but may consider and, in support of its conclusions, may rely upon the actual facts and figures pertaining to matters referred to in the record, as verified by the tariffs and other official documents and records which the law requires carriers to file with it. Oklahoma Cottonseed Crushers' Assn. v. M. K. & T. Ry. Co., 39 I. C. C. 497, 500.

ALL OTHER CITATIONS

City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 419; Swift & Co. v. C. & A. R. R. Co., 16 I. C. C. 426, 429; Awbrey & Semple v. G. H. & S. A. Ry. Co., 17 I. C. C. 267, 271; Greater Des Moines Committee v. C. M. & St. P. Ry. Co., 18 I. C. C. 73, 79; Quammen & Austad Lumber Co. v. C. M. & St. P. Ry. Co., 19 I. C. C. 110, 111; Merchants' Freight Bureau v. M. P. Ry. Co., 21 I. C. C. 573, 575; Board of Trade of Kansas City v. C. M. & St. P. Ry. Co., 34 I. C. C. 208, 209.

§17. Res Adjudicata.

See Evidence V §69;

CASES 1887-1908

(a) There is sufficient reason for following a decision of the Interstate Commerce Commission which determines that companies carrying on a certain

kind of business are not subject to the provisions of the Interstate Commerce Act, if all such companies have acted upon the faith of the decision, unless it is clearly erroneous. United States v. Morsman, 3 I. C. R. 112.

IMPORTANT CASES SINCE 1908

(b) Where reparation has been awarded for an excessive charge on hay, the Commission will not enter an order establishing for the future the lower rate upon which such reparation is based where the rate situation between the points in question has been determined by a previous decision. Arkansas Fuel Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 95, 99.

(c) When a given rate situation has been fully considered and deliberately passed upon by the Commission, the decision ought to be, if not binding upon it, certainly of very great weight with it in considering the same situation in a later proceeding between different parties, but this rule applies only where the same state of facts is involved in the latter as in the former proceeding. Receivers & Shippers' Ass'n. of Cincinnati v. C. N. O. & T. P. Ry. Co., 18 I. C. C. 440, 445.

(d) Rates reasonable at the present time may within the period of two years become very unreasonable by reason of changes in circumstances and conditions economic, transportation, or the like. It should be just as apparent that a rate which was unreasonable two years or more ago may become reasonable by reason of such changes in conditions. A plea of estoppel by reason of former adjudication is not good in so far as an investigation of present rates is concerned, although in a former proceeding a decree of a court was a general finding for the defendants on all the issues of fact. National Hay Ass'n. v. M. C. R. R. Co., 19 I. C. C. 34, 37.

(e) The doctrine of stare decisis has little application in proceedings before the Commission involving economic questions of transportation. Hillsdale Coal & Coke Co. v. P. R. R. Co., 19 I. C. C. 356, 361.

(f) While an order of the Commission in a particular case must necessarily fix the rights of a party to the proceeding so far as past shipments are concerned, and must necessarily restrain until further order the continuance of a rate or practice condemned and compel the carrier to observe the rate or practice prescribed for the future these great questions of transportation are not foreclosed of further discussion and consideration upon further complaint. Additional experience with the actual operation of rules that combine commercial with physical capacity in the rating of coal mines for car distribution, may throw new light upon a matter that has vexed the Commission, as well as many carriers that have endeavored to do equity as between different mines on their lines, and if so the Commission shall not hesitate to modify what has been said in this and in other cases before it on that question. The principle of stare decisis has little application in proceedings involving questions of this nature. Hillsdale Coal & Coke Co. v. P. R. R. Co., 19 I. C. C. 356, 361.

(g) The technical doctrine of res adjudicata as enforced in courts of law is not applied by the commission. Goss v. Director General, as Agent, 73 I. C. C. 649, 653.

ALL OTHER CITATIONS

Kansas City Hay Dealers' Ass'n. v. M. P. Ry. Co., 14 I. C. C. 597, 600; Banner Milling Co. v. N. Y. C. & H. R. R. R. Co., 14 I. C. C. 398, 400, 401; Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co., 16 I. C. C. 323, 328; Ferguson Saw Mill Co. v. St. L., I. M. & S. Ry. Co., 18 I. C. C. 391, 393; Received and Shippers Ass'n of Cincinnati. v. C. N. O. & T. Ry. Co., 78 I. C. C. 440, 444; Waco Freight Bureau v. H. & T. C. R. R. Co., 19 I. C. C. 22, 24; Lewis v. C. B & Q. R. R. Co., 25 I. C. C. 97, 99; Wichita Board of Trade v. A. T. & S. F. Ry. Co., 25 I. C. C. 625; Holmes & Hallowell Co. v. G. N. Ry. Co., 60 I. C. C. 687, 706.

§18. Requesting Information of Carrier.

CASES 1887-1908

(a) The books of the defendant carriers as to rates charged, facilities furnished, and general movements of freight, being in the nature of semi public records, to any extent that they can fairly and justly save time, labor, or expense to complainant, or to their companies, by giving to him, in response to any calls he may make, statements of facts shown by their books, records, or files which may probably have importance on the hearing, the officers and agents of the defendant carriers under the direction of defendants, ought to give such statements, and ought to do

so as promptly as may be found reasonably practicable. Much unnecessary controversy, inconvenience, and delay might well be avoided in the first instance, as well as in subsequent stages of proceedings, if carriers would exhibit without technical objection, what their books show in reference to a transaction in question to anyone who calls for the information in good faith, believing, though perhaps erroneously, that it is, or may be, important to his interests, and when the application is seasonably and properly made, with a due regard for the convenience of the carrier's agents and officers; and in the instances are numerous in which it would put an end to the controversy, and in many others that the party would not then trouble the carrier for the production of the books. Rice v. Cincinnati, Washington & Baltimore R. Co., 2 I. C. R. 584.

(b) Application of petitioner for subpoenas duces tecum for the production of books, vouchers, accounts, and papers by various parties. Where the application is made to compel one who is a party to the proceeding, and who is a carrier engaged in interstate commerce, to produce its books for the purpose of evidence in a pending proceeding, it is sufficient for the application to indicate in writing in a general way what books of the carrier should be produced, and that there is reason to believe that in the course of the hearing they will become of service, on account of the light they will throw upon the questions in controversy in the proceeding, and as an evidence of good faith in making the application the applicant should make an affidavit, as part of the application, that such application is made in good faith, and not for the purpose of vexing or harassing the defendant, and upon such a showing, as a general rule, the process should issue. Rice v. L. & N. R. Co., 2 I. C. C. 584, 592.

(c) An application to the Interstate Commerce Commission for subpoenas duces tecum may be denied, as applicable to contracts and papers of third persons not before the Commission, on the ground of injustice that might be done such persons. Haddock v. Delaware L. & W. R. Co. (Com.), 3 I. C. R. 302.

(d) A ruling by a referee that the petition in a case be taken as true because of the defendant's failure to produce books and papers and answer interrogatories is not reversible error where plaintiff's evidence establishes the facts pleaded without conflict and defendant introduces no evidence whatever. Cook & Wheeler v. Chicago, R. I. & P. R. Co., 3 I. C. R. 383.

(da) Although the motion for the production of books and papers is defective, or the order made upon it too broad yet if such instruments of evidence are used in the mode required by law on the trial, there is no prejudicial error. Cleveland, C. & C. & I. R. Co. v. Closser,

(e) Inspection of books and papers denied. Mason v. C. R. I. & P. Ry. Co., 12 I. C. C. 61.

IMPORTANT CASES SINCE 1908

(f) In a complaint charging an express company with unjust discrimination in transporting money, a subpoena duces tecum will not issue to compel defendant to furnish voluminous information with respect to its financial and business transactions where it does not appear necessary so to do and the information sought is not pertinent to the questions involved. American Bankers' Ass'n. v. American Express Co., 15 I. C. C. 15, 24.

(g) The Interstate Commerce Commission cannot enlarge its powers to compel testimony from a corporation, which, not being subject to regulation by the Commission, is simply in the position of a witness interested in, but a stranger to, the inquiry, by making such corporation a party to the proceeding and serving it with notice. Ellis v. Interstate Com. Com., 35 Sup. Ct. 645, 647; 237 U. S. 434; 59 L. Ed.

§18½. Reparation Statements and Pleadings.

IMPORTANT CASES SINCE 1908

(a) A general description in the complaint of the shipments on which reparation is asked is sufficient to meet the requirements of the statute. Coakley v. Director General, 59 I. C. C. 141, 144.

(b) Incomplying with Rule V of the Commission's Rules of Practice, complainants may be authorized to submit proof in the form of affidavits that freight charges were paid and borne by them where the carriers do not object to this form of proof. Boston Chamber of Commerce v. Director General, as Agent, 66 I. C. C. 142, 144.

(c) Complainants indicated that if a showing of the ultimate destinations of shipments was essential before repara-

tion could be awarded they would ask the commission to require carriers to furnish that information. HELD, such information would be insufficient without further data as to rates ultimately applied and amount of charges collected and the commission does not regard it as reasonable or appropriate that carriers should be called upon to furnish information necessary to the establishment of claims for reparation. Peoria Board of Trade v. A. T. & S. F. Ry. Co., 73 I. C. C. 535.

(d) While ordinarily a complainant should present his entire case at the time of the original hearing, it is often to the best interest of the commission and the parties to defer the taking of testimony on the question of the details of the damage until the main issue has been decided. National Preservers & Fruit Products Asso. v. A. & S. Ry., 74 I. C. C. 179, 183.

(e) Shipments made subsequent to hearing authorized to be included in reparation statement under Rule V of the commission's Rules of Practice if accompanied by proof in the form of an affidavit that shipments were made and charges were paid and borne by complainants, with understanding that if carriers object to proof in affidavit form complainants may request further hearing with respect to reparation. Following cases in 74 I. C. C.: Kissel Motor Car Co. v. G. T. Ry. Co., 45, 47; Phoenix Chamber of Commerce v. Director General, as Agent, 31, 33; Purity extract & Tonic Co. v. Director General as Agent, 263, 270.

ALL OTHER CITATIONS

National Petroleum Asso. v. M. K. & T. Ry. Co., 58 I. C. C. 415, 418; Northern Potato Traffic Asso. v. A. T. & S. F. Ry. Co., 58 I. C. C. 592, 596; Tanners' Council v. Director General, as Agent, 66 I. C. C. 415, 419.

§19. Tests of Revenue.

IMPORTANT CASES SINCE 1908

(a) The Commission reduced commodity rates from the east to Spokane but held that before making the final order it will be advisable to learn the result of an actual test, and that carriers will be required for the months of July, August and September, 1910, or for such other representative months as may be determined upon by the Commission, after conference with the carriers, to furnish an accurate and detailed account, showing the revenue which accrued upon business actually handled under present rates, and the revenue which would have accrued upon the same business had the rates here prescribed been in effect. This account should be confined to traffic covered by the rates named, but the carriers may, if they elect, indicate what other changes will be required which are not covered by the rates prescribed in this and other cases, and may keep separate accounts showing the loss as applied to actual transactions. City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 178.

ALL OTHER CITATIONS

City of Spokane v. N. P. Ry. Co., 15 I. C. C. 454, 456; R. R. Com. of Nev. v. S. P. Co., 23 I. C. C. 456, 457; Commercial Club, Salt Lake City, v. A. T. & S. F. Ry. Co., 19 I. C. C. 218, 230; Railroad Commission of Nevada v. S. P. Co., 19 I. C. C. 238, 256; Maricopa County Commercial Club v. A. F. P. & P. Ry. Co., 19 I. C. C. 257, 258; Portland Chamber of Commerce v. O. R. R. & Nav. Co., 19 I. C. C. 265, 284; N. Y. Hay Exchange Ass'n. v. Penn. R. R. Co., 14 I. C. C. 178, 188.

§19½. Unreported Opinions.

IMPORTANT CASES SINCE 1908

(a) Unreported opinions of the Commission are as carefully considered and have the same binding effect and force as reported opinions. Fish & Solomon v. P. R. R. Co., Unrep. Op. A473.

VIII. DEFENSES AND EVIDENCE.

§20. In General.

See Evidence; Reasonableness of Rates; Special Contracts §6; Undercharges §3.

CASES 1887-1908

(a) The Act to Regulate Commerce does not afford a remedy for transactions which occurred before it took effect. Ottinger v. Southern Pac. R. R. Co., 1 I. C. R. 607.

(ab) A claim of exemption from discovery on the ground that it would fix a penal liability upon the party cannot be sustained where a prosecution for the penalty is already barred by the Statute of Limitations. Manchester & Lawrence R. Co. v. Concord R. Co., 3 I. C. R. 319.

(b) Where it appears that a complainant has invoked the aid of the law for the purpose of securing what he,

with the acquiescence of the carrier, had previously obtained in apparent contravention of the law, such acquiescing carrier will not be held entitled to plead violations of the law by complainant in bar of a decision on the merits, nor will the individual interests of the complainant be taken into consideration; but the Commission will examine the evidence and make such report thereon as, under the provision of the law, the rights of other shippers and the public generally may require. If, independently of any action or interest of complainants, the conduct of defendants with reference to the transportation which is the subject of the proceeding is shown by the evidence to be unlawful, it is the duty of the Commission to execute and enforce the statutory provisions applicable thereto. Page v. D. L. & W. R. Co., 4 I. C. C. 525, 534.

(c) Under its rules and practice shippers have ample opportunity for personally laying their troubles before the Commissin and thus showing the actual results of the rates complained of upon their business. Upon a complaint in which no person directly interested in such rates appeared as a witness having no personal knowledge of the effect of the rates upon the merchants dealing in the commodities involved and whose testimony is limited to a comparison of the rates attacked with rates on the same commodities for equal distances in other parts of the country, where the traffic is much more dense, the net revenues per mile greater, and where the other transportation conditions are entirely different: HELD, that the record discloses no sufficient basis for an order by the Commission. The complaint is therefore dismissed without prejudice. Dallas Freight Bureau v. Mo., Kans. & Tex. Ry. Co., 12 I. C. C. 428.

IMPORTANT CASES SINCE 1908

(d) Technical defenses have no place before the Commission and will not be permitted to defeat the broad principles of the Act. Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 187.

(e) An objection by a state commission to the introduction of evidence relating to intrastate rates on stone and gravel when for use in construction of public highway and consigned to federal, state, county or municipal authorities or their agents, on the ground that no order affecting such rates could be made by the Commission because of the provision of section 22 of the Act. HELD such a construction of section 22 would make it mandatory on carriers to maintain lower rates on such traffic; that section has been construed as being permissive in character; and in granting such reduced rates carriers must not violate sections 2 and 3 of the Act. Tennessee Rates and Charges, 63 I. C. C. 160, 172.

ALL OTHER CITATIONS

In Re Advances on Lumber, 24 I. C. C. 686, 696; Godwin v. Y. & M. V. R. R. Co., 31 I. C. C. 25, 29; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 51 I. C. C. 635, 644.

§21. Immunity.

IMPORTANT CASES SINCE 1908

(a) The Commission proceeds on the theory that it is better to expose wrongdoing, even if in doing so it would be necessary to use a few witnesses whose testimony might bring them immunity, than through fear of bestowing immunity on some, leave facts unknown and uncovered and thereby give immunity to all, not only as to prosecution, but as to stigma of exposure as well. Financial Investigation of N. Y., N. H. & H. R. R. Co., 31 I. C. C. 32, 68.

(b) The purpose of the immunity statute was to aid in the search for facts by removing the obstacle of witnesses refusing to testify on the ground of self-incrimination. Financial Investigation of N. Y., N. H. & H. R. R. Co., 31 I. C. C. 32, 68.

§21a. Moot Question.

CASES 1887-1908

(a) The Commission will not say in advance of violation of Act what rates company shall make for any class or organization of persons. Re Theatrical Rates, 1 I. C. R. 18.

(b) The Commission can not construe the Act before violation thereof. Re Theatrical Rates, 1 I. C. R. 18; Re Order of Railway Conductors, 1 I. C. R. 18.

(c) The Commission has no power to advance of an actual act or omission on the part of a common carrier in conconstrue, interpret or apply the Act in travention of the provisions of the act. The Commission is confined to entertaining and deciding applications presented to it under section 4 of the Act for relief from the provisions of that section, and complaints under section 13, in re-

lation to acts or omissions in contravention of the provisions of the Act. HELD, applications averring that the railroad companies do not now violate the law and do not wish to do so, and asking the ruling of the Commission (in advance of any action by the railroads) as to the effect of the act in reference to the granting of free passes to railroad employees and their families, and in reference to an additional allowance of free baggage to commercial travelers, can not be entertained. Re Petition of the Order of Railway Conductors, 1 I. C. C. 18, 19.

(d) A desire to obtain a construction of the Interstate Commerce Act is not sufficient to support a proceeding. Boston & A. R. R. Co. v. Boston & L. R. R. Co., 1 I. C. R. 571.

(e) When, pending a proceeding begun to test the reasonableness of rates, the rates are reduced and made satisfactory to complainants, the Commission will not consider the question whether the rates before the reduction were or were not excessive; that question having by the reduction made become purely abstract and speculative. The question whether the rates paid ought to be refunded having been presented to a judicial tribunal, where it is now pending, the Commission will not take cognizance of it. Harris v. Duval, Rec'r. F. Ry. & Navigation Co., 2 I. C. C. 514.

§22. Witnesses and subpoena duces tecum.

CASES 1887-1908

(a) Subpoenas will be issued by any commissioner and will be required to be obeyed. Rule 9, Appendix I, 1 I. C. R. 842.

(b) As the application in these cases does not conform to the rules herein stated in reference to making a prima facie showing for the compulsory production of the books, papers and documents, either as against the defendant carriers or those who are strangers to these proceedings, the relief it seeks cannot now be granted, and for the present must be denied; but this does not preclude the petitioner from renewing his application, provided, in doing so he conforms to the rules indicated. Rice v. Cincinnati, Washington & Baltimore R. Co., 2 I. C. R. 584.

(c) In prescribing the contents of an application for subpoena duces tecum, the Commission, while guided by the Interstate Commerce Act, will consider and apply rules of the United States courts and those laid down by the federal statutes, so far as applicable. Rice v. Cincinnati, W. & B. R. Co. (Com.), 2 I. C. R. 584.

(d) An action to compel parties not carriers, or third parties, to produce books, papers, or documents should be in writing, and should specify the things whose production is desired, should be accompanied by an affidavit that the things are in the witness's possession or under his control, and should show prima facie the materiality and necessity of the evidence. If directed against a carrier who is a party, it is sufficient to indicate the things desired in a general way, and state a belief that they will be of service, and that the application is in good faith. Rice v. Cincinnati W. & B. R. Co. (Com.), 2 I. C. R. 584.

(e) The difference that exists in what should be a prima facie showing for compulsory process for the production of books, papers and documents as between parties not engaged as carriers in interstate commerce, or strangers to the proceeding, on the one hand, and, on the other hand, carriers who are engaged in interstate commerce, is one that is very manifest. The books of carriers engaged in interstate commerce, whether made up from shipping tickets, way bills, expense bills, or otherwise, are supposed to give the exact particulars of the consignment, showing the weight, rate, and amount of charges to be paid to the company's agent, and are put in this enduring form at the time of the consignment, as part of the transaction, upon rates that the Law requires to be open and public, and thus they give a history of the details of the transaction, and are in the nature of semi-public records. Shippers, consignees, and even the public, may well have an interest, under certain circumstances, in the evidence these records afford as to rates, charges, facilities furnished, and the general movements of freight. The books of strangers to the proceeding and of parties not engaged as carriers in interstate commerce, do not necessarily occupy any such relation to these transactions, though there may possibly be such a showing as would make them material and competent evidence in proceedings in which these transactions come into controversy. Rice v. Cincinnati, Washington & Baltimore R. Co., 2 I. C. R. 584.

(f) Where the application is made to compel one who is a party to the proceeding, and who is a carrier engaged in interstate commerce, to produce its books for the purpose of evidence in a pending proceeding, it is sufficient for the application to indicate in writing in a general way what books of the carrier should be produced, and that there is reason to believe, and that the applicant does believe, that in the course of the hearing they will become of service, on account of the light they will throw upon the questions in controversy in the proceeding, and as an evidence of good faith, in making the application. the applicant should make an affidavit, as part of the application, that such application is made in good faith, and not for the purpose of vexing or harassing the defendant, and upon such a showing, as a general rule. the process should issue unless the number of books called for should be so large, or from other exceptional circumstances, the Commission should order the testimony to be taken at such place as would avoid oppression in producing the books at a far-distant hearing, and expedite the progress of the investigation. Rice v. Cincinnati, Washington & Baltimore R. Co., 2 I. C. R. 584.

(g) In proceedings between parties, when an application is made to the Commission to compel parties who are not engaged as carriers in interstate commerce, or others who are strangers to the proceeding, to produce books, papers, and documents, the application should be in writing, addressed to the Commission, and should specify, as nearly as may be, the books, papers, or documents for the production of which process is desired, and be accompanied by an affidavit that the books, papers, or documents described are in the possession of the witness, or under his control, and should set forth facts which make a prima facie case that these contain evidence that is material and necessary to the party seeking their production in the pending proceeding; and in such a case the prima facie showing that what is required to be produced will be legal evidence for the party demanding it ought to be very clear and full. Rice v. Cincinnati, Washington & Baltimore R. Co., 2 I. C. R. 584.

(h) In laying down rules upon the subject of what an application shall contain for the compulsory production of books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, the Commission is governed by the provisions of the Act to Regulate Commerce, and the objects and purposes of this Statute, but in connection with these will also consider the practice in the courts of the United States, as well as the rules prescribed by federal statutes in proceedings which seem to be most nearly analogous to proceedings in which such application to the Commission is made. Rice v. Cincinnati, Washington & Baltimore R. Co., 2 I. C. R. 584.

(ha) In a proceeding for a subpoena Duces Tecum, by a complainant who alleged that the defendant granted preferential rates to the Standard Oil Trust, and sought to compel production of all papers showing the relation between the carriers and such preferred competitor, it is enough to show the rates actually charged, if there are or have been any such to certain shippers or consignees different from the published tariff rates, or the preferential facilities, if any such, furnished by the defendants to some shippers or consignees, and not to others, or the comparative rates on the different commodities named in the complaints, and from and to designated points. Innumerable shipments, with all their minuteness of detail, over the various lines, that were made for many years before the Act to Regulate Commerce took effect, as well as since that date, and the names of the consignors and consignees at so many different points, through these long periods of time, seem to be immaterial. It appears to be sufficient for all the purposes of these cases to show the rates published, the rates actually charged, and the facilities furnished from and to designated points since the Act to Regulate Commerce went into effect, and for whatever light these may throw upon the question of the reasonableness and justness of the rates, if any, and the fairness of the facilities afforded by way of comparison what these were for a reasonable time—for example, for a period of twelve months before the Act to Regulate Commerce went into effect. Rice v. Cincinnati, Washington, Baltimore R. Co., 2 I. C. R. 584.

(i) A proceeding to compel the attendance of a witness before the Interstate Commerce Commission, or to require him to answer questions put to

him, or to compel the production of books, documents, or papers in his possession is a case of which, under the Constitution, a court of the United States may take cognizance. Interstate Commerce Commission v. Brimson, 4 I. C. R. 545.

IMPORTANT CASES SINCE 1908

(j) It is not only proper but essential that undisclosed facts, necessary to the adjudication of issues presented, be impartially elicited by the presiding Commissioner or examiner; therefore, no error was committed in recalling a witness for interrogation after the party introducing the witness had closed its case. Interstate Packing Co. v. C., M. & St. P. Ry. Co., 41 I. C. C. 396, 399.

(k) Testimony as to comparative transportation conditions must of necessity be somewhat general, and to require a witness to have an intimate familiarity with the physical conditions existing on each of two roads before he can be permitted to testify that transportation conditions on the two roads are similar would ordinarily exclude as witnesses all persons who had not been actively employed in the operation of both roads. Old Vincennes Distillery Co. v. B. & O. S. W. R. R., 45 I. C. C. 447, 450.

(l) But a witness who had not seen the shipment and knew nothing except by hearsay is not a competent witness. Northern Merchantile Co. v. S. I. Ry. Co., Unrep. Op. A-207.

(m) A refrigerator car company, owned by a large packing company, which builds and owns refrigerator tank and box cars which it leases to railroads and shippers has the same immunities as an ordinary witness in an investigation brought by the Interstate Commerce Commission wherein the Commission subpoenas it to testify, unless it is shown that such refrigerator company is a tool of the users of its facilities and a device for the purpose of evading some provision of the Act. Ellis v. I C. C. 35 Sup. Ct. Rep. 646, 647; 237 U S. 434; 59 L. Ed.—

(n) The Commission may not require witnesses to testify against their will concerning the cost of production of articles moving in interstate commerce. Stonega Coke & Coal Co. v. L. & N. R R. Co., 39 I C. C. 523, 549.

§23 New Procedure.

(1) Evidence in Writing.

ALL CITATIONS

Interstate Cotton Oil Refining Co. v. St. L. S. W. Ry. Co., 81 I. C. C. 67; Sanford v. P. R. R. Co., 81 I. C. C. 730; Warfield-Pratt-Howell Co. v. T. & P. Ry. Co., 81 I. C. C. 733; Union Tanning Co., v. S. Ry. Co., 81 I. C. C. 741; National Supply Co. v. B. & O. R. R. Co. 81 I. C. C. 743.

PROPORTIONAL RATES

I. APPLICATION.
II. DISCRIMINATION AND REASONABLENESS.
III. LEGALITY.
IV. EVIDENCE.
V. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
VI. TARIFFS AND PUBLICATION.
VII. REPARATION.

CROSS REFERENCES

See advanced Rates §9½; Evidence §13 (5) §14 (5); Through Routes and Joint Rates §13½.

I. APPLICATION.

See Application of Rates; Facilities and privileges §18; Through Routes and Joint Rates §18; Reshipping Rates.

IMPORTANT CASES SINCE 1908

(a) In one sense proportional rates are but divisions of through rates. Chattanooga Packet Co. v. I. C. R. R. Co., 33 I. C. C. 384, 391.

(b) A proportional rate, limited to shipments over a particular line, is unjustly discriminatory. Chattanooga Packet Co. v. I. C. R. R. Co., 33 I. C. C. 384, 391.

(c) Where a proportional tariff contained no provision governing application of a flat increase in the combination rates on through shipments, but carriers parties thereto were also parties to tariffs naming joint rates containing such a provision, they are bound by the rule which prescribed a specific method for constructing combination rates on through shipments. Bell Lumber Co. v. Director General, as Agent, 63 I. C. C. 225, 228.

(d) The proportional or reshipping rate applicable on a reshipment from the transit point is that in effect when the inbound shipment moved from the point of origin. Bell Lumber Co. v. Director General, as Agent, 63 I. C. C. 225, 228.

(e) It is well settled that reshipping and proportional rates are inseparably connected with and form parts of the rates applying to through transportation. A proportional rate means a part of or the remainder of, a through rate, or it means nothing at all. Kansas City Board of Trade v. A., T. & S. F. R. R. 69 I. C. C. 185, 188.

(f) A reshipping or rebilling rate is a proportional rate under which after a commodity has been shipped to a distributing market and unloaded for the purpose of storage or treatment in transit, the same commodity or an equivalent amount may be reshipped to final destination. There is a close analogy between reshipping rates and transit. Kansas City Board of Trade v. A., T. & S. F. R. R., 69 I. C. C. 185, 188.

(g) The reshipping rate is usually less than the local rate from the distributing or transit point to the final destination and must be regarded as part of the through rate or charge from the point of origin through the transit point to the ultimate destination. Kansas City Board of Trade v. A., T. & S. F. R. R. 69 I. C. C. 185, 188.

(h) A rate on coal delivered to a vessel and thereafter used for bunker purposes may fairly be regarded and treated as a proportional or transshipment rate. Rates on Bunker Coal, 73 I. C. C. 62, 76.

(i) Proposal to except proportional rates of the Midland Continental R. R., on petroleum and products, from application of the combination rule, which provided a method by which through rates were given specific or flat increases under General Order No. 28 of the director general, when made up of separately established rates, found not justified. Tariffs specificially provided for application of the combination rule; use of the Midland's proportional rates is not therein prohibited; and proposed exception would result in conflicting tariff provisions. Cancellation of Combination Rule on Petroleum,73 I. C. C. 146.

(j) Contention that the combination rule, which provided a method by which through rates were given specific or flat increases under General Order No. 28 of the director general, when made up of separately established factors, was not intended to apply to a proportional rate established without relation to any rate in effect June 24, 1918. HELD, rule is subject to no such restriction. Cancellation of Combination Rule on Petroleum, 73 I. C. C. 146, 148.

(k) Proposed establishment of proportional rates which would have the effect of threatening the stability of the present rate structure, found not justified. Iron and Steel Articles from New Orleans, 74 I. C. C. 146.

(l) Following Proportional Rates on Grain and Grain Products, 69 I. C. C. 203 proposed proportional rates on grain and products from Sioux City, Iowa, to points in Arkansas and Missouri, based differentially over Omaha, Nebr., found not justified. The effect of the proposed rates would be to give Sioux City additional routes over which to ship grain under rates which place Kansas City at an unreasonable disadvantage, and result in violations of section 4 of the Act Proportional Rates on Grain and Grain Products, 74 I. C. C. 341.

(m) Proposed elimination of class D proportional rates from west-bank Mississippi River points in Iowa and Missouri to stations in Iowa constructed on basis prescribed in Interior Iowa cases 46 I. C. C. 39, from application on hard or bituminous coal, leaving in effect increased combination rates found not justified. Desire of carriers to effect uniformity in the coal rate situation in Iowa would not be served by such cancellation, and elimination of class rates on coal furnishes no justification for increased rates. Proportional Rates on Coal to Iowa, 74 I. C. C. 729.

(ma) Contention that charging proportional rate lower than local rate to defendant's terminal, or charging a proportional rate to terminal lower than local rate to an intermediate point, are departures from fourth section of the act, rejected as untenable. Southern Illinois Millers Asso., 23 I. C. C., 672; Rates on Grain and Grain Products to Texarkana, Ark., 29 I. C. C., 35. Ohio Refining Co. v. L. & N. R. R. Co., 81 I. C. C., 688, 690.

(n) Respondents proposed generally to increase the present proportional rates on petroleum and petroleum products between points in official classification territory, including proportional rates on these commodities from East St. Louis, Ill., and other Mississippi River crossings and related points on shipments originating at points west of the Mississippi River destined to points in official classification territory. The

increases are to be effected in some instances by cancelling existing proportional rates and in other instances by increasing the proportional rates to the level of the local rates. For many years the rates from Oklahoma to the destination territory were a combination of the local rates on East St. Louis. On June 25, 1918, the rates were advanced 25% and on July 1, 1918, a flat increase of 4.5c was substituted for the 25% increase, and established proportional rates to and from East St. Louis lower than the local rates to and from that point, each of which had been increased 4.5c. The through rate from Group E on refined or fuel oil to the official territory made up of the combination of locals on East St. Louis, was 4.5c higher than the combination of proportional rates from Group E. The difference between the local and the lower proportional rates east of the Mississippi River was 2.5c. On August 26, 1920, the local and proportional rates west of the river were increased 35% and those east of the river 40%. The difference between the local and proportional rates east of the river then became 3.5c and west of the river 3c. The issues to be decided are whether the maintenance of the lower proportional rates from East St. Louis resulted in discrimination against or undue prejudice to complainants to the undue advantage and preference of shippers from mid-continent field and whether the carriers have justified their proposed cancellation of or increases in the proportional rates. If the tariffs under suspension are allowed to become effective, the difference in favor of group 3 will be eliminated. Petroleum and its products are sold by refiners, wherever located, at the Group 3 price, f. o. b., Group 3. The Group price may be described as the prevailing price among refiners in group 3, but it is not a fixed, definite figure on any particular day. In addition to other advantages naturally arising out of the location of their plants at East St. Louis, complainants have an advantage in rates on refined and fuel oils shipped from their plants to points in destination territory as compared with the rates on these commodities from Group 3 to the same points. The rates on refined and fuel oils from the mid-continent field to destinations in Indiana, Ohio and Michigan, made on the East St. Louis combination, will be increased 2.5 to 3c if the rates under suspenion are allowed to go into effect. The Commission must consider not merely the proportional rate in and of itself as compared with the local rate but also its use as a factor of the through rate from the mid-continent field. There have been numerous decisions with respect to the propriety of the establishment of proportional rates less than the local rates and many rates have been so established. The establishment of through charges upon the basis of the aggregate of proportional rates is but one method of stating such charges. If the carriers east of the river and the carriers west of the river were to establish joint through rates equal to the present through rates and cancel the separately published proportionals the service of the carriers east of the river would not be different from what it is now and complainants allegation of discrimination and undue prejudice because of the existence of lower proportionals east of the river would obviously have no foundation. HELD, rates from East St. Louis to official territory not unjust, unreasonable, unjustly discriminatory, or unduly preferential of refiners in the mid-continent field; the cancellation of proportional rates not justified. Petroleum and Petroleum Products between Points in Official Classification Territory, 78 I. C. C. 162.

(o) A "proportional rate," as the term implies, is simply a part of a through rate. It is the share of the aggregate charge from origin to destination which one or more of the carriers accepts for performing a definite portion of the whole transportation service. It is a matter of common knowledge that through rates are generally less than the sum of intermediate local rates; and when all the participating carriers do not join in establishing the through rates, it is a common practice for one or more of them to name proportional rates up to some point of connection with another carrier which completes or continues the transportation. The propriety and lawfullness of proportional rates to the point of transfer which are less than local rates to that point have frequently been affirmed by the Interstate Commerce Commission, and are sanctioned by considerations of public policy. Hocking Valley Ry. Co. v. Lackawanna Coal & L. Co., 224 Fed. 930, 931.

ALL OTHER CITATIONS

Indianapolis Freight Bureau v. C. C.

C. & St. L. Ry. Co., 15 I. C. C. 504, 511; Kansas City Transportation Bureau v. A., T. & S. F. Ry. Co., 16 I. C. C. 195, 201; Lindsay Bros. v. B. & O. S. W. R. R. Co., 16 I. C. C. 6, 8; Bayou City Rice Mills v. T. & N. O. R. R. Co., 18 I. C. C. 490, 493; Central Lumber Co. v. C. M. St. P. Ry. Co., 18 I. C. C. 495, 496; Beekman Lumber Co. v. I. C. R. R. Co., 20 I. C. C. 98, 99; Baltimore Chamber of Commerce v. B. & O. R. R. Co., 22 I. C. C. 696, 600; Southern Illinois Millers' Ass'n. v. L. & N. R. R. Co., 23 I. C. C. 672, 678; K. C. S. Ry. v. Albers Comm. Co., 223 U. S. 573, 595, 32 Sup. Ct. 316, 56 L. Ed. 556; Interior Iowa Cities Case, 28 I. C. C. 64, 69, 70, 75; Boney & Harper Milling Co. v. A. C. L. R. R. Co., 28 I. C. C. 383, 387, 388; Becker v. P. M. R. R. Co., 28 I. C. C. 645, 651; Mesilla Valley Produce Exchange, Inc. v. A., T. & S. F. Ry. Co., Unrep. Op. A-229; Rates to North Carolina Points, 29 I. C. C. 550; Proportional Rates on Coal, 30 I. C. C. 465; Export Rates on Grain and Grain Products, 31 I. C. C. 616, 619; Board of Trade of Kansas City v. St. L. & S. F. R. R. Co., 32 I. C. C. 297, 307, 313; Massie & Pierce Lumber Co. v. N. & W. Ry. Co., 33 I. C. C. 14, 23; Rosenblatt & Sons v. A. A. R. R. Co., 33 I. C. C. 324, 325; Eastern Fruit Growers' Asso. v. B. & O. R. R. Co., 33 I. C. C. 343, 352; Chattanooga Packet Co. v. I. C. R. R. Co., 33 I. C. C. 384, 388, 390, 391 392; Corp. Comm. of North Carolina v. S Ry. Co., 33 I. C. C. 487, 492; Merchants Exchange of St. Louis v. B. & O. R. R. Co., 34 I. C. C. 341, 351; Rates on Lumber from Southern Points, 34 I. C. C. 652, 678, 697; Des Moines Saw Mill Co. v. M. & St. L. R. R., 35 I. C. C. 182; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 35 I. C. C. 460, 465; Isaac Joseph Iron Co. v. M. L. & T. R. R. & S. S. Co., 37 I. C. C. 591; Joseph Iron Co. v. M. L & T. R. R. & S. S. Co., Unrep. Op. 2208; Joseph Iron Co. v. M. L. & T. R. R. & S. S. Co., 40 I. C. C. 525; Sioux City Com. Club v. C. B. & Q. R. R. Co., 41 I. C. C. 518, 520; Southwestern Dairy Products, 44 I. C. C. 379, 390, 391; Swift & Co. v. Erie R. R., 45 I. C. C. 554, 556; Interior Iowa Cases, 46 I. C. C. 39, 59, 60; State of Iowa v. B & O. R. R., 46 I. C. C. 595, 597, 599; C. & N. S. S. Co., 47 I. C. C. 365, 371; Baltimore & Carolina S. S. Co. v. A. C. L. R. R., 49 I. C. C. 176, 181; Williams Co. v. P. Co., 50 I. C. C. 531, 536; Rates on Grain and Grain Products, 56 I. C. C. 133, 138; Transit Privileges on Rough Forest Products, 59 I. C. C. 176; North Iowa Traffic Asso. v. Director General, 58 I. C. C. 491, 495; Cobbs & Mitchell v. Director General, as Agent, 59 I. C. C. 179, 181; Greater Des Moines Committee (Inc.) v. Director General, 60 I. C. C. 403, 407; Rates from Minnesota and Wisconsin, 68 I. C. C. 665; Weir Smelting Co. v. Director General, as Agent, 74 I. C. C. 260; Boston Wool Trade Asso. v. B. & A. R. R. Co., 77 I. C. C. 431; Petroleum and Petroleum Products between Points in Official Classification Territory, 78 I. C. C. 162; Grain and Flaxseed from Twin Cities to Lake Superior Ports for Boat Movement beyond, 78 I. C. C. 575; Lumber from San Francisco Bay points When from Beyond, 78 I. C. C. 760.

II. DISCRIMINATION AND REASONABLENESS.

See Discrimination.

CASES 1887-1908

(a) The proportional rates per 100 lbs., charged by the Atchison, Topeka & Santa Fe Railway Company, on shipments of hay over its road and the road of the Texas & Pacific Railway Company, from Robinson and La Junta, Colo., and Dodge City, Kans., to Marshall, Jefferson, and Kildare, Tex., were excessive and unreasonable to the extent that they exceeded 21 cents for the transportation to Ft. Worth, Tex., and those of the Texas Company were excessive and unreasonable to the extent that they exceeded 15 cents for the transportation from Ft. Worth to the destinations named. H. B. Pitts & Son v. Atchison, T. & S. F. R. Co., 10 I. C. C. 691.

(aa) Facts stated concerning shipments of hay by complainant over the railways of the Atchison, Topeka & Santa Fe and Texas & Pacific Companies, from Robinson and La Junta, Colo., and Dodge City, Kans., to Marshall, Jefferson and Kildare, Tex. HELD, that the proportional rates per 100 lbs. charged by the former company were excessive and unreasonable to extent that they exceeded 21 cents for the transportation to Fort Worth, Tex., and those of the latter company excessive and unreasonable to the extent that they exceeded 15 cents for the transportation from Fort Worth to the destinations named, and that complainant is entitled to reparation from the A., T.

& S. F. R. Co., in the sum of $196 84. and from the T. & P. Co., in the sum of $51.95, with interest from August 1, 1903. H. B. Pitts & Son v. Atchison T. & S. F. R. Co., et al, 10 I. C. C. 691.

(b) Complainant attacked rates on hay from points on the E. & T. H. R., to points in the south as unreasonab e and unjustly discriminatory. The E. & T. H. does not make through rates with the other defendants from points in Indiana to destinations south of the Ohio River but has established on hay a local rate of 8c to Evansville and a proportional of 6.5c to Evansville when the shipment is billed through to a specified destination. The E. & T. H. refused to apply a proportional on shipments billed to Evansville in care of a southern line for points beyond, having discontinued a tariff providing therefor which was effective from Nov. 10, 1903, to July 19, 1904. The rate from Evansville by the other defendant lines is the same whether shipped locally from or through Evansville. HELD, it is unreasonable and unjust for the E. & T. H. to insist upon the billing of these shipments to a specified destination in order to secure application of the lower proportional rate, while it declines to assume responsibility for such billing and does not post in its stations the tariffs from which the shipper can him self ascertain the rate at which the shipment should be billed; and that while the proportional rate is kept in force it is reasonable and just that these shipments shall be billed to Evansville in care of the road leading southerly there from, as was actually done in 1903 and 1904. HELD, complainants are entitled to reparation on a shipment of one carload of hay from Johnstown, Ind., to Charleston, S. C., amounting to $4.36 from the E. & T. H. and $5.97 as admitted overcharge by the Georgia R. T. M. Kehoe & Co. v. E. & T. H. R. R., 11 I. C .C. 172.

(c) Complainant attacked as unreasonable, unjustly discriminatory and unduly prejudicial commodity rates on gacoal, carloads, from mines in Pennsylvania to Baltimore, Md., according as the coal may be finally forwarded or re consigned by water to Norfolk, Va., to points inside the capes, not including Norfolk or to "points outside the capes." Defendant carries coal to Baltimore destined finally to points outside the capes, (largely to New England points) and shipments of the same coal may be made to Norfolk, an Atlantic seaport. The rate to Baltimore on coal reshipped to points outside the capes points is forced by the competition of lines from other mines, and under such rate defendant secures a large annual tonnage via its lines to the port of Baltimore. The rate to Baltimore on coal for Norfolk is the local rate to Baltimore. If the shipments to Norfolk and points outside the capes be regarded as through shipments on what are in essence through rates, the competition stated might justify a higher rate to Baltimore when the final destination is Norfolk, then when it is a point outside the capes; but if this coal is all purely local to Baltimore, there is much doubt whether, as a matter of law, defendant can charge for the haul to Baltimore more in one case than in the other. Defendant also transports coal from Pennsylvania mines to Baltimore which may be carried from Baltimore by water to Norfolk and to various other points on the Bay inside the capes points. The rate to Baltimore on coal reshipped by water to points inside the capes is materially less than its rate to Baltimore on coal reshipped by water to Norfolk. Defendant's service and expense to Baltimore is the same whether the coal finally goes to Norfolk or to other points on the Bay. By agreement between the carriers of coal from the various mines to Norfolk, Newport News and other Chesapeake Bay points, competition has been suppressed, and while defendant does want to carry traffic to designated inside the capes points, it does not desire to participate in the coal traffic to Norfolk. HELD, that this constitutes wrongful prejudice and unjust discrimination, and that while defendant continues to give a rate less than its local to Baltimore on coal destined to inside the capes points, it can not lawfully deny the same rate on coal forwarded by water from Baltimore to Norfolk. Reparation awarded. City Gas Company of Norfolk v. B. & O. R. R. Co., 11 I. C. C. 371.

(d) Complainant attacked commodity rates on the N. C. & St. L. Ry. and I. C., on oak staves and headings from Hollow Rock and other Tennessee points of origin to East St. Louis when destined to South Omaha, Nebr., as unreasonable when compared with the rates on such commodities over said

roads from the same points of origin to East St. Louis when destined to Alexandria, Mo. or Keokuk, Iowa. The South Omaha rate is a combination of the 14c rate of the N. C. & St. L., and I. C., plus the local rate of 10c of the C. B. & Q., whereas the Keokuk or Alexandria rate is a joint rate of 19c, 14c to the first two carriers and 5c to the C. B. & Q. No complaint was made against the C. B. & Q. rate. It appeared that some years ago the division gave the C. B. & Q. its full local from East St. Louis to Keokuk and Alexandria, and the two eastern carriers 2c less than their joint rate to East St. Louis, but the division as now made gives these two roads the same earnings on cooperage products carried from Tennessee points to East St. Louis, whether destined to South Omaha, Alexandria or Keokuk. HELD, complaint dismissed. Omaha Cooperage Co. v. N. C. & St. L. Ry., 12 I. C. C. 251.

IMPORTANT CASES SINCE 1908

(e) Lower proportionals from points served by foreign carriers afford no basis for a charge of discrimination against a complaining point served by other carriers. Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 16 I. C. C. 56, 66.

(f) A proportional rate is nothing more or less than a separately established rate, as that phrase is used in section 6 of the amended Act, applicable to through transportation. And it has not been understood that a separately established rate can be other than an open rate available to all. Bascom Co. v. A., T. & S. F. Ry. Co., 17 I. C. C. 354, 356.

(g) Failure to apply proportional or shrinkage rates on shipments of grain may result in unjust discrimination. Indianapolis Freight Bureau v. C., C., C. & St. L. Ry., 26 I. C. C. 53, 60.

(h) The principle that where joint or proportional rates are made by all carriers leading to certain points of destination, it is proper to end a discrimination as between points of origin by a reduction in the rate from a certain point that was subject to discrimination, has application only where the traffic from both groups of origin is necessarily transported to destinations by the same connecting carrier or carriers, and where it is possible for the delivering carriers to put an end to the discrimination by the exercise of their power to refuse to enter into preferential joint or proportional rates. Memphis Freight Bureau v. B. & O. Ry. Co., 28 I. C. C. 543, 548.

(i) The withdrawal of proportional rates via circuitous line may be justified. Rates on Grain and Grain Products, 30 I. C. C. 16, 17.

(j) By withholding proportional rates from traffic handled in connection with a boat line, while according them on traffic handled in connection with a rail carrier operating between the same points as the boat line, a railroad unduly discriminates against the boat line and shippers who may choose to avail themselves of the water-and-rail route. Chattanooga Packet Co. v. I. C. R. R., 33 I. C. C. 384, 390.

(k) Proposed elimination of class D proportional rates from west-bank Mississippi River points in Iowa and Missouri to stations in Iowa, constructed on basis prescribed in Interior Iowa Cases, 46 I. C. C. 39, from application on bituminous coal, leaving in effect increased combination rates, found not justified. Desire of carriers to effect uniformity in the coal-rate situation in Iowa would not be served by such cancellation, and elimination of class rates on coal furnishes no justification for increased rates. Proportional Rates on Coal to Iowa, 74 I. C. C. 729.

(l) Proposed extension to all ports of northern California of application of proportional rates on lumber and products from San Francisco Bay points to transcontinental destinations, now proposed elimination of restriction of such traffic to vessels filing tariffs with the commission, found justified. Purpose of extension is to place water-locked points more nearly on parity with points served by rail, and can only be effected by establishment of proportional rates somewhat lower than coast-ground all-rail rate. Lumber from San Francisco Bay Points, 78 I. C. C. 760.

(m) Proportional or transshipment rates may lawfully be made lower than local rates between same points. Lumber from San Francisco Bay Points, 78 I. C. C., 760, 767.

ALL OTHER CITATIONS

Indianapolis Freight Bureau v. C. C. C. & St. Louis Ry. Co., 15 I. C. C. 504, 512; Philip v. C. M. & St. P. Ry. Co., 16 I. C. C. 418, 419; Noble v. St. L.

& S. F. R. R. Co., 16 I. C. C. 186, 187; Henderson Elevator Co. v. I. C. R. R. Co., 17 I. C. C. 573, 575; Larrowe Milling Co. v. C. & N. R. Ry. Co., 17 I. C. C. 548, 549; Henderson Elevator Co. v. L. & N. R. R. Co., 18 I. C. C. 538, 539; In Re Restricted Rates, 20 I. C. C. 426, 436; In Re Rates, etc. of the Louisiana Ry. & Nav. Co., 22 I. C. C. 558, 564; Sioux City Terminal Elevator Co. v. C. M. & St. P. Ry. Co., 23 I. C. C. 98, 109; Wisconsin State Millers' Ass'n. v. C. M. & St. P. Ry. Co., 23 I. C. C. 494; Proportional Rates on Grain Products to Texas, 27 I. C. C. 282; Missouri River-Illinois Wheat and Flour Rates, 27 I. C. C. 286, 291; Board of Trade of the City of Chicago v. C. & A. R. R. Co., 27 I. C. C. 530; Rates on Grain and Grain Products to Texarkana, Ark., 29 I. C. C. 35; Interior Iowa Cities Case, 28 I. C. C. 64, 73; Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 554; Proportional Rates on Coal from Ohio Coal Fields to Mississippi River Crossings, 30 I. C. C. 465; Lumber Rates from Thebes, Ill., 31 I. C. C. 15; Bowling Green Business Men's Asso. v. L. & N. R. R. Co., 31 I. C. C. 1; Board of Trade of Kansas City v. St. L. & S. F. R. R. Co., 32 I. C. C. 297; Chattanooga Packet Co. v. I. C. R. R., 33 I. C. C. 384, 390, 391; Michigan Paper Mills Tr. Assn. v. A. V. Ry. 43 I. C. C. 16, 21; Traffic Bureau, Toledo Commerce Club v. C. H. & D. Ry. Co., 43 I. C. C. 446, 457; Proportional Rates to Ohio River Crossings, 43 I. C. C. 458; Board of Trade of Chicago v. P. M. R. R., 44 I. C. C. 345; Indianapolis Chamber of Commerce v. C. C. C. & St. L. Ry., 46 I. C. C. 547, 556; South San Francisco Chamber of Commerce v. S. P. Co., 53 I. C. C. 285, 294; Alexandria (La.) Chamber of Commerce v. M. P. R. R. Co., 53 I. C. C. 311; Omaha Grain Exchange v. C. R. I & P. Ry., 53 I. C. C. 250; Holt Mfg. Co. v. N. P. Ry., 53 I. C. C. 314; Rates on Grain and Grain Products, 56 I. C. C. 133, 146; Monroe Chamber of Commerce v. Director General, 57 I. C. C. 227; Transit Privileges on Rough Forest Products, 59 I. C. C. 176; Grain from St. Louis to Cincinnati and Louisville, 59 I. C. C. 435; Arkansas Jobbers & Mfrs. Asso. v. Director General, 59 I. C. C. 662, 670; Grain from St. Louis, Mo., to Cincinnati and Louisville, 61 I. C. C. 256; Rates between Ohio River and Cumberland River Points, 61 I. C. C. 10; Fresh and Salted Meats between Points in Florida, 61 I. C. C. 461; Iron Poles, Pipes and Connections between Mississippi River Crossings and Iowa Points, 61 I. C. C. 530; Board of Railroad Commissioners of Iowa v. Director General, 63 I. C. C. 405; Bell Lumber Co. v. Director General, as Agent, 63 I. C. C. 225, 227; Board of Railroad Commissioners of the State of Iowa v. B. & O. R. R. 64 I. C. C. 673; Rates from Chicago via. Panama Canal 68 I. C. C. 74; Proportional Rates between Seattle and Portland, 69 I. C. C. 198; Proportional Rates on Grain and Products, 69 I. C. C. 203; Combination Rule for Transcontinental Rates, 78 I. C. C., 24; Petroleum and Products, 78 I. C. C. 162; David Cole Creamery Co. v. Director General, Association v. B. & A. R. R. Co., 78 I. C. C. 91; Boston Wool Trade Association v. B. & A. R. R. Co., 78 I. C. C. 178; Grain from Chicago, Joliet and Lockport, Ill., to Texas, 81 I. C. C. 209; Petroleum from Texas Points, 77 I. C. C. 228; Atchison Board of Trade v. A. T. & S. F. Ry. Co., 80 I. C. C. 350; Arkansas Jobbers & Mfrs. Asso. v. C. R. I. & P. Ry. Co., 80 I. C. C. 620; Northwestern Traffic and Service Bureau v. C. W. Ry. Co., 80 I. C. C. 659, Barytes from C. F. A. to Points in Canada, 81 I. C. C. 399; Sugar Cases of 1922, 81 I. C. C. 448, 473, 476; Tulare Mining Company v. Director General, 81 I. C. C. 675; Proportional Rates on Hay to Cairo, Ill., 83 I. C. C. 38; Creosote Oil from Birmingham Group, 83 I. C. C. 41; Proportional Cases Rates to Interior Iowa Points, 83 I. C. C. 93; Grain to Cairo and St. Louis, 83 I. C. C. 118; Cairo Board of Trade v. A. G. S. R. R. Co., 83 I. C. C. 761, 768; Class Rates on Fish, 87 I. C. C. 640; Paxton & Gallagher Co. v. Director General, 87 I. C. C. 668; Grain and Grain Products to Indiana, 87 I. C.C. 731;Grain and Grain Products from Minnesota and Wisconsin, 88 I. C. C. 365; Scrap Iron to Terre Haute, 88 I. C. C. 410; Universal Paper Bag Co. v. Me. Central R. R., 88 I. C. C. 593; Cutler Hammer Mfg. Co. v. Director General, 88 I. C. C. 600; Valley Camp Coal Co. v. B. & O. R. R., 88 I. C. C. 682; Ahern Brokerage Company v. A. C. L. R. R. 89 I. C. C. 274.

III. LEGALITY.

See Legality of Rates; Tariffs §14.

CASES 1887-1908

(a) The Evansville & Terre Haute

Railroad Company having, instead of making a through rate from points in Indiana to destinations south of the Ohio River, established a local rate on hay of 8 cents per hundred pounds to Evansville, and a proportional of 6½ cents to Evansville when the shipmennt is billed through to a specified destination, acts unreasonably and unjustly in insisting upon the billing of these shipments to a specified destination in order to secure application of the lower proportional rate, while it declines to assume responsibility for such billing, and does not post in its stations the tariffs from which the shipper can himself ascertain the rate at which the ship ment should be billed. While the proportional rate is kept in force it is reasonable and just that these shipments shall be billed to Evansville in care of the road leading southerly therefrom T. M. Kehoe & Co. v. Evansville & T. H. R. Co., 11 I. C. C. 172.

IMPORTANT CASES SINCE 1908

(b) Proportional rates are nothing more or less than separately established rates, as that phrase is used in section 6 of the Act, applicable to through transportation, and in order to be lawful must be established, within the meaning of section 6, by publication and filing with the Commission. Greater Des Moines Committee (Inc.) v. Director General, 60 I. C. C. 403, 407.

(c) The charging of a local rate for a shorter distance higher than a proportional rate for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, is not a violation of the fourth section. Iowa Railroad Commissioners v. Director General, 63 I. C. C. 405, 406.

(d) It is generally recognized that proportional or transshipment rates may lawfully be made lower than local rates between the same points. Rates in Bunker Coal, 73 I. C. C. 62 ,75.

(e) Proposed waiver of surrender of inbound-freight bills on grain shipments as a condition precedent to the application of proportional rates, and to accept in lieu thereof a certificate that shipments are to be forwarded by boat found not justified. The practice of permitting the application of proportional rates and stop-over privileges without surrender of inbound freight bills was condemned in 69 I. C. C. 185, and it is doubtful if such provision would have the intended effect as expressed in the holding of the commission that the rate in effect at the beginning of a transit movement must be applied on a shipment to final destination. Nonsurrender of Inbound Billing, 73 I. C. C. 455.

(f) Carriers may lawfully publish rates on coal for transshipment to vessels, when the coal is consigned to ultimate destination in this country, or abroad, which are lower than the coal rates from the same points of origin to the same ports. Proportional or transshipment rates of this character may lawfully be made lower than the local rates between the same points. No restrictions as to filing of tariffs were imposed. Lumber from San Francisco Bay Points, 78 I. C. C. 760, 767.

ALL OTHER CITATIONS

Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 15 I. C. C. 504, 512; Bascon Co. v. A. T. & S. F. Ry. Co., 17 I. C C. 354, 356, 357; Delray Salt Co. v. Detroit, Toledo & Ironton Ry. Co., 18 I. C. C. 245, 246; Serry v. S. P. Co., 18 I. C. C. 554, 556; Southwestern Shippers' Traffic Assn. v. A. T. & S. F. Ry. Co., 24 I. C. C. 570, 578; Boney & Parker Milling Co. v. A. C. L. R. R. Co., 28 I. C. C. 383, 388; Interior Iowa Cities Case, 28 I C. C. 64, 73; Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., 29 I. C. C. 28, 29; Columbus Iron Works Co. v. V. S. & P. Ry. Co., Unrep. Op. A-547; Export Rates on Grain and Grain Products, 31 I. C. C. 617, 618; Nanson Commission Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-926; Export Grain Products from Missouri River Points, 40 I. C. C. 195, 200; State of Iowa v. B. & O. R. R., 46 I. C. C. 595, 599.

IV. EVIDENCE.

See Evidence §13 (5); Reasonableness of Rates.

CASES 1887-1908

(a) Where a proportion of a through rate for part of a through haul is greatly disproportionate to the balance of the through rate, the knowledge of the circumstances and conditions (if any), justifying such disproportionate rate being peculiarly in the possession of the carrier, the burden is on the carrier to make proof of such justifying circumstances and conditions. Board of Trade v. Alabama Midland R. Co., 4 I. C. R. 348.

IMPORTANT CASES SINCE 1908

(b) The idea of differing propor-

tional rates for the same service depending upon the origin or destination of the traffic did not originate with the Commission. It originated with and has been used by carriers to a greater or less extent, and is now and for a long time has been in effect on the lines of some of these defendants. The Commission is not insensible to the force of competitive conditions and is not disposed in these premises to insist upon the application of that theory in the face of the combined and harmonious judgment of complainants and defendants that it is undesirable and impracticable to apply it to traffic originating in Atlantic seaboard territory or in territory east of the Indiana-Illinois state line and moving to the Missouri River through Mississippi River crossings. In Re Advances in Rates by Carriers Operating Between the Mississippi and Missouri River, 21 I. C. C. 546, 551.

(c) A carrier cannot maintain a proportional rate on traffic reaching its line via one or more specified routes and at the same time maintain a higher proportional rate on the same traffic from the same point of origin and destined to the same point of consumption that comes to it at the same point via the same connecting carrier but over another route formed by different intermediate connecting carriers. Rosenbaum Bros. v. L. & N. R. R. Co., 22 I. C. C. 62, 65.

(d) Proportional rates applying to through traffic might well be lower than corresponding local rates. R. R. Comm. of Kan. v. A. T. & S. F. Ry. Co., 22 I. C. C. 407, 415.

(e) While local and proportional rates are not ordinarily comparable, comparisons of such rates may be considered in connection with other evidence in determining the reasonableness of a particular rate. Lindsay Bros. v. L. S. & M. S. Ry. Co., 22 I. C. C. 516, 517.

(f) Proportional rates should not be compared with local rates in determining a violation of section 4. Rates on Grain and Grain Products to Texarkana, 29 I. C. C. 35.

(g) Proportional rates as such may not be attacked as unreasonable or otherwise in violation of the Act unless the through rates are also attacked, whether there be a claim for reparation or not, for even in cases where reparation is not demanded the proportional rate could not be considered by itself, as it is necessarily always a part of a through rate and can not be used alone. Local rates, however, when used as parts of through rates partake of the nature of proportional rates, and may be regarded as, in effect, local and proportional rates. So far as they are strictly local rates they may, of course, be brought in question without questioning the propriety of any other rate; in so far as they are used in through transportation they could be treated as other proportional rates and many not be considered unless the through rate be attacked as a whole. Stevens Grocer Co. v. St. L. I. M. & S. Ry. Co., 42 I. C. C. 396, 398.

(h) Proportional rates are necessarily parts of through rates and differ from local rates used as parts of through rates in that before the proportional rate may be attacked at all there must be an allegation that the through rate is unreasonable because of the unreasonableness of the particular proportional rate; whereas local rates, as such, may be attacked separately when used separately. Stevens Grocer Co. v. St. L. I. M. & S. Ry. Co., 42 I. C. C. 396, 398.

(i) The Commission has frequently held that proportional rates may properly be somewhat lower than the corresponding local rates. Swift & Co. v. Director General, 66 I. C. C. 409, 413.

(j) The Commission has never held that the local rate to a junction point must be paid on shipments that are going beyond that point. What it has said is that the local rate to the junction point shall be the same for all shippers to that point, and that the through charge on shipments going beyond the junction point shall be alike for all shippers to the same destination. Rates on Bunker Coal, 73 I. C. C. 62, 72.

(k) A rate on coal delivered to a vessel and thereafter used for bunker purposes may fairly be regarded and treated as a proportional or transhipment rate. Rates on Bunker Coal, 73 I. C. C. 62, 72.

ALL OTHER CITATIONS

St. Regis Paper Co. v. N. Y. C. & H. R. R. R. Co., Unrep. Op. 403; Freight Bureau v. C. C. C. & St. L. Ry. Co., 15 I. C. C. 504, 512; Bulte Milling Co. v. C. & A. R. R. Co., 15 I. C. C. 351; Tyler Commission Co. v. C. M. & St. P. R. R. Co., 16 I. C. C. 490, 491; Sunderland Bros. Co. v. P. M. R. R. Co., 16

I. C. C. 450; Kansas City Hay Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 100, 102; Board of Trade of Winston-Salem v. N. & W. Ry. Co., 16 I. C. C. 12, 14, 16; Ottumwa Commercial Ass'n v. C. B. & Q. R. R. Co., 17 I. C. C. 413, 414; Crutchfield & Woolfolk v. L. & N. R. R. Co., 17 I. C. C. 302; Greater Des Moines Committee v. C. R. I. & P. Ry. Co., 17 I. C. C. 54, 55.. Jennison Co. v. G. N. Ry. Co., 18 I. C. C. 113, 124; Liverpool Salt & Coal Co. v. B. & O. R. R. Co., 18 I. C. C. 51, 52; St. Paul Board of Trade v. M. St. P. & S. Ste. M. Ry. Co., 19 I. C. C. 285, 288; Maritime Exchange v. P. R. R. Co., 21 I. C. C. 81; Cole Mfg. Co. v. C. & O. Ry. Co., Unrep. Op. A-31; In Re Rates for Transportation of Flaxseed, 25 I. C. C. 337, 340; In Re Lumber Rates from the South, 25 I. C. C. 50, 60; Rates on Common Brick to Canada, 26 I. C. C. 129, 131; Boney & Parker Milling Co. v. A. C. L. R. R. Co., 28 I. C. C. 383, 387, 388; Rates on Grain and Grain Products to Texarkana, Ark., 28 I. C. C. 35; Interior Iowa Cities Case, 28 I. C. C. 64, 74; Omaha Grain Exchange v. R. I. & P. Ry. Co., 28 I. C. C. 680, 4; Von Behren Mfg. Co. v. St. L. & S. F. R. R. Co., Unrep. Op., A-173; Isbell-Brown Co. v. M. C. R. R. Co., Unrep. Op. A-425; Export Rates on Grain and Grain Products, 31 I. C. C. 617, 619; Rates on Agricultural Implements from San Francisco, 33 I. C. C. 119; Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 632; Proportional Commodity Rates between Kerper and Wilson, Ohio, Unrep. Op. A-893; Rates on Grain and Grain Products from St. Paul, Minn., and Other Points to Stations in Kansas, Nebraska and Other States, Unrep. Op A-938; Des Moines Commodity Rates, 34 I. C. C. 281; Corp. Comm. of North Carolina v. S. Ry. Co., 33 I. C. C. 487, 492, 497; Himmelberger-Harrison Lumber Co. v. St. L. & S. F. R. R., 36 I. C. C. 262; Peppard Seed Co. v. A. T. & S. F. Ry., 36 I. C. C. 311; Boston New York Proportional Rates, 38 I. C. C. 61; Paducah Board of Trade v. C. B. & Q. R. R. Co., 37 I. C. C. 743, 756; Export Grain from Missouri River Points (No. 2), 40 I. C. C. 195; Sewer Pipe from Jacksonville, Fla., 40 I. C. C. 568; Coal to Red Wing, Minn., 41 I. C. C. 309; Beaver Valley Milling Co. v. A. T. & S. F. Ry. Co., 41 I. C. C. 533, 537; Henderson Commercial Club v. I. C. R. R. Co., 42 I. C. C. 196, 199; Lake and Rail Rate Cancellations (No. 2), 42 I. C. C. 513, 515, 519; Crown Williamette Paper Co. v. A. T. & S F. Ry. Co., 42 I. C. C. 613, 615; Globe Stove & R. Co. v. P. C. C. & St. L. Ry., 43 I. C. C. 79; Gasoline from Coffeyville, Kan., 43 I. C. C. 98, 100, 101; Vehicles from Toledo, Ohio, 43 I. C. C. 111; Boston New York Proportional Rates, 43 I. C. C. 203; Cybur Lumber Co. v. N. O. & N. E. R. R. Co., 43 I. C. C. 268, 274; Proportional Rates to Ohio River Crossings, 43 I. C. C. 458, 461, 468; Fruits from Florida, 43 I. C. C. 595; Green v. A. & V. Ry., 43 I. C. C. 662; Helena-Thebes Lumber, 44 I. C. C. 277; Fresh Meats from St. Louis, Mo., 44 I. C. C. 365, 367; Schram Glass Mfg. Co., v. St. L. & S. F. R. R., 45 I. C. C. 465; State of Iowa v. B. & O. R. R., 46 I. C. C. 595; Commercial Club of Michell, S. Dak., v. A. & W. Ry., 46 I. C. C. 1, 13, 14; Interior Iowa Cases, 46 I. C. C. 39, 59, 60; Whiteville Lumber Co. v. A. C. L. R. R., 46 I. C. C. 622, 627; Canned Goods from San Francisco, Cal., 47 I. C. C. 285; Live Stock from Nashville, Tenn., 48 I. C. C. 277, 278; Zion's Co-operative Merchantile Institution v. C. R. I. & P. Ry., 49 I. C. C. 71, 74; Dawson Produce Co. v. A. C. L. R. R. 49 I. C. C. 291, 298, 301; Baltimore & Carolina S. S. Co. v. A. C. L. R. R., 49 I. C. C. 176, 180; Cotton from New Orleans, 49 I. C. C. 751, 757; Mills & Co. v. St. L. S. F. Ry., 50 I. C. C. 260; Meridian Fertilizer Factory v. B. R. R. & C. Co., 50 I. C. C. 379, 382; R. R. Com'rs. of Iowa v. M. & St. L. R. R. Co., 53 I. C. C. 484, 490; Henderson v. Director General, 53 I. C. C. 713, 714; Watertown Sash & Door Co. v. Director General, 55 I. C. C. 186; Waccamaw Lumber Co. v. A. C. L. Ry., 55 I. C. C. 595; Mississippi River & Bonne Terre Ry. v. Director General, 55 I. C. C. 674; Crown Williamette Paper Co. v. W. T. & T. Co., 56 I. C. C. 415; New York & Pennsylvania Co. v. Director General, 58 I. C. C. 124; Rates on Grain and Grain Products, 56 I. C. C. 133, 144, 140, 146, 689, 691, 692; North Iowa Traffic Asso v. Director General, 58 I. C. C. 491, 496; Arkansas Jobbers & Mfrs. Asso v. Director General, 59 I. C. C. 662 National Fireproofing Co. v. Director General, 59 I. C. C. 673; Iowa R. R. Com'rs. v. Director General, 63 I. C. C. 405; Boston Wool Trade Asso. v. A. & S. Ry. Co., 64 I. C. C. 365, 380, 381, 382; Fruits and Vegetables to Duane St., N. Y., 66 I. C. C. 135; Alter v. Directo-

General, as Agent, 66 I. C. C. 619; Swift & Co. v. A. T. & S. F. Ry., 68 I. C. C. 157; Proportional Rates on Grain and Grain Products from Sioux City, Ia., 69 I. C. C. 203; Rates on Bunker Coal, 73 I. C. C. 62, 72; Cancellation of Combination Rule on Petroleum, 73 I. C. C. 146; The City of Detroit v. C. & O. Ry., 77 I. C. C. 98; Weir Smelting Co. v. Director General, 74 I. C. C. 260; Proportional Rates on Grain and Grain Products from Sioux City, Iowa, to Arkansas and Missouri, 74 I. C. C. 341; Class D. Proportional Rates on Coal From West Bank Mississippi River Points to Iowa, 74 I. C. C. 729.

V. CONTROL AND REGULATION.

See Control and Regulations.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I.

CASES 1887-1908

(a) When a carrier publishes a proportional rate, made applicable by its terms only to interstate shipments, that rate is subject to the jurisdiction of the Act and the Commission may determine whether the rate itself or the terms or conditions on which the rate is applied are just and reasonable. Kehoe & Co. v. E. & T. H. R. Co., 11 I. C. C. 172, 179.

IMPORTANT CASES SINCE 1908

(b) The Commission has authority to reduce an excessive proportional rate where it is found to result in an unreasonable through rate. Himmelberger-Harrison Lumber Co. v. St. L. & S. F. R. R. Co., 46 I. C. C. 480.

(c) The power of the Commission under section 6 "to establish maximum proportional rates" by rail to and from ports is not confined to establishing such rates with only those water carriers who own docks, nor does provision of section 15 limit the power. B. & C. S. S. Co. v. A. C. L. R. R., 49 I. C. C. 176, 180.

(d) Proportional rates as defined by the Congress are "those which differ from the corresponding local rates." B. & C. C. S. S. Co. v. A. C. L. R. R., 49 I. C. C. 176, 181.

ALL OTHER CITATIONS

Southwestern Shippers' Traffic Assn. v. A. T. & S. F. Ry. Co., 24 I. C. C. 570, 578, 579; Crescent Coal & Mining Co. v. C. & E. I. R. R. Co., 24 I. C. C. 149, 155; In Re Lumber Rates, 25 I. C. C. 50, 60; Malt Rates to New Orleans, La., 30 I. C. C. 587, 590, 591; Chattanooga Packet Co. v. I. C. R. R. Co., 33 I. C. C. 384, 392; Charleston & Norfolk S. S. Co. v. C. & O. Ry. Co., 40 I. C. C. 382, 38 Crown Williamette Paper Co. v. A. T. & S. F. Ry., 41 I. C. C. 613, 614; Second Duluth Case, 46 I. C. C. 585, 590; Baltimore & Carolina S. S. Co. v. A. C. L. R. R., 49 I. C. C. 176, 179; Williams Co. v. P. Co., 50 I. C. C. 531, 536; Rates on Bunker Coal, 73 I. C. C. 62, 76; Cancellation of Combination Rule on Petroleum, 73 I. C. C. 146, 148; Iron and Steel Articles from New Orleans, 74 I. C. C. 146; Weir Smelting Co. v. Director General, as Agent, 74 I. C. C. 260; Proportional Rates on Grain and Grain Products, 74 I. C. C. 341; Proportional Rates on Coal to Iowa, 74 I. C. C. 729; Boston Wool Trade Asso. v. B. & A. R. R. Co., 77 I. C. C. 431; Petroleum and Petroleum Products between Points in Official Classifications Territory, 78 I. C. C. 162; Grain and Flaxseed from Twin Cities to Lake Superior Ports for Boat Movement Beyond, 78 I. C. C. 575; Lumber from San Francisco Bay Points When from beyond, 78 I. C. C. 760; Hocking Valley Ry. Co. v. Lackawanna Coal & I. Co., 224 Fed. 9.

VI. TARIFFS AND PUBLICATION.

See tariffs.

IMPORTANT CASES SINCE 1908

(a) Where interstate proportional or reshipping rates are named on shipments originating beyond reshipping or transit points such rates are applicable only in case the inbound charges are based on the inbound interstate rate. Kansas City Board of Trade v. A. T. & S. F. R. R., 69 I. C. C. 185, 190.

ALL OTHER CITATIONS

Crescent Coal & Mining Co. v. C. & E. I. R. R. Co., 24 I. C. C. 149, 155; Greater Des Moines Committee v. Director General, 60 I. C. C. 403, 407; Bell Lumber Co. v. Director General, as Agent, 63 I. C. C. 225, 228.

VII. REPARATION.

IMPORTANT CASES SINCE 1908

(a) Proportional rate assailed found unreasonable. Reparation denied, due to failure of complainant to attack through rate. Boston Wool Trade Asso. v. B. & A. R. R. Co., 78 I. C. C. 178, 186.

PROTECTIVE SERVICE

See Facilities and Privileges §10½; Perishable Freight; Precooling; Refrigeration; Ventilation.

IMPORTANT CASES SINCE 1908

(a) The railroads are solely and dir-

ectly responsible for the protective service, even when performed through the agency of a carline company, and the question of justice or injustice to a separate entity does not enter in. Perishable Freight Investigation, 56 I. C. C. 449, 464.

(b) The essential governing principle in determining the extent to which protective service might be required and the rates that should be charged for the same, is that one carrier may not be made to suffer for the shortcomings of another. Perishable Freight Investigation, 56 I. C. C. 449, 464.

(c) In many respects protective service against heat or cold is closely intermeshed with the freight haulage service. It is not unlawful to secure compensation for all or any part of the protective service through the line haul rate on perishable freight, and that no presumption exists that compensation is not secured in this way. Perishable Freight Investigation, 56 I. C. C. 449, 465.

(d) It was evident it was not the intent to prohibit the carrier, if it wished to do so, from regarding the haulage of the freight and incidental protection against heat or cold as one combined transportation service for which a single charge might be made, or from treating certain elements of the protection in this way and making a separate charge for others which could be more readily segregated from the haulage service. Manifestly, the intent was merely to require where a separate charge was in fact levied, that it be published and filed, so that it might be uniformly available and uniformly applied without discrimination. In other words, while all charges must be separately stated, the statute does not make it lawful to secure compensation for the protective service by regarding it as an integral part of the service of transportation. Perishable Freight Investigation, 56 I. C. C. 449, 465.

(e) It is quite impossible to determine mathematically what weight has been given to any particular factor or that it has been given weight at all. The fact is not conclusive that the same rates are applicable whether or not protective tariff is afforded, for it is consistent with rate making practices to average the effect of such service on particular traffic, just as weather conditions throughout the year are averaged. No higher rates are charged in winter than in summer, although the cost of operation in winter is greater than in summer, at least in the northern territory. Nor is the fact conclusive that a rate or rating has remained unchanged for many years, for the increase in cost brought about by the development of protective service may have been offset by an increase in the volume of the traffic or a decrease in the cost of haulage, or both. Perishable Freight Investigation, 56 I. C. C. 449, 466.

(f) Undoubtedly the best means of ensuring full justice in dealing with proposals to establish separate charges for protective service where none has heretofore existed or covering elements of cost which have not been so covered hitherto, is to consider at the same time the level of the corresponding line haul rates. Perishable Freight Investigation, 56 I. C. C. 449, 466.

(g) Separate charges for protective service should not be established where none are now maintained, or covering elements of cost which have not hitherto been included, unless the carriers are prepared to justify as reasonable, if complaint be made, the increase which would result in the aggregate charge for haulage and protective service combined. Perishable Freight Investigation, 56 I. C. C. 449, 467.

(h) It is obvious that the carriers are fairly entitled to reasonable compensation for the protective service which they furnish, and if the conclusion be reached that such compensation is not now afforded by the line haul rates there are only two ways in which it can be obtained, one being to increase these rates and the other to establish separate charges. Perishable Freight Investigation, 56 I. C. C. 449, 480.

(i) Carriers are entitled to reasonable compensation for protective service they furnish, and if the conclusion be reached that such compensation is not afforded by the line haul rates, the only two ways in which it can be obtained are by increasing these rates or establishing separate charges. The latter system is deemed more equitable. Perishable Freight Investigation, 56 I. C. C. 449, 480, 481.

(j) An opportunity in protective service for conservation of carrier revenues and food products exists in the harvesting or manufacture of ice, methods and facilities used at icing points, loading

of freight and the proper encouragement of precooling, as well as in the construction and equipment of cars. Wastage in the service is a burden upon the country and can gradually be corrected. Perishable Freight Investigation, 56 I. C. C. 449, 489.

(k) There is a vast opportunity in protective service against both heat and cold for conservation not only of carrier revenues but of the food products of the nation. This opportunity exists in the harvesting or manufacture of ice, in the methods and facilities used at icing points, in the loading of the freight, and in the proper encouragement of precooling before shipment, as well as in the construction and equipment of the cars Perishable Freight Investigation, 56 I. C. C. 449, 489.

(l) Shipments moving under Carriers' Protective Service require much closer attention and supervision than do shipments moving under refrigeration, due to danger from overheating with resulting damage, and also risk of damage from gas and smoke. Perishable Freight Investigation, 56 I. C. C. 449, 533.

(m) Considerable risk attends Carriers' Protective Service, even with suitable equipment and reasonable transportation conditions, and is properly to be considered in estimating the cost of the service. Perishable Freight Investigation, 56 I. C. C. 449, 540.

(n) It is not reasonable to require the shipper, who is much better informed in regard to the characteristics of his freight than the carrier can be, to specify the kind of protective service he desires, and further, if he desires protective service against cold, to specify whether he desires Shippers' Protective Service or Carriers' Protective Service upon the northwest lines, if his shipment is to move either wholly or partly within that territory. Perishable Freight Investigation, 56 I. C. C. 449, 595.

(o) The value of protective service against cold to the shipper in insuring against loss and damage, to the carrier in stimulating traffic, and to the nation in conserving the food supply, makes it imperative that no individual railroad be permitted to hinder its further development. Heater Service for Fresh Fruits and Vegetables, 64 I. C. C. 283, 288.

(p) Proposed cancellation of note in rule of perishable protective tariff, which provides for saving of shipper's right to kind of protective service specified by him when carrier furnishes car of other type than that ordered, found not justified. There is no evidence that note has been misinterpreted or that it has been burdensome to carriers with respect to defending claims for loss and damage. On contrary, it is of benefit to carriers and informative to shippers. Rules for Protective Service on Perishable Freight, 83 I. C. C. 275, 277, 279, 281.

ALL OTHER CITATIONS

Perishable Fruit Investigation, 56 I. C. C. 449, 458, 462, 463, 476, 613, 481, 483, 614, 528, 432, 665, 536, 548, 669, 549, 615, 552, 558, 559, 562, 563, 564, 565, 566, 568, 593, 597, 603, 604, 605, 606, 608, 609, 598; Northern Potato Traffic Asso. v. B. & O. R. R., 61 I. C. C. 680, 688; Carnation Milk Products Co. v. A. T. & S. F. Ry. Co., 63 I. C. C. 60; American Fruit & Vegetable Asso., v. B. & A. R. R. Co. 68 I. C. C. 446; Protective Service on Perishable Freight, 81 I. C. C. 155, 160, 161.

PUBLIC INTEREST

See Blanket Rates §4; Evidence §44½; Panama Canal Act; Reasonableness of Rates §27¼;

PUBLIC RECORDS

See Evidence §44¾.

PULLMAN COMPANY

See Sleeping Car Companies.

QUARANTINE REGULATIONS

See Cars and Car Suply §32¼.

IMPORTANT CASES SINCE 1908

(a) A quarantine order by the director of agriculture, excluding from the state shipments of alfalfa from weevil-infested territory outside the state, pursuant to the Washington law, HELD not ineffectual for want of formal proclamation by the Governor, as authorized by section 3 after his approval thereof, where it was filed in the secretary of state's office, as required by section 2, and all the railroad companies of the state were furnished copies. State v. Oregon-Washington R. & Nav. Co. (Wash. 1924), 223 P. 600.

(b) A state may exclude from its territory, without specific inspection at the state line, all of any commodity brought from territory, which its duly constituted authority, pursuant to its law, has in good faith found so afflicted

with some blight or disease as will probably result in material injury, by infection, to a considerable part of property within the state, especially when it is a relatively large resource of the state. State v. Oregon-Washington R. & Nav. Co. (Wash., 1924), 223 P. 600.

RAIL-AND-WATER RATES

See Bill of Lading §3; Equalization §4 (3); Evidence §14 (4); Panama Canal Act; Port-to-Port Rates; Routing and Misrouting §6½; Water Carriers.

CASES 1887-1908

(a) Several railroads engaged in interstate commerce cross or touch a navigable river leaving a large space of territory along and near the river and between their lines that can be served only by steamboats, and in connection with steamboats these rail carriers carry freight to and receive it from this territory at points where they touch or cross the river respectively, but as to it they make through rates with only one line of steamboats and refuse to make such through rates with other steamboats on the river. HELD, the rail carriers may do this and it is not unjust discrimination or unlawful preference. Through rates and through billings are matters of agreement among carriers and the Commission has no power to compel them against their consent to enter into arrangements for through rates and through billing. Capehart v. L. & N. R. Co., 3 I. C. C. 278.

(b) Where there were two routes from the place of shipment to the place of destination, one much longer and much more expensive to operate than the other, the longer and more expensive being operated by one, while the more direct and less expensive route was over continuous lines operated by more than one common carrier. HELD, that the rate must be reasonable for the transportation by the shorter and less expensive route. A. S. Newland v. Northern Pacific R. R. Co., et al, 6 I. C. C. 131.

(c) Rail lines between St. Paul and Duluth are part of lake and rail routes to New York, and such lines, operating under through rates with the lake carriers, can not be heard to set up water carriage as competition via the lakes, in excess of the rates which they themselves make in furtherance of that competition. George Tileston Milling Co. v. N. P. R. Co., 8 I. C. C. 346, 356.

(d) On complaint that a rate of $1.61½ per 100 pounds on knit goods from New York and New York rate points via water and rail through Galveston, Tex., to Wichita, Kans., is unlawful, and with which is compared defendant's rate of $1.31 on that traffic through Wichita to Topeka, Kans. HELD, (1) that the difference in rates is justified by competition for traffic to Topeka which does not exist and apply with like force at Wichita; (2) that the rate to Wichita is not, under the circumstances, shown to be unreasonable. Johnston-Larimer Dry Goods Co. v. N. Y. & T. S. S. Co., 12 I. C. C. 58.

(e) Lake and Rail rates available eight months, influence as competitive rate extends through year. Johnston-Larimer Dry Goods Co. v. New York & T. S. S. Co., 12 I. C. C. 58.

(f) Complainant attacked class rates charged on knit goods from New York and New York rate points via water and rail through Galveston, Tex., to Wichita, Kans., as unreasonable. Rate charged to Wichita, Kans., $1.61½, through Wichita, to Topeka, Kans., $1.31. The difference in rates is justified by competition for traffic to Topeka which does not exist and apply with like force at Wichita. HELD, rate attacked not unreasonable, complaint dismissed. Johnston-Lartimer Dry Goods Co. v. N. Y. & T. S. S. Co., 12 I. C. C. 58.

(g) Complainant attacked lake and rail rates charged on grass twine matting and rugs from St. Paul, Minn., to Boston, Mass., via rail and water through Duluth, Minn., as unreasonable. There were no through rates via Duluth at the time of shipment and rate charged was 23c to Duluth and 39c beyond, whereas at the same time rate via Lake Michigan ports was 45c and all rail 49c. Shortly afterwards the through rates for the open season basis of 44c which subsequently became the rate via Lake Michigan ports. HELD, rate attacked unreasonable to extent it exceeded 45c, reparation awarded. American Grass Twine Co. v. C., St. P., M. & O. Ry., 12 I. C. C. 141.

(h) Complainant attacked as unreasonable and discriminatory rate of 41c charged by ocean and rail from Augusta, Ga., to New York on cotton piece goods. For a period of ten years prior to the filing of the complaint the rate was 37c.

The rates complained of are the result of concerted action of defendants but this fact alone does not warrant a finding of unreasonableness. The rates on the manufactured products are not greatly in excess of the rates on the raw material of which they are made, while the values of the former are much in excess of the value of the latter, and the expense of handling the goods is materially greater than that of handling the cotton. HELD, rates attacked not unreasonable, complaint dismissed. Warren Mfg. Co. v. Southern Ry., 12 I. C. C. 381.

(i) Complainant attacked as unreasonable class rates from Boson, Mass., and Providence, R. I., etc., rail and water, to Aiken, Graniteville, Langley and Blackville, S. C. It appears that class rates from north Atlantic ports were the same to a group of suburban mills as to Augusta, Ga., for ten or twelve years before the absorption of the S. C. & G. Ry. by the Southern; that subsequent to such absorption the long existing rates to these suburban points were increased by the concerted action of the carriers, though the mill group is still recognized on shipments in the opposite direction, and that this grouping system is still effective to the extent of classing together some of these suburban points which are as far apart as Augusta is from the nearest. It also appears that water lines by way of the Savannah River secure most of the freight of the heavy and bulky classes for these mills, and that a restoration of the Augusta rates to these suburban points would divert much of this traffic to the defendant lines and thus increase their revenue. HELD the rates to these suburban mill points in excess of those to Augusta are unjust and unreasonable. J. L. Quimby v. Clyde Steamship Co., 12 I. C. C. 392.

IMPORTANT CASES SINCE 1908

(j) As to whether a boat line or the rail line should publish a joint-rate tariff is a matter for the carriers themselves to determine and is of no concern to the Comission. Lake and Rail Rate Cancellation, 44 I. C. C. 745, 747.

(k) The Commission has never exercised jurisdiction over the individual or companies performing the intermediate services on lake cargo coal between the lower and upper lake ports going to interior points. Lake Cargo Coal Rates, 46 I. C. C. 159, 185.

(l) While rail-and-water rates have generally been lower than all-rail rates, there is no rate-making principle that requires such a relationship in all cases, nor that requires the Comission to condemn water-and-rail rates as unreasonable merely because they are on a higher basis than the all-rail rates between the same or adjacent points. Eastern Shore of Virginia Produce Exchange v. A. & St. L. R. R., 50 I. C. C. 436, 447.

(m) Fact that there is a water route affording a low rate from a given point to a certain destination does not justify the Commission in permitting the rail carrier to charge an unreasonable rate to that given point. Anaconda Copper Mining Co. v. Director General, 57 I. C. C. 723, 733.

(n) Portion of lake-and-rail rates accruing to water carriers not subject to the Commission's jurisdiction. National Supply Co. v. C., M. & St. P. Ry. Co., 57 I. C. C. 739, 741.

(o) The Commission has jurisdiction over the rail transportation which takes place wholly within a state on traffic moving to the ports by water from interstate or foreign points of origin. International Agricultural Corp. v. Director General, as Agent, 60 I. C. C. 726.

(oa) Contention that shipments delivered unrouted should have been forwarded via rail-water-and-rail routes at rates lower than those applied for the all-rail movement of the shipments. HELD: If a shipper desires his shipment to move via. a water-and-rail route that is cheaper than the all-rail route, he must in delivering it to the initial carrier specify such routing, otherwise it is understood that the shipment is to move via all-rail. Conf. Ruling 190. When the movement is all-rail, with certain exceptions, the initial carrier assumes the responsibility for the movement over the cheapest available route unless the consignor gives directions to the contrary. Conf. Ruling 214 (c). Schuhle's Pure Grape Juice Co. v. Director General, as Agent, 68 I. C. C. 485.

(p) Rail-and-lake on small-arms ammunition from Kings Mills, Ohio, via Cleveland, Ohio, to Duluth, Minn., found not unreasonable, but the participation of defendant Great Lakes Transit Corp., and the director general during Federal control, in joint rates from Bridgeport, and New Haven, Conn., to Duluth via

rail lines to Erie, Pa., or Buffalo, N. Y., and the Great Lake company beyond less than 11 cents lower than those maintained from Kings Mills found to result in undue prejudice in favor of Bridgeport and New Haven. Peters Cartridge Co. v. Director General, as Agent, 73 I. C. C. 311.

(q) It is not necessary to have the same rate by water as by rail to afford the two sets of carriers equality of opportunity from any given point of shipment. The slower service, the necessity for making arrangements for transshipment at the ports, the irregularity of ship movements, special requirements as to marking, and other considerations operate to the disadvantage of the water lines. Transcontinental Cases of 1922, 74 I. C. C. 48, 60.

(r) Section 500 of the Transportation Act, 1920, wherein it is declared the policy of Congress to foster and preserve rail and water transportation, was Congress' way of saying that the commission should follow a less liberal policy in dealing with departures from the long and short haul rule than had been followed in former years. Transcontinental Cases of 1922, 74 I. C. C. 48, 70.

(s) The commission is required to accord due observance to section 500 of the Transportation Act, 1920, which indicates the purpose of Congress to foster and preserve rail and water transportation. Transcontinental Cases of 1922, 74 I. C. C. 48, 70, 71.

(t) It clearly would defeat the intent of Congress to foster transportation by rail and water in full vigor if rail carriers were permitted, at practically little or no profit to themselves, to operate so as to deprive water carriers of traffic which the water carriers would naturally handle. Transcontinental Cases of 1922, 74 I. C. C. 48, 70, 71.

(u) That water transportation is cheaper than rail transportation is an elementary proposition. Crude Oil from Louisiana Points, 74 I. C. C. 623, 629.

(v) Whatever may be the case as between rail lines, joint rates over rail-and-water routes ought to be divided without regard to the extent to which rail carriers are short-hauled, and not upon a plan designed to discourage or render impracticable the use of such joint rates. U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 355.

(va) Routing instructions designated two roads "and connecting lines" but did not specify rate. Tariff under which charges assessed named certain steamship lines as participating carriers. Contention by complainant that such steamship lines are "connecting lines" under routing instructions given and that reparation be awarded to basis of rate that would have resulted from rail-and-water movement, not sustained. If complainant desired to have shipment move over cheaper rail-and-water route, it should have specified such routing to initial carrier. Schule's Pure Grape Juice Co., 68 I. C. C., 485. Shipment not misrouted. Zelnicker Supply Co. v. S. L. Ry. Co., 81 I. C. C., 189.

(vb) Equation of 3 miles of water haul to 1 mile by rail adopted as measure of rail-and-water rates. Reduced Rates from New York Piers, 81 I. C. C., 312, 323, 324.

(vc) Section 15 (a), paragraph (5) of the act, which authorizes "uniform rates upon competitive traffic which will adequately sustain all carriers engaged in such traffic," and section 5, which contemplates "uniform rates in movement of competitive traffic," are not construed as prohibiting differentials for rail-and-water routes under all-rail routes between same points. Reduced Rates from New York, 81 I. C. C., 312, 329.

(vd) Provisions of section 15, paragraph (3), of the Act, restricting commission's regulatory power over rates of water lines, is inapplicable to water lines owned, controlled, or operated by rail lines, which, by section 5, paragraph (11) of the Act, have same status as controlling railroad. That commission has same power to fix minimum rates over such water carrier as though it were an all-rail line was decided in Rail-and-Water Rates from Atlantic Seaboard 63 I. C. C., 267. Reduced Rates from New York Piers, 81 I. C. C., 312, 330.

(w) Morgan, Mallory and Southern lines, respondents, in conjunction with rail carriers operating from Texas ports, proposed to establish local, proportional, and joint commodity rates on roasted coffee, less carloads, by water and rail from New York and Philadelphia to Galveston, Houston and interior Texas points. Roasted coffee, less carloads, from Atlantic seaboard territory to Texas destinations, is subject to third and fourth class, dependent upon the method of packing, which are the bases generally applicable within, to and from south-

western territory. The proposed adjustment will result in less carload commodity rates substantially lower than the class basis. The water lines cannot control the all rail rates to the interior points of destination, and only for the reason that the rail carriers participate in the joint rate of 66c at the same time maintaining higher rates to the same points of destination could the 66c rate be said to subject shippers under the all rail rates to undue prejudice. HELD, proposed rates not unduly prejudicial or otherwise unlawful. Roasted Coffee from Atlantic Seaboard, 83 I. C. C. 131.

(wa) The commission has no power to prescribe minimum rates over a through route where one of the carriers is a water line, except where such water line is owned or controlled by a rail carrier. Roasted Coffee from Atlantic Seaboard, 83 I. C. C., 131, 134, 135.

(wb) Section 15 (3) of the act authorizes commission to establish through routes and joint rates applicable to transportation of property where one of the carriers is a water line. However by that same section and paragraph it is provided that commission shall not "have right to establish any route classification, or practice, or any rate, fare, or charge when transportation is wholly by water." Boston Wool Trade Asso. v. A. T. & S. F. Ry. Co., 83 I. C. C. 445, 449.

(x) Where goods transported under a joint water and rail rate were in fact unloaded from the vessel into the cars at a dock which made the total haul a greater distance than the haul by vessel alone, for which a greater rate was charged, the fact that the vessel could have been discharged at a dock nearer the point of destination, so that the haul would have been shorter, does not make the rate valid especially where the tariffs of the steamship company provided that cargoes would not be discharged other than at its regular landing place. Davis v. Parrington, 281 Fed. 10.

ALL OTHER CITATIONS

Coors v. S. P. Co., 18 I. C. C. 352, 353; Hartford & N. Y. Transp. Co. Joint Rates, 43 I. C. C. 417; Ohio Rail and Lake, 43 I. C. C. 525; Cannon Mfg. Co. v. S. Ry., 43 I. C. C. 625; West-bound Rail-and-Lake, 44 I. C. C. 424; Cotton to New England Points, 44 I. C. C. 441; Cham. of Comm. of La Crosse v. G. L. Transit Corp. 44 I. C. C. 506; Lake and Rail Cancellations. 44 I. C. C. 745, 749; Williston Mill Co. v. G. N. Ry., 45 I. C. C. 137; The Fifteen Per cent Case, 45 I. C. C. 303, 324; Allentown Portland Cement Co. v. M. & M. Transp. Co., 46 I. C. C. 492; Goodner Malone Co. v. M. O. & G. Ry., 45 I. C. C. 531; R. R. Com'rs. of Iowa v. A., T. & S. F. Ry., 46 I. C. C. 63, 65; Lake Charles Rice Milling Co. v. S. P. Co., 46 I. C. C. 661, 664; Buffalo Grain Cases, 46 I. C. C. 570, 582; Second Duluth Case, 46 I. C. C. 585, 590, 591; Natl. Utilization Corp. v. B & A. R. R., 47 I. C. C. 467; Charleston & Norfolk S. S. Co., 47 I. C. C. 365, 371; Larrowe Milling Co. v. Clyde S. S. Co., 49 I. C. C. 143; B. & C. S. S. Co. v. A. S. L. R. R., 49 I. C. C. 176, 180; Traffic Bureau of Knoxville, Tenn. v. B. & O. R. R., 49 I. C. C. 205, 215, 218, 220; Natchez Chamber of Commerce v. Y. & M. V. R. R., 49 I. C. C. 631; Toledo Produce Exch. v. N. Y. C. R. R., 50 I. C. C. 515; Eastern Shore of Virginia Produce Exchange v. W. M. Ry., 50 I. C. C. 60; Alexandria (La.) Chamber of Commerce v. Director General, 53 I. C. C. 687, 692; Seaboard By-Product Coke Co. v. Director General, 53 I. C. C. 598, 602; Coal Rates to the Northwest, 53 I. C. C. 590; Commercial Club of Detroit v. B. F. & I. F. Ry. Co., 53 I. C. C. 85, 88; Rates on Grain and Grain Products 56 I. C. C. 133, 140; New Bedford Board of Commerce v. Director General, 55 I. C. C. 274; Public Utilities Commission of Colorado v. A., T. & S. F. Ry., 55 I. C. C. 374; Keet & Roundtree Dry Goods Co. v. Director General, 55 I. C. C. 400; Cannon Mfg. Co. v. S. Ry., 56 I. C. C. 128; Rates on Grain and Grain Products, 56 I. C. C. 133, 141; Phelps Dodge Corp. v. Director General, 57 I. C. C. 714, 719, 720; Increased Rates, 1920, 58 I. C. C. 220, 489; Wexalbaum & Bro. v. Ocean Steamship Co., 59 I. C. C. 480; Lee Hardware Co. v. A., T. & S. F. Ry., 59 I. C. C. 728; Pacific Coast Shippers' Asso. v. Director General, 59 I. C. C. 133; Providence Fruit Produce Exchange v. Director General, 62 I. C. C. 179; Texas Carnegie Steel Assn. v. Director General, as Agent, 60 I. C. C. 726; Rates between Ohio River and Cumberland River Points, 61 I. C. C. 10; Smelter Products from Nevada and Utah, 61 I. C. C. 374; Texas Carnegie Steel Asso. v. Director General as Agent, 62 I. C. C. 253; Rail and Water Rates on Plaster, 62 I. C. C. 685; Rail and Water Rates from Atlantic Seaboard, 63 I. C. C. 267; Macon Chamber of Commerce v. N. Y., N. H. & H. R.

R. Co., 63 I. C. C. 327; Coffee from Galveston and other Gulf Ports, 64 I. C. C. 26, 32; Rates from Chicago via. Panama Canal, 68 I. C. C. 74; Kalbfleisch Corp. v. C. of Ga. Ry. Co., 68 I. C. C. 333; Grain Rates from Minnesota and Wisconsin 68 I. C. C. 665; Corona Coal Co. v. Secretary of War, 69 I. C. C. 389, 391, 392; American Cigar Co. v. Director General, 69 I. C. C. 159; Boots and Shoes from Boston, Mass., and Providence, R. I., to Petersburg, Richmond and South Richmond, Va., 73 I. C. C. 16; Boston Chamber of Commerce v. O. S. S. Co. of S., 73 I. C. C. 233; Peters Cartridge Co. v. Director General, as Agent, 73 I. C. C. 311; Du Pont de Nemours & Co. v. Director General, as Agent, 74 I. C. C. 191; U. S. War Department v. A. & S. Ry., 77 I. C. C. 317 Crown Williamette Paper Co. v. Director General, 78 I. C. C. 273; H. W. Garrow & Co. v. Director General, 78 I. C. C. 378; American Fruit & Vegetable Shippers' Asso. v. D. & A. R. R., 78 I. C. C. 381; Boston Wool Trade Association v. Clyde Steamship Co., 78 I. C. C. 411; Archendol Automobile Supply Co. v. A. S. R. R. Co., 78 I. C. C. 434; S. M. Bulley & Son v. Director General, as Agent, 78 I. C. C. 569; Detroit v. C. & O. Ry. Co., 77 I. C. C. 98; Marcus & Co. v. Director General, as Agent, 77 I. C. C. 244; Sash and Doors from Pacific Coast to New York, N. Y., 81 I. C. C. 279; Reduced Rate from New York Piers, 81 I. C. Rate from New York Piers, 81 I. C. C. 312; White Star Line v. N. Y. C. R. R. Co., 83 I. C. C. 473; Armacost & Company v. M. & M. T. Co., 88 I. C. C. 185; Oil, Oil Cake and Oil Cake Meal, 88 I. C. C. 421.

RAILROAD COMPETITION

See Competition; Discrimination §8 (3); §8 (4); Equalization of Rates §4 (2); Evidence §14 (3); Long and Short Hauls §4; §4¼; §9; Rail and Water Rates; Reasonableness of Rates §8; §8 (2); §27½; §37; Through Routes and Joint Rates §6.

RATE BREAKING POINTS

Basing Points and Lines.

RATES VIA COMPETING LINES

See Equalization of Rates §4 (2); Evidence §47; Reasonableness of Rates §27½; Reparation §11; Routing and Misrouting §5.

REASONABLE RATES

See Absorption of Charges IV; Advanced Rates IV; §7 (7); §17; Allowances V; Alternative Rates I; Any Quantity Rates I; Basing Points and Lines III; Bills of Lading VII; Blanket Rates II; IV; §3; §4; §5; §11; §12; Class Rates II; Classification V; §5; §17; Commodities Clause I; Commodity Rates II; III; Compress Companies and Charges II; §2; Demurrage §10½; Differentials IV; Distance Rates II; Division V; Electric Lines IV; Evidence §21½; Export Rates and Facilities V; Express Companies §10, IV; Facilities and Privileges VI; Import Traffic II; Interstate Commerce Commission V; Lighterage §2; §3; II; Long and Short Hauls §6⅞; Minimums §7; Narrow Gauge Railroad I; Passenger Fares and Facilities §2; §11; II; Pipe Lines §6; IV; Port-to-Port Rates; Precooling V; Proportional Rates IV; Reasonableness of Rates; Reconsignment III; Reduced Rates §4½; Refrigeration III; Released Rates IV; Reparation §2; Restricted Rates; Shrinkage Rates; Storage §2; Switch Tracks and Switching III; Tariffs §15; Telephone and Telegraph Companies II; Terminal Facilities §5; Through Routes and Joint Rates II; IV; Track Storage II; Water Carriers II; VI; Weights and Weignihg II; VII.

REASONABLENESS OF RATES

I. CONTROL AND REGULATION.
- §1. In general.
- §1½ Procedure in general.

II. ELEMENTS DETERMINING REASONABLENESS.
- §2. In general.
- §2½. Absorption.
- §3. Actions of state commissions.
- §4. Attractiveness of traffic.
- §5. Capitalization.
- §6. Car-mile or train-mile revenue.
- §7. Changed circumstances.
- §7¼. Combination of rates.
- §7½. Comparisons.
- §8. Competition.
  - (1) In general.
  - (1½) Market competition.
  - (2) Railroad competition.

(3) Rail-and-water competition.
(4) Water competition.
(5) Wagon or motor competition.
§8½. Concerted action.
§8¾. Congestion.
§9. Cost of service and operation.
§10. Distance.
§10½. Divisions.
§11. Earnings.
§12. Economical management.
§12½. Equalizing commercial condition.
§13. Equipment furnished.
§13a. Erroneous rate.
§14. Investment relying upon rate.
§15. Investment of carrier.
§15½. Loading.
§16. Long continued adjustment.
§16½. Low prior rate.
§17. Manufactured product.
§18. Mineral lands owned by carrier.
§18½. Motive of carrier.
§19. Natural advantages.
§20. Need for revenue.
§21. Obsolescence.
§22. Origin of traffic.
§23. Ownership or use of commodity.
§24. Paper rate.
§25. Past rates.
§26. Permanent improvements
§26½. Prior adjudication.
§27. Profits of shipper.
§27¼. Public interest.
§27½. Rate via competing route.
§27¾. Rate in opposite direction.
§28. Relativity of the rate.
§29. Reproduction value of road.
§30. Revenues of road.
§30½. Risk.
§31. Special service.
§32. Standard for carriers.
§32½. Subsequent reduction.
§33. Surplus.
§34. Terminal facilities.
§35. Time of changing rate.
§36. Ton-mile revenue.
§37. Two-line haul.
§38. Value of commodity.
§39. Value of service.
§39½. Valuation of carrier.
§40. Volume of traffic.
§40½. Wages.
§41. Weight.

I. CONTROL AND REGULATION.

See Control and Regulations.

§1. In General.

CASES 1887-1908

(a) The Commission has the power and duty to fix maximum rates in cases of complaints against rates as unjust, excessive and unreasonable. Murphy, Wasey & Co. v. Wabash R. Co., 3 I. C. C. 725, 727.

(b) The Act to Regulate Commerce expressly requires that transportation charges shall be reasonable, and empowers the Commission to enforce its provisions. Wherever the power of enforcing reasonable rates exists there must also exist the power to ascertain what is reasonable. The Commission is not restricted to finding that an existing rate is unreasonable and forbidding its continuance, but has the further authority to ascertain, order and enforce a rate that is reasonable. The power to determine and declare what is a maximum reasonable rate also results from those provisions of the Act which require the Commission to determine what reparation, if any, should be made by carriers to parties injured by their violations of law, and in cases of unreasonable rates the measure of reparation due to such a party is the difference between the rate actually charged and the reasonable rate which should have been charged. Perry v. Fla. Central & Peninsular R. Co., 3 I. C. R. 740.

IMPORTANT CASES SINCE 1908

(c) The Act creates a special administrative tribunal clothed with power to hear and determine causes of action involving a right which has long existed at common law, viz., the right to recover for an unreasonable transportation charge. The Act did not abrogate this common law right, and by the express language of section 22 the remedies already existing for its enforcement are saved. Where the special reme is lost by a subsequent act ousting the jurisdiction of the Commission, this does not affect the right of claimant to pursue his common law remedy. Hussey v. C. R. I. & P. Ry. Co., 13 I. C. C. 366, 368.

(d) Under the Hepburn amendment the Commission has jurisdiction over carriers engaged in the transportation wholly by railroad from one state to another, irrespective of "common control, management or arrangement," and the test of jurisdiction is not the arrange-

ment under which the freight is delivered, but rather the character of the transportation itself. Leonard v. K. C. S. Ry. Co., 13 I. C. C. 573, 578.

(e) Complainant attacked rates from Billings, Mont., to points in Wyoming on branch lines of defendant. HELD, that these branch lines traverse a new country, where transportation conditions are difficult and the volume of business comparatively small. These lines, however, are operated as part of a great and prosperous system; they are feeders to the main line and help to swell the revenue of that line. A part of any great railroad system might be selected, and, counting cost of operation and fixed charges, such part be shown to be unprofitable. This, however, would not truly indicate its value and profitableness as an integral part of the whole property. The fact that these branch lines, considered by themselves, fail to show large earnings does not justify the charging of unreasonable rates. Billings Chamber of Commerce v. C., B. & Q. R. R. Co., 19 I. C. C. 71, 75.

(f) The Commission is not a court of law. Its function is to apply the mandatory and restrictive provisions of the Act to stated conditions of fact. It must regard the problems presented from as many standpoints as there are public interests involved. The making of a rate is in ultimate analysis, the exercise of a taxing power on commerce. The reasonableness of a rate is to be determined by no mere mathematical calculation, though figures of cost and revenue must play a not inconsiderable part in arriving at a final judgement. The unrestricted power to make rates, however, should not rest in the hands of those whose tendency must be by reason of human nature to exact to the limit the highest return that can be procured. In Re Advances in Rates—Western Case, 20 I. C. C. 307, 315.

(g) It is doubtless true that in its control over the charges which railroads may make, the Commission exercises a power so extensive as to justify the broadest consideration of the economic and financial effects of its orders. By its decisions in the Abilene Cotton Oil case, 204 U. S. 426, and in the Illinois Central case, 215 U. S. 452, the Supreme Court has erected the Commission into what has been termed "an economic court," or to give it a more commonplace definition, but one of stricter legal analogy, a select jury to pass upon the reasonableness and justness of railroad rates, rules and practices. Within broad lines of discretion the courts regard the conclusions of the Commission on questions of fact as final. There is an appeal upon questions of law by the carriers to the courts, but unless a constitutional guaranty is violated the order of the Commission is final, provided, of course, the Commission does not overstep the jurisdictional limits placed upon it by the statute. And as to the shipper this tribunal is his one and only resort against injustice. In Re Advances in Rates—Western Case, 20 I. C. C. 307, 317.

(h) The Commission alone has the power to determine the reasonableness of a rate. In Re Advances in Rates—Western Case, 20 I. C. C. 307, 317.

(i) The Commission has power to determine the reasonableness of differences in rates on various commodities. In Re Advances of Coal to Lake Ports, 22 I. C. C. 604, 623.

(j) The first section of the Act declares that every unjust or unreasonable charge, or any part thereof, is unlawful. In Re Wool, Hides and Pelts, 25 I. C. C. 675, 676.

(k) In removing unreasonableness of rates and unjust discriminations the Commission must take into consideration the effect of a drastic reduction in the revenues of the carriers. The Mississippi River Case, 28 I. C. C. 47, 59.

(l) The experience of shippers and carriers in the past resulted in the enactment of the Act., and the law limits such principles of rate making, at least to the extent that the rates on the low grade commodities must be just and reasonable to all shippers, and not discriminatory. Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 282.

(m) However reluctant the Commission may feel to sanction changes in rates which tend to impair or destroy the value of investments made in expectation of their continuance, it cannot on that ground deny to carriers the right to charge rates which are just and reasonable. Chattanooga Log Rates, 35 I. C. C. 163, 168.

(n) The Commission will not refuse

to approve a rate basis which seeks merely to secure for the carriers a fair return in transportation charges on all tonnage actually hauled and to supplant a rate basis which has failed of this effect. Straw Rates from St. Louis to Anderson, Ind., 36 I. C. C. 30.

(o) The Commission has no power to substitute a new rate for a just and reasonable rate on the ground that it was a wise policy to do so, or that the railroad had so conducted itself as to be estopped in the future from being entitled to receive a just and reasonable compensation for the service rendered. S. P. Co. v. I. C. C. 219 U. S. 433, 443, 31 Sup. Ct. Rep. 288, 55 L. Ed. 283.

(p) It is not within the authority of the Commission to reduce rates not merely against the weight of the evidence produced to sustain them, but without anything substantial to warrant the conclusion reached or the reasons assigned therefor. L. & N. R. R. Co. v. I. C. C., 195 Fed. 541, 564.

(q) The authority granted the Interstate Commerce Commission under section 15 of the Act to prescribe reasonable rates does not confer absolute or arbitrary power to act on any considerations which the Commission may deem best for the public, the shipper, and the carrier. Its order must be based on transportation considerations. While it may give weight to all factors bearing either on the cost or the value of the transportation services, it must disregard as well the demand of the shipper for protection from legitimate competition, domestic or foreign, for unlimited markets, or for the enforcement of equitable estoppels arising from a justifiable expectation that past rates will be maintained, and the demand of the carrier for the maximum rate under which the traffic will move freely. A., T. & S. F. Ry. Co. v. I. C. C., 190 Fed. 591, 594.

(r) When the legislative power concerns the administrative affairs of the Commission, it may be delegated to an officer, or a board already existing or created for the purpose, and, when so delegated, the power may be as fully exercised as the legislature might have exercised it subject to any limitations imposed by the legislature itself. Under this rule the power vested in the Interstate Commerce Commission to fix rates for the future is constitutional. L. & N. R. R. Co. v. I. C. C., 184 Fed. 118, 122.

(s) Congress did not in the Act and its amendments intend to vest administrative authority in the courts in the matter of fixing rates, but on the contrary committed the power to and imposed the duty to ascertain facts and determine what is reasonable in regard to rates and charges in view of such facts on the Commission. L. & N. R. R. Co. v. I. C. C., 184 Fed. 118, 124.

(t) What rates, involved in a complaint before the Commission, should be, whether they should remain as fixed by the railroad company or whether there should be other rates, is a matter committed by the statute to the Commission to be settled by its opinion as to what is just and reasonable, and when so settled, its determination is binding, and is not subject to judicial review, unless it is made to appear that the Commission in making it has not merely erred in the exercise of its power, or has proceeded upon grounds and reasons which to a court might seem unsatisfactory, but has violated some distinct paramount right secured by the Constitution or otherwise vested in the carrier, or in the public. L. & N. R. R. Co. v. I. C. C., 184 Fed. 118, 128.

ALL OTHER CITATIONS

Holley Mathews Mfg. Co. v. Y. M. V. R. R. Co., 15 I. C. C. 436, 437; City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 414, 416; Morse Produce Co. v. C., M. & St. P. Ry. Co., 15 I. C. C. 334, 337; Washer Grain Co. v. M. P. Ry. Co., 15 I. C. C. 147, 156; Porter v. St. L. & S. F. R. R. Co., 15 I. C. C. 1, 5; Railroad Commission of Wisconsin v. C. N. W. Ry. Co., 16 I. C. C. 85, 89; M., K. & T. R. R. Co. v. I. C. C., 164 Fed. 645, 648, 647; Phila. & R. Ry. Co. v. I. C. C., 174 Fed. 687, 688; Anadarko Cotton Oil Co. v. A., T. & S. F. Ry. Co., 24 I. C. C. 327; St. Louis Blast Furnace Co. v. Va. Co., 24 I. C. C. 361; Lumber Rates from Memphis and Other Points to New Orleans, 27 I C. C. 471, 486; Wickwire Steel Co. v. N. Y. C. & H. R. R. Co., 27 I. C. C. 168, 169; Central Commercial Co. v. L. & N. R. R. Co., 27 I. C. C. 114, 115; Boston Chamber of Commerce v. A., T. & S. F. Ry. Co., 28 I. C. C. 230, 234; Board of Trade of Carrollton, Ga., v. C. of Ga. Ry. Co., 28 I. C. C. 154, 168; I. C. C. v. L. & N. R. R. Co.,

33 Sup. Ct. 185, 187, 227 U. S. 88; N. Y. Produce Exchange v. N. Y. C. & H. R. R. Co., 32 I. C. C. 212, 215; Railroad Commrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 642; Sulzberger & Sons Co. v. M., St. P. & S. S. M. Ry. Co., 40 I. C. C. 173, 174; Western Cement Rates, 48 I. C. C. 201, 252.

§1½. Procedure in General.

See Claims I; Procedure Before Commission.

II. ELEMENTS DETERMINING REASONABLENESS.

§2. In General.

CASES 1887-1908

(a) Where from Wabasha, the junction of the "narrow gauge" branch with the main line of defendant's railway, the distance over the main line northwest to Lake City is twelve miles, and to Red Wing twenty-nine miles and over the branch line the distance west from Wabasha to McCracken is eighteen and to Mazeppa fifty-two miles, and the distance north from Mazeppa to Red Wing by wagon road is twenty-two miles, and nearly the same to Lake City, and both are competitors with Mazeppa for the grain and other trade with the territory intervening; the distance from Chicago to Mazeppa being 392 miles from Red Wing, 369 miles from Lake City 352 miles, and to Milwaukee the distance is less than to Chicago by 107 miles and the complainant alleged that the discriminations made by the defendant against the locality of Mazeppa were unjust and sufficient to divert largely its grain business; that the excess charged of eight cents in the Mazeppa rates over Lake City and Red Wing rates was and, any difference or excess in such rates above two cents would be an undue preference in favor of Lake City and Red Wing and an unreasonable prejudice against Mazeppa in respect of the grain and other trade in which complainant was and is interested, and the only evidence in support of complainant's statement that the Mazeppa rate, now 12½ cents, is unreasonable, is afforded by comparison of this and other rates on the branch line with the Red Wing, Lake City and other rates on the River Division of the main line; the Commission declined to declare 12½ cents an unreasonable charge for the services rendered, or that a rate nearly a third lower than it had ever been previous to the Act to Regulate Commerce is unjust and unlawful of itself, or within the meaning of the first section of the said Act. Raymon v. Chic., Milwaukee & St. Paul R. Co., 1 I. C. R. 627.

(b) A variety of practical considerations must enter into making of freight rates and determine to a great extent whether rates are reasonable. Evans v. Oregon Railway Navigation Co., 1. I. C. R. 641.

(c) The length and character of the haul, the cost of service, the volume of business, the conditions of competition, the storage capacity and the geographical situation of the different terminal points are all elements of importance bearing upon the relative reasonableness of the respective charges for transportation. Boston Chamber of Commerce v. Lake Shore & M. S. R. Co., 1 I. C. R. 754.

(de) To determine the reasonableness and justness of any freight rate made by a railroad company, all the surrounding circumstances and conditions must be considered as well as the rights of the shipper, and if these circumstances and conditions are so compulsory or imperious that they fairly and justly exercise any controlling influence in the making of the rate, they cannot be disregarded in a proceeding in which the reasonableness and justness of the rate is presented for determination. Business Men's Asso. v. Chicago, St. P. M. & O. R. Co, 2 I. C. R. 41.

(f) The provision of the Act to Regulate Commerce, that all rates shall be just and reasonable, was intended for the protection of the general public, and not for that of the carrier against the action of its own officers or the action of rivals. Re Chicago, St. P. & K. C. R. Co. (Com.), 2 I. C. R. 137.

(g) The provisions in the Act that all rates shall be just and reasonable, was a provision for the protection of the general public, and not for the protection of carriers against the action of their own officers or against the action of rivals. The carriers were supposed to have means of self protection against unreasonably low rates in the power they had to make the rates themselves. Re Chicago, St. Paul & Kansas City R. Co., 2 I. C. C. 137, 147.

(h) The question of the reasonableness of rates is always a perplexing

one; a great variety of considerations are necessarily involved in each instance; theory and conjecture merely are not enough; a comparison of one isolated rate with another is not sufficient; the whole field must be considered in order to approximate justice, and at best the result can not be regarded as other than an approximation. Howell v. N. Y. L. E. & W. R. Co., 2 I. C. C. 162, 171.

(i) A prima facie case of unreasonableness of rates is not made out by showing that the rates for a certain commodity are higher in certain cases than certain other rates, and that they produce a large profit to the carrier. When a question of reasonable rates is presented, the whole subject would be laid open, with all the attending circumstances and relations. Howell v. N. Y., L. E. & W. R. R., 2 I. C. C. 162, 172.

(j) Rates that are just and reasonable from selected manufacturing points through the entire territory east of Missouri River and west of the Atlantic Seaboard, are prima facie just and reasonable from all other points in the same territory. Re Tariffs of the Trans-Continental Lines. 2 I. C. R. 202.

(k) To be reasonable the rate from Meridian to New Orleans should not exceed $1.50 per bale, compressed cotton. New Orleans Cotton Exchange v. Cincinnati, N. O. & T. P. R. Co., 2 I. C. R. 289.

(l) To protect the rights of shippers rates must be reasonable of themselves. They must be reasonable and equitable in their relation to prevent undue prejudice or disadvantage to any person or kind of traffic. New Orleans Cotton Exchange v. C., N. O. & T. P. R. Co., 2 I. C. C. 289, 293.

(m) Complainants have the right to be protected against unreasonable and unjust rates; but their reasonableness and justice must be determined not alone by the exigencies of complainants business but with due regard for the circumstances of the carrier as well. Rice Robinson & Witherop v. N. Y. & P. R. R., 2 I. C. C. 298, 300.

(n) A railroad company is under special obligation to give reasonable rates for its local business; but there are many influences which may affect through rates while not bearing upon local rates at all, or, if at all, in less degree. Lippman v. Illinois C. R. Co. (Com.), 2 I. C. R. 414.

(o) No presumption arises that a rate is reasonable from the mere fact that it has been put in effect; and when it is prima facie disproportionate or relatively unequal, the burden is on the carrier to justify its charges when challenged on those grounds. McMorran & Co. v. G. T. R. R. of Canada, 2 I. C. C. 604, 607.

(oa) In solving questions concerning the reasonableness of rates, the Commission will look at and consider every fact, circumstance and condition surrounding the traffic and of the service performed in its transportation, and if the competition of water carriers at any point is such as to be large, active, and of controlling force, the all-rail lines competing for the traffic at the same point may make rates that are reasonable and just, in view of such competition, and which will enable them to participate in the carriage of the traffic, and are not obliged to go out of the business and leave it as a monopoly to water carriers. New Orleans Cotton Exchange v. Illinois Central R. Co., 2 I. C. R. 777.

(p) The rates of forty-six cents per hundred pounds on grain and fifty-one cents on flour and meal between the grain region in Kansas and a large district in Texas are the same for distances shorter than two hundred and fifty and longer than eight hundred miles and are unreasonably high for the longer and grossly excessive and extortionate for the shorter distances. Rates and Charges on Food Products, 3 I C. R. 93.

(q) The charge of twenty cents on the hundred pounds of corn and oats from the Missouri River to Chicago, and five cents less to the Mississippi River, is excessive, and to be reasonable should not exceed seventeen cents to Chicago and twelve to the Mississippi River, east side. Rates and Charges on Food Products, 3 I. C. R. 93.

(r) The question of the reasonableness of a rate of charge for transportation by a railroad company is eminently a question for judicial investigation, requiring due process of law for its determination. Chicago, M. & St. P. R. Co. v. Minnesota, Minnesota R. & W. Com. (U. S. Sup. Ct.), 3 I. C. R. 209.

(s) If the company is deprived of the power of charging reasonable rates

for the use of its property, and such deprivation takes place in the absence of a judicial investigation, it is deprived of the use of its property, and, in effect, of the property itself, without due process of law and in violation of the Constitution of the United States. Chicago, M. & St. P. R. Co. v. State of Minn., 3 I. C. R. 209.

(t) A carrier does not and can not expect to receive equally remunerative rates from each of the different kinds of freight carried by it over its line. It is entitled to a fair, reasonable and just rate upon each of these; and what is a fair, reasonable and just rate depends upon a variety of considerations. Harvard Company v. Pennsylvania Co., 3 I. C. C. 257, 262.

(u) A common carrier cannot lawfully make unreasonable charges for his services nor unjust discrimination between his customers. Cook & Wheeler v. Chicago, R. I. & P. R. Co., 3 I. C. R. 383.

(v) A common carrier can not be required to move interstate traffic without the payment of reasonable charges for its service, and can exact only a reasonable charge from the traffic. The reasonableness of the charge may depend on a variety of considerations, and the relations of one article to another, or of one locality to another, may be among those considerations. Kauffman Milling Co. v. M. P. R. Co., 3 I. C. C. 400, 407.

(w) There is no unbending rule by which to determine what common carriers may reasonably charge for their services, and the reasonable rate must be ascertained from the facts of the particular case. To be reasonable, rates must be just, both to the parties immediately interested and to the public Coxe Bros. & Co. v. L. V. R. R. Co., 3 I. C. C. 460, 478.

(x) The requirement of the Statute that all rates shall be reasonable and just involves a consideration of the commercial value of the traffic, and implies that rates should be so adjusted that producers of traffic as well as carriers may carry on their pursuits successfully, if practicable for both and without injustice to the carrier. The public good requires what is plainly the spirit of the Law, that the transportation interests are not alone to be considered, but that in the just exercise of regulation care should be taken that the lawful and necessary occupations of citizens are not unjustly burdened. Delaware State Grange v. N. Y. P. & N. R. Co., 3 I. C. R. 554.

(y) The rates on wheat and barley of 50 and 56 cents per hundred weight, respectively, charged from Ritzville, Washington, to St. Paul, Minnesota, a distance of 1,576 miles, in view of the circumstances and conditions surrounding the traffic, are held not to be unreasonable. Buchanan v. Northern P. R. Co. (Com.), 3 I. C. R. 655.

(z) The increasing or diminishing volume of business, the market price of the articles to be transported, the relation of local to through freights, the articles of freight upon which the railroad must depend as compared with other roads transporting similar commodities through more populous communities, the development of competition, the opening of new lines of communication, the course of business which may concentrate empty cars at either terminus of the line, all have a bearing upon the making of reasonable rates. Buchanan v. N. P. R. Co., 3 I. C. C. 655, 658.

(aa) In passing upon the reasonableness of rates, the question whether they afford the carrier a proper return for the service rendered is to be considered as well as the result of the business to the shipper or producer of traffic. Laud v. South Carolina R. Co., 4 I. C. R. 205.

(bb) When the reasonableness or relative reasonableness of charges is challenged every material consideration which enters into the making of such charges including the apportionment thereof to connecting roads in a through line, is pertinent to the inquiry. James & Abbott v. C. P. R. Co., 4 I. C. C. 274, 281.

(cc) All charges made for any service in the transportation of any passengers or property, or for receiving, delivering, storing, or handling property, must under the Interstate Commerce Act be reasonable and just; and no discrimination can be made in rates, charges, or facilities. Cutting v. Florida R. & Nav. Co., (C. C. N. D. Fla.), 4 I. C. R. 424.

(dd) In the absence of some prohibition or restraint, common law or statutory, a common carrier may lawfully demand or contract for such compensa-

tion for carriage as he may be able to obtain, without regard to its unreasonableness. Swift & Co. v. Philadelphia & R. R. Co., 4 I. C. R. 633.

(ee) There is no hard and fast test which can be laid down to determine whether or not the rates of railroad freight charges established by the legislature are just and reasonable. Ames v. Union Pacific R. Co., 4 I. C. R. 835.

(ff) Under the 1st section of the Act to Regulate Commerce, the question may be made as to whether a given rate is, in and of itself, unreasonable and unjust. In the consideration of such a question rates to other places or points of shipment are unimportant, except as evidentiary circumstances; but where the conditions are similar, proof of rates charged by other roads is of great value. Interstate Commerce Commission v. L. & N. R. Co., 5 I. C. R. 656.

(gg) The terms "reasonable and just," "unreasonable or unjust," "undue or unreasonable preference or advantage," "undue or unreasonable prejudice or disadvantage in any respect whatsoever," as used in the statute, imply comparison of relative locations, of natural and acquired advantages, of the reasonableness of charges per se and in their relation to other rates on the various lines which serve competing localities, and consideration of all the facts and circumstances which affect rates to different communities. Daniels v. Chicago, R. I. & P. Ry. Co., et al, 6 I. C. C. 458.

(hh) The value of the goods, the cost of the services, and the degree of risk to the carrier, among other considerations, have an important bearing on the relation of the rates on different kinds of traffic, as well as the reasonableness of a rate on a specified article. Colorado Fuel & I. Co. v. Southern P. Co., 6 I. C. C. 488.

(ii) Upon complaints of unreasonable and unjust rates for the transportation of wheat from Walla Walla and Dayton, Wash., to Portland, Ore., and after investigation and consideration of all the facts and circumstances in each case. HELD, that the rates complained of were unjust and unreasonable; that reduced wheat rates put in force between said points during the pendency of these proceedings are still above reasonable and just charges for the service rendered; that the wheat rate from Walla Walla to Portland should not exceed 19½ cents per hundred pounds, or $3.90 per ton; and the rate for the somewhat longer distance from Dayton to Portland should not exceed 20 cents per hundred pounds, or $4.00 per ton. Complainant's claim for money reparation denied. Evans v. Union Pacific R. Co., 6 I. C. C. 520.

(jj) Complainant attacked as unjust and unreasonable rates on wheat from Walla Walla and Dayton, Wash., to Portland, Ore. Rate charged on wheat $4.70 per ton, distance from Walla Walla, 246 miles. In Milton Evans v. O. R. & N. R. Co., decided Dec. 3, 1887, the Commission found the rate charged unreasonable to extent it exceeded 23½ cents per 100 pounds during the grain season of that year with the further statement that the defendants were to make further reductions after the season had closed. The carriers did not take any affirmative action on their statement to that effect. HELD, rate attacked unreasonable to extent it exceeded 19½ cents from Walla Walla and 20 cents from Dayton, a longer distant point. Evans v. U. P. R. Co., 6 I. C. C. 520.

(kk) The charges of the Eureka Springs Railway Company between Seligman and Eureka Springs on first class goods to or from the Harrison district are 19 cents per 100 pounds, and on the business of Eureka Springs proper are 35 cents, with proportionate rates on all classes, which Eureka Springs rates are found to be unreasonable and unlawful. Cary v. Eureka Springs R. Co., 7 I. C. C. 286.

(ll) Freight rates from Chicago and other eastern points to Kearney, Neb., made by combining rates to and from Omaha, a point on the Missouri River, are not unreasonable in amount, and the evidence was insufficient upon the question whether such rates subject Kearney merchants to unlawful disadvantage. Gustin v. Atchinson, T. & S. F. R. Co., 8 I. C. C. 277.

(mm) Rates can not be said to be reasonable which are not reasonably remunerative to the carrier, and rates which do not pay their full proportion of operating expenses, fixed charges and reasonable dividends are not per se or in and of themselves reasonably remunerative. Board of Trade of Hampton, Fla., v. N. C. & St. L. R. Co., 8 I. C. C. 503, 524.

(mma) As a matter of general application, rates at Denver to or from the east, or to or from the Pacific Coast, ought not to be higher than those between San Francisco and other Pacific Coast terminals and the Missouri River or points east. Kindel v. Atchison, T. & S. F. R. Co., 8 I. C. C. 608.

(nn) A reasonable rate is the only remedy available to an independent coal operator competing with a railway owning most of the mines upon its system, where the carrier conducts its mining operations at a loss, and relies for its profit upon the revenue derived from the carriage of the product. McGrew v. Missouri P. R. Co., 8 I. C. C. 630.

(oo) There is no absolute rule by which the reasonableness of a rate can be determined. That depends upon competitive, commercial and operating conditions which are constantly varying. A conclusion eminently proper upon the facts of today would, perhaps, be entirely wrong tomorrow. The authority which is exercised by the Commission in the making of an order to cease and desist from charging a particular rate is rather administrative than judicial and in the nature of things of a continuing character. It would be most unfortunate both for the railway and the public and most illogical to apply to the exercise of that power the doctrine of res judicata. Cattle Raisers Asso. v. C., B. & Q. R. Co., 10 I. C. C. 83, 106.

(pp) The rate of 47 cents on sugar from New Orleans to Wichita is unreasonable. Lehman-Higginson Grocery Co. v. Atchison, T. & S. F. R. Co., 10 I. C. C. 460.

(qq) The test of the reasonableness of a rate is not the amount of profit in the business of the shipper or manufacturer, but whether the rate yields a reasonable compensation for the service performed. Carriers necessarily and justly participate in the prosperity of their patrons in the resultant enlargement of their own business. Central Yellow Pine Asso. v. I. C. R. R., 10 I. C. C. 505, 535.

(rr) The elements to be considered in determining the reasonableness of an entire system of rates are widely different from those involved in the question of the reasonableness of the rate upon a single commodity. Central Yellow Pine Asso. v. I. C. R. R., 10 I. C. C. 505, 539.

(ss) The rate of the St. Louis & San Francisco Railroad Company for the transportation in carload lots of snapped corn from Grove, I. T., to Paris, Tex., is excessive and unreasonable to extent it exceeds 21 cents per 100 lbs. H. B. Pitts & Son v. St. Louis & S. F. R. Co., 10 I. C. C. 684.

(tt) Upon the evidence as presented it does not appear that a rate of 62 cents per hundred pounds on "wool in the grease" from Philadelphia, Pa., to Ft. Wayne, Ind., is unreasonable. Weil v. Pennsylvania R. Co., 11 I. C. C. 627.

(uu) While the law requires all rates to be reasonable and just, and forbids unreasonable discriminations, it does not prescribe any measure or test of reasonableness in either case. It is manifest that the reasonableness of every rate or discrimination called into question must be determined and measured by the circumstances and conditions affecting the business. The potency of any particular fact, circumstance or condition in a given case is to such an extent dependent upon or modified by others, so that that which is of great importance in one case may be of minor consequence in another. It follows that it can not be required in reason that rates must in all cases be the same in both directions between the same points any more than they can be made on a strictly uniform mileage basis. Weil v. Pennsylvania R. Co., 11 I. C. C. 627, 629.

(vv) The rate of $1.75 per ton on anthracite coal and $1.40 per ton on bituminous coal from Superior, Wis., to Hastings, Minn., are unreasonably high, and should not exceed $1.50 per ton on anthracite and $1.25 per ton on bituminous coal. Hastings Malting Co. v. Chicago, M. & St. P. R. Co., 11 I. C. C. 675.

(vva) Complainant shipped 13 carloads of beer between January 20, 1901, and March 4, 1902, as through shipments over defendant's lines, from Milwaukee, Wis., to Woodward, Okla., upon 8 carloads of which he was charged a rate of 73 cents per 100 pounds, and upon 5 carloads 75 cents; whereas during the time of such shipments defendants' rates on beer from Milwaukee to Oklahoma City, Okla., more distant than Woodward, were only 53 cents per 100 pounds. It appears that the rate to Woodward was 53 cents in 1892 and up to March 1, 1899, while the rate to Oklahoma City was 76 cents in 1892,

which was reduced in 1893 to 53 cents, and so continued to 1899; and it also appears that on April 9, 1902, defendants reduced such rates to Woodward to 53 cents, where they have ever since remained. Upon all the facts and circumstances, HELD, that the rates charged upon complainant's shipments were unjust and unreasonable to the extent of $715.05, and that complainant is entitled to reparation in that amount. Cutler v. Atchison, T. & S. F. R. Co., et al, 11 I. C. C. 689.

(ww) Class rate of $3.80 per ton, **on brick, carloads, from Frederick, Md. to Elberon, N. J., 236 miles, unreasonable. Frederick Brick Works v. Northern C. R. Co., 12 I. C. C. 13.**

(xx) Ninety-six cents on cotton goods from producing points in Texas compared with 50 cent rate to Kansas City and St. Louis, and 55 cent rate to Omaha and Chicago, unreasonable. Johnston v. A., T. & S. F. R. Co., 12 I. C. C. 47.

(yy) Coal to Enid, Okla., from Henryetta District, Ind. Terr., 180 miles, of $1.95 for lump and $1.50 for slack, excessive and unreasonable. Johnson v. St. Louis & S. F. R. Co., 12 I. C. C. 73.

(zz) Coal to Enid, Okla., from San Bois District, Ind. Terr., 225 miles average distance, $2.10 per lump and $1.50 per slack, excessive and unreasonable. Johnston v. St. Louis & S. F. R. Co., 12 I. C. C. 73.

(3a) Rates per ton on coal, carloads, of $1.95 for lump and $1.50 for slack from the Henryetta District, Indian Territory, to Enid, Okla., 180 miles, over the St. Louis & San Francisco road, are excessive and unreasonable, and should not exceed $1.60 for lump and $1.25 for slack. Action of carrier in making effective March 31, 1907, rates of $1.65 for lump and $1.25 for slack is noted. Complainant is allowed thirty days to file statement of shipments under his claim for reparation, as to which claim the case is reserved. Johnston v. St L. & S. F. R. Co., 12 I. C. C. 73.

(3b) Rates per ton on coal, carloads, of $2.10 for lump and $1.50 for slack from the San Bois District, Indian Territory, to Enid, Okla., 225 miles everage distance, over the Fort Smith & Western and Denver, Enid & Gulf roads, are excessive and unreasonable, and should not exceed $1.85 for lump and $1.35 for slack. Reparation is denied. Johnston v. St. L. & S. F. R. Co., 12 I. C. C. 73.

(3c) Rates per ton on coal, carloads, of $1.65 for lump and $1.35 for slack from the Lehigh district, Indian Territory, to Enid. Okla., 235 miles, over the Missouri, Kansas & Texas and Denver, Enid & Gulf roads, are not, upon the evidence, excessive or unreasonable. Johnston v. St. L. & S. F. R. Co., 12 I. C. C. 73.

(3d) Rates per ton on coal, carloads, of $2.10 for lump and $1.40 for slack from the McAlester district, Indian Territory, to Enid, Okla., 290 miles, via the Missouri, Kansas & Texas and Denver, Enid & Gulf roads, are not, upon the evidence, excessive or unreasonable. Johnston v. St. L. & S. F. R. Co., 12 I. C. C. 73.

(3e) Complainant made shipment of **grass twine matting and rugs from St.** Paul, Minn., to Boston, Mass., via Duluth, over defendants' lines, upon which it was charged a rate of 62 cents per 100 pounds; this rate was a combination of a rail rate of 23 cents to Duluth plus a lake and rail rate of 39 cents from Duluth to Boston; at the date of the shipment lake and rail joint through rates via Duluth were not effective, but a rate via Lake Michigan ports of 45 cents per 100 and an all rail joint through rate of 49 cents were in force; HELD, that under the special and peculiar circumstances disclosed upon the record, the 62 cent rate on such shipment was unreasonable, and that the 45 cent rate in effect from St. Paul to Boston via Lake Michigan ports at the time of the shipment affords a reasonable basis for fixing the rate for the service rendered at the same amount. Amer. Grass Twine Co. v. C., St. P. M. & O. R. Co., 12 I. C. C. 141.

(3f) Rate of 81 cents on peaches from Macon and Atlanta, Ga., to Philadelphia and New York, and 78 cents to Baltimore and Washington, and refrigeration charge of 12½ cents per crate of 42 pounds, minimum carload 550 crates, unreasonable and unjust. Waxelbaum v. A. C. L. R. R. Co., 12 I. C. C. 178.

(3g) Defendants' rate of 28½ cents per 100 pounds for the transportation of wheat from Oklahoma City, Okla., to Gainesville and Fort Worth, Tex., found unreasonable and defendants required to establish in lieu thereof a rate of 20 cents to Gainesville and a rate of 22

cents to Fort Worth. Mitchell v. Atchison, Topeka & Santa Fe Ry. Co., 12 I. C. C. 325.

(3h) Shippers along the line of an interstate carrier are entitled to have their products moved in either direction at reasonable rates, and the Commission can not agree that a carrier may establish prohibitive rates on any commodity on the ground that it is not desirable traffic for that carrier. A. J. Poor Grain Co. v. C., B. & Q. Ry. Co., et al, 12 I. C. C. 418.

(3i) Rates of G., C. & S. F. Ry. Co. of 27 and 29 cents per 100 pounds of cotton seed in carloads from Marietta and Berwyn, Okla., respectively to Cleburne, Tex., are unreasonable, and should not exceed 16 and 18 cents per 100, respectively, and the joint rate of the G., C. & S. F. Ry. Co., and the St. L. S. W. Ry. Co. of Texas, of 45 cents per 100 pounds on cotton seed in carloads from Marietta, Okla., to Plano, Tex., is unreasonable and should not exceed 25 cents per 100 pounds. Pressley v. Gulf, Colo. & S. F. Ry. Co., et al, 12 I. C. C. 518.

IMPORTANT CASES SINCE 1908

(3j) The interstate rates of the country, having grown up under the operation of various forces and conditions and not on any consistent theory, must be dealt with by the Commission as it finds them; the Commission has no authority to establish general rate schedules; and, unless, therefore, the general result of all rates is to yield an undue revenue to the carrier, the Commission will not reduce a particular rate simply because it may think, in establishing the rate de novo as part of the general scheme that it ought to be somewhat lower or higher in proportion to others; the rate attacked must be so out of proportion as to be unreasonable, or must so discriminate as to be undue, or must be unlawful for some other special reason. Corn Belt Meat Producers' Assn. v. C., B. & Q. R. R. Co., 14 I. C. C. 376, 394.

(3k) Rates cannot be established to shut out foreign products. Florida Fruit & Vegetable Shippers v. A. C. L. R. R. Co., 14 I. C. C. 476, 502.

(3l) In publishing a rate or schedule of rates the carrier must act under section 1 of the Act, requiring rates to be reasonable and just. If it establishes a rate which is excessive, such rate is not lawful when its reasonableness is subsequently questioned upon complaint filed. While it is the legal rate—the rate that must be paid by the shipper and collected by the carrier because it is the published rate—the mere publication cannot make a rate lawful that is unreasonable and excessive. No rate can be lawful in the sense of being immune from attack with respect to past or future shipments if it be excessive and unreasonable in amount. Arkansas Fuel Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 95, 97.

(3m) The American railroad rate has always been recognized as covering the full service which the carrier gives—in furnishing the car, a proper place at which to load it, the conveyance of that loaded car, and its terminal delivery. The charge for these various services is not in America broken up into its component parts and a charge imposed for each, as in England. The rate, which it requires shall be published, is a complete rate which includes not only the charge for haul, but the charge for the use of the terminals at both ends of the line. Associated Jobbers of Los Angeles v. A., T. & S. F. Ry. Co., 18 I. C. C. 310, 314.

(3n) Rates should be so adjusted as to permit the widest possible competition. Andy's Ridge Coal Co. v. So. Ry. Co., 18 I. C. C. 405, 410.

(3o) Freight rates cannot be made solely with reference to the value of the article transported, or with reference alone to the loss and damage claims arising from transportation. The carrier is entitled to take into consideration the occupancy of its equipment and facilities, or in other terms, to charge for the service rendered. This charge for the service rendered may be tested relatively by means of the rate per ton mile, which is most helpful in connection with dense and heavy articles, or the value of the service and the reasonableness of the rate may be tested by means of the rate per car per mile, where articles of the same relative weight, density, direction and volume of movement are in question; but generally the ultimate test with the carrier itself must be the return for the occupation and use of its equipment and facilities. National Hay Ass'n. v. M. C. R. R. Co., 19 I. C. C. 34, 47.

(3p) The standard of the law by which the validity of any rate as affected by its amount is determined is

not more definite than that it must be reasonable and just. The test of reasonableness can be applied only by reference to and upon consideration of all pertinent facts, circumstances and conditions affecting the rate in effect at any particular time. In the nature of the case there can be no rule or process whereby the definite absolute maximum limit of reasonableness in the amount of a rate can be fixed with the certainty of a demonstration. Anadarko Cotton Oil Co. v. A., T. & S. F. R. R. Co., 20 I. C. C. 43, 49.

(3q) Carriers are presumed to act in good faith in initiating rates, and their rates cannot be condemned except upon investigation and full hearing. A rate reasonable in view of the circumstances and conditions when it is established may in course of time become unreasonable by virtue of changed circumstances and conditions. It is manifestly impracticable for the carriers or the Commission in such a case to determine at what exact time in the gradual process of changes the rate becomes unreasonable. Anadarko Cotton Oil Co. v. A., T. & S. F. R. R. Co., 20 I. C. C. 43, 50.

(3r) The railroad rates of this country have not been constructed, as a rule, upon any scientific basis, and this is especially true of the interstate rates. The traffic officials who have established these rates have generally done so without any special inquiry as to the total amount of revenue which ought to be produced, or as to the part of that burden which a particular commodity ought to bear. This Commission is called upon to deal with rates as they exist, and in so doing it ordinarily considers them not from the revenue standpoint, but rather from the commercial and traffic standpoint. At the same time it is now the settled law that there is a limit below which the revenue of railroads cannot be reduced by public authority, and if there were no such constitutional limitations it would, nevertheless, behoove every regulating body to permit the existence of such rate, when possible, as would yield just earnings to the railway The question of revenue is therefore fundamental and ever present in all considerations as to the reasonableness of railroad rates, although it may not be and seldom is, where single rates are presented, the controlling question. In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 248.

(3s) Railroads should be kept in a high state of efficiency and rates should be sufficient to permit this. In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 250.

(3t) The Commission must be conscious in its consideration of rate questions of their effect upon the policy of the railroads and ultimately upon the welfare of the state. This country cannot afford to have poor railroads, insufficiently equipped, unsubstantially built and carelessly operated. We need the best of service. Our railroad management should be the most progressive. It should have wide latitude for experiment. It should have such encouragement as would attract the imagination of both the engineer and the investor. Nevertheless it is likewise to be remembered that the government has not undertaken to become the directing mind in railroad management. The Commission is not the manager of the railroads. And no matter what the revenue they may receive there can be no control placed by the Commission upon its expenditure, no improvements directed, no economy enforced. Advances in Rates—Western Case, 20 I. C. C. 307, 317.

(3u) The legislature may not make rates so as to confiscate the carrier's' property. The carrier on the other hand may not make rates which are unjust to those who by economic necessity are compelled to employ its services. Advances in Rates—Western Case 20 I. C. C. 307, 347.

(3v) Once the comparative cost for various services is learned a schedule of rates may be made which will approach justice as between services. Supplement cost with scientific classification of freight giving their due to all the various factors such as value, bulk and hazard—especially to value—adding return for use of plant, and force is given to every factor which the Supreme Court has said should be considered in the fixing of rates for public utilities. Advances in Rates—Western Case. 20 I. C. C. 307, 362.

(3w) What the public is primarily interested in is the charge for the transportation service rendered, irrespective of the divisions of the rate, and if the rate itself is reasonable and just the

fact that it is unequally divided between the participating lines is not a basis for reduction. There may be many reasons why a particular carrier would be willing to accept a very small proportion of a joint rate in order to secure business, and it is within its rights in bargaining with its connections for tonnage so long as it does not undertake to haul one class of freight at rates so low as to thereby burden other traffic. Florida Mercantile Agency v. Penn. R. R. Co., 21 I. C. C. 85, 87.

(3x) The prohibition of the law is against charging differently for a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions. In Re Advances in Rates by Carriers Operating Between the Mississippi and Missouri Rivers, 21 I. C. C. 546, 552.

(3y) What is a reasonable freight rate cannot, strictly speaking, be the subject of agreement between carriers and shippers nor between carriers and the Commission. If in a given case, after hearing all that is to be said by the parties, the Commission is clearly of the conviction that the rates in effect are wrong, it is its duty to substitute for those rates others which it believes to be right. But it is not required to interfere unless clearly convinced that the schedule in effect is unlawful. Arlington Heights Fruit Exchange v. S. P. Co., 22 I. C. C. 149, 156.

(3z) A just and reasonable rate must be one which respects alike the carrier's deserts and the character of the traffic. The words "just and reasonable" imply the application of good faith and fairness, of common sense and a sense of justice to a given condition of facts. They are not fixed, unalterable, mathematical terms. Their meaning implies the exercise of judgement. In Re Advances on Coal to Lake Ports, 22 I. C. C. 604, 624.

(4a) While cost is an important element in determining the reasonableness of freight rates, it does not control, and a reasonable maximum rate is not ipso facto, only such a rate as pays a fixed distributing share of operating expenses. So long as freight is classified this cannot be, and the preservation of that classification calls for the exercise of "the flexible limit of judgement which belongs to the power to fix rates." L. & N. R. R. Coal and Coke Rates, 26 I. C. C., 20, 27.

(4b) While, in fixing reasonable rates and relative rate adjustments, distance must always be considered as bearing both upon the cost to the carrier in performing the service and the value of the service to the shippers, there are many other facts, such as density or sparsity of traffic over and along the lines of movement, comparative cost of construction and operation, and competitive conditions, which must be given weight. In some situations the other facts and conditions are so clearly uniform or similar that distance becomes the dominating factor in the relative adjustment of rates, while in others distance becomes, without limitations, a minor factor because of the dominating and controlling force of other facts and conditions. Union Tanning Co. v. S. Ry. Co., 26 I. C. C. 159, 164.

(4c) Shippers in general, whether jobbers, retailers, or direct consumers, are entitled to rates comparatively reasonable, class for class and commodity for commodity, with the rates of their competitors to the extent of the similarity in transportation conditions, where complainant attacks not only alleged discrimination between competing jobbers, but also the reasonableness per se of the rates. State of Kansas v. A., T. & S. F. Ry. Co., 27 I. C. C. 673, 688.

(4d) Act requires carriers to show affirmatively reasonableness of proposed advanced rates. Five Per Cent Case, 31 I. C. C. 351, 425.

(4e) It seems that a reasonable ore rate is one that takes into account both the lean years and the fat years. Lum v. G. N. Ry. Co., 33 I. C. C. 541, 555.

(4f) The breaking up of a rate for transportation into separate rates or charges for the individual services incident to the transportation is merely a different way of stating the former rate. National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co., 43 I. C. C. 392, 397.

(4g) Commercial considerations presented can not be regarded as controlling in determining the reasonableness of proposed rates for the service performed. New England Lumber Rates No. 2, 43 I. C. C. 641, 646.

(4h) To enable the Commission to prescribe reasonable rates the Congress has delegated to it a quasi legislative

or administrative power in the exercise of which there inheres necessarily and admittedly a wide but sound discretion aptly termed the "flexible limit of judgment which belongs to the power to fix rates." This "flexible limit of judgment" obtains equally whether the rate to be fixed is to apply as of the past, for the present or for the future. The discretion is just as wide and as broad in respect of a past as of a future rate, but in exercising the function the end to be attained in its exercise must be kept in mind. For the future the Commission is endeavoring to prevent a public wrong; as to the past it has to look only to the remedying of a private injury by awarding damages. The only effect of finding a rate attacked unreasonable or otherwise unlawful as of the past is to afford a basis upon which to predicate an award of damages. Moreover, section 16 of the Act provides "that if * * * the Commission shall determine that any party complainant is entitled to an award of damages," etc., it shall make an order directing the carrier to pay the complainant the sum to which he is entitled. Arlington Heights Fruit Exch. v. S. P. Co., 45 I. C. C. 248, 250, 251.

(4i) Because complainant is in an uneconomical transportation situation, placing him at a disadvantage compared with competitors who are under no necessity of backhauling their freight, is no reason why he is not entitled to all the benefits of reasonable and nondiscriminatory rates. Interstate Packing Co. v. C., M. & St. P. Ry., 45 I. C. C. 365, 368.

(4j) The misquotation of a rate affords no basis for a finding that the rate applied to a shipment is unreasonable. Lookout Point Mfg. Co. v. N. Y. C. R. R., 45 I. C. C. 539, 540.

(4ja) The admission of the carrier is not conclusive as to the reasonableness of a rate. Sunderland Bros. Co. v. C., B. & Q. R. R., 51 I. C. C. 21, 22.

(4k) Communities can not long prosper on rates which impair the ability of carriers to properly serve them, and carriers can not long prosper on rates which shackle the energies of the communities served. The adjustment must be reasonable and fair to both, and made to meet the traffic and transportation conditions which both encounter. Public Utilities Commission of the State of Colorado v. A., T. & S. F. Ry., 52 I. C. C. 439, 478.

(4l) Just as there are criteria by which the reasonableness of a rate may be measured, so there are tests whereby it may be determined whether a particular service is within the scope of a carrier's legal obligation. That a service such as spotting has been rendered for a long time under a transportation rate, is important evidence that the service was considered in arriving at the rate, and also of the carrier's obligation as to delivery. However, duration of time is not conclusive. United States Cast Iron Pipe & Foundry Co. v. Director General, 57 I. C. C. 677, 682, 683.

(4m) A prima facie presumption of reasonableness attaches to a rate that has been long voluntarily maintained. But the continuance of a given rate is not conclusive evidence of its reasonableness, and certainly the existence of a lower rate in the past, especially in view of the abrupt economic changes since the date when the lower rates were established, does not necessarily prove of value in ascertaining the reasonableness of rates in force during the period of federal control. Anaconda Copper Mining Co. v. Director General, 57 I. C. C. 723, 729.

(4n) The manifest intent of Congress was to repose in the Commission authority to provide the revenues found necessary to yield the specified return by considering the entire structure of rates, both state and interstate, and the aggregate value of the railroad property held for and used in the service of transportation without regard to state lines, and to protect interstate commerce against any undue, unreasonable or unjust discrimination. Intrastate Rates within the State of Texas, 60 I. C. C. 421, 426.

(4o) In exercising the power to prescribe just and reasonable rates under section 1 of the Act, the Commission is now required by section 15a to initiate, modify, establish, or adjust rates so that carriers as a whole or in designated rate groups will, under proper standards of operation, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportations. Rates on Grain, Grain Products, and Hay, 64 I. C. C. 85, 98.

(4p) The words "just and reasonable" are not fixed and unalterable

mathematical terms. Reparation as relating to increase of rates. 68 I. C. C. 5, 6.

(4q) To what extent a rate was and is unjust or unreasonable in a particular case is a question of fact, to be determined by the exercise of good judgment informed by experience, in the light of all the pertinent facts of record in that case. Reparation as relating to increase of rates, 68 I. C. C. 5, 8.

(4r) If the rate charged is unreasonable, the absence of a request for a reduction in the rate prior to the commencement of the movement is immaterial. Proctor & Gamble Co. v. A. N. R. R., 68 I. C. C. 121, 123.

(4s) Failure to adhere strictly to the terms of an order of the Director General does not invalidate the published rates. The controlling question is whether the published rates were unreasonable or otherwise unlawful. Rock Products Traffic League v. B. & O. R. R., 68 I. C. C. 146, 148.

(4t) Failure to strictly observe the terms of General Order 28 does not of itself impair the validity of the published rate. That fact affords no basis for determining whether or not the rates in issue are unreasonable. Continental Paper Co. v. Director General, 68 I. C. C. 162, 163.

(4u) The determination as to the reasonableness of a rate rests upon the facts and circumstances present in each case. Riverside Coal Co. v. Director General, 68 I. C. C. 205, 210.

(4v) The fact that provisions of G. O. 28 were not complied with does not establish the allegation of unreasonableness. Swift & Co. v. Director General, 68 I. C. C. 287, 289.

(4w) Section 15a, reasonably construed, contemplates the determination of a return which the carriers, collectively, or in rate groups, may attain over a period of time under rates adjusted from time to time with that object in view. The phrase "from time to time" does not mean that the Commission should adjust and readjust rates to meet business fluctuations. Whether carriers may be able to earn an aggregate net railway operating income equal to a fair return must depend to a large extent upon business conditions. Reduced rates, 1922, 68 I. C. C. 676, 680.

(4x) Section 15a imposes upon the Commission an affirmative duty to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. Reduced Rates, 1922, 68 I. C. C. 676, 680.

(4y) Because the yield on some railroad bonds has declined to something over 5 per cent it does not follow that a fair return should approximate that percentage. Reduced Rates, 1922, 68 I. C. C., 676, 681.

(4z) The fact that a utility may reach financial success only in time or not at all is a reason for allowing a liberal return on the money invested in the enterprise. Reduced Rates, 1922, 68 I. C. C. 676, 682.

(5a) The net income under accounting procedure of the Commission is to the stockholder a tax exempt income, and this fact should be considered in determining what return shall be deemed fair. Reduced rates, 1922, 68 I. C. C. 676, 683.

(5b) It is not the function of the Commission to deal with wage scales and it expresses no opinion as to what the rates of pay should be. But it must recognize the connection between necessary revenues and present relatively high operating expenses. Reduced Rates 1922, 68 I. C. C. 676, 689.

(5c) The Commission refuses to approve the imposition by carriers of conditions which would benefit one or a few shippers and which might, and perhaps would, correspondingly injure many others. National Wholesale Grocers Asso. v. Director General, 69 I. C. C. 669, 672.

(5d) The fact that rates were not published in strict conformity with G. O. 28 does not, of itself, establish unreasonableness. Tampa Gas Co. v. Director General, 73 I. C. C. 488, 490.

(5e) Contention that transportation service was a switching movement and that increases in switching charges were not contemplated by General Order No. 28 of the director general. HELD, whether or not charges assessed were authorized by that order, the fact is that they were published and were applicable charges, and it is immaterial, so far as the issue of their justness and reasonableness is concerned, whether the movement be designated a switching or line-haul service Minnesota Steel Co. v. Director General, as Agent, 73 I. C. C. 571, 573.

(5f) Without attempting to determine whether the terms of G. O. 28 were strictly observed, the lack of such observance does not establish the unreasonableness of the rates attacked. Atlas Portland Cement Co. v. Director General 74 I. C. C. 611.

(5g) Neither the approval by the Commission of a tariff rule for future application in all classification territories, nor its existence in Western territory when shipments moved, is proof of unreasonableness of charges assessed under the provisions of the rule as stated in official classification. Kissel Motor Car Co. v. G. T. Ry. Co., 74 I. C. C. 45, 46.

(5h) The reasonableness of any rate can not be gauged solely by comparing its earnings with average earnings on all traffic. It it could be ,the inevitable result would be to bring all rates to a common level. Indiahoma Refining Co. v. Director General, as Agent, 74 I. C. C. 392, 393.

(5i) Where there is no proof that rates are unreasonable, they can not be so regarded merely because they may have been published under a misinterpretation of prior triffs. Clark & Sons v. Director General, as Agent, 74 I. C. C. 396, 398.

(5j) Where a rate is attacked as unreasonable, the primary question for determination is the reasonableness of the rate charged and not the particular basis on which it was constructed. Sligo Furnace Co. v. C. & N. W. Ry. Co., 74 I. C. C. 463, 464.

(5k) The lack of strict observance of the terms of General Order No. 28 of the director general does not establish unreasonableness. Nor does it follow that rates are unreasonable merely because they were subsequently reduced in the course of a rate adjustment Atlas Portland Cement Co. v. Director General, as Agent, 74 I. C. C. 611.

(5l) The manner in which the rates were arrived at is only one of the elements to be considered in determining whether or not they were just and reasonable. Theo. Marcus Co. v. Director General, 77 I. C. C. 244, 246.

(5m) It would be in interminable task to take every station in an extensive territory and attempt to fix just and reasonable rates on each commodity from and to each of such stations. The best that can be done in a task of this kind, in a territory where operating conditions have been found to be substantially similar for rate making purposes, is to strike at the main cause of the inequalities and discriminations found to exist and to place each point and community, so far as is consistent with other valid considerations, upon the basis with relation to its competitors to which it is entitled by virtue of its location. Memphis-Southwestern Investigation, 77 I. C. C. 497.

(5ma) Contention that decisions of United States Supreme Court make it mandatory upon commission to fix rates at amounts which will not exceed operating costs and a reasonable return upon value of property and that therefore cost of service must be test of reasonableness of rates on traffic earning more than prescribed return, not sustained. Neither directly nor by implication do those cases lay down principle that rates must be fixed at amounts to yield not more than a stated percentage of value of carrier's property used in transportating a particular class of traffic. On contrary, such doctrine is distinctly disapproved in 236 U. S., 585, and in cases of this character the commission has never followed cost-of-service principle exclusively. Adriatic Mining Co. v. C. & N. W. Ry. Co., 78 I. C. C. 611, 631, 632.

(5n) Though by no means the sole consideration, rate level necessary to move a commodity is an element to be weighed in determining a reasonable rate thereon. Penick & Ford v. Director General, as Agent, 80 I. C. C. 152, 156.

(5o) Unreasonable charges are unlawful, and it is the Commission's duty to afford relief when it finds that charges exacted were unreasonable. A tariff rule which is reasonable in its general application may operate unreasonably under certain conditions. It is impossible to draft a general rule which will meet justly all possible contingencies. Hawkins Sons v. Director General, as Agent, 80 I. C. C. 225, 227.

(5p) A rule which is reasonable in its general application may operate unreasonably under certain conditions. It is impossible to draft a general rule which will meet justly all possible contingencies. Hawkins & Sons v. Director General, as Agent, 80 I. C. C. 225, 227.

(5qr) Complainant attacked rates charged on 23 carloads of petroleum products during the period April 22, 1918, to Sparrows Point, Md., as

unreasonable from Philadelphia, Shipments moved via the Pennsylvania, complainants refinery being served by the B. & O., and Pennsylvania, distance to Baltimore via Pennsylvania 110 miles and to Sparrows Point, 115 miles; by the B. & O., 97.5 and 99.1 miles. Prior to April 4, 1918, the rates had been the same between these points via both routes in both directions, 7.5c. Following 45 I. C. C. 303, Pennsylvania increased its rate to 8.5c and erroneously increased the rate in the opposite direction to 9c, the B. & O. increasing its rates to 8.5c in both directions. Under G. O. No. 28, the Pennsylvania rate was 11.5c and B. & O. 10.5c. Subsequently the rate in both directions and via both lines became 13c. The allegation was only supported by evidence of the rate in the opposite direction. HELD, rate attacked not unreasonable, complaint dismissed. Atlantic Refining Co. v. Director General, 80 I. C. C. 298.

(5s) The fact that the rates paid represented a high percentage of increase over the rates formerly charged is not proof that the rates paid were unreasonable. French Battery & Carbon Co. v. C. N. W. Ry., 80 I. C. C. 344, 346.

(5t) Where proceeding is one of investigation into reasonableness and propriety of rates, the Commission's determination might well result in fixation of rates related to each other, although relationship of rates as such may not have been contemplated within issue as originally presented. Rates on Grain, Grain Products, and Hay, 80 I. C. C. 365.

(5u) When a complaint challenges reasonableness of rates on a commodity from only one point and it appears that because of competitive or other practical trade or transportation considerations, a number of points of origin of the particular commodity are grouped under common rates, and also that there is a relationship between two or more groups, the commission must give due consideration to other factors than rate comparisons. Atlas Portland Cement Co. v. B. & M. R. R., 44 I. C. C. 416, 422. Perry County Coal Corp.v. E. St. L. & S Ry. Co., 80 I. C. C. 711, 715.

(5ua) The statute does not cast burden upon a protestant to prove unreasonableness of a proposed rate. Class Rates to and from Delaware Division Stations, 81 I. C. C., 758, 761.

(5v) Failure to adhere strictly to the terms of a preliminary order of the director general can not be construed as defeating the validity of the rate concerned, nor does it prove the unreasonableness of such rate. Peninsular Portland Cement Co. v. Director General 83 I. C. C. 10, 12.

(5w) If the usual tests of the reasonableness of rates, approved by experience and valid in law, show the basis as to any commodity to be too high it would be the duty of the Commission under Section 1 of the Act to find such rates to be unreasonable. Kansas Public Utilities Commission v. A., T. & S. F. R. Co., 83 I. C. C. 105, 115.

(5wa) Every shipper is entitled to a reasonable rate, whether class or commodity, on his traffic and where he attacks the reasonableness of a rate, whether class or commodity, that issue must be decided upon its merits. Armacost & Co. v. M. & M. T. Co., 88 I. C. C. 185, 187.

(5wb) The mere fact that rates attacked are greater percentages of the class rates than are commodity rates of the contemporaneous rates between other points does not establish the unreasonableness of the rates attacked. Radiant Glass Co. v. Director General 88 I. C. C. 295, 297.

(5wc) A rate may be reasonable and yet not reach the maximum or minimum limit of reasonableness. Valley Camp Coal Co. v. B. & O. R. R., 88 I. C. C. 682, 685.

(5x) Prior to the Transportation Act carriers were at liberty to establish or maintain unreasonably low rates providing they were not discriminatory. Keogh v. Chicago & N. W. Ry. Co., 43 Sup. Ct. 47, 49.

(5y) A public utility is only entitled to earn a fair return on the property investment. City of Cincinnati v. Public Utlities Commission, (Ohio, 1922), 137 N. E. 36.

ALL OTHER CITATIONS

Holcomb-Hayes Co. v. I. C. R. R. Co., 13 I. C. C. 16, 19; Washburn-Crosby Co. v. L. V. R. R. Co. 13 I. C. C. 39; Washburn Crosby Co., v. Erie R. R. Co., 13 I. C. C. 38; Thornton & Chester Milling Co. v. D. L. & W. R. R. Co., 13 I. C. C. 37; Ocheltree Grain Co. v. St. L. & S. F. R. R. Co. 13 I. C. C. 46, 47; North Bros. v. St. L. & S. F. R. R. Co. 13 I. C. C. 152; Haines v. C. R. I. &

P. Ry. Co., 13 I. C. C. 214, 219; Amarillo Gas Co. v. A. T. & S. F. Ry. Co., 13 I. C. C. 240, 242; Hydraulic Press Brick Co. v. St. L. & S. F. R. R. Co., 13 I. C. C. 342, 348; Detroit Chemical Works v. Erie R. R. Co. 13 I. C. C. 363, 365; Detroit Chemical Works v. Northern Central Ry. Co. 13 I. C. C. 357, 362; Goff-Kirby Coal Co. v. B. & L. E. R. R. Co. 13 I. C. C. 383, 385; Masurite Explosive Co. v. Pittsburg & Lake Erie R. R. Co. 13 I. C. C. 405, 408; Winter's Metallic Paint Co. v. A. T. & S. F. Ry. Co. 13 I. C. C. 409; Frye & Bruhn v. N. P. Ry Co. 13 I. C. C. 501, 510, 511, 512; White Water Farms Co. v. P. B. & W. Ry Co., 13 I. C. C. 526, 527; Merti v. C. M. & St. P. Ry. Co. 13 I. C. C. 513. 515; Topeka Banana Dealers' Asso. v. St. L. & S. F. R. R. Co., 13 I. C. C. 620, 626, 630; Thompson Co. v. I. C. R. R. Co. 13 I. C. C. 657, 664; Burgess v. Transcontential Freight Bureau, 13 I. C. C. 668, 675, 678; Erie Preserving Co. v. L. S. & M. S. Ry. Co., 14 I. C. C. 118; William Patten v. Wisconsin Central Ry. Co. 14 I. C. C. 189, 190; National Petroleum Ass'n. v. Ann Arbor R. R. Co., 14 I. C. C. 272, 281; Okla. & Ark. Coal Traffic Bu. v. C., R. I. & P. Ry. Co., 14 I. C. C. 216, 221; Marshall Oil Co. v. C. & N. W. Ry. Co., 14 I. C. C. 210, 213; Pacific Coast Lumber Co. v. N. P. Ry. Co., 14 I. C. C. 51, 58; Struthers Cells Co. v. Penn R. R. Co. 14 I. C. C. 291; Fosters Bros. Co. v. D. S. S. & A. Ry. Co. 14 I. C. C. 232, 234, 235, 246; Greater Des Moines Committee, Inc., v. C. G. W. Ry. Co., 14 I. C. C. 294, 295; Corn Belt Meat Producers' Ass'n. v. C. B. & Q. Ry Co., 14 I. C. C. 376, 395; Kansas City Cotton Mills Co. v. C. R. I. & P. Ry. Co., 14 I. C. C. 468, 471, 475; Florida Fruit and Vegetable Shippers' Protective Ass'n. v. A. C. L. R. R. Co., 14 I. C. C. 476, 493, 495, 498, 510, 503, 505, 508; Platten Produce Co. v. C. M. & St. P. Ry. Co. 14 I. C. C. 512, 513; Fort Wayne Rolling Mill Co. v. N. Y. C. & St. L. R. R. Co., 14 I. C. C. 514, 515; Gamble-Robinson Commission Co. v. N. P. Ry. Co., 14 I. C. C. 523, 524; Slimmer & Thomas v. C. St. P. M. & O. Ry. Co., 14 I. C. C. 525, 526, 577, 578; Hayden & Westcott Lumber Co. v. G. & S. I. R. R. Co., 14 I. C. C. 537, 539, 540; Hartville Celery Growers Ass'n. v. Pacific Express Co., 14 I. C. C. 590, 593; Kansas City Ass'n. v. M. P. Co., 14 I. C. C. 597, 600; Reed v. C. M. & St. P. Ry. Co. 14 I. C. C. 616, 618; Chamber of Milwaukee v. C. R. I. & P. Ry. Co., 15 I. C. C. 460, 466, 465; Kent Co. v. N. Y. & H. R. R. Co., 15 I. C. C. 439, 441; City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 416; Black Mountain Coal Land Co v. So. Ry. Co., 15 I. C. C. 286, 295; Pacola Refining Co. v. M., K. & T. Ry. Co., 15 I. C. C. 29, 31; Naylor & Co. v. Lehigh Valley R. R. Co. 15 I. C. C. 9; Central Commercial Co. v. M. J. & K. C. R. R. Co. 15 I. C. C. 25, 26; Oklahoma v. C. R. I. & P. Ry; Co. 15 I. C. C. 42, 43; Red Wing Linseed Co. v. C. M. & St. P. Ry Co., 15 I. C. C. 47; Menefee Lumber Co. v. T. & P. Ry. Co., 15 I. C. C. 49, 51; Foster Lumber Co. v. A. T. & S. F. Ry. Co. 15 I. C. C. 56, 57, 58; North Brothers v. C. M. & St. P. Ry. Co. 15 I. C. C. 70, 71; Beatrice Creamery Co. v. I. C. R. R. Co. 15 I. C. C. 109, 124, 132; Parlin Orendorff Co. v. St. L. I. M. & S. Ry. Co. 15 I. C. C. 145, 146; Pilant v. A. T. & S. F. Ry. Co., 15 I. C. C. 178, 180; Payne v. M. L. & T. R. R. & S. S. Co., 15 I. C. C. 185, 191; Barrett Mfg. Co. v. L. & N. R. R. Co., 15 I. C. C. 196, 198; Hafey v. St. L. & S. F. R. R. Co., 15 I. C. C. 245, 246; Bowman-Kranz Lumber Co. v. C. M. & St. P. Ry. Co. 15 I. C. C. 277, 278; Mountain Ice Co. v. D. L. & W. R. R. Co. 15 I. C. C. 305, 316, 321, 322; Cooper & Son v. C. B. & Q. R. R. Co. 15 C. C. 324, 325; Penrod Walnut & Veneer Co. v. C. B. & Q. R. R. Co. 15 I. C. C. 326, 327; Carstens Packing Co. v. N. Y. Ry. Co., 15 I. C. C. 431; Darbyshire-Harvie Iron & Machine Co. v. El Paso & S. W. R. R. Co. 15 I. C. C. 451, 452; American Refractories Co. v. E. J. & E. R. R. Co. 15 I. C. C. 480, 481; Nollenberger v. M. P. Ry. Co. 15 I. C. C. 595, 597; Farley & Loetscher Mfg. Co. v. C. M. & St. P. Ry. Co., 15 I. C. C. 602, 603. Kurtz v. Penn. Co., 16 I. C. C. 410; Davis & West Jersey Express Co., 16 I. C. C. 214, 216; Railroad Commission of Wisconsin v. C. & N. W. Ry. Co., 16 I. C. C. 85, 88, 90, 91; Chilton Malting Co. v. C. M. & St. P. Ry. Co. 16 I. C. C. 10, 11; Tully Grain Co. v. F. S. & W. R. R. Co. 16 I. C. C. 28, 29; MacGillis & Gibbs Co. v. C. & E. I. Ry. Co. 16 I. C. C. 40, 41; Voorhees v. A. C. L. R. R. Co., 16 I. C. C. 42, 43, 45, 48; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 16 I. C. C. 56, 69, 70, 71; Valley Flour Mills v. A. T. S. F. Ry. Co. 16 I. C. C. 73, 77, 79; Arkansas Fuel Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 95, 99; Ozark Fruit Growers Ass'n. v. St. L. & S. F. R. R. Co., 16 I. C. C. 110, 114, 134, 137, 141; De Camp Bros. v. S. Ry. Co. 16 I. C. C. 144, 145; La Salle Paper

Co. v. Michigan Central R. R. Co. 16 I. C. C. 149, 150; Lagomarcino-Grupe Co. v. I. C. R. R. Co., 16 I. C. C. 151, 152; New Albany Box Co. v. I. C. R. R. Co. 16 I. C. C. 315, 317; American Agriculture Chemical Co. v. E. R. R. Co. 16 I. C. C. 320, 321; Chicago Lumber & Coal Co. v. T. S. Ry. Co. 16 I. C. C. 323, 331, 334; Winn Parish Lumber Co. v. A. S. Ry. Co. 16 I. C. C. 335; Windsor Milling & Elevator Co. v. C. & S. Ry. Co., 16 I. C. C. 349; Snook & Janes v. A. T. & S. F. Ry. Co. 16 I. C. C. 356, 357; Swift & Co. v. C. & A. R. R. Co. 16 I. C. C. 426, 429; 442, 443; Hewit & Conner v. C. & N. W. Ry. Co., 16 I. C. C. 431, Sunderland Bros. Co. v. C. & N. W. Ry. Co. 16 I. C. C. 433, 434; Darbyshire & Evans v. El Paso & S. W. R. R. Co. 16 I. C. C. 435; Carstens Packing Co. v. C. M. & St. P. R. R. Co. 16 I. C. C. 469, 470; Mineral Point Zinc Co. v. Wabash R. R. Co. 16 I. C. C. 440, 441; Hutchinson & Co. v. Central of Georgia Ry. Co., 16 I. C. C. 523, 524; Crane Brothers v. C. H. & D. Ry. Co., 16 I. C. C. 571; Black Horse Tobacco Co. v. I. C. R. R. Co., 17 I. C. C. 588, 592; Old Dominion Copper & Smelting Co. v. P. R. R. Co., 17 I. C. C. 309, 312; Memphis Cotton Oil Co. v. I. C. R. R. Co., 17 I. C. C. 313, 318; Boys Commercial Club v. Adams Express Co., 17 I. C. C. 115, 121; Muskogee Traffic Bureau v. A., T. & S. F. Ry. Co., 17 I. C. C. 169, 172; Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co., 17 I. C. C. 30, 35; Monarch Milling Co. v. C. R. I. & P. Ry. Co. 17 I. C. C. 1; American Trust & Savings Bank v. C. M. & St. P. Ry. Co. 17 I. C. C. 11; Hood & Sons v. Delaware & Hudson Co. 17 I. C. C. 15, 20; Memphis Freight Bureau v. K. C. S. Ry. Co., 17 I. C. C. 90, 91; Sligo Iron Store Co., v. A. T. & S. F. Co., 17 I. C. C. 139, 142, 143; Bartles Oil Co. v. C. M. & St. P. Ry. Co. 17 I. C. C. 146, 148; Central Commercial Co. v. A. T. & S. F. Ry. Co., 17 I. C. C. 166; Metropolitan Paving Brick Co. v. Ann Arbor R. R. Co., 17 I. C. C. 197, 206, 208; Baer Bros. Mercantile Co. v. M. P. Ry. Co., 17 I. C. C. 225, 227; James & Abbott Co. v. B. & M. R. R. 17 I. C. C. 273, 275; Partridge Lumber Co. v. Gt. N. Ry. Co. 17 I. C. C. 276, 279; Connelly-Fanning Co. v. P. R. R. Co., 17 I. C. C. 283, 285; William v. C. N. Q. Ry. Co. 17 I. C. C. 304; Mill Creek Cannel Coal Co. v. Coal & Coke Ry. Co. 17 I. C. C. 306; Vanness v. L. & H. R. Ry. Co., 17 I. C. C. 307; Crowell & Spencer Lumber Co. v. T. & P. Ry. Co., 17 I. C. C. 333, 334. Pabst Brewing Co. v. C. M. & St. P. Ry. Co., 17 I. C. C. 359, 360; Harmon & Co. v. L. S. & M. S. Ry. Co., 17 I. C. C. 394; Ottumwa Commercial Ass'n. v. C. B. & Q. R. R. Co., 17 I. C. C. 413, 415; White Bros. v. A. T. & S. F. Ry. Co. 17 I. C. C. 416; Mountain Ice Co. v. D. L. & W. R. R. Co. 17 I. C. C. 447, 449, 456; Armour Car Line v. S. P. Co. 17 I. C. C. 461, 462; Bunch & Tussey v. Nevada, C. & O. Ry., 17 I. C. C. 490; Merle Co. v. N. Y. C. & H. R. R. Co. 17 I. C. C. 475, 477; Corn Belt Meat Producers Ass'n. v. C. B. & Q. R. R. Co., 17 I. C. C. 533, 535, 537, 539; Florida Fruit & Vegetable Ass'n. v. A. C. L. R. R. Co. 17 I. C. C. 552, 556, 557, 558, 563, 564, 565, 566, 568; Merle Co. v. N. Y. N. H. & H. R. R. Co. 17 I. C. C. 585, 586; Virginia-Carolina Chemical Co. v. St. L. I. M. & S. Ry. Co., 18 I. C. C. 1, 2; Stone-Ordean-Wells Co. v. S. P. Co. 18 I. C. C. 13, 14; Stone-Ordean-Wells Co. v. S. P. Co., 18 I. C. C. 15, 16; Anderson-Tully Co. v. C. R. I. & P. Ry. Co., 18 I. C. C. 48, 50; Commercial Club of Omaha v. S. P. Co. 18 I. C. C. 53, 56; Memphis Freight Bureau v. St. L. S. W. Ry. Co., 18 I. C. C. 67, 70; Rainey & Rogers v. St. L. & S. F. R. R. Co., 18 I. C. C. 88, 90; Lauer & Son v. S. P. Co. 18 I. C. C. 109, 110; Wheeling Corrugating Co. v. B. & O. R. R. Co. 18 I. C. C. 125, 126; Okerson v. Pennsylvania R. R. Co., 18 I. C. C. 127; Continental Lumber & Tie Co. v. T. & P. Ry. Co. 18 I. C. C. 129, 131; Milburn Wagon Co. v. L. S. & M. S. Ry Co. 18 I. C. C. 144, 145, 146; Roach & Seeber Co. v. C. M. St. P. Ry Co., 18 I. C. C. 172, 173; Wells-Higman Co. v. St. L. I. M. & S. Ry. 18 I. C. C. 175, 176; Southern Timber & Land Co. v. S. P. Co. 18 I. C. C. 232, 233; Galvin Grain Co. v. C. & N. Ry. Company 18 I. C. C. 241; Delray Salt Co. Detroit, Toledo & Ironton Ry. Co. 18 I. C. C. 245, 246, 247, 268, 269; Rotsted Co. v. C. & N. W. R. R. Co., 18 I. C. C. 257, 258; Consumers' Ice Co. v. A. T. & S. F. Ry. Co., 18 I. C. C. 277, 278; Maris v. S. P. Co. 18 I. C. C. 301, 302, 306, 307; Coors v. S. P. Co., 18 I. C. C. 352, 353; Sackett Plaster Board Co. v. B. R. & P. Ry. Co., 18 I. C. C. 374, 375; Clark Co. v. Buffalo & Susquahanna Ry. Co. 18 I. C. C. 380, 381; Chatfield Mfg. Co. v. L. & N. R. R. Co., 18 I. C. C. 385, 387; National Refining Co. v. A. T. &

S. F. Ry. Co. 18 I. C. C. 389, 390; Colorado Bedding Co. v. C. B. & Q. R. R. Co., 18 I. C. C. 401, 402; Ocheltree Grain Co. v. T. & P. Ry. Co. 18 I. C. C. 412, 413; Rose, Boston & Albany R. R. Co. 18 I. C. C. 427, 429; Sunderland Bros. Co. v. C. B. & Q. R. R. Co., 18 I. C. C. 512, 513; Bash Fertilizer Co. v. Wabash R. R. Co. 18 I. C. C. 522, 526; William Plummer Co. v. N. P. Ry. Co. 18 I. C. C. 530, 531; Wilburine Oil Works Ltd., v. Penn. R. R. Co. 18 I C. C. 548, 549; League of Southern Idaho Commercial Clubs v. O. S. L. R. R. Co., 18 I. C. C. 562, 565; Pankey & Holmes v. Central New England Ry. Co. 18 I. C. C. 578, 579; Texas Grain & Elevator Co. v. C. R. I. & P. Ry. Co. 18 I. C. C. 580, 581; National Rolling Mill Co. v. B. & O. S. W. R. R. Co., 18 I. C. C. 604, 605; Receivers' and Shippers' Ass'n. of Cincinnati v. C. N. O. & T. P. Ry. Co., 18 I. C. C. 440, 458, 447; Williamette Pulp & Paper Co. v. N. P. Ry. Co., 18 I. C. C. 388; Ponchatoula Farmers' Ass'n. v. I. C. R. R. Co., 19 I. C. C. 531, 515; Morgan Grain Co. v. A. C. L. R. R. Co. , 19 I. C. C. 460, 470; Billings Chamber of Commerce v. C. B. & Q. R. R. Co., 19 I. C. C. 71, 75; Chappelle v. L. & N. R. R. Co., 19 I. C. C. 56, 59; Lull Carriage Co. v. C., K. & S. Ry. Co., 19 I. C. C. 15, 16; Harmon & Co. v. L. S. & M. S. Ry. Co., 17 I. C. C. 394; Commercial Club of Salt Lake City v. A., T. & S. F. Ry. Co., 19 I. C. C. 218, 225; Maritime Exchange v. Penn. R. R. Co., 21 I. C. C., 81, 84; Carolina Portland Cement Co. v. A., T. & S. F. Ry. Co., Unrep. Op. 454; Goodman Mfg. Co. v. P. B. & W. R. R. Co., Unrep. Op. 362; Baer Bros. Mercantile Co. v. M. P. Ry. Co., 19 I. C. C. 18; Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co., 19 I. C. C. 20; Waco Freight Bureau v. H. & T. C. R. R. Co. 19 I. C. C. 22; Newding v. M. K. & T. Ry. Co., 19 I. C. C. 29; National Hay Ass'n v. M. C. R. R. Co., 19 I. C. C. 34, 38; Northern Lumber Mfg. Co. v. T. & P. Ry. Co. 19 I. C. C. 54; Chappelle v. L. & N. R. R. Co. 19 I. C. C. 56, 59; Pennsylvania Smelting Co v. L. & N. R. R. Co. 19 I. C. C. 60; Felton Grain Co. v. U. P. R. R. Co., 19 I. C. C. 63; Ohio Foundry Co. v. P. C. C. & St. L. Ry. Co. 19 I. C. C. 65, 67; Billings Chamber of Commerce v. C. B. & Q. R. R. Co., 19 I. C. C. 71; Unrep. Op. 211; Millar v. N. Y. C. & H. R. R. R. Co., 19 I. C. C. 78; Gamble Robinson Commission Co. v. St. L. & S. F. R. R. Co. 19 I. C. C. 114; Austin Lumber Co. v. St. L. I. M. & S. Ry. Co., 19 I. C. C. 141; Craig Lumber Co. v. Virginian Ry. Co. 19 I. C. C. 144; Saginaw & Manistee Lumber Co. 19 I. C. C. v. 119; Bott Bros. Mfg. Co. v. C. B. & Q. R. R. Co., 19 I. C. C. 136; Arlington Heights Fruit Exchange v. S. P. Co., 19 I. C. C. 148; Commercial Club of Omaha v. C. & N. W. Ry Co. 19 I. C. C. 156; Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co., 19 I. C. C. 218, 223, 224, 226; Railroad Commission of Nevada v. S. P. Co., 19 I. C. C. 238; Maricopa County Commercial Club v. S. F. P. & P. Ry. Co. 19 I. C. C. 257, 258; Traffic Bureau of Merchants Exchange v. S. P. Co., 19 I. C. C. 259; Portland Chamber of Commerce v. O. R. R. & Nav. Co., 19 I. C. C. 265; Fisk & Sons v. B. & M. R. R. 19 I. C. C. 299, 301, 302; Corporation Commission of North Carolina v. N. & W. Ry. Co., 19 I. C. C. 303, 311, 312; Louisiana Central Lumber Co. v. C. B. & Q. R. R. Co. 19 I. C. C. 333; Florida Cotton Oil Co. v. C. of Ga. Ry. Co. 19 I. C. C. 336, 339, 342; Commercial Club of Omaha v. B. & O. R. R. Co., 19 I. C. C. 397; Chicago Car Lumber Co. v. L. & N. R. R. Co. 19 I. C. C. 438; Ionia Wagon Co. v. A. G. S. R. R. Co. 19 I C. C. 458, 459; Johnson Co. v. Clyde S. S. Co., 19 I. C. C. 512; Ponchatoula Farmers Ass'n. v. I. C. R. R. Co., 19 I. C. C. 513; Sligo Iron Store Co. v. U. P. R. R. Co. 19 I. C. C. 527, 528, 529; Hydraulic-Press Brick Co. v. St. L. & S. F. R. R. Co., 19 I. C. C. 532, 554; Northern Anthracite Coal Co., v. D. L. & W. R. R. Co., 19 I. C. C. 549; Du Mee Sons & Co. v. A. T. & N. R. R. Co., 19 I. C. C. 575; Cleary Bros. Co. v. C. & N. W. Ry. Co., 19 I. C. C. 588; Breese-Trenton Mining Co. v. Wabash R. R. Co., 19 I. C. C. 598; McCaull-Dinsmore v. C. M. & St. P. Ry. Co. 20 I. C. C. 15; Anadarko Cotton Oil Co. v. A. T. & S. F. R. R. Co. 20 I. C. C. 43; American Cigar Co v. P. & R. R. R. Co. 20 I. C. C. 81, 82; Fullerton Powell Hardware Lumber Co. v. V. & S. W. Ry. Co. 20 I. C. C. 86; Beekman Lumber Co. v. I. C. C. R. R. Co. 22 I. C. C. 98, 99; Cobb v. N. P. Ry. Co., 20 I. C. C. 100, 103; Stacy & Sons v. O. S. L. R. R. Co., 20 I. C. C. 136, 138; Henderson Iron Works & Supply Co. v. T. & P. Ry. Co. 20 I. C. C. 159; Browne Grain Co. v. G. C. & S. F. Ry. Co. 20 I. C. C. 163; Carstens Packing Co v. S. P. Co., 20 I. C. C. 165, 166; Maxwell v. W. F. & N. W. Ry. Co. 20 I. C. C. 197, 199;

Danville Brick Co. v. C. & N. W. Ry. Co., 20 I. C. C. 239, 241; Morrell & Co. v. C. B. & Q. R. R. Co., 20 I. C. C. 400; Browne Grain Co. v. F. W. & R. G. Ry. Co., 20 I. C. C. 410; Scheuing v. L. & N. R. R. Co.. 20 I. C. C. 550, 552; Meridan Fertilizer Factory v. V. S. & P. Ry. Co., 20 I. C. C. 554; National Refining Co. v. C. C. C. St. L. Ry. Co. 20 I. C. C. 649; In Re Western Case 20 I. C. C. 307, 315, 317, 347, 355, 356, 362; In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 250, 263, 253, 280; National League of Commission Merchants v. A. C. L. R. R. Co., 20 I. C. C. 132, 135; Board of Trade of Chicago v. A. C. R. R. Co., 20 I. C. C. 504, 507; Oregon & Washington Lumber Mfrs. Ass'n v. S. P. Co., 21 I. C. C. 389, 392; Auto Vehicle Co. v. C. M. & St. P. Ry. Co., 21 I. C. C. 286, 288; Texas Brewing Co. v. A. T. & S. F. Ry. Co., 21 I. C. C. 171, 175; Maritime Exchange v. Penn. R. R. Co., 21 I. C. C. 81, 84; Florida Merchantile Agency v. P. R. R. Co. 21 I. C. C. 85; Blumenstine v. P. & R. Ry. Co. 21 I. C. C. 90, 92; In Re Advance in Rates the Transportation of Lacomotives and Tenders. 21 I. C. C. 103; Diamond Coal & Coke Co., v. B. & O. R. R. Co., 22 I. C. C. 129, 130; Meeker & Co. v. L. V. R. R. Co., 21 I. C. C. 129, 162; Racine Sattley Co. v. C. M. & St. P. Ry. Co. 21 I. C. C. 164; Ontario Iron Ore Co. v. N. Y. C. & H. R. R. Co. 21 I. C. C. 204; Victor Mfg. Co. v. S. Ry. Co., 21 I. C. C. 222; Holden Co. v. L. & N. R. R. Co. 21 I. C. C. 237; Radinsky v. O. S. L. R. R. Co. 21 I. C. C. 243; Investigation and Suspension Docket No. 23, 21 I. C. C. 252; Sawyer & Austin Lumber Co. v. St. L. I. M. & S. Ry. Co. 21 I. C. C. 464; Carolina Portland Cement Co. v. C. & O. Ry. Co., 21 I. C. C. 533, 535; Youngblood v. T. & P. Ry. Co. 21 I. C. C. 569, 572; Arizona Ry. Commission v. Wells, Fargo & Co. 21 I. C. C. 571; Merchants Freight Bureau v. M. P. Ry. Co. 21 I. C. C. 573; Lovelace Lumber Co. v. L. & N. R. R. Co. 21 I. C. C. 585; Southern Bitulithic Co. v. C. C. C. & St. L. Ry. Co., 21 I. C. C. 588, 590; Baker Mfg. Co. & N. W. Ry. Co., 21 I. C. C. 605, 606, 607; Signor Tie Co. v. I. & G. N. R. R. Co. 21 I. C. C. 615, 617; Baxter & Co. v. G. S. & F. Ry. Co. 21 I. C. C. 647, 649; In Re Advance on Coal to Lake Ports, 22 I. C. C. 604, 625; Milburn Wagon Co. v. L. S. M. S. Ry. Co., 22 I. C. C. 93, 100; Florida Fruit & Veg. Shippers v. A. C. L. R. R. Co., 22 I. C. C. 11. 18; Diamond Coal & Coke Co. v. B. & O. R. R. Co., 22 I. C. C. 129, 130; Atchinson v. St. L. I. M. & S. Ry. Co., 22 I. C. C. 131, 134; Redpath-Vawter Chautauqua System v. A. T. & S. F. Ry. Co., 22 I. C. C. 135, 137; Gamble Robinson Commission Co. v. St. L. I. M. & S. Ry. Co., 22 I. C. C. 138, 140; Sunderland Bros. Co. v. M. P. Ry. Co., 22 I. C. C. 141, 143; Arlington Heights Fruit Exchange v. S. P. Co., 22 I. C. C. 149, 154; In Re Unreasonableness of Rates on Meats 22 I. C. C. 160, 165, 166, 168; Sanguinetti v. I. C. R. R. Co., 22 I. C. C. 185, 186; Maricopa County Commercial Club v. P. & E. R. R. Co., 22 I. C. C. 218, 220; Maricopa County Commercial Club v. Phoenix & Eastern R. R. Co., 22 I. C. C. 221; Chamber of Commerce of Augusta, Ga., v. S. Ry. Co., 22 I. C. C. 233, 238; Minneapolis Traffic Association v. C. B. & Q. Ry. Co., 22 I. C. C. 259, 260; Empson Packing Co. v. Colorado Midland Ry. Co., 22 I. C. C. 268, 270, 271; Maricopa County Commercial Club v. Maricopa & Phoenix R. R. Co., 22 I. C. C. 279; Acme Cement Plaster Co. v. St. L. & S. F. R. R. Co., 22 I. C. C. 283; El Dorado Oil Mills & Fertilizer Co. v. C. R. I. & P. Ry. Co., 22 I. C. C. 286; Mich. Hardwood Mfrs. Ass'n. v. Trans. Freight Bureau, 22 I. C. C. 287; Wells-Higman Co. v. St. L. I. M. & S. Ry. Co. 22 I. C. C. 288; Southern Atlantic Waste Co. v. S. Ry. Co., 22 I. C. C. 293; Albree v. B. & M. R. R. Co. 22 I. C. C. 303, 327; Humboldt Refining Co. v. M. K. & T. Ry. Co. 22 I. C. C. 363; Vulcan Iron Works Co. v. A. T. & S. F. Ry. Co. 22 I. C. C. 377; Maricopa County Commercial Club v. S. P. Co., 22 I. C. C. 429; Gill Co. v. O. R. R. N. Co., 22 I. C. C. 442; Southwestern Missouri Millers Club v. M. K. & T. Ry. Co., 22 I. C. C. 442, 427; Houston Packing Co. v. T. & N. O. R. R. Co., 22 I. C. C. 456; Chattanooga Feed Co. v. A. G. S. R. R. Co. 22 I. C. C. 480, 485; International Agriculture Corporation v. L. & N. R. R. Co. 22 I. C. C. 488, 493, 494; California Pole & Piling Co. v. S. P. Co., 22 I. C. C. 507; Leggett & Platt Spring Bed Co. v. M. P. Ry. 22 I. C. C. 513, 515; Lindsay Brothers v. L. S. & M. S. Ry. Co. 22 I. C. C. 516; Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co., 22 I. C. C. 548, 555; Republic Metalware Co. v. E. R. R. Co. 22 I. C. C. 565, 567; Wisconsin Pulp Wood Co. v. Gt. N. Ry. Co., 22 I. C. C. 594, 595; Baltimore Chamber of Commerce v. B. & O. R.

R. Co., 22 I. C. C. 596; In Re Advances on Potatoes 23, I. C. C. 69, 70; Priesmeyer Shoe Co. v. C. & A. R. R. Co. 23 I. C. C. 78; National Mohair Growers' Ass'n. v. A. T. & S. F. Ry. Co. 23 I. C. C. 180, 181; Ferguson Sawmill Co. v. St. L. I. M. & S. Ry. Co., 23 I. C. C. 229; Rickards v. A. C. L. R. R. Co., 23 I. C. C. 239; Electric Malting Co. v. A. T. & S. F. Ry. Co., 23 I. C. C. 378; Jouannet v. A. C. L. R. R. Co., 23 I. C. C. 392; Black v. G. N. Ry. Co. 23 I. C. C. 402; McClung & Co. v. L. & N. R. R. Co. 23 I. C. C. 414, 416; Huntingdon Lumber Co. v. I. C. R. R. Co. 23 I. C. C. 507; Wheeler Lumber Bridge & Supply Co. v. L. I. M. & S. Ry. Co., 23 I. C. C. 514; National Refining Co. v. M. K. & T. Ry. Co. 23 I. C. C. 527, 531; Re Investigation of Alleged Unreasonable Rates on Meats 23 I. C. C. 656, 660, 662, 666; Southern Illinois Millers' Ass'n. v. L. & N. R. R. Co. 23 I. C. C. 672, 673; Medford Traffic Bureau v. S. P. Co., 23 I. C. C. 701, 706; Sunderland Bros. Co. v. St. L. & S. F. R. R. Co., 23 I. C. C. 259, 262; New Orleans Board of Trade v. L. & N. R. R. Co., 23 I. C. C. 429, 431; Public Service Commission, Wash., v. N. P. Ry. Co., 23 I. C. C. 256; In Re Transportation of Wools, Hides and Pelts, 23 I. C. C. 151, 164, 174; Arkansas Fuel Co. v. C. M. & St. P. Ry. Co. Unrep. Op. 246; Whittaker v. G. N. Ry. Co., Unrep. Op. 113; Clow & Sons v. Penn. Co. Unrep. Op. 3; Gisholt Machine Co. v. C. C. C. & St. L. Ry. Unrep. Op. 290; Electric Malting Co. v. C. M. & St. P. Ry. Co. Unrep. Op. 504; Minnesota & Iowa Elevator Co. v. C. R. I. & P. Ry. Co. Unrep. Op. 169; Hill & Webb v. I. & V. R. R. Co. Unrep Op. 333; Graham & Co. v. C. B. & Q. R. R. Co. Unrep. Op. 344; Back v. C. M. & St. P. Ry. Co. Unrep. Op. 292; Greer Houghton Lumber Co. v. L. & P. Ry. Co., Unrep. Op., 303; Minneapolis Bedding Co. v. C. B. & Q. R. R. Co., Unrep. Op. 329, Western Hardwood Lumber Co. v. M. St. P. & S. Ste. M. Ry. Co. Unrep. Op. 463; National Pole Co. v. C. & N. W. Ry. Co., Unrep. Op. 465; Sawyer & Austin Lumber Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. 478; Howard & Co. v. W. Co. Ry. Co., Unrep. Op. 569; Koch Butchers Supply Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 572; French Board Mfg. Co. v. L. & N. R. R. Co. Unrep. Op. 586; St. Regis Paper Co. v. N. Y. C. & H. R. R. R. Co. Unrep. Op. 368; Mead Auto Cycle Co. v. W. R. R. Co. Unrep. Op. 435; Whiting v. C. B. & Q. R. R. Co. Unrep. Op. 436; Robertson Pater Co. v. B. & M. R. R. Co. Unrep. Op. 206; Buffalo Oil Co. v. C. N. O. & T. P. Ry. Co. Unrep. Op. 289; Chanute Refining Co. v. A. T. & S. F. Ry. Co. Unrep. Op. 348; Lowenthal & Co. v. C. M. & St. P. Ry. Co. Unrep. Op. 155; Radinsky v. C. & S. Ry. Co. Unrep. Op. 492; Ford Mfg. Co. v. C. St. P. M. & O. Ry. Co. Unrep Op. 576; Great Western Portland Cement Co. v. A. T. & S. F. Ry. Co. Unrep. Op. 454; M. K. & T. Ry. Co. v. I. C. C. 164 Fed. 645, 650; Portner Brewing Co. v. S. Ry. Co., Unrep. Op. 361; Gund Brewing Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 501; Acme Cement Plaster Co. v. I. C. R. R. Co., Unrep. Op. 30; Acme Cement Plaster Co. v. C. R. I. & P. Ry. Co. Unrep. Op. 58; Rosebrough v. P. Express Co. Unrep. Op. 438; Florida Fruit and Vegetable Shippers' Protective Ass'n v. A. C. L. R. R. Co., Unrep. Op. 418; Preston v. R. F. & P. R. R. Co. Unrep. Op. 203; MacGillis & Gibbs Co., v. C. & N. W. Ry. Co. Unrep. Op. 271; Wheeler-Holden Co. v. L. & N. R. R. Co., Unrep. Op. 402; Stricklin & Co. v. L. & N. R. R. Co. Unrep. Op. 533; Gooch Lumber Co. v. L. & N. R. R. Co. Unrep. Op. 535; Harmount v. L. & N. R. R. Co. Unrep. Op. 545; Ohio Valley Tie Co. v. L. H. & St. L. Ry. Co. Unrep Op. 567; D. & R. G. R. R. Co. v. I. C. C., 195 Fed. 968. Hooker v. I. C. C., 188 Fed. 242, 248; N. & W. Ry. Co. v. U. S., 195 Fed. 953, 959, 962; I. C. C. v. C. G. W. Ry. Co., 209 U. S. 108, 118, 28 Sup. Ct. 493, 52 L. Ed. 705; I. C. C. v. Stickney, 215 U. S. 98, 105, 30 Sup. Ct. 66, 54 L. Ed. 112; National Pole Co. v. C. St. P. M. & O. Ry. Co. Unrep. Op. 124; Naylor & Co. v. L. V. R. R. Co. Unrep. Op. 168; I. C. C. v. U. P. R. R. Co., 222 U. S. 541, 549, 32 Sup. Ct., Rep. 108, 56 L. Ed. 308; Lang & Ouverson v. I. C. R. R. Co., Unrep. Op. A-86: Chalmers v. A., T. & S. F. Ry. Co., Unrep. Op. A-85; Winters Metallic Paint Co. v. C., M. & St. P. Ry. Co., Unrep. Op. A-77; Jones Bros. Co. v. B. & M. R. R., Unrep. Op. A-17; Logsdon v. I. C. R. R. Co., 24 I. C. C. 624; Memphis Hay & Grain Assn. v. St. L. & S. F. R. R. Co., 24 I. C. C. 609, 615; Bahrenburg Bros. & Co. v. A. C. L. R. R. Co., 24 I. C. C. 560; Bancroft-Whitney Co. v. C. N. O. & T. P. Ry. Co., 24 I. C. C. 557, 558; Bascom-Porter Co. v. A., T. & S. F. Ry. Co., 24 I. C. C. 297; R. R. Comm of Oregon v. S. P.

Co, 24 I. C. C. 273; 277, 278; Natural Mohair Growers' Assn. v. A., T. & S. F. Ry. Co., 25 I. C. C. 679; Bartlesville Salvage Co. v. M., K. & T. Ry. Co., 25 I. C. C. 672, 674; Wichita Board of Trade v. A., T. & S. F. Ry. Co., 25 I. C. C. 625, 629, 631; Taylor v. N. & W. Ry. Co., 25 I. C. C. 613, 617; Wharton Steel Co. v. D., L. & W. R. R. Co., 25 I. C. C. 303, 308; Lebanon Commercial Club v. L. & N. R. R. Co., 25 I. C. C. 277, 279; Superior Commercial Club v. G. N. Ry. Co., 25 I. C. C. 342, 345; City of Crawford v. C. & N. W. Ry. Co., 25 I. C. C. 259; In Re Advances on Potatoes, 25 I. C. C. 247, 248; Appalachia Lumber Co. v. L. & N. R. R. Co., 25 I. C. C. 193; Thompson v. A., T. & S. F. Ry. Co., 25 I. C. C. 174; Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 141, 149; Mixon-McClintock Co. v. St. L., I. M. & S. Ry. Co., 25 I. C. C. 8; Sheridan Chamber of Commerce v. C., B. & Q. R. R. Co., 26 I. C. C. 638, 647, 648; Board of Trade of Chicago v. I. C. R. R. Co., 26 I. C. C. 545, 549; Robinson Land & Lumber Co. v. M. & O. R. R. Co., 26 I. C. C. 427, 429; American Insulated Wire & Cable Co. v. C. & N. W. Ry. Co., 26 I. C. C. 415, 416. St. Louis, Springfield & Peoria R. R. Co. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 237; Texhoma Mill & Elevator Co. v. C., R. I. & P. Ry. Co., 26 I. C. C. 94, 96; Highland Park Mfg. Co. v. S. Ry. Co., 26 I. C. C. 67, 70; Indianapolis Freight Bureau v. C., C., C. & St. L. Ry. Co., 26 I. C. C. 53, 58, 59; In Re Rates on Commodity Beer Packages Returned, 26 I. C. C. 4, 6; State of Kansas v. A., T. & S. F. Ry. Co., 27 I. C. C. 673, 689; Lumber Rates from Memphis and Other Points to New Orleans, 27 I. C. C. 471, 486; Cherokee Lumber Co. v. A. C. L. R. R. Co., 27 I. C. C. 438, 440; Topeka Traffic Assn. v. A. & V. Ry. Co., 27 I. C. C. 428, 433, 436; Western Fruit Jobbers' Assn. v. C., R. I. & P. Ry. Co., 27 I. C. C. 417, 422; Rates on Corn Milled at Oneonta, N. Y., 27 I. C. C. 367, 369; Commercial Club of Omaha v. A. & S. R. Ry. Co., 27 I. C. C. 302, 317; Freight Bureau of Macon, Ga., v. C. N. O. & T. P. Ry. Co., 27 I. C. C. 263, 265; Coke Producers' Assn. of Connellsville v. B. & O. R. R. Co., 27 I. C. C. 125, 140, 149; Wisconsin Steel Co. v. P. & L. E. R. R. Co., 27 I. C. C. 152, 163; Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 27 I. C. C. 165, 166; People's Fuel & Supply Co. v. G. T. W. Ry. Co., 27 I. C. C. 24, 29; Interstate Commerce Commission v. U. P. R. R. Co., 222 U. S. 541; Middlesboro Board of Trade v. L. & N. R. R. Co., 27 I. C. C. 14, 22; Boldt Co. v. C., R. I. & P. Ry. Co., 27 I. C. C. 11, 13; Volco Mfg. Co. v. A. T. & S. F. Ry. Co., 28 I. C. C. 289; Northwestern Woodenware Co. v. C., M. & St. P. S. Ry. Co., 28 I. C. C. 237, 240; Atlanta Journal Co. v. S. A. L. Ry. Co., 28 I. C. C. 186; Florida East Coast Ry. Co. v. U. S., 200 Fed. 797, 804, 805; A., T. & S. F. Ry. Co. v. U. S., 203 Fed. 56, 59; L. V. R. R. Co. v. U. S., 204 Fed. 986, 991; Order in Meeker & Co. v. L. V. R. R. Co., 21 I. C. C. 129, Approved; L. V. R. R. Co. v. United States, 204 Fed. 986, 991; Curry & Whyte Co. v. D. I. & R. R. Co., 30 I. C. C. 1, 6; Rates on Crushed Stone, 30 I. C. C. 22, 28; Straw Rates from Stations in Missouri to Alton, Ill., 29 I. C. C. 562, 563; Oklahoma-Colorado Potato Rates, 28 I. C. C. 298, 300; Mississippi River Case, 28 I. C. C. 47, 57; Railroad Commissioners of Fla. v. S. Exp. Co., 28 I. C. C. 634, 635; Molasses Rates from Mobile, Ala., 28 I. C. C. 666, 669; Morey Mercantile Co. v. C., R. I. & P. Ry. Co., Unrep. Op. A-156; Mesilla Valley Produce Exchange, Inc., v. A., T. & S. F. Ry. Co., Unrep. Op. A-229; Boyle Commission Co. v. W. P. Ry. Co., Unrep. Op. A-327; Switching at Arcade, N. Y., 30 I. C. C. 501, 504; Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 515; Lumber Rates from the Southwest to Points North, 29 I. C. C. 1, 15; British Columbia News Co. v. Express Traffic Association, 13 Can. Ry. Cas. 176; Gulf Lumber Co. v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-574; Aetna Powder Co. v. Wabash R. R. Co., Unrep. Op. A-681; Commercial Club of Joplin v. M. P. Ry. Co., 32 I. C. C. 226, 232; Am. Round Bale Press Co. v. A., T. & S. F. Ry. Co., 32 I. C. C. 458, 483; The Illinois Coal Cases, 32 I. C. C. 659, 673; 680; Five Per Cent Case, 31 I. C. C. 351, 359; R. R. Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 651; Rates on Beer and Other Malt Products 31 I. C. C. 544, 545; Jackson Oil & Refining Co. v. S. R. Ry. Co., Unrep. Op. A-763; Lumber v. G. N. Ry., 33 I. C. C. 541, 555; Transcontinental Commodity Rates, 32 I. C. C. 449, 452; Pacific Creamery Co. v. S. P. Co., 34 I. C. C. 586, 590; Boise Lumber Co., Ltd., v. P. & I. N. Ry. Co., 33 I. C. C. 109, 115; Lindsay & Co. v. Northern Exp. Co.,

33 I. C. C. 394, 396; Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C. 523, 530; Lum v. G. N. Ry. Co., 33 I. C. C. 541, 555, 556; Newport Mining Co v. C. & N. W. Ry. Co., 33 I. C. C. 645, 652; Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co., 34 I. C. C. 393, 399; Pacific Creamery Co. v. S. P. Co., 34 I. C. C. 586, 588, 594; Rates on Lumber from Southern Points, 34 I. C. C. 652, 658, 677; Peninsular Portland Cement Co. v. C. N. R. R. Co., Unrep. Op. 2024; Rates for the Transportation of Anthracite Coal, 35 I. C. C. 220, 234; Cape Girardeau Portland Cement Co. v. St. L. & S. F. R. R. Co., 35 I. C. C. 109, 125; Ladd Co. v. G. S. W. Ry., 36 I. C. C. 179, 182; Excelsior for St. Paul, Minn., 36 I. C. C. 349, 365, 366; Straw Rates from St. Louis to Anderson, Ind., 36 I. C. C. 30, 32; Mid-continent Oil Rates, 36 I. C. C. 109, 113; Oklahoma Traffic Ass'n. v. A. & S. Ry. Co., 36 I. C. C. 329, 342; New York-New Jersey City Ferry Rates, 37 I. C. C. 103, 113; Holmes & Hallowell Co. v. G. N. Ry. Co., 37 I. C. C. 627, 635; Bituminous Coal Rates to the Southeast, 37 I. C. C. 652, 663; Bennett & Son v. C. & O. Ry. Co., 38 I. C. C. 310, 313; Chapin & Co. v. C. I. & L. Ry., 38 I. C. C. 611, 612; Export Grain Case, 37 I. C. C. 190, 192; Grain from Manitowoc, Wis., 37 I. C. C. 549, 557; Cast Iron Pipe from Carolina Points, 38 I. C. C. 183, 186; La Crosse Shippers' Asso. v. C. & N. W. Ry. Co., 38 I. C. C. 453, 458; Stonega Coke & Coal Co. v. L. & M. R. R. Co., 39 I. C. C. 523, 541, 542; Joseph Bros. & Co. v. M. C. R. R. Co., 38 I. C. C. 719, 720; Sioux City Live Stock Exch. v. St. P. M. & O. Ry. Co., 40 I. C. C. 418, 420; Corp. Comm. of Virginia v. C. & O. Ry. Co., 40 I. C. C. 24, 28; New England Milk Case, 40 I. C. C. 699, 720, 727; R. R. Comm. of La. v. A. H. R. Ry. Co., 41 I. C. C. 83, 119; Iron Ore Rate Cases, 41 I. C. C. 181, 214; Moffat Co. v. S. P. Co., 41 I. C. C. 477, 479; American Paper & Pulp Asso. v. B. & O. R. R. Co., 41 I. C. C. 506, 511; New England Plaster, 41 I. C. C. 687, 704; Montague Mailing Machinery Co. v. I. C. R. R. Co., 42 I. C. C. 357, 358; Milk and Cream Rates to Philadelphia, Pa., 45 I. C. C. 371, 379, 386; Milk and Cream Rates to New York City, 45 I. C. C. 412, 423; Lookout Point Mfg. Co. v. N. Y. C. R. R., 45 I. C. C. 539, 541; Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 114; Buffalo Grain Cases, 46 I. C. C. 570, 580; Tripp v. Michigan Cent. R. R., 238 Fed. 449; Price Bros. & Co. v. C. N. Ry., 46 I. C. C. 397, 398; Lewis & Co. v. L. & B. R. R. R. 47 I. C. C. 79; New York Harbor Storage, 47 I. C. C. 141, 151; Dimmitt-Caudle-Smith L. S. Co. v. C., B. & Q. R. R., 47 I. C. C. 287, 298; Michigan Percentage Cases, 47 I. C. C. 409, 427; Coal to South Dakota, 47 I. C. C. 750, 754; Western Cement Rates, 48 I. C. C. 201, 235; Railroad Comm. of La. v. A. H. T. Ry. Co., 48 I. C. C. 312, 369; Coal from Arkansas and Other States, 49 I. C. C. 727, 731; Wilson Co. v. C. M. & St. P. Ry. Co., 50 I. C. C. 126, 129; Eastern Shore of Virginia Produce Exch. v. A. & St. L. R. R. Co., 50 I. C. C. 436, 439; Springston Lumber Co. v. N. P. Ry. Co., 50 I. C. C. 591, 594; Cape Girardeau Com. Club v. I. C. R. R., 51 I. C. C. 107; Building and Roofing Paper and Paper Board Rates, 52 I. C. C. 84, 100, 94; In the Matter of Rates on and Classification of Lumber and Lumber Products, 52 I. C. C. 598, 612; Atlas Portland Cement Co. v. N. & B. R. R., 52 I. C. C. 387, 389; Aetna Explosives Co. v. Director General, 53 I. C. C. 140; Allegheny Ore & Iron Co. v. C. & O., 53 I. C. C. 415, 424; Memphis-Southwestern Investigation, 55 I. C. C. 515, 540, 548; Beaumont Chamber of Commerce v. A. & V. Ry., 57 I. C. C. 189, 192; Southport Mill (Ltd.) v. Director General, 55 I. C. C. 154, 161; Carnation Milk Products Co. v. Director General, 55 I. C. C. 665, 668; Meeker & Co. v. C. R. R. Co. of N. J., 57 I. C. C. 414, 416; Phelps Dodge Corp. v. Director General, 57 I. C. C. 714, 718; Anaconda Copper Mining Co. v. Director General, 57 I. C. C. 723, 726, 732, 733; Assignment of Freight Cars, 57 I. C. C. 760, 765; Calif. Citrus League v. Director General, 58 I. C. C. 373, 380; Acme Cement Plaster Co. v. Director General, 59 I. C. C. 411, 412; Seaboard By Products Coke Co. v. Director General, 59 I. C. C. 453, 455; Mine Timbers, Missouri to Illinois Stations, 58 I. C. C. 545, 547; Inland Empire Shippers' League v. Director General, 59 I. C. C. 321, 341; Intermediate Rate Asso. v. Director General, 61 I. C. C. 226, 233; Louisville Cement Co. v. Director General, 62 I. C. C. 362, 364; Acme Cement Plaster Co. v. Director General, as Agent, 62 I. C. C. 119; Sheffield Farms Co. v. Director General, as Agent, 62 I. C. C. 503; National Live Stock Shippers' League v. A., T. & S. F. Ry. Co.,

63 I. C. C. 107, 116; Silica Sand Producers Asso. v. C., B. & Q. R. R., 64 I. C. C. 302, 304; Pioneer Lumber Co. v. Director General, 64 I. C. C. 485, 486; Great Western Smelting & Refining Co. v. Director General, 64 I. C. C. 605, 606; Oxford Paper Co. v. Director General, 66 I. C. C. 159, 163; Southern Hardwood Traffic Asso. v. I. C. R. R. Co., 66 I. C. C. 68, 73; Tuffli Bros. Pig Iron & Coke Co. v. Director General, as Agent, 66 I. C. C. 129, 130; Union Traction Co. of Indiana v. Director General, as Agent, 66 I. C. C. 157; Oxford Paper Co. v. Director General, as Agent, 66 I. C. C. 159, 163; Citizens' Coal Mining Co. v. Director General, as Agent, 66 I. C. C. 271, 272; American Wholesale Lumber Asso. v. Director General, as Agent, 66 I. C. C. 393, 397; Central Illinois Light Co. v. Director General, as Agent, 66 I. C. C. 623, 626; Reparation as Relating to Increase of Rates, 68 I. C. C. 5, 7; Brundred Bros. v. Prairie Pipe Line Co., 68 I. C. C. 458, 460; Grasselli Chemical Co. v. N. Y. C. R. R. Co., 69 I. C. C. 529, 530; Kansas Rock Salt Co., v. A. T. & S. F. Ry. Co., 69 I. C. C. 745, 751; Peninsular Portland Cement Co. v. Director General, 73 I. C. C. 542, 544; Walsh Fire Clay Products Co. v. Director General, as Agent, 73 I. C. C. 410; Lustig-Burgerhoff Co. v. Director General, 74 I. C. C. 395; Boston Wool Trade Asso. v. Director General, as Agent, 78 I. C. C. 341, 343; Mirvale Steel & Ordinance Co. v. Director General, as Agent, 78 I. C. C. 721, 723; Crystal Springs Mfg. Co. v. I. C. R. R., 80 I. C. C. 132; Hawkins & Sons v. Director General, 80 I. C. C. 225, 227; Spencer Kellogg & Sons v. Director General, 80 I. C. C. 507; In the Matter of Rates, Fares and Charges of Carriers by Railroad, Subject to the Interstate Commerce Act. 81 I. C. C 170; Cincinnati Grain & Hay Exchange Co. v. A. & R. Ry. Co., 80 I. C. C. 114; Green Cananea Copper Co. v. Director General, as Agent, 80 I. C. C. 122; Northern States Power Co. v. A., T. & S. F. Ry. Co., 80 I. C. C. 261, 264; Derby v. K. C. S. Ry. Co., 80 I. C. C. 374; Kellogg & Sons v. Director General, as Agent. 80 I. C. C. 377, 379; Peninsula Portland Cement Co.,v. Director General, 83 I. C. C. 10, 11; Western Meat Co. v. Director General, 83 I. C. C. 218, 220.

§2½. Absorption.

See Absorption of Charges.

IMPORTANT CASES SINCE 1908

(a) The reasonableness of charges maintained by one carrier can not be judged by the ability or inability of a connecting competitor to absorb them. Nashville Switching, 40 I. C. C. 474, 482.

§3. Actions of State Commissions.

See State Rates and Regulations.

IMPORTANT CASES SINCE 1908

(a) There are many reasons why state and interstate rates should be established in harmony with one another. When the Commission is asked to examine the reasonableness of an interstate rate, similar rates established by state authority in that territory must have great influence, especially where they have been long acquiesced in by the carriers. Still, these state rates have no binding force upon the Commission. They are standards of comparison of greater or less value, according as they appear to be just and reasonable. Corn Belt Meat Producers' Ass'n'. v. C. B. & Q. Ry. Co., 14 I C. C 376, 385.

(b) State rates afford standards of comparison of greater or less value, according as they appear reasonable, especially so when acquiesced in by the carriers; but when a state rate is under protest and being contested, and appears unreasonably low, it is not valuable as a comparison. Willman & Co. v. St. L. I. M. & S. Ry. Co., 22 I. C. C. 405.

(c) The acquiescence of carriers in state-made rates and their voluntary application of such rates to some interstate traffic adds to the weight which should be given them in a determination of their reasonableness on other interstate traffic, but such acquiescence by certain carriers in one state made pursuant to their own best interests should not be determinative against other carriers whose interests lie mainly in another state. Pulp & Paper Mfrs. Traffic Assn. v. C. M. & St. P. Ry. Co., 27 I. C. C. 83, 96.

(d) The Commission has always given due consideration to rates established by state commissions, but it cannot feel bound to apply to that part of interstate transportation taking place in another state, the rates prescribed by a contiguous state for transportation wholly within its confines. Pulp & Paper Mfrs. Traffic Assn. v. C. M. & St. P. Ry. Co., 27 I. C. C. 83, 96.

(e) Interstate fares prescribed by a municipal ordinance are not conclusively presumed to be reasonable, even if ac-

cepted by the interstate carrier as one of the conditions of a franchise. St. Louis, Mo-Illinois Passenger Fares, 41 I. C. C. 584, 590.

ALL OTHER CITATIONS

Marshall Oil Co. v. C. & N. W. Ry. Co., 14 I. C. C. 210, 213; Hafey v. St. L. & S. F. R. R. Co., 15 I. C. C. 245, 246; Marble Falls Insulator Pin Co. v. H. & T. C. R. R. Co., 15 I. C. C. 167, 169; Board of Mayor and Aldermen v. V. & S. W. Ry. Co., 15 I. C. C. 453, 459; Paola Refining Co. v. M. K. & T. Ry. Co., 15 I. C. C. 29; Fort Dodge Commercial Club v. I. C. R. R. Co., 16 I. C. C. 572, 579; Railroad Commission of Wisconsin v. C. & N. W. Ry. Co., 16 I. C. C. 85, 89, 91; Bartles Oil Co. v. C. M. & St. P. Ry. Co., 17 I. C. C. 146, 148; Commercial Club of Omaha v. Anderson & Saline River Ry. Co., 18 I. C. C. 532, 536; Saunders & Co. v. Southern Express Co., 18 I. C. C. 415, 421; Waco Freight Bureau v. H. & T. C. R. R. Co., 19 I. C. C. 22, 26; Cobb v. N. P. Ry. Co., 20 I. C. C. 100, 103; Baxter & Co v. G. S. & F. Ry. Co., 21 I. C. C. 647, 648; In Re Advances in Rates by Carriers Operating Between the Mississippi and Missouri Rivers, 21 I. C. C. 546, 552; Investigation of Alleged Unreasonable Rates on Meats, 22 I. C. C. 160, 164; In Re Investigation of Unreasonable Rates on Meats, 23 I. C. C. 656, 664; Highland Park Mfg. Co. v. S. Ry. Co., 26 I. C. C. 77, 79; Waukesha Lime & Stone Co. v. C., M. & St. P. Ry. Co., 26 I. C. C. 515, 517.

§4. Attractiveness of Traffic.

IMPORTANT CASES SINCE 1908

(a) There is no warrant in law for the maintenance of a rate for the purpose of restricting the movement of a certain class of traffic because it is unattractive to carriers. Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 15 I. C. C. 370, 373.

§5. Capitalization.

See Evidence §7; Express Companies §24; Finance Dockets; Interstate Commerce Commission §7.

CASES 1887-1908

(a) The capital account of a railroad does not necessarily furnish a criterion by which the reasonableness of its freight rates is to be determined; and in order that the capitalization should be considered in cases involving the readjustment of rates it must be accompanied by a history of the capital account. Grain Shippers Asso. v. Illinois C. R. R. Co., 8 I. C. C. 158.

IMPORTANT CASES SINCE 1908

(b) The fact that a carrier has issued watered stock cannot be urged on a question of reasonableness of rates to deny the right of present holders of said stock to receive reasonable dividends thereon. City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 410.

(c) The fact that a carrier's stock originally sold at less than par cannot be urged on a question of reasonableness of rates to deny the present holders thereof fair dividends t herefrom. City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 411

(d) The market value of stock should be considered in fixing rates, but such rates cannot be allowed as will guarantee the prices at which the stock was bought. In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 260.

(e) It is almost axiomatic that the investment in an American railroad is not represented by its capitalization. The Commission cannot accept capitalization as representing either investment or value. Advances in Rates—Western Case, 20 I. C. C. 307, 320.

(f) There is no relation between capital and value and there is no relation between stocks representing value and bonds representing value. In Re Advances in Rates—Western Case, 20 I. C. C. 307, 335.

(g) Record plainly indicated that carrier greatly overcapitalized and afforded no tangible basis upon which alone to determine what should be the measure of a reasonable system of charges on the basis of the value of its property devoted to the public use. Fares of the Washington-Virginia Ry. Co., 62 I. C. C. 200, 203.

ALL OTHER CITATIONS

City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 408, 409; In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 289.

§6. Car-mile or Train-mile Revenue.

See Evidence §6 §8.

IMPORTANT CASES SINCE 1908

(a) Car revenue is an important element in determining the reasonableness of a rate. Merchants Mfrs.' Ass'n. v. A. C. L. R. R. Co., 22 I. C. C. 467, 469.

(b) The earnings per car mile and per train mile of a carrier constitute

a much fairer basis for determining the reasonableness of a rate than the earnings per ton mile. On account of the volume of traffic, the heavy load per car and the regularity of movement, most of the freight which pays the carrier the best is that which yields the lowest rate per ton mile. In Re Advances on Coal to Lake Ports, 22 I. C. C. 604, 620.

(c) While a fairer basis for determining the reasonableness of rates is found in the earnings per car-mile and per train-mile, the rate per ton per mile is instructive. Wisconsin Steel Co. v. P. & L. E. R. R. Co., 27 I. C. C. 152, 162.

(d) The fact that the earnings per car are greater on certain materials than the earnings per car on articles manufactured therefrom does not of itself prove that the rates in either case are unreasonable. The earnings per car on the materials are frequently higher because of the heavier loading per car. Again this comparison disregards the considerations which influenced the establishment of the rates on the materials and the rates on the articles manufactured therefrom. Nor does the fact that the rate on the materials is higher than the rate on certain manufactured articles prove the unreasonableness of the one or the other. As a general proposition the principle that the rate on material should be less than the rate on its finished product has been approved by the Commission, but there are exceptions to this rule. The Iron and Steel Cases, 36 I. C. C. 86, 106.

ALL OTHER CITATIONS

Ozark Fruit Growers' Ass'n. v. St. L. & S. F. R. R. Co., 16 I. C. C. 106, 114; Pabst Brewing Co. v. C. M. & St. P. Ry. Co, 17 I. C. C. 359, 360; Rainey & Rodgers v. St. L. & S. F. R. R. Co., 18 I. C. C. 88, 90; National Hay Ass'n. v. M. C. R. R. Co., 19 I. C. C. 34, 47; In Re Advances on Coal to Lake Ports, 22 I. C. C. 604, 624; Bahrenburg Bros. & Co. v. A. C. L. R. R. Co., 24 I. C. C. 560, 566; Little Rock Chamber of Commerce v. St. L., I. M. & S. Ry. Co., 26 I. C. C. 341, 343; Rates on Crushed Stone, 30 I. C. C. 22, 27; Lumber Rates from Southwest Points North, 29 I. C. C. 1, 13; Rock Springs Distilling Co. v. I. C. R. R. Co., 29 I. C. C. 18, 22; Emigrant Movables to South Dakota, 29 I. C. C. 40, 41; Maier & Co. v. S. P. Co., 29 I. C. C. 103, 105; Pacific Creamery Co. v. S. P. Co., 29 I. C. C. 405, 406; Duluth Log Rates, 29 I. C. C. 420, 421; Straw Rates from Stations in Missouri, 29 I. C. C. 562, 564; Lumber Rates from Local Points to Chattanooga, 29 I. C. C. 646, 648; Ontario Iron Ore Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 566, 569; Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 433.

§7. Changed Circumstances.

See Advanced Rates §7; Evidence §9.

IMPORTANT CASES SINCE 1908

(a) Where present transportation conditions are likely to change, the Commission may take this fact into consideration in adjusting rates. Florida Fruit & Vegetable Shippers' Protective Ass'n. v. A. C. L. R. R. Co., 14 I. C. C. 476, 488.

(b) Unless the Commission recognized changes in conditions with the development of traffic, there would never be any changes in rate levels and never any readjustments of rates. The primary question is whether the rates, in whatever manner they are constructed by the carriers are reasonable and free from undue discrimination. Western Cement Rates, 48 I. C. C. 201, 229.

(c) A charge, reasonable in its inception many years ago, may become unreasonably low in consequence of the construction of more adequate facilities, a change in the character of the service rendered, the increased level of operating cost generally, or one or more of these factors. But the existence of such general conditions alone affords no proper basis upon which to test the reasonableness of a specific material increase in charges. Space Rental Charges on Cotton, 66 I. C. C. 121, 125.

ALL OTHER CITATIONS

In Re Advances in Rates by Carriers Operating Between the Mississippi and Missouri Rivers, 21 I. C. C. 546, 555, 557; Steinfield & Co. v. I. C. R. R. Co., 20 I.C. C. 12, 14; Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co., 20 I. C. C. 43, 50; Riverside Mills v. G. R. R., 20 I. C. C. 423, 425; National Hay Ass'n. v. M. C. R. R. Co., 19 I. C. C. 34, 37; Topeka Traffic Assn. v. A. & V. Ry. Co., 27 I. C. C. 428, 433; New Pittsburgh Coal Co. v. H. V. Ry. Co., 26 I. C. C. 121, 125; National Wool Growers' Assn. v. S. L. R. R. Co., 25 I. C. C. 675, 677; In Re Wool, Hides and Pelts, 25 I. C. C. 675, 677; Class and Commodity Rates to

Salt Lake City, Utah, 32 I. C. C. 551, 558.

§7¼. Combinations of Rates.

See Evidence §10.

CASES 1887-1908

(a) Whether railroad companies combine or act separately in making rates or charges is not so important; the essential requirement is that however made they shall be reasonable of themselves, and so fairly adjusted as to be reasonable in their relations to each other and in their results. New Orleans Cotton Exchange v. C. N. O. & T. P. R. R., 2 I. C. C. 289, 292.

(b) A rate which is advanced as the result of an agreement among carriers, even if such agreement be with color of violation of the antitrust act, will not on that ground alone be declared unreasonable; evidence of such violation is pertinent and must be considered; but the existence of such an unlawful agreement, even when proved, is not conclusive of the unreasonableness of the rates so advanced. Enterprise Manufacturing Co. v. Georgia R. R. Co., 12 I. C. C. 451.

ALL OTHER CITATIONS

Flanley Grain Co. v. C., B. & Q. R. R. Co., Unrep. Op. A-638; Crane-Johnson Co. v. G. N. Ry. Co., Unrep. Op. A-640.

§7½. Comparisons.

See Blanket Rates §18; Classification §20; Comparative Rates; Evidence §11; §12; §13; Through Routes and Joint Rates §15.

CASES 1887-1908

(a) When the reasonableness of rates is in question, charges on long through lines cannot offer a just basis for comparison with local rates for relatively short distances. Crews v. Richmond & D. R. Co., 1 I. C. R. 703.

(b) The reasonableness and justness of rates on other portions of the carrier's line cannot be measured alone by the standard furnished by exceptional rates forced upon him for a portion only of the line, but must be governed by considerations which fairly and justly apply to them. Business Mens Asso v. Chicago, St. P. M. & O. R. Co. (Com.), 2 I. C. R. 41.

(c) On the question of what are just and fair rates to any particular locality, it is necessary to see what rates are given to other localities. They cannot be considered by themselves. Re Chicago, St. Paul & Kansas City R. Co., 2 I. C. R. 137.

(d) A prima facie case of unreasonableness of rates is not made out by showing that the rates for a certain commodity are higher in certain cases than certain other rates, and that they produce a large profit to the carrier. Howell v. New York, L. E. & W. R. Co., (Com.), 2 I. C. R. 162.

(e) In determining the reasonableness of rates a comparison of one isolated rate with another is not sufficient; the whole field must be considered in order to approximate justice, and at best the result cannot be regarded as other than an approximation. Howell v. New York, L. E. & W. R. Co., (Com.), 2 I. C. R. 162.

(ea) The Commission is not willing to determine the relative reasonableness of rates at many stations, and in a large extent of territory, upon the mere face of tariffs, and without further proof. Spartanburg Board of Trade v. R. & D. R. R., 2 I. C. C. 193, 194.

(f) Where unreasonableness of freight rate on oil in carload lots is charged on short local hauls,—for example, from Titusville, Pennsylvania, to Buffalo, New York; and the charge is attempted to be sustained on a comparison of these rates with rates on what is usually an inferior grade of oil transported from Titusville, through Buffalo, to Perth Amboy, New Jersey for export, chiefly in the cars of another company; and it appears that upon such shipments destined to Buffalo there are expensive terminal charges, while upon such shipments to Perth Amboy these terminal charges are far less considerable,—the circumstances and conditions which control the making of the rates in each instance are substantially dissimilar. Rice v. Western N. Y. & P. R. Co. (Com.), 2 I. C. R. 298.

(g) Any transportation charges between the Mississippi River and New York City on wheat and flour based on a higher rate than twenty-three cents per hundred pounds from Chicago to New York City is unreasonable, and any rate on wheat and flour carried from any one place to another which is more than fifteen per cent above the rate on corn and oats between the same places is unreasonable. Rates and Charges on Food Products, 3 I. C. R. 93.

(h) The circumstances and condi-

tions in the carriage of flour to New York are substantially dissimilar at Boston to what they are at Readville, an interior town about 8 miles from Boston, on the line of the all rail carriers, where no competition exists between the all-rail carriers and the water lines; and justifies the all-rail carrers in meeting the water rate at Boston by a joint through rate which is less from New York to Boston than the combined local rates to Readville from New York. King v. New York, N. H. & H. R. Co. (Com.), 3 I. C. R. 272.

(ha) Complainant attacked rates on flour, grain and mill stuffs, carloads, from Milwaukee, Wis., to the Eastern seaboard, as unreasonable and unjustly prejudicial in that the carriers reduced the rate from Milwaukee 2½c on these commodities originating at Minneapolis passing through Milwaukee to the east without making a like change in the rate from Milwaukee. Upon the manifest and widely different circumstances and conditions of transportation this class of property from Minneapolis to eastern points as compared with those surrounding the transportation of similar freight from Milwaukee to the same eastern points, the division of the Minneapolis rate at Milwaukee west, so that the proportion of it from Milwaukee should be the same and no less than the rate upon the same class of freight originating at Milwaukee is a standard of comparison that cannot be sustained. Complaint dismissed. Milwaukee Chamber of Commerce v. F. & P. M. R., 2 I. C. C. 393.

(i) Comparison with rates in other localities where dissimilar conditions and modifying circumstances are found, is not sufficient to establish the unreasonableness of the charges complained of. Where no discrimination is alleged as between points of production tributary to the same market, or on account of disproportionate rates on different kinds of traffic similar in character and volume, it must affirmatively appear that the charges assailed are unreasonable and ought to be reduced. Lincoln Creamery v. Union Pacific R. Co. 3 I. C. R. 794.

(j) Complainant attacked as unreasonable and unjust rates on lumber of 16½c, carloads and 31½c on shingles, carloads, from Fort Fairfield, Stevens Siding and Hurds Siding, Me., to Boston, Mass., distance 484 miles, compared with rates of 14½c on lumber, carloads, and 16¾c on shingles, carloads from Fredericton, Tracey and Russia-gornish, New Brunswick, Can. distance 433 miles. Subsequently the rate was reduced from complainants mills. The rail rate from the Canadian mill to market being fixed with especial reference to the effect of the log drive to and water competition for shingle traffic from the seaport the rate from the Maine mill should be fixed on the same basis, the log drive going past the Maine mill. HELD, rate from Fort Fairfield should not exceed the rate from Fredericton more than 6½c. James & Abbott v. C. P. R. Co. 4 I. C. C. 274.

(k) Where the reasonableness of rates is in question, comparison thereof may be made, not only with rates on another line of the same carrier, but also with those on the lines of other and distinct carriers. Cincinnati Freight Bureau v. Cincinnati N. O. & T. P. R. Co. (Com.) 4 I. C. R. 592; Morrell v. Union P. R. 4 I. C. R. Co. (Com.) 469.

(lm) Rates and charges in force on lines of rival companies or on different branches or lines of the same company are entitled to consideration in connection with the question of reasonable charges for transportation services rendered under like conditions. Morrell v. U. P. R. Co. 4 I. C. C. 469, 473.

(n) Rates maintained and which may be reasonable under the conditions existing in one section or part of the country afford no safe criterion by which to measure reasonable charges in other localities where the expense of operating a road and other conditions affecting transportation are widely different. Morrell v. U. P. R. Co., 4 I. C. C. 469, 473.

(o) Where the reasonableness of rates is in question, comparison thereof may be made not only with rates on another line of the same carrier but also with those on the lines of other and distinct carriers—the value of the comparison being dependent in all cases upon the degree of similarity of the circumstances and conditions attending the transportation for which the rates compared are charged. Freight Bureau v. C. N. O. & T. P. R. Co. 4 I. C. C. 592, 611.

(p) The fact that the freight rates are higher in one state than in another is not of itself sufficient to justify an arbitrary reduction of them by the legislature in the former state for the purpose of equalizing rates. Ames v. Union Pacific R. Co. 4 I. C. R. 835.

(q) Where the reasonableness of rates is in question, comparison thereof may be made, not only with rates on another line of the same carrier, but also with those on the lines of other and distinct carriers. Freight Bureau v. Cincinnati, N. O. & T. R. Co., 6 I. C. C. 195 Morreil v. Union P. R. Co., 6 I. C. C. 121.

(r) Rates maintained and which may be reasonable under the conditions existing in one section or part of the country afford no safe criterion by which to measure reasonable charges in other lo calities, where the expense of operating a road and other conditions affecting transportation are widely different. Morrell v. Union P. R. Co. 6 I. C. C. 121.

(s) Where the reasonableness of rates is in question, comparison thereof may be made, not only with rates on another line of the same carrier, but also with those on the lines of other and distinct carriers—the value of the same comparison being dependent in all cases upon the degree of similarity of the circumstances and conditions attending the transportation for which the rates compared are charged. Freight Bureau v. Cincinnati, N. O. & T. P. R. Co. et al. 6 I. C. C. 197.

(sa) A showing of substantial similarity in transportation conditions is necessary to make the rates of carrier in one section of the country proper standards of comparison in a case of alleged un just and unreasonable charges in another section. Evans v. Union P. R. Co. 6 I. C. C. 520.

(t) A charge of 70 and 80 cents per 100 pounds on cotton from a given point is unreasonable where the carrier charges only 75 cents for a distance from 400 to 600 miles longer, and has long had in force rates of 60 and 65 cents from the former point when the value of cotton was higher and its transportation more expensive, and other roads in the same territory have much longer hauls for similar rates. Jerome Hill Cotton Co. v. Missouri, K. & T. R. Co. 6 I. C. C. 601.

(u) Rates from New Orleans to La Grange are unreasonable in themselves and relatively, as compared with rates at Atlanta, where the latter rates are such that an Atlantic dealer can ship from New Orleans to Atlanta and then back to La Grange as cheaply as the goods can be shipped from New Orleans to La Grange, and higher rates from New Orleans to La Grange than those charged to Atlanta are unlawful. Calloway v. Louisville & N. R. Co., 7 I. C. C. 431.

(v) The comparative reasonableness of rates for transportation of grain to two different cities should, so far as distance is controlling, be tested by distance over the shorter available routes from the place of shipment to such cities. Milwaukee Chamber of Commerce v. Chicago, M. & St. P. R. Co. 7 I. C. C. 481.

(w) A carrier's charges on grain originating at points on its Southern Minnesota division, milled in transit at La Crosse, Wis., and forwarded as product to Milwaukee or Chicago, are not unjust or otherwise unlawful when not more than 2½ cents per 100 pounds in excess of its wheat rates from the same points of origin to Milwaukee or Chicago, either as related to the wheat rates or as affecting the competitive relation of the complainant with millers at Milwaukee. Listman Mill Co. v. Chicago, M. & St. P. R. Co., 8 I. C. C. 47.

(x) Rates on barrel material from the West to Hawkinsville, Ga., were higher than those to Macon, Ga., from February 10, 1896, to January 22, 1897. At times prior to the date first mentioned, and uniformly since the date last mentioned, the rates to Hawkinsville and Macon have been the same. Rates on other commodities are, as a rule, higher to Hawkinsville than to Macon. The distance is greater to Hawkinsville, which is located on a branch line, competition is less active there than at Macon. HELD, that complainant failed to show that the rate on barrel material under the Act to Regulate Commerce ought from February 10, 1896, to January 22, 1897, to have been the same to Hawkinsville as to Macon, and that the complaint should be dismissed. Holmes & Co. v. Southern R. Co., 8 I. C. C. 561.

(y) It is competent to compare rates and distances on different roads in dealing with an alleged unreasonable rate, and these are to be considered in connection with the many other factors that enter into the adjustment of rates, but it does not necessarily follow that a rate is unreasonable because on the same or another road a particular kind of traffic is hauled a greater distance from a different point of origin at the same or a less rate. Cannon v. Mobile & O. R. Co. 11 I. C. C. 537.

(z) Rates on flour from Louisville and

Evansville by the Southern Railway to Berry, Ala., on the line of the Southern, and by the Southern and Mobile & Ohio to Gordo, Ala., on the line of the Mobile & Ohio, are less than those of the Mobile & Ohio from Ava and Cairo, Ill., to Gordo. The rate by the Southern from St. Louis to Gordo is the same as that of the Mobile & Ohio from St. Louis and Ava, although the distance by the former is about twice that from Ava by the latter, and much greater than that from St. Louis by the Mobile & Ohio. HELD, that these facts do not warrant the conclusion that the flour rates from St. Louis, Ava and Cairo to Gordo are unreasonable. S. J. & S. Cannon v. Mobile & O. R. Co., 11 I. C. C. 537.

(aa) Lochland, Ky., rate of 21 cents per 100 pounds on brick machinery, C. L. to East St. Louis, Ill., compared with the rate of 15 cents from Louisville, Ky., 8 miles farther distant, to the same destination held not unreasonable under section 1 of the statute, it appearing that the rate from Louisville is fixed under competition. Durham v. Illinois C. R. Co., 12 I. C. C. 37.

(bb) $1.61½ per 100 pounds on knit goods from New York points via water and rail, through Galveston, Tex, to Wichita, Kansas, as compared with rate of $1.31 to Topeka, Kan., not unreasonable. Johnston-Larimer Dry Goods Co. v. New York & T. S. S. Co., 12 I. C. C. 58.

(cc) Coal $1.70 per short ton and $2.75 per long ton from Birmingham, Ala., to Cordele, Ga., as compared with corresponding charges to Macon, Ga., of $1.60 and $1.65, unreasonable. Tomlin-Harris Mach. Co. v. L. N. R. R. Co. 12 I. C. C. 133.

(dd) Grass twine and matting, St. Paul to Boston. Rate of 62 cents per 100 pounds via Duluth, which was a combination of a rate of 23 cents to Duluth plus a rail rate of 39 cents from Duluth to Boston, lake and rail point through routes via Duluth not being in effect at the date of the shipment, but a rate via Lake Michigan ports of 45 cents, and an all-rail joint through rate of 49 cents, being in force,—held, under the special and peculiar circumstances disclosed, to be unreasonable. American Grass Twine Co. v. St. Paul, M. & O. R. Co., 12 I. C. C. 141.

(ee) Southwestern mills to the Orient, of $1.25 per 100 pounds, as compared with rate from New England mills of $11.25 for 40 cubic feet of measured space, equivalent to about 85 cents per 100 pounds, not unreasonable. China & Japan Trading Co. v. Georgia R. Co. 12 I. C. C. 236.

(ff) Complainant alleges that the rates of the Nashville, Chattanooga & St. Louis and Illinois Central roads on oak staves and headings from Hollow Rock and other Tennessee points of origin to East St. Louis when destined to South Omaha, Nebr., are unreasonable when compared with the rates on such commodities over said road from the same points of origin to East St. Louis when destined for Alexandria, Mo., or Keokuk, Iowa. The South Omaha rate is a combinatiion of the 14-cent rate of the N., C. & St. L. and Ill. Central plus the "local" rate of 10 cents of the C., B. & Q., whereas the Keokuk or Alexandria rate is a joint rate of 19 cents, 14 cents to the two first carriers and 5 cents to the C., B. & Q. Complainant made no complaint against the C., B. & Q. rate. It appears that some years ago the division gave the C., B. & Q. its full "local" from East St. Louis to Keokuk or Alexandria, and the two eastern carriers 2 cents less than their joint rate to East St. Louis; but the division as now made gives these two roads the same earnings on cooperage products carried from Tennessee points to East St. Louis, whether destined to South Omaha, Alexandria, or Keokuk. Complaint dismissed. Omaha Cooperage Co. v. Nash-Chat. & St. L. Ry. Co. 12 I. C. C. 251.

(gg) Relative rates to Hope, Arkansas, via Texarkana, from points north of Shreveport, Alabama, on cotton seed, joint through rate of 30 cents as compared with sums of locals, 17½ cents, held unreasonable. Hope Cotton Oil Co. v. T. & P. R. R. Co., 12 I. C. C. 265.

(hh) Marquette and Phillips, Neb. 75 cents per 100 pounds on wheat to California terminals, compared with through rate on corn over same route, and through rates on both corn and wheat on other routes, unreasonable; should not exceed 65 cents. Poor Grain Co. v. C. B. & Q. Ry. Co. 12 I. C. C. 418.

(ii) Comparison with rates in other localities where different conditions and modifying circumstances are found is not enough to establish the unreasonableness of the rate attacked. Dallas

Freight Bureau v. M. K. & T. Ry. 12 I. C. C. 427, 433.

(jj) Rates maintained and which may be reasonable under the conditions existing in one section or part of the country afford no safe criterion by which to measure reasonable charges in other localities where the expense of operating a road and other conditions affecting transportation are widely different. Dallas Freight Bureau v. M. K. & T. Ry., 12 I. C. C. 427, 433.

(kk) Rate of 56 cents per 100 pounds on butter and eggs in carload lots from Granite Falls, Minn., to Chicago, as compared with 43-cent rate from Whitestone, Minn., on another branch, 41 miles farther distant, held unreasonable and unjust; should not exceed 43 cents per 100 pounds. Morse Produce Co. v. C. M. & St. P. Ry. Co., 12 I. C. C. 485.

(ll) Rates on denatured alcohol from Chicago and from Missouri River common points to Northern Pacific Coast terminals, and to certain points in Oregon, the record showing that denatured alcohol is manufactured in California and is sold in the North Pacific Coast cities at a price which could be made by the eastern product only by reducing the transportation charges to nothing, and that an effort to place denatured alcohol upon a parity with proof spirits would lead either to a large increase in the charges on the proof spirits, which would probably render futile all effort to compete with the California product, or to a practical wiping out of the charges on the denatured article,—not shown to be unreasonable per se. Railroad Commission of Oregon v. B. C. & A. R. R. Co., 12 I. C. C. 541.

IMPORTANT CASES SINCE 1908

(mm) Comparisons of car earnings on the commodity involved with car earnings on analogous commodities moving from the same point of origin to the same points of destination is a fair test of the reasonableness of the rates in question, and the evidentiary force of such comparisons has not infrequently been recognized . Northwestern Woodenware Co. v. C. M. & P. S. Ry. Co., 28 I. C. C. 237, 240.

(nn) Comparisons may be resorted to, of course, as evidence of unreasonable rates, but to be effective their elements must have, as a common basis, similarity of conditions. A rate may be reasonable and yet higher than another rate for substantially the same service, for example, where the traffic density varies greatly. Commercial Club of Sioux Falls v. Pullman Co., 31 I. C. C. 654, 659.

(oo) The reasonableness of a rate may be judged in part from a comparison with revenue derived by carriers involved from transportation of other commodities under similar circumstances and conditions. Pacific Creamery Co. v. S. P. Co., 34 I. C. C., 586, 591.

(pp) When rate comparisons are offered in evidence in substantiation of a claim of unreasonableness, they should be accompanied by such testimony as is possible showing the transportation circumstances and conditions incident to the rates compared; such evidence is forceful until impeached by other evidence showing that the rate comparisons are not comparable. Rate comparisons may thus be discredited in a number of ways, among others by showing that the transportation conditions prevailing in the two territories from which the rates are compared are different; that competitive conditions by rail are different; that water or rail competition intervenes as a factor; and in many other ways. Lehigh Portland Cement Co. v. B. & O. S. W. R. R., 35 I. C. C. 20.

(qq) When rate comparisons are offered in evidence, the question arises whether these comparisons are of value in determining the reasonableness of the rates in issue. If these comparisons have been drawn from different territory it becomes important to know the traffic and transportation conditions prevailing in that territory. Eastern Live Stock Case, 36 I. C. C. 675, 682.

(rr) In passing upon the reasonableness of a scale or system of rates the Commission may not properly consider only the points of origin and destination. It is bound to consider and give due weight to what has been found in other cases involving rates applicable from and to points in the same general territory where transportation conditions are substantially similar. This must be done in order that the structure of rates in any given territory may be properly related, and from as a whole a harmonious and consistent adjustment. Each city or shipping point is entitled to advantages in rates which spring from its location, with the limitation that the rates must be reasonable and not unduly dis-

criminatory. New Orleans-Texas Rates, 38 I. C. C., 1, 9.

(ss) Comparisons of the revenue per loaded car on a commodity with that on all freight handled by the carrier during a selected period, are entitled to consideration in determining the reasonableness of the rate on the commodity. Traffic Bureau of Nashville v. L. & N. R. R., 43 I. C. C. 366, 373.

(tt) In considering reasonableness of rates on a particular commodity, comparisons with rates in effect between the same points on comparable commodities are entitled to considerable weight. Atlas Portland Cement Co. v. B. & M. R. R., 44 I. C. C. 416, 421.

(uu) The fact that rates on a commodity are made the usual differential over those on a related commodity for the same movement is not conclusive of their reasonableness, where the latter are merely paper rates. Cameron & Co. v. A. T. & S. F. Ry., 44 I. C. C. 286, 294.

(vv) In considering the reasonableness of rates on a particular commodity, comparisons with rates in effect between the same points on comparable commodities are entitled to considerable weight; but when a complaint challenges the reasonableness of rates on a commodity from only one point and it appears that, because of competitive or other practical trade or transportation considerations, a number of points of origin of the particular commodity are grouped under common rates, and also that there is a relationship in rates between two or more groups, we must give due consideration to other facts that rate comparisons. The grouping of a number of points does not, of course, justify the maintenance of a rate which is unreasonable per se from any of such points, but in the absence of a conclusive showing that the rates challenged from a point included in a group are in fact unreasonable it is impracticable to consider the reasonableness of the group rates except as applied from all points in the group. Atlas Portland Cement Co. v. B. & M. R. R. 44 I. C. C. 416, 421, 422.

(ww) If the reasonableness of any rate could be gauged solely by comparing it with the average earnings of the carriers on all traffic, the inevitable result would be to bring all rates to a common level. Utah-Idaho Miller's and Grain Dealer's Assn. v. D. & R. G. R. R. Co., 44 I. C. C. 714, 725.

(xx) One of the best tests of the reasonableness of rates under section 1 is to compare the rates in issue with rates prescribed by the Commission or with rates established by the carriers with relation thereto. Blackman & Griffin Co. v. A. C. & Y. Ry., 49 I. C. C. 649, 654.

(yy) Comparisons where there is no showing of similarity either in transportation conditions or in the varying influences that affect rates are not very helpful in testing the unreasonableness of the adjustment. Dawson Co. v. A. C. L. R. R., 49 I. C. C. 296.

(zz) When the rate compared is clearly shown to be less than that which the carrier could reasonably be required to publish, the Commission can not use that subnormal rate as a measure of the reasonableness of the rate on commodities, although they possess similar transportation characteristics. Carnation Milk Products Co. v. Director General, 55 I. C. C. 665, 668.

(3a) And while value is an essential factor of a reasonable rate but is only one of the elements that must be considered. Other elemental tests must be supplied of which a comparison of revenue under the rates attacked with revenue derived from the transportation of other commodities under similar circumstances and conditions is one of considerable importance. Anaconda Copper Mining Co. v. Director General, 57 I. C. C. 723, 731, 732.

(3b) While rates assailed and rates cited in comparison depart from the usual canons of rate making in that there is considerable variation in the ton-mile earnings, and that for some what longer distances these earnings are greater than for certain shorter distances, this variation in relationships in itself is not probative of the unreasonableness alleged. Decker & Sons v. Director General, as Agent, 59 I. C. C. 67.

(3c) So a mere comparative statement of charges unsupported by a showing of the conditions under which they are maintained can not be accepted as proof that charges at a given point are unreasonable. Holly Ridge Lumber Co. v. Director General, 60 I. C. C. 120, 122.

(3d) Where rates are higher, distance considered, than those generally prevailing from near-by points to the same destinations or to points in that vicinity, over the same or other routes, whether

they are unreasonable or unduly prejudicial can not be determined from that standpoint alone, but consideration must be given to all the circumstances and conditions surrounding the traffic. National Fireproofing Co. v. Director General, as Agent, 61 I. C. C. 49, 55.

(3e) The reasonableness of any rate can not be gauged solely by comparing its earnings with average earnings of the carriers on all traffic. If this were true the inevitable result would be to bring all rates to a common level. Swift & Co. v. Director General, 62 I. C. C. 618, 625.

(3f) Comparisons between the rates on crude anthracene and the rates on commodities moved in tank cars, and on such dry commodities as paper, copper, brass, soda ash, and other dissimilar commodities, are not helpful in determining the reasonableness of the rates on anthracene. Du Pont de Nemours & Co. v. Director General, as Agent, 73 I. C. C., 129, 132.

(3g) Comparisons between the rates on a particular commodity and the rates on other commodities dissimilar in transportation and other characteristics are not helpful in determining the reasonableness of the rates on such particular commodity. Du Pont de Nemours & Co. v. Director General, as Agent, 73 I. C. C., 129, 132.

(3h) While coconut and cottonseed oils should ordinarily take the same rate, it does not follow that the cottonseed oil rate is a proper basis for determining the reasonableness of the coconut-oil rate if it appears that the former is sub-normal. Wilson & Co. v. Director General, as Agent, 73 I. C. C., 438, 441.

(3i) The reasonableness of any rate can not be gauged solely by comparing its earnings with average earnings on all traffic. If it could be, the inevitable result would be to bring all rates to a common level. Indiahoma Refining Co. v. Director General, 74 I. C. C., 392, 393.

(3j) Fourth-class rate on nickel steel and special-treatment steel from Munhall Pa., to Seattle, Wash., found not unreasonable or otherwise unlawful as compared with lower commodity rates on ship steel and tank steel from eastern producing points to same destination Nickel steel and special-treatment steel are used only in construction of war vessels. There is at present no movement of this steel to the Pacific coast, and no similar movement in the future is probable. Todd Dry Dock & Construction Corp. v. C., M. St. P. Ry. Co., 74 I. C. C. 291.

(3k) Intrastate rates are not controlling in gauging the reasonableness of interstate rates, but, in connection with other facts, they are not without significance as a basis for comparison. East Coast Potato Distributors v. N. Y., P. & N. R. R. Co., 77 I. C. C. 607, 613.

(3l) Anthracite coal is competitive with bituminous coal for many purposes, particularly for domestic uses, but its sale is hampered by reason of excessive cost, due in large part to rates of transportation. Western Coal Rates, 80 I. C. C. 383, 439.

(3m) The most helpful evidence in determining reasonableness of rates is comparison of the rates on like traffic, moving under like circumstances, and in the same territory. Mississippi Railroad Commission v. A. & V. Ry., 89 I. C. C. 47, 61.

ALL OTHER CITATIONS

Railroad Commission of Wisconsin v. C. & N. W. Ry. Co., 16 I. C. C. 85, 88, 90, 91; Henderson Iron Works & Supply Co. v. T. & P. Ry. Co. 20 I. C. C. 159; Gill Co. v. O. R. R. & N. Co., 22 I. C. C. 442; Dewey Bros. Co. v. L. & N. R. R. Co., Unrep. Op. A-89; Board of Improvement, Water Works District No. 1, Fort Smith, Ark., v. St. L. & S. F. R. R. Co., 26 I. C. C. 541, 542; Railroad Commissioners of Montana v. N. P. Ry. Co., 26 I. C. C. 482, 483; Augusta & Savannah Steamboat Co. v. O. S. S. Co., of Savannah, 26 I. C. C. 380, 387; Rates on Tin Cans and other commodities, 27 I. C. C. 298, 300; Scrap Iron Rates Between Duluth, Chicago, etc., 28 I. C. C. 467, 469; Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co., 28 I. C. C. 76; Colorado Mfrs. Asso. v. A. T. & S. F. Ry. Co., 28 I. C. C. 82, 90; Board of Trade of Carrollton v. C. of G. Ry. Co., 28 I. C. C. 154, 164; Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 193, 195; Erickson Co. v. C. M. & St. P. Ry. Co., 29 I. C. C. 414, 415; Rates on Potash and Other Commodities, 29 I. C. C. 626, 628; Oliver v. O. G. & N. E. Ry. Co., Unrep. Op. A-496; Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 707, 708; Wichita Business Association v. A. T. & S. F. Ry. Co., 30 I. C. C. 45, 50; Muskogee Wholesale Grocery Co. v. St. L. & S. F. R

Co., Unrep. Op. A-577; Montague Mailing Machinery Co. v. N. C. & St. L. Ry. Co., Unrep. Op. A-626; Norton Co. v. N. P. Ry. Co., Unrep. Op. A-637; Anderson-Tully Co. v. A. & V. Ry. Co., Unrep. Op. A-643; Railroad Commrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 650; U. S. v. N. C. & St. L. Ry. Co., Unrep. Op. A-691; Owensboro Wagon Co. v. S. Ry. Co., Unrep. Op. A-714; California Fruit Growers' Asso. v. A. G. S. R. R. Co., 32 I. C. C. 51, 52; New York Produce Exchange v. N. Y. C. & H. R. R. Co., 32 I. C. C. 212, 216; Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 268; Freight Rates from Minnesota Points, 32 I. C. C. 361, 363; Baltimore Switching Charges 32 I. C. C. 376, 379; Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 625; Pacific Creamery Co. v. S. P. Co. 34 I. C. C. 586, 591; Furniture Mfrs. Asso. of Grand Rapids v. A. A. R. R. Co., 34 I. C. C., 262, 265; Coal and Coke Rates in the Lebanon Commercial Club v. L. & N. R. R. Co., 35 I. C. C. 204, 213; Eastern Live Stock Case, 36 I. C. C. 675, 682, 703; Peet Bros. Mfg. Co. v. A. T. & S. F. Ry. Co., 36 I. C. C. 208, 213; Rates on Bituminous Coal, 36 I. C. C. 401, 425; Merrill & Bro. v. I. C. R. R. Co., 36 I. C. C. 523, 524; Morris & Co. v. U. P. R. R. Co., 36 I. C. C. 540, 544; Traffic Bureau of Knoxville, Tenn. v. C. N. O. & T. P. Ry., 37 I. C. C. 687, 690; Holmes & Hallowell Co. v. G. N. Ry. Co., 37 I. C. C. 627, 635, 641; Eagle Ice Co. v. C. M. & St. P. Ry. Co., 37 I. C. C. 250, 256; Beekman Sawmill Co. v. St. L. I. M. & S. Ry., 39 I. C. C. 215; Corporation Commission of Virginia v. C. & O. Ry. Co., 37 I. C. C. 24, 28, 32, 33; Cement to Texas Points, 40 I. C. C. 94, 99, 100; North Dakota Metal Culvert Co. v. G. N. Ry. Co., 40 I. C. C. 537, 538; Tennessee Copper Co. v. S. Ry. Co., 41 I. C. C. 336, 343, 349, 350, 353; Phoenix-American Pipe Works v. M. P. Ry., 42 I. C. C. 585, 586; Hormel & Co. v. C. G. W. R. R. Co., 43 I. C. C. 23, 25; Scully Syrup Co. v. A. G. S. R. R. Co., 43 I. C. C. 567, 574; New England Lumber Rates, 43 I. C. C. 641, 653; Green v. A. & V. Ry. Co., 43 I. C. C. 662, 671, 676; Board of Commerce, Lexington, Ky. v. C., N. O. & T. P. Ry., 44 I. C. C. 407, 415, 412; National Slag Co. v. L. V. R. R. 35 I. C. C. 125, 127; Williston Mill Co. v. G. N. Ry., 45 I. C. C. 137, 138; Milk and Cream Rates to New York City, 45 I. C. C. 412, 421; R. R. Comm. of La. v. A. H. T. Ry. Co., 48 I. C. C. 312, 367; Crushed Rock from Pixleys, Mo., 48 I. C. C. 577, 580; Albany Perforated Wrapping Paper Co. v. A. E. R. R. 49 I. C. C. 387; Holt Mfg. Co. v. S. P. Co., 51 I. C. C. 397; Royster Guano Co. v. A. C. L. R. R., 50 I. C. C. 34, 42; International Paper Co. v. D. & H. Co., 50 I. C. C. 75; Kansas City Millers' Club v. A. T. & S. F. Ry., 50 I. C. C. 170, 182; Macaroni & Noodle Mfrs. v. A. G. S. R. R., 50 I. C. C. 289, 292; Ewing & Co., Ltd. v. S. I. Ry., 50 I. C. C. 339; Southeastern Manufactured Tobacco, 50 I. C. C. 353; Henderson v. Director General, 53 I. C. C. 713, 714; Hyman-Michaels Co. v. Director General, 53 I. C. C. 177; Omaha Grain Exchange v. C. R. I. & P. Ry., 53 I. C. C. 249, 265; Carnation Milk Products Co. v. Director General, 55 I. C. C. 665, 668; Du Pont de Nemours & Co. v. Director General, as Agent, 59 I. C. C. 99; Du Pont de Nemours & Co. v. Director General as Agent, 60 I. C. C. 120, 122; Holly Ridge Lumber Co. v. Director General as Agent, 60 I. C. C. 121; Standard Oil Co., (Ky.) v. Director General, as Agent, 60 I. C. C. 449; Empire Cotton Oil Co. v. Director General, as Agent, 60 I. C. C. 661; Stone-Products Co. v. Director General, as Agent, 61 I. C. C. 51; Rock Products Traffic League v. C. V. & Q. R. R. Co., 62 I. C. C. 105; Pacific Coast Steel Co. v. Director General, as Agent, 62 I. C. C. 207; Security Mills & Feed Co. v. Director General, as Agent, 62 I. C. C. 405, 409; Beaumont Chamber of Commerce v. Director General, as Agent, 63 I. C. C. 151; Aetna Explosives Co. v. B. & O. R. R. Co., 63 I. C. C. 213, 214; Bell Lumber Co. v. Director General, as Agent, 63 I. C. C. 225, 227; Beaumont Chamber of Commerce v. Director General, as Agent, 63 I. C. C. 253; Du Pont de Nemours Co. v. Director General, as Agent, 63 I. C. C. 255; Macon Chamber of Commerce v. N. Y. N. H. & H. R. R. Co., 63 I. C. C. 327; El Paso Sash & Door Co. v. Director General, as Agent, 63 I. C. C. 342; Walroth & Sherwood Lumber Co. v. Director General, as Agent, 63 I. C. C. 347; Consumers Ice Co. v. Director General, as Agent, 63 I. C. C. 413; Kline Brick Co. v. Director General, as Agent, 63 I. C. C. 439; Kurth Malting Co. v. Director General, as Agent, 63 I. C. C. 446; Empire Cotton Oil Co. v. Director General, as Agent, 64 I. C. C. 71; Pillsbury Flour Mills Co. v. Director General, as Agent, 64 I. C. C. 81; Anaconda Copper Mining Co. v. Director General, as Agent, 64 I.

C. C. 136, 139; Armour & Co. v. O. S. L. R. R. Co., 64 I. C. C. 173; Houston Chamber of Commerce v. Director General, as Agent, 64 I. C. C. 181; Canon Mfg. Co. v. Director General, as Agent, 64 I. C. C. 183; Armour & Co. v. C. & N. W. Ry. Co., 64 I. C. C. 641; U. M. Slater, Inc., v. S. P. Co., 64 I. C. C. 647, 652; Ault & Wilborg Co. v. Director General, as Agent, 64 I. C. C. 755; Rock Products Traffic League v. B. & O. R. R. Co., 68 I. C. C. 146, 148; Riverside Coal Co. v. Director General, as Agent, 68 I. C. C. 205, 209; Republic of France v. Director General, as Agent 68 I. C. C. 424; Gillespie v. C. R. I. & P. Ry. Co., 77 I. C. C. 96; Mathieson Alkali Works v. C., C. & O. Ry., 77 I. C. C. 150; American Radiator Co. v. Director General, as Agent, 80 I. C. C. 77; Carlton Consolidated Lumber Co. v. Director General, as Agent, 80 I. C. C. 303; Elm Coal Co. v. L. V. R. R. Co., 80 I. C. C. 647; Fort Worth Cotton Oil Mill v. A. T. & S. F. Ry. Co., 80 I. C. C. 18; Armour & Co. v. C. B. & Q. R. R. Co., 80 I C C. 49; Eureka Flint & Spar Co. v. N. Y., N. H. & H. R. R. Co., 80 I. C. C. 57; Brown's Tract Lumber Co. v. Director General, as Agent, 80 I. C. C. 111; Marion Machine, Foundry & Supply Co. v. Director General, as Agent, 80 I. C. C. 119; Crystal Springs Mfg. Co. v. I. C. R. R. Co., 80 I. C. C. 132; Green Lumber Co. v. A. A. R. R. Co., 80 I. C. C. 185; Armour & Co. v. Director General, as Agent, 80 I. C. C. 210; Minute Tapioca Co. v. Director General, as Agent, 80 I. C. C. 215; Homestead Valve Mfg. Co. v. Director General, as Agent, 80 I. C. C. 248; Oklahoma Iron Works v. Director General, 80 I. C. C. 327; Bradford Rig & Reel Co. v. Director General, as Agent, 80 I. C. C. 335; French Battery & Carbon Co. v. C. & N. W. Ry. Co. 80 I. C. C. 344; Kellogg & Sons v. Director General, as Agent, 80 I. C. C. 377; Niles Fire Brick Co. v. Director General, as Agent, 80 I. C. C. 380; Kellogg & Sons v. W. S. R. R. Co., 80 I. C. C. 751; Union Sulphur Co. v. A. & W. Ry. Co., 81 I. C. C. 382; Apache Cotton Oil & Mfg. Co. v. Director General, as Agent, 81 I. C. C. 569; United Paperboard Co. v. G. & J. Ry. Co., 81 I. C. C. 591; Inland Empire Paper Co. v. S. I. Ry Co., 81 I. C. C. 603, 604, 607, 608; Western Silo Co. v. I. C. R. R. Co., 81 I. C. C. 614; Lissberger & Co. v. P. R. R. Co., 81 I C. C. 645; Metal & Thermit Corp v. Director General, as Agent, 81 I. C. C. 654; Larimer County Mild Co. v. Director General, as Agent, 83 I. C. C. 225; Aunt Jemima Mills Co. v. Director General, as Agent, 83 I. C. C. 549; Miffin-Hood Brick Co. v. Director General, as Agent, 83 I. C. C. 553; Lookout Oil & Refining Co. v. A. & V. Ry. Co., 83 I. C. C. 715; Du Pont de Nemours & Co. v. Director General. as Agent, 83 I. C. C. 719; A. & C. Mill Co. v. Director General, 89 I. C. C. 245.

§8. **Competition.**

See Competition; Long and Short Hauls §4¾.

(1) In general.

CASES 1887-1908

(a) Rates can not be charged at the mere discretion of a carrier. They are to be equitably adjusted with regard to the public interests as well as the carrier. Reduced rates at points where competitive influences are controlling must not fall below some revenue from the traffic in excess of cost, and higher rates at other points, required for the necessary revenue of a carrier, must be reasonable in themselves, and also relatively reasonable in comparison with the competitive rate. Lehmann Higginson & Co. v. S. P. Co., 3 I. C. C. 80.

(b) Neither the absence nor the presence of competition by carriers alone, nor the extent of their operations measured solely by their financial interests, can be relied on to adjust rates reasonable and just to all. Mayor and Council of Tifton, Ga. v. Louisville & Nashville R. Co., 9 I. C. C. 160.

IMPORTANT CASES SINCE 1908

(c) A carrier may in its own interest, if it so desires, carry for a longer distance over its own line than would be necessary if carried between the same points over the line of its competitors, in order to obtain a portion of the competitive business upon terms that will afford some profit. It does not necessarily follow, however, that a carrier not competing for traffic in this way thereby subjects itself to an order compelling it to do so. Hydraulic Press Brick Co. v. St. L. & S. F. R. R. Co., 13 I. C. C. 342, 347.

(d) So competition is an important element in determining reasonableness of rate. Corporation Commission of N. C. v. N. & W. Ry. Co., 19 I. C. C. 303, 309.

(e) The Commission cannot overcome by an adjustment of freight rates natural advantages, such as water competition and climatic conditions, which one

competing locality has over another. Truck Growers' Ass'n. v. A. C. L. R. R. Co., 20 I. C. C. 190, 193.

(f) Most of the great systems in Official Classification territory have existed in substantially their present form for the past twenty-five years. Originally there was the most active competition in the rate of transportation by rail, and the tariffs in Official Classification territory are largely the product of that competition. There is a strong presumption that rates so arrived at are reasonable rates. In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 259.

(g) Where at one point water and rail competition exists to an extent not present at another point the conditions are so dissimilar that the rates to the former are not necessarily a measure of a reasonable rate to the latter. Georgetown Railway & Light Co. v. N. & W. Ry. Co., 22 I. C. C. 144.

(h) Cross-country competition considered in determining the relative reasonableness of rates. Superior Commercial Club v. G. N. Ry. Co., 25 I. C. C. 342, 345; Lebanon Commercial Club v. L. & N. R. R. Co., 25 I. C. C. 277, 279.

(i) The fact that there are more competing lines in one section than another considered in determining the relative reasonableness of rates. Philadelphia Veneer & Lumber Co. v. C. R. R. Co. of N. J., 25 I. C. C. 653, 654.

(j) The Commission has not recognized the right of a carrier to fix its rates to or from a given point on a higher level than they otherwise should be in order to prevent one community from competing with another, or to keep the products of one community out of a territory, the wants of which may be fully supplied by another community. Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 26 I. C. C. 53, 58.

(k) A rate fixed through competitive conditions is no measure of a rate to which such conditions do not apply. McKnight-Keaton Gro. Co. v. C. M. & St. P. Ry. Co., 26 I. C. C. 563, 564.

(l) Where the adjustment of rates in a territory is the result of competitive conditions which the carriers operating in that territory have to a certain extent inherited or have been unable to control, those rates can not fairly be used as the only basis for comparison in determining whether or not rates immediately beyond that territory are reasonable. But rates to and from points just without this territory should not be made on an entirely different basis and without any relation to those rates. In other words, if at near-by points these same conditions do not exist the rates to and from those points should be graded up to a basis that will bear a reasonable relationship to the rates to and from points in the so-called low rated territory. Lebanon Commercial Club v. L. & N. R. R. Co., 33 I. C. C. 204, 213.

(m) The voluntary reduction of a refrigeration rate to meet carrier competition does not establish unreasonableness of previous rate. Wattam v. N. P. Ry. Co., 37 I. C. C. 101, 102.

(n) Carriers have kept constantly before us the fact that the reductions in rates from time to time were due to the action of competitive forces and were not made with the conviction that rates previously in effect were unreasonable. But competition has often been the agency through which the public received reasonable rates. The Southeastern Sugar Cases, 48 I. C. C. 739, 742.

ALL OTHER CITATIONS

La Salle Paper Co. v. Michigan Central R. R. Co., 16 I. C. C. 149, 150; St. Regis Paper Co. v. N. Y. C. & H. R. R. Co., Unrep. Op. 368; Flint & Walling Mfg. Co. v. G. R. & I. Ry. Co., 14 I. C. C. 520; Oregon & Washington Lumber Mfrs. Ass'n. v. U. P. R. R. Co., 14 I. C. C. 1, 14; Indianapolis Freight Bureau v. P. R. R. Co., 15 I. C. C. 567, 576; Bulte Milling Co. v. C. & A. R. R. Co., 15 I. C. C. 351, 359; Swift & Co., v. C. & A. R. R. Co., 17 I. C. C. 426, 428; Florida Fruit & Vegetable Ass'n v. A. C. L. R. R. Co., 17 I. C. C. 552, 558; Memphis Cotton Oil Co. v. I. C. R. R. Co., 17 I. C. C. 313, 318; Rainey & Rogers v. St. L. & S. F. R. R. Co., 18 I. C. C. 88, 89; Gamble-Robinson Commission Co. v. St. L. & S. F. R. R. Co., 19 I. C. C. 114, 115; Florida Cotton Oil Co., v. C. of G. Ry. Co. 19 I. C. C. 336, 339; Florida Mercantile Agency v. P. R. R. Co., 21 I. C. C. 85; Bluefield Shippers' Ass'n. v. N. & W. Ry. Co., 22 I. C. C. 519; Georgetown Ry. & Light Co. v. N. & W. Ry. Co., 22 I. C. C. 144; R. R. Commissioners of Kansas v. A. T. & S. F. Ry. Co., 22 I. C. C. 407; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 23 I. C. C. 195, 205; Sioux City Terminal Elevator Co. v. C. M. P. Ry. Co., 23 I. C. C. 98; 107; In re Advances in Class and Commodity

Rates, 25 I. C. C. 401, 402; Eagle Pencil Co. v. N. C. & St. L. Ry., 25 I. C. C. 203; Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 141, 149, 150; Du Pont de Nemours Powder Co. v. C. R. Co. of N. J., 25 I. C. C. 19; Marian Coal Co. v. D. L. & W. R. R. Co, 25 I. C. C. 14; Merchants' Freight Bureau of Little Rock v. A. T. & S. F. Ry. Co., 26 I. C. C. 543; Board of Improvement, Waterworks Dist. No. 1, Ft. Smith, Ark., v. A. T. & S. F. Ry. Co., 26 I. C. C. 539; Blue Grass Lumber Co. v. L. & N. R. R. Co., 26 I. C. C. 438, 441; May Bros. v. Y. & M. V. R. R. Co., 26 I. C. C. 323, 328; Union Tanning Co. v. S. Ry. Co., 26 I. C. C. 159, 164; Sioux City Terminal Elevator Co. v. C. M. & St. P. Ry. Co., 27 I. C. C. 457, 463; Scrap-Iron Rates Between Duluth and Chicago, 28 I. C. C. 467, 470; Grain Rates in Central Freight Assn. Territory, 28 I. C. C. 549, 557; Portland Chamber of Commerce v. C. M. & St. P. Ry. Co., 32 I. C. C. 188, 190; Bowling Green Protective Asso. v. E. & B. G. Packet Co., 31 I. C. C. 301, 307; Livingston Bros. v. C. M. & St. P. R. Ry. Co., Unrep. Op. A-729; Mount Pleasant Fertilizer Co. v. L. & N. R. R. Co., Unrep. Op. A-748; Maley & Wertz v. C. C. C. & St. L. Ry. Co., Unrep. Op. A-811; Cottonseed Crushers' Assn. v. M. K. & T. Ry. Co., 39 I. C. C. 497, 503; Pardee Works v. C. R. R. Co. of N. J., 39 I. C. C. 162, 165; Clay from Flordia, 40 I. C. C. 275, 279; Beaver Valley Milling Co. v. A. T. & S. F. Ry. Co., 41 I. C. C. 533, 536; American Sugar Beet Co. v. S. P. Co., 41 I. C. C. 631, 636; Export Grain from Colorado, 42 I. C. C. 114, 120; Pelican Lumber Co. v. S. P. Ry. 50 I. C. C. 540; L'Anguille River Ry. v. I. C. R. R. Co., 83 I. C. C. 521.

§8 (1½) Market Competition.

See Market Competition.

CASES 1887-1908

(a) Rates for the transportation of property should be arrived at and based so far as practicable upon permanently continuing fixed facts and conditions. The fluctuations of the markets of the country are so frequent, especially as to competitive articles, and oftentimes unexpected, that commercial considerations alone would not furnish a sufficiently stable and fixed rule for guidance in making a rate which ought to remain substantially permanent through all fluctuations. Squire & Co. v. M. C. R. Co., 3 I. C. C. 515, 521.

(b) Each locality competing with others in a common market are entitled to reasonable and just rates at the hands of the carriers serving it and to the benefit of all its natural advantages, and no departure from the rule requiring rates in all cases to be reasonable in themselves can be justified on the ground that it is necessary in order to maintain existing trade relations, or to protect commercial conditions or to secure to carriers traffic from certain territory assumed to be exclusively theirs. Freight Bureau v. C. N. O. & T. P. R. Co., 4 I. C. C. 592, 615.

(c) No departure from the rule requiring rates in all cases to be reasonable in themselves can be justified on the ground that it is necessary in order to maintain existing trade relations, or to "protect competing markets," or to "equalize commercial conditions." or to secure to carriers traffic from certain territory assumed to be exclusively theirs. Freight Bureau v. Cincinnati, N. O. & T. P. R. Co., 6 I. C. C. 195.

(d) Defendants' rates per 100 pounds on cotton goods from various producing points in Texas are 96 cents to Wichita, Kan., 50 cents to Kansas City and St. Louis, and 55 cents to Omaha and Chicago. The average distances range from 458 miles to Wichita to 1,038 miles to Chicago. Active market and carriers' competition exists for the sale and transportation of this traffic to the points other than Wichita, to which substantially agreed rates are maintained by the four carriers reaching that point from all markets. A rate from Texas producing points to Wichita of 50 cents per 100 pounds would be highly profitable to the carriers and complainant; a Wichita jobber formerly had, by the rebate system, a rate as low as 50 cents. Until recently the tariff rate to Wichita from these points was $1.16. The present rates to Kansas City and other Missouri River points and to Wichita exclude the Wichita jobber from competition. Under these circumstances complainant buys cotton goods in other markets. HELD, that the present rate of 96 cents to Wichita is unreasonable and unjust, and should not exceed 50 cents per 100 pounds. For reasons stated the rate from Galveston to Wichita is not included in the decision. Johnston-Larimer Dry Goods Co. v. A., T. & S. F. R. Co., 12 I. C. C. 48.

(e) Defendant's rates on refined oil at the date of filing complaint from Erie,

Kans., to Joplin, Mo., 69 miles, and to St. Louis, Mo., 400 miles, were 17 cents per 100 pounds; but later the rate from Erie to Joplin was reduced to 15 cents, which is the rate prevailing from other oil-shipping points in Kansas to Joplin. The rates to Joplin, St. Louis, and Kansas City from these producing points are apparently adjusted with a view to placing the shippers on an equitable basis and affording them equal opportunities in the markets. Complaint dismissed. Wilhart v. Missouri Kansas & Texas Ry. Co. 12 I. C. C. 139.

(f) The record showing the rate on coal from Jewett, Kan., to Kansas City, Mo., to be the same as from other mines in the same field, the same as that on competing railroads in the same field, and to be fixed in accordance with an established relation of rates on coal from other producing points in the same market; and it also appearing that such rate could not be changed without disturbing rates on coal, not only from other neighboring mines, but from all the local-producing centers the product of which is sent to Kansas City,—the Commission is not justified in ordering rate changed or declaring it unreasonable. Fellows Coal & Material Co. v. Missouri P. Ry. Co., 12 I. C. C. 481.

IMPORTANT CASES SINCE 1908

(g) The fact that one market has higher rates inbound than its competitor is not a justification for rates outbound which are less than just and reasonable. La Crosse Shippers' Asso. v. C. & N. W. Ry. Co., 38 I. C. C. 453, 458.

(h) There may be little or nothing which will aid in determining from a tranportation standpoint what is the just and reasonable rate to be applied on various commodities, made to meet the varying stress of commercial competition between foreign and domestic producers of those commodities. Chamber of Commerce, Houston, Tex. v. S. P. Co., 49 I. C. C. 316, 318.

(i) Ability or inability to market all the product is not in itself determinative of the justness and reasonableness of the rates. Ohio Valley Coal Operators Asso. v. I. C. R. R., 53 I. C. C. 148, 151.

ALL OTHER CITATIONS

Rice from California, 42 I. C. C. 427, 439; National Implement & Vehicle Asso. v. B. & O. R. R. Co., 42 I. C. C. 461, 468; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. 46 I. C. C. 558, 563; Barrett Mfg. Co. v. A. T. & S. F. Ry., 47 I. C. C. 27, 31; Beaumont Chamber of Commerce v. Director General, as Agent, 63 I. C. C. 151; El Paso Sash & Door Co. v. Director General, as Agent, 63 I. C. C. 342; Upjohn Co. v. Director General, as Agent, 63 I. C. C. 371.

§8 (2) Railroad Competition.

See Evidence §14 (3); Railroad Competition:

CASES 1887-1908

(a) Exceptional cases of rates made lower than other rates by a carrier on one portion of its line by the action of a competitor, and in which it is without fault itself under the operation of the act, can not be adopted as the standard as to other rates upon a far distant portion of its line where no such exceptional conditions exist, and the reasonableness of its rates must be determined by altogether different considerations. Business Mens Asso. of Minnesota v. C. & N. W. Ry. 2 I. C. C. 48, 52.

IMPORTANT CASES SINCE 1908

(b) The competition of a circuitous line with a short line is considered in determining the relative reasonableness of a rate. Edwards & Bradford Lumber Co. v. C. B. & Q. R. R. Co., 25 I. C. C. 93, 95.

ALL OTHER CITATIONS

I. C. C. v. C. G. W. Ry. Co., 209 U. S. 108, 119; 28 Sup. Ct. 493, 52 L. ed. 705; In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 259; Morgan Grain Co. v. A. C. L. R. R. Co., 19 I. C. C. 460, 463; Wilson Sadlery Co. v. C. & S. Ry. Co., 18 I. C. C. 220, 221; Southern Timber & Land Co. v. S. P. Co., 18 I. C. C. 232; Schoenhofen Brewing Co. v. A. T. & S. F. Ry. Co., 17 I. C. C. 329; Indianapolis Freight Bureau v .P. R. R. Co., 15 I. C. C. 567, 576; City of Crawford v. C. & N. W. Ry. Co., 25 I. C. C. 259, 264; McCullough v. L. & N. R. R. Co., 25 I. C. C. 48, 49; Farrar Lumber Co. v. N. C. & St. L. Ry. 25 I. C. C. 22, 24; Philadelphia Veneer & Lumber Co. v. C. R. R. Co., of N. J., 25 I. C. C. 653, 654; Iowa Grain Rates, 28 I. C. C. 354, 355; Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 555, 556; Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 577, 581; Fourth Section Violations in the Southeast, 30 I. C. C. 153, 204, 208, 230, 279, 304; Memphis Freight Bureau v. I. C. R. R. Co., 30 I. C. C. 471, 475; Fourth Section Violations on Sugar, 31 I. C. C. 511, 522; Cunningham v. B. &

O. S. W. R. R. Co., Unrep. Op. A-798; Doran & Co. v. N. C. & St. L. Ry. 33 I. C. C. 523, 530; Wattam v. N. P. Ry. Co., 37 I. C. C. 101, 102.

§8 (3) Rail-and-water Competition.

See Rail and Water Rates.

IMPORTANT CASES SINCE 1908

(a) Rail-and-water rates should be lower than all-rail rates. Bowling Green Protective Asso. v. E. & B. G. Packet Co., 31 I. C. C. 301, 307.

ALL OTHER CITATIONS

Georgetown Railway & Light Co. v. N. & W. Ry. Co. 22 I. C. C. 144, 146; In Re Advances in Rates for the Transportation of Flaxseed in Carloads, 23 I. C. C. 272, 275.

§8. (4) Water Competition.

See Evidence §14 (5); Water Competition.

CASES 1887-1908

(a) The possible influence of water competition upon rates for the transportation of oranges and the non-existence of such competition in the carriage of berries, because the latter cannot be carried by water in any considerable quantity, does not authorize defendants to take advantage of the situation and charge unreasonable rates on berries. Perry v. Fla. Central & Peninsular R. Co. 3 I. C. R. 740.

(b) Competition in ocean transportation is to be taken into consideration in determining whether or not the rate for the carriage of goods imported on a through bill of lading from a foreign port, from the port of entry in the United States to the point of destination, violates the interstate commerce law; and the fact that the proportion of the through rate allowed for carriage in the United States is less than the rate scheduled for ordinary shipments between the same points does not necessarily render the rate charged unlawful. Southern Pacific Co. v. Redding & Son, 8 I. C. C. App. II.

IMPORTANT CASES SINCE 1908

(c) Carriers can not be compelled to meet water competition; they do it of their own volition, or whenever the same is potent enough to compel them to do so in order to secure the traffic. In each instance the carrier determines for itself whether such water competition has sufficient influence on the traffic to make it reduce its rates. Bainbridge Board of Trade v. L. H. & St. L. Ry. Co., 15 I. C. C. 586, 594.

(d) There may be water competition at each of two points, and yet a difference in rates to those points may be justified. Bainbridge Board of Trade v. L. H. & St. L. Ry. Co., 15 I. C. C. 586, 594.

(e) While water competition may be availed of by a carrier as its justification and excuse for rates that are lower than would otherwise be lawful, the existence of such competition is not in itself a ground upon which shipper may demand a lower rate. Lindsay Bros. v. B. & O. S. W. R. R. Co., 16 I. C. C. 6, 8.

(f) Potential competition, as well as actual, justifies low rates. Kentucky Wagon Mfg. Co. v. I. C. R. R. Co., 18 I. C. C. 360, 363.

(g) Terminal rates, such as a blanket rate from the Mississippi River to the Atlantic seaboard, to all Pacific terminals are low and not a fair measure of rates generally. Ohio Foundry Co. v. P. C. C. & St. L. Ry. Co., 19 I. C. C. 65, 67.

(h) The mere fact of water competition is not proof that rail rates are so low as to deprive a carrier of a reasonable return. R. R. Commission of Nev. v. S. P. Co., 19 I. C. C. 238, 250.

(i) The Commission cannot overcome by an adjustment of freight rates natural advantages, such as water competition and climatic conditions, which one competing locality has over another. Truck Growers' Ass'n v. A. C. L. R. R. Co., 20 I. C. C. 190, 193.

(j) Potential water competition is considered in fixing rates. Audley Hill & Co. v. S. Ry. Co., 20 I. C. C. 225, 226;

(k) Lower rates which are forced by water competition cannot be accepted as a measure of reasonableness of rates from points where such competition does not exist. South Atlantic Waste Co. v. S. Ry. Co., 22 I. C. C. 293, 296.

(l) Ocean competition, as well as circumstances and conditions beyond the seaboard, are to be considered in determining whether differences in rates as between foreign and domestic traffic are unreasonable or unduly discriminatory. Chamber of Commerce of Newport News v. S. Ry. Co., 23 I. C. C. 345, 355.

(m) A water-compelled rate is not the measure of a normal all-rail rate. Cohen & Co. v. Mallory Steamship Co., 23 I. C. C. 374, 377.

(n) Lower rates which are forced by water competition can not be accepted

as a measure of reasonableness of rates from or to points where such competition does not exist. Class and Commodity Rates between St. Louis, East St. Louis, and Ohio River Points, 38 I. C. C. 411, 431.

(o) Transcontinental rates are affected by competition of ocean carrying vessels and other conditions, and it would be difficult to find in them any practical standard whereby to determine the reasonableness of rates directly involved. Tennessee Copper Co. v. S. Ry. Co., 41 I. C. C. 336, 356.

(p) A water compelled rate can not be taken as a measure of a reasonable rate, nor can the voluntary reduction of a rate without other evidence be considered a sufficient basis upon which to find the higher rate unreasonable. Du Pont De N. P. Co. v. Penn. R. R., 46 I. C. C. 363, 364.

(q) The fact that there is a water route from a given point to a certain destination affording a low and reasonable rate does not justify the Commission in permitting the rail carriers to charge a high and unreasonable rate on traffic between these points. S. P. Co. v. I. C. C., 219 U. S. 433, 451, 31 Sup. Ct. 288, 55 L. ed. 283.

ALL OTHER CITATIONS

Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 16 I. C. C. 276, 281; Lindsay Brothers v. B. & O. S. W. R. R. Co., 16 I. C. C. 6, 8; Fuller & Co. v. P. C. & Y. Ry. Co., 17 I. C. C. 594, 595; Receivers & Shippers' Asso. of Cincinnati v. C. N. O. & T. P. Ry. Co., 18 I. C. C. 440, 453; Kentucky Wagon Mfg. Co. v. I. C. R. R. Co., 18 I. C. C. 360, 362, 363 Rainey & Rogers v. St. L. & S. F. R. R. Co., 18 I. C. C. 88, 89; City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162 174, 169; Truck Growers' Ass'n v. A. C. L. R. R. Co., 20 I. C. C. 190, 194; Steinfeld & Co. v. I. C. R. R. Co., 20 I. C. C. 12; In Re Advances on Furniture, 25 I. C. C. 331, 332; Wharton Steel Co. v. D. L. & W. R. R. Co., 25 I. C. C. 303, 308; Taylor v. N. W. Ry. Co., 25 I. C. C. 613, 617; Meridian Board of Trade & Cotton Exchange v. A. G. S. R. R. Co., 28 I. C. C. 360, 361; Class and Commodity Rates between St. Louis, East St. Louis, and Ohio River Points, 38 I. C. C. 411, 431; Tennessee Copper Co. v. S. Ry. Co., 41 I. C. C. 336, 356; Anaconda Copper Mining Co. v. Director General, 57 I. C. C. 723, 733; Greater Des Moines Committee (Inc.) v. Director General, 60 I. C. C. 403; Elm Coal Co. v. L. V. R. R. Co., 80 I. C. C. 647.

§8. (5) Wagon or Motor Competition.

See Water Competition.

IMPORTANT CASES SINCE 1908

(a) Stated that if rail rates are too high a considerable portion of short-haul traffic would be lost to motor service, but this fact could not enter very largely in determination of what would be reasonable rates. C. F. A. Class Scale Case, 45 I. C. C. 254, 272..

§8½. Concerted Action.

See Advanced Rates §9.

IMPORTANT CASES SINCE 1908

(a) The fact that a rate became effective by concerted action of carriers does not in itself prove that it was unreasonable and does not relieve complainant of the necessity of showing it was unreasonable. New Pittsburgh Coal Co. v. H. C. Ry. Co., 26 I. C. C. 121, 122.

ALL OTHER CITATIONS

Excelsior from St. Paul, Minn., 36 I. C. C. 349, 362.

§8¾. Congestion.

IMPORTANT CASES SINCE 1908

(a) Considering the congested conditions in and around Chicago, Ill., a rate of 70 cents per ton, or 3.5 cents per 100 pounds, can scarcely be denominated a high rate even on a low-grade commodity and for comparatively short distances. Illinois Brick Co. v. Director General, as Agent, 73 I. C. C., 215, 217.

ALL OTHER CITATIONS

Switching at Baltimore, Md., 30 I. C. C. 581, 583.

§9. Cost of Service and Operation.

See Advanced Rates §7 (2); Evidence §6 §17 §18.

CASES 1887-1908

(a) In arriving at what is a just and reasonable rate on freight transported by a carrier on a short local line having but a small volume of business, where the cost of transportation is exceptionally great, arising from steep grades, sparse population, and light traffic, these are circumstances and conditions of controlling weight in the making of the rates, and cannot be overlooked when a question of their reasonableness is involved; and under such circumstances the fact that an independent pipe line from Titusville to Buffalo transports oil between those points at lower rates than

the railroad company constitutes no just reason why the railroad company should be required to reduce its rates to those of the pipe line. Rice v. Western N. Y. & P. R. Co. (Com.) 2 I. C. R. 298.

(b) It is not shown that the rate of 17½ cents on grain and grain products from Chicago to New York is unremunerative or disproportionate as compared with other rates; and whether tested by the cost of movement, by what the carriers have voluntarily accepted in the past, or by comparison with rates on somewhat similar kinds of traffic, it is not shown to be unprofitable or unreasonably low. It is 10 to 40 per cent higher than the rates actually received in recent years, and nothing appears from the financial conditions of the carriers to justify a greater advance. In the Matter of Proposed Advances in Freight Rates, 9 I. C. C., 302.

(c) Cost of service not conclusive as to the reasonableness of a rate on a particular article. Society of American Florists, etc. v. U. S. Express Co. 12 I. C. C. 120.

(d) Cost of service on a particular article is not conclusive as to the reasonableness of a rate thereon. Society of American Florists, etc., v. U. S. Express Co. 12 I. C. C. 121.

IMPORTANT CASES SINCE 1908

(e) An increase in the cost of labor and in the price of railway materials and supplies does not necessarily imply a decrease in the net earnings of a carrier or preclude the possibility of an increase in its net earnings, due to an increase in the volume of traffic. Shippers & Receivers' Bureau of Newark v. N. Y. O. & W. Ry. Co., 15 I. C. C. 264, 265.

(f) In determining the cost of hauling ice from New Jersey and Pennsylvania points to Jersey City, Hoboken and other points the carrier obtained indirect line expense by assuming that the cost in the case of ice equaled the average cost of moving a ton of freight upon its line without presenting the slightest evidence to bear out the assumption. The indirect terminal expense was obtained by taking an average obtained by dividing the total terminal cost, including a proportion of the fixed charges, by the total number of cars of traffic of all kinds shipped on the railroad. Nearly one-third of the total amount which was used for the purpose of determining the ton-mile cost of hauling ice in case of indirect line expenses and of terminal cost was styled "fixed charges," which consisted mainly of rent and to a small extent of interest and taxes. The Commission held this method of computing the cost of transportation of the ice was unreliable. The indirect line expense might be greater or less, according to the nature of the entire traffic handled over the system. Some of the items which were included in the indirect line expense were due in part to the movement of the ice trains and others were not, and to assume that every ton of the ice should bear a proportionate share of all the expenses of the railroad of all kinds was to beg the whole question. It was erroneous to assume that ice should pay in proportion to the number of tons exactly the same contribution to fixed charges that all other traffic paid. Mountain Ice Co. v. D. L. & W. R. R. Co., 15 I. C. C. 305, 316, 318, 319.

(g) Rates over the same lines, between the same points but under differing conditions, must be made with some consideration for the difference in the cost of service. Kindel v. N. Y. C. H. & H. R. R. Co., 15 I. C. C. 555, 558.

(h) Certain portions of a system of railroad cannot be segregated from the whole and the expenses and earnings charged and credited to such portions on a mileage pro rata basis. In Re Investigation of Advances on Grain, 21 I. C. C. 22, 25.

(i) In fixing rates on competitive articles the relation should be determined on the basis of a difference in the cost of service, and many of the other considerations entering into the establishment of rates upon independent or isolated articles should be in a large part eliminated. Carstens Packing Co. v. O. & W. R. R. Co., 22 I. C. C. 77, 81.

(j) Carriers may not haul a particular class of traffic or traffic for a particular community at less than the cost of the service, and recoup themselves from the charges levied against other traffic. In re Advances in Rates by Carriers for the Transportation of Single Package Lots, 22 I. C. C. 328, 335.

(k) Costs do not determine rates; yet most rates have within them as a constituent the element of cost. Cost is generally an important element in arriving at a judgment with respect to a rate. What weight shall be given to that element as compared with all the

other elements entering into a particular rate is a matter to be decided in each individual case. Boileau v. P. & L. E. R. R. Co., 21 I. C. C. 640, 652.

(l) Information as to the cost of service is helpful in the determination of the reasonableness of rates. The cost of service is one of the factors to be considered in determining the reasonableness of rates. But neither the cost of the service, nor any one of the other factors, of which there are many, can be taken alone as conclusive. If cost of service were to be accepted as the controlling factor, it must necessarily follow that the rates on lines of light traffic must be much higher relatively than upon lines having great density of traffic. If adjusted upon that basis alone, it would seem inevitable that industry and commercial activity must more and more concentrate in great centers and in fewer hands. Aside from the risk of loss or damage, the cost of service between two points is presumably the same for two cars of equal weight loaded, one with a low-grade commodity, and one with a commodity of high value. If the rates were necessarily the same upon both, the apparently inevitable result would be great restriction upon the abandonment of the movement of the low-grade commodity. This would cause material shrinkage in the total revenue from transportation and increase the rates for the traffic that must move, whatever the rates may be. Coke Producers' Assn. of Connellsville v. B. & O. R. R. Co., 27 I. C. C. 125, 140.

(m) Commercial and transportation conditions must not be confused, and the condition of the market as to any specific commodity is not to be considered the controlling element in determining the reasonableness of a rate. If, when viewed in the light of those considerations which enter into proper rate-making, a particular rate is fair and just for the service performed, the price at which the shipper markets his product cannot be accepted as the controlling factor in fixing the rate. Rates on Potatoes from Oklahoma to Points in Colorado, 28 I. C. C. 298, 300.

(n) The cost of transporting a commodity is an element properly to be considered in deciding what is a reasonable rate, but it is not necessarily determinative in all cases. Cost of transportation may be said to determine the minimum rate that may be charged as, on the other hand, the value of the service to the shipper marks the maximum of a reasonable rate or charge. Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 112.

(o) When cost figures are used in determining the reasonableness of rates and are the result of painstaking efforts to arrive at just and reasonable results, such figures are not to be disregarded because they may not be correct in every detail and are based in part on estimates. Switching and Absorption at Minneapolis, 61 I. C. C. 646, 652.

(p) Cost of service includes not only expenses of operation but taxes and the proper capital charges incident to the continued functioning of the property. The Commission recognizes this when it makes allowances for density of traffic in the determination of reasonable rates. The share of overhead costs fairly attributable to interchange of traffic may likewise be greater, relatively, where this density is low. New England Divisions, 66 I. C. C., 196, 199.

(q) Proof that a carrier is not earning operating expenses on its State and interstate freight traffic as a whole does not establish that the joint interstate rates on a particular commodiy, if reduced in accordance with findings in Reduced Rates, 68 I. C. C., 676, would be less than just and reasonable. Reduced Rates, 1922, 73 I. C. C., 189, 191.

(r) Where a rate imposed by a regulatory body is under judicial review upon the allegation that the rate fixed is confiscatory, it has been held by the courts that a rate may not lawfully be fixed by such tribunal which is based alone on the out of pocket costs ascribable to that particular traffic, but that to be lawful the rate must be sufficient to cover a ratable proportion of the average cost of freight traffic generally, including a return on the property devoted to public service. To hold otherwise would compel the performance of a certain specified kind of service by the carrier at less than average cost. The extension of this principle to other classes of traffic, if pursued far enough, would bankrupt the road. Transcontinental Cases of 1922, 74 I. C. C., 48, 69.

(s) It has been held by the courts that a rate may not lawfully be fixed by a regulatory tribunal which is based alone on the out-of-pocket costs ascribable to that particular traffic, but that to be lawful the rate must be sufficient to cover

a ratable portion of the average cost of freight traffic generally, including a return on the property devoted to public service. To hold otherwise would compel the performance of a certain specified kind of service at less than average cost. The extension of this principle to other classes of traffic, if pursued far enough, would bankrupt the road. Transcontinental Cases of 1922, 74 I. C. C. 48, 69.

(t) Where cost studies appear to be the result of an earnest endeavor to determine the cost of a particular service they are entitled to some weight in arriving at a reasonable charge. Switching and Absorption at Minneapolis, 74 I. C.

(ta) Rates (including dock service charge) on iron ore from Mesabi, Vermillion, and Cuyuna Ranges in Minnesota to vessels at Two Harbors and Duluth, Minn., and Allouez Bay and Superior, Wis., found not unreasonable, discriminatory, or unduly prejudical. Evidence consists of statistics and cost studies of operation on roads controlled by U. S. Steel Corporation, upon doubtful assumption that such statistics are representative of all roads considered herein. Fact that Steel Corporation roads earn in excess of return prescribed in the act does not prove discriminatory or prejudice or preference, and general reductions of 1922, applied to ore rates, seem to have been fairly proportionate to decreased costs of operation. Adriatic Mining Co. v. C. & N. W. Ry. Co., 78 I. C. C. 611, 617, 634.

(tb) Charges assailed can not be found unreasonable merely because defendant's operating costs were in excess of what they would have been if it had paid wages lower than those found unreasonable by Railroad Labor Board. Sugarland Industries v. Galveston Wharf Co., 80 I. C. C., 665, 667.

(u) The cost of the service includes not only expenses of operation but taxes and the proper capital charges incident to the continued functioning of the property. The Commission recognizes this when it makes allowance for density of traffic in the determination of reasonable rates. The share of overhead costs fairly attributable to interchange traffic may likewise be greater, relatively, where this density is low. Wichita Northwestern Ry. v. C. R. I. & P. Ry. 81 I. C. C. 513, 516.

(v) While cost is an important element in determining reasonableness of rates it is not necessarily controlling. Republic Iron & Steel Co. v. B. & O. R. R. Co., 83 I. C. C. 429, 431.

ALL OTHER CITATIONS

Nebraska State Ry. Commission v. C. B. & Q. R. R. Co., 23 I. C. C. 121, 126; Albree v. B. & M. R. R. Co., 22 I. C. C. 303, 316; Boileau v. P. & L. E. R. R. Co., 22 I. C. C. 640, 646; Martime Exchange v. P. R. R. Co., 21 I. C. C. 81, 84; Meeker v. L. V. R. R. Co., 21 I. C. C. 129; In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 275; Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 173; Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co., 19 I. C. C. 218, 222; Commercial Club of Omaha v. B. & O. R. R. Co., 19 I. C. C. 397, 401; Board of Trade of Winston-Salem v. N. & W. Ry. Co., 16 I. C. C. 12, 17; Cedar Hill Coal & Coke Co. v. Colo. & So. Ry. Co., 16 I. C. C. 387, 391; Duncan Co. v. N. C. & St. L. Ry. Co., 16 I. C. C. 590, 593; Oregon & Washington Lumber Mfrs'. Ass'n v. U. P. R. R. Co., 14 I. C. C. 1, 9, 10; American Asphalt Ass'n v. United Ry. Co., 13 I. C. C. 196, 204; Cattle Raisers Ass'n of Texas v. N. K. & T. Ry. Co., 13 I. C. C. 418, 430; Medford Traffic Bureau v. S. P. Co. 23 I. C. C. 701; Albree v. B. & M. R. R. Co., 22 I. C. C. 303, 316; In Re Advances in Rates by Carriers for the Transportation of Single Package Lots, 22 I. C. C. 328, 335; In Re Advances on Coal to Lake Ports, 22 I. C. C. 604, 615, 624, 625; In Re Investigation of Advances on Grain, 21 I. C. C. 22, 28; Burnham, Hanna, Munger Co. v. C. R. I. & P. Ry. Co., 14 I. C. C. 299, 310; Chamber of Commerce of New York v. N. Y. C. & H. R. R. Co., 27 I. C. C. 238, 242; New England Investigation, 27 I. C. C. 560, 575; L. & N. R. R. Coal & Coke Rates, 26 I. C. C. 20, 27; Hormel & Co. v. C. M. & St. P. Ry. Co., 26 I. C. C. 112, 114; Union Tanning Co. v. S. Ry. Co., 26 I. C. C. 159, 164; Lumber from Louisiana to North Atlantic Points, 26 I. C. C. 186, 189; U. S. v. Wharton & Northern R. R. Co., 26 I. C. C. 309, 311; Spiegle v. S. Ry. Co., 25 I. C. C. 71, 75; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 75; Commercial Club of Superior, Wis., v. G. N. Ry. Co., 24 I. C. C. 96, 102; Marion Coal Co. v. D. L. & W. R. R. Co., 24 I. C. C. 140, 143; Pittsburgh Vein Operators' Assn. of Ohio v. P. Co., 24 I. C. C. 280, 285; Consolidated Fuel Co. v. A. T. & S. F. Ry., 24 I. C. C. 213, 215; Arlington Heights Fruit Exchange v. S. P. Co., 24 I. C. C. 671, 672; Board

of Railroad Commissioners of Mont. v. D. & R. G. R. R. Co., 27 I. C. C. 522; Hampton Mfg. Co. v. Old Dominion S. S. Co., 27 I. C. C. 666; Hennepin Paper Co. v. N. P. Ry. Co., 27 I. C. C. 699, 700; In re Rates on Commodity Beer Packages Returned, 26 I. C. C. 4, 6; Meridian Fertilizer Factory v. T. & P. Ry. Co., 26 I. C. C. 351, 353; Stewart & Clark Mfg Co. v. A. T. & S. F. Ry. Co., 26 I. C. C. 361, 363; Louisville Cottonseed Products Co. v. L. & N. R. R. Co., 26 I. C. C. 607, 608; Moore v. D. & R. G. R. R. Co., 25 I. C. C. 1; In re Express Rates, 24 I. C. C. 380, 423; Santa Rosa Traffic Assn. v. S. P. Co., 24 I. C. C. 46, 49; Union Tanning Co. v. S. Ry. Co., 25 I. C. C. 112, 115; Multnomah Lumber & Box Co. v. S. P. Co., 25 I. C. C. 123, 128; North Fork Channel Coal Co. v. A. A. R. R. Co., 25 I. C. C. 241, 245; Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co., 28 I. C. C. 193, 200; Boston Chamber of Commerce v. A. T. & S. F. Ry. Co., 28 I. C. C. 230, 232; Kansas-Iowa Brick Rates, 28 I. C. C. 285, 287; Elgin Commercial Club v. B. & N. R. R., 28 I. C. C. 380, 381; Traffic Bureau of Nashville v. L. & N. R. R. Co., 28 I. C. C. 533, 536; Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 553, 554; National Syrup Co. v. C. & N. W. Ry. Co., 28 I. C. C. 673, 674; Decker & Sons v. C. N. & St. P. Ry. Co., 30 I. C. C. 547, 548; Fort Scott Industrial Assn. v. St. L. & S. F. R. R. Co., 29 I. C. C. 671, 678; Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 678; In re Separation of Operating Expenses, 30 I. C. C. 676, 678; American Refining Co. v. St. L. & S. F. R. R. Co., 30 I. C. C. 103, 104; New York Shippers' Protective Asso. v. N. Y. C. & H. R. R. R. Co. 30 I. C. C. 437, 441; Coal Rates from Oak Hills, Colo., 30 I. C. C. 505, 508; Chamber of Commerce of Washington v. B. & O. R. R. Co., 30 I. C. C. 446, 447; Judd & Detweiler, Inc. v. B. & O. R. R. Co., 30 I. C. C. 455, 457; Railroad Commission of Arkansas, v. M. & N. A. R. R. Co., 30 I. C. C. 488, 491; Coal Rates from Oak Hills, Colo., 30 I. C. C. 505, 508; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597, 602; Low Moor Iron Co. of Virginia v. C. & O. Ry. Co., 30 I. C. C. 615, 618; Alderman & Sons Co. v. A. C. L. R. R. Co., Unrep. Op. A-548; Class and Commodity Rates to Salt Lake City, Utah, 32 I. C. C. 551, 555; Class and Commodity Rates from Stations in Maine, 31 I. C. C. 18, 22; Five Per Cent Case, 31 I. C. C. 351, 380; Commercial Club of Sioux Falls v. Pullman Co., 31 I. C. C. 654, 658; Weatherford Chamber of Commerce v. M. K. & T. Ry. Co., 31 I. C. C. 665, 666; National Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 691, 695; Kenner Truck Farmers' Asso. v. I. C. R. R. Co., 32 I. C. C. 1, 9; American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 463, 466; Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 622; Proportional Commodity Rates Between Kerper and Wilson, Ohio, Unrep. Op. A-893; Industrial Railways Case, 29 I. C. C. 212, 236; Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 432; In re Separation of Operating Expenses, 30 I. C. C. 676, 678; Coal Rates from Virginia Mines, 30 I. C. C. 635, 646; Alderman & Sons Co. v. A. C. L. R. R. Co., Unrep. Op. A-548; Alpha Portland Cement Co. v. B. & O. R. R., 34 I. C. C. 414, 420; Switching Charges at Alexandria, Ind., 35 I. C. C. 494, 495; Western Laundry Machinery Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 2195; Paducah Board of Trade v. I. C. R. R. Co., 37 I. C. C. 719, 722; Royal Milling Co. v. G. N. Ry. Co., 41 I. C. C., 29, 34; California Walnut Growers Assn. v. A. & R. R. R., 50 I. C. C. 558, 570; Roberts & Schaefer Co. v. Director General, 55 I. C. C. 277, 278.

§10. Distance

See Infra §36; Blanket Rates §9; Differentials; Distance Rates; Evidence §20; §58.

CASES 1887-1908

(a) Where a road makes the same charge to one point that it does to another one third or two-thirds the distance on the same line, presumptively its charges to the last mentioned point are unjust and illegal. Re Chicago St. Paul & Kansas City R. Co. 2 I. C. C. 137, 147.

(b) Distance is not always the controlling element in determining what is a reasonable rate, but there is ordinarily no better measure of railroad service in carrying goods than the distance they are carried. And where the rates of freight charges over one line, on similar freight carried from neighboring territory to the same market, is considerably greater than over other lines for distances as long or longer, such greater rate is held to be excessive and should be reduced. James & Abbott v. E. T. V. & Ga. R. R., 2 I. C. C. 609, 613.

(c) In the absence of other influential conditions, distances may be fairly con-

sidered a controlling element in fixing reasonable rates. The distance being in favor of one of two competing points, and neither the cost, the value of the service nor other conditions of transportation in favor of the other, the shorter distance point cannot justly be denied at least equal rates with the longer. HELD, on the facts in this case, that any higher rate from Nashville, Tenn., to Cordele, Ga., than to Albany and Americus, Ga., is unreasonable and unduly prejudicial to complainants. S. J. Hill & Bro. v. Nashville, C. & St. L. R. Co. et al, 6 I. C. C. 343, 358.

(d) To make distance the sole factor in determining a reasonable rate would introduce undue discrimination and create chaotic commercial conditions. E. M. Wilhoit v. M. K. & T. Ry., 12 I. C. C. 139, 140.

(ef) Distance not sole factor in determining reasonable rates. Wilhoit v. M. K. & T. R. Co., 12 I. C. C. 138.

IMPORTANT CASES SINCE 1908

(g) If strictly distance rates were applied to grain moving from points of origin it is apparent that at a certain distance the rate would be prohibitive. Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co., 16 I. C. C. 195, 204.

(h) Unquestionably mileage is a factor in the determination of the reasonableness of rates, but how important, or what effect it should have in judging the fairness of a challenged rate is a question which must be answered in the light of all the facts surrounding the exact-ion of the rate. The Commission will not compel the establishment of rates solely according to mileage; the public benefits, the greater volume of business of carriers warranting lower rates to all, the force of competition and many other potent considerations may far outweigh a claim of right founded only on geographic location. Fort Dodge Commercial Club v. I. C. R. R. Co., 16 I. C. C. 572, 581.

(i) It is well settled that distance is always a factor to be taken into consideration in determining either the reasonableness of a rate by itself or in considering its relation to rates to other points, but it is equally well settled that distance alone is not controlling. Competition is an important element and there are various other considerations, all of which must be taken into account in determining the fact whether a particular rate or a system is entitled as a matter of law to rates that are reasonable and that do not operate to unduly discriminate against them. Corporation Commission of North Carolina v. N. & W. Ry. Co., 19 I. C. C. 303, 309.

(j) When long distances are under consideration, it often, and perhaps usually, happens that a considerable difference in mileage may be disregarded in fixing the total through charge, but where different packing-houses pay freight upon the animals which they slaughter in proportion to distance, the element of distance ought to be considered in fixing the proper relation in rates upon the product out. Investigation of Alleged Unreasonable Rates on Meats, 22 I. C. C. 160, 168.

(k) That rates are below the continuous-mileage scale is not conclusive of their unreasonableness. Middlesboro Board of Trade v. L. & N. R. R. Co., 27 I. C. C. 14, 22.

(l) The Commission must consider the entire haul both rail and water in determining whether a rate is remunerative. In re Advances in Break-bulk Rates, 27 I. C. C. 78, 80.

(m) Ordinarily in the making of rates carriers must consider, among other things, distances and natural advantages. But this does not mean that they must or should so adjust rates as to give all shippers engaged in the same business equal access to markets or to prevent free access to the fields where raw materials are produced on part of others than those located in or immediately adjacent to such fields, and the Commission recognizes no exclusive right to supply consuming markets or to serve the fields of production. Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 628.

(n) From the fact that the average distance from one district is substantially the same as from another it does not necessarily follow that higher rates from the former are unreasonable. San Toy Coal Co. v. A. C. & Y. Ry. Co., 34 I. C. C. 93, 96.

(o) Average haul considered in determining reasonableness of rates. Transit Rates on Logs and Staves at Alexandria, La., 34 I. C. C. 169, 171.

(p) If a blanket or group arrangement is a reasonable one, the reasonableness of a rate from the group to a given point is properly to be determined with respect to the average distance from all

points in the group. Midcontinent Oil Rates, 36 I. C. C. 109, 115.

(q) The element of distance is an important matter to be considered in determining the reasonableness of rates in their relation to other rates with which they are compared, but distance alone is not controlling, and in many cases must yield to other and more weighty circumstances and conditions. Corporation Commission of Virginia v. C. & O. Ry. Co., 40 I. C. C., 24, 29.

(r) But it is seldom that distance is the sole factor to be considered in fixing reasonable rate. Chamber of Johnson City v. S. Ry., 46 I. C. C. 527, 531.

(s) Rates on, sand and gravel, in c. f. a. territory, considered as a whole, found not unreasonable as compared with rates on slag. While earnings on sand and gravel were shown to be higher than those on all traffic, such comparisons are of little significance because of the comparatively shorter average haul on sand and gravel. National Asso. of Sand & Gravel Producers v. P. R. R. Co., 74 I. C. C. 615.

(t) The Commission has found that distance is only one of the elements to be considered in testing the reasonableness of rates, and that other elements may outweigh it. Union Sulphur Company v. A. & W. R. Co., 81 I. C. C. 382, 387.

ALL OTHER CITATIONS

Phillip v. C. M. & St. P. Ry. Co., 16 I. C. C. 418, 419; Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co., 16 I. C. C. 195, 203, 204; Memphis Cotton Oil Co. v. I. C. R. R. Co. 17 I. C. C. 313,118, 172; Muskogee Traffic Bureau v. A. T. & S. F. Ry. Co., 17 I. C. C. 169, 172; Receivers & Shippers' Ass'n of Cincinnati v. C. N. O. & T. P. Ry. Co., 18 I. C. C. 440, 455; Andy's Ridge Coal Co. v. Southern Ry. Co., 18 I. C. C. 405, 410; Idaho Commercial Clubs v. O. S. L. R. R. Co., 18 I. C. C. 562, 565; Olive-Sternenberg Lumber Co. v. T. & N. O. R. R. Co., Unrep. Op. 2; Omaha Grain Exchange v. C. & N. W. Ry. Co. 19 I. C. C. 424, 431; Florida Cotton Oil Co. v. C. of G. Ry. Co., 19 I. C. C. 336, 329; Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co., 19 I. C. C. 218, 226; Meridian Fertilizer Factory v. V. S. & P. Ry. Co., 20 I. C. C. 554; In Re Investigation of Advances in Rates on Grain, 21 I. C. C. 22, 34; Sunflower Glass Co. v. M. P. Ry. Co., 22 I. C. C. 391; Maricopa County Commercial Club v. 279; Sioux City Commercial Club v. C. & N. W. Ry. Co., 22 I. C. C. 110, 114; Arlington Heights Fruit Exchange v. S. P. Co., 22 I. C. C. 149, 152; Florida Fruit & Vegetable Shippers' Protective Ass'n v. A. L. R. R. Co., 22 I. C. C. 11, 17; Southern Illinois Millers' Ass'n v. L. & N. R. R. Co., 23 I. C. C. 672, 673; In Re Investigation of Unreasonable Rates on Meats, 23 I. C. C. 656, 669; In Re Advances in Rates for the Transportation of Cotton and Cotton Linters, 23 I. C. C. 404, 408; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 23 I. C. C. 195, 205; I. C. C. v. U. P. R. R. Maricopa & Phoenix R. R. Co., 22 I. C. C. Co., 222 U. S. 541, 549, 32 Sup. Ct. 108, 56 L. ed. 308; Oliver-Sternenberg Lumber Co. v. T. & N. O. R. R. Co., Unrep. Op. 2; Black Mountain Coal Land Co. v. S. Ry. Co., 15 I. C. C. 286, 295, 296; Paving Brick Co. v. A. A. R. R. Co., 17 I. C. C. 197, 207; Idaho Commercial Clubs v. O. S. L. R. R. 18 I. C. C. 562, 565; Brook-Rauch Mill & Elevator Co. v. St. L. I. M. & S. Ry. Co., 22 I. C. C. 249; In Re Lumber Rates, 25 I. C. C. 50, 55; Hottelet & Co. v. C. M. & St. P. Ry. Co., Unrep Op. 2200; National Wool Growers' Assn. v. O. S. L. R. R. Co., 25 I. C. C. 675, 678; Bartlesville Salvage Co. v. M. K. & T. Ry. Co., 25 I. C. C. 672, 674; Norris v. St. L. & S. F. R. R. Co., 25 I. C. C. 416, 423; Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 645, 648; Bartsville Salvage Co. v. M. K. & T. Ry. Co., 25 I. C. C. 672, 674; Taylor v. N. & W. Ry. Co., 25 I. C. C. 613, 617; Wichita Board of Trade v. A. T. & S. F. Ry Co., 25 I. C. C. 625, 633; Gilmore & Co. v. C. & N. W. Ry. Co., 25 I. C. C. 403, 405; Superior Commercial Club v. G. N. Ry. Co., 25 I. C. C. 342, 345; Appalachia Lumber Co. v. L. & N. R. R. Co., 25 I. C. C. 193, 194; Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 26 I. C. C. 638, 654; Scott Paper Co. v. P. R. R. Co., 26 I. C. C. 601, 603; Diamond Crystal Salt Co. v. M. C. R. R. Co., 26 I. C. C. 434, 436; Coal Rates on the Stony Fork Branch, 26 I. C. C. 168, 175; Union Tanning Co. v. S. Ry. Co., 26 I. C. C. 129, 159, 164 Rates from Walsenburg Coal Field, 26 I. C. C. 85, 88; Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 643, 644; Lumber Rates from Memphis and Other Points to New Orleans, 27 I. C. C. 471, 475; New England Investigation, 27 I. C. C. 560, 575, 577; Topeka Traffic Assn. v. A. & C. Ry. Co., 27 I. C. C. 428, 434;

Coke Producers' Assn. of Connellsville v. B. & O. R. R. Co., 27 I. C. C. 125, 143, 150; Pulp & Paper Mfrs.' Traffic Assn. v. C. M. & St. P. Ry. Co., 27 I. C. C. 83, 98; Rock Spring Distilling Co. v. I. C. R. R. Co., 27 I. C. C. 54, 58; Brown v. B. & M. R. R. Co., 27 I. C. C. 47, 53; Edgar & Son v. L. & N. R. R. R., 26 I. C. C. 181, Philadelphia Veneer & Lumber Co. v. C. R. R. Co., of N. J., 25 I. C. C. 653, 654; Victor Mfg. Co. v. S. Ry. Co., 27 I. C. C. 661, 663; Cherokee Lumber Co. v. A. C. L. R. R. Co., 27 I. C. C. 438, 440; Lewis-Vidger Co. v. S. P. Co., Unrep. Op. A-50; Johnson & Son v. C. & O. Ry. Co., 24 I. C. C. 698, 701; In re Advances on Barley from California Points to Minneapolis, 24 I. C. C. 664, 666, 667; Southwestern Shippers' Traffic Assn. v. A. T. & S. F. Ry. Co., 24 I. C. C. 570, 583; Lumbermen's Exchange of St. Louis v. A. & S. R. R. R. Co., 24 I. C. C. 220, 223; Boileau v. P. & E. R. R. Co., 24 I. C. C. 129, 132; Omaha Grain Exchange v. C. M. & St. P. Ry. Co., 24 I. C. C. 122, 123; Consolidated Fuel Co. v. A. T. & S. F. Ry. Co., 24 I. C. C. 213, 215; R. R. Com. of Oregon v. S. P. Co., 24 I. C. C. 273, 277; Commercial Club of Superior v. G. N. Co., 24 I. C. C. 96, 110, 116, 120; McCloud River Lumber Co. v. S. P. Co., 24 I. C. C. 89, 95; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 71; Mississippi River Case, 28 I. C. C. 47, 50; Board of Trade of Carrollton v. C. of G. Ry. Co., 28 I. C. C. 154, 162; Montezuma v. C. of G. Ry. Co., 28 I. C. C. 280, 282; Boney & Harper Milling Co. v. A. C. L. R. R. Co. 28 I. C. C. 383, 388; Texas, etc., to Oklahoma and Missouri, 28 I. C. C. 471, 475, 476; Springfield Commercial Asso. v. P. R. R. Co., 28 I. C. C. 511, 512, 513; U. S. v. U. P. R. R. Co., 28 I. C. C. 518, 522; Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 558; Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 580; Jackson Lumber Co. v. L. & N. R. R. Co., Unrep. Op. A-154; Dodd v. T. & P. Ry. Co., Unrep. Op. A-223 In re Separation of Operating Expenses, 30 I. C. C. 676, 681; Metropolois Commercial Club v. I. C. R. R. Co., 30 I. C. C. 40, 43; Fourth Section Violations in the Southeast 30 I. C. C. 153, 163, 178; California-Colorado Lumber Rates, 30 I. C. C. 461, 463; Brownsville, Tex., Class and Commodity Rates, 30 I. C. C. 479, 485; Lumber Rates to Knoxville, Tenn., 30 I. C. C. 524, 526; Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 576, 580; Kansas Wholesale Grocery Co. v. A. & W. Ry. Co., 32 I. C. C. 139, 143; Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 269; Commercial of Joplin v. M. P. Ry., 32 I. C. C. 226, 232; Northbound Rates on Hardwood, 32 I. C. C. 521, 529; Coffeyville Merc. Co. v. M. K. & T. Ry. 33 I. C. C. 122, 124; Grain Rates from Milwaukee, 33 I. C. C. 417, 424; R. R. Comm. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 37; Fourth Section Violations in the Southeast, 32 I. C. C. 61, 63; St. Matthews Produce Exchange v. L. & N. R. R. Co., 32 I. C. C. 233, 236; Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 269; Columbia Chamber of Commerce v. S. Ry. Co., 32 I. C. C. 504, 505; Fox River Valley Mfrs. Asso. v. M. C. R. R. Co., 32 I. C. C. 551, 555; Class and Commodity Rates to Salt Lake City, Utah, 32 I. C. C. 547, 549; Rates on Clay from Points in Georgia, 32 I. C. C. 564, 567; Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 631; Lipman v. A. C. L. R. R. Co., Unrep. Op. A-896; Valley Plaining Mill Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-906; Schreiber Hay & Grain Co. v. C. B. & Q. R. R. Co., Un-Rep. Op. A-946; Rates on Matches to Oklahoma Stations, Unrep. Op. A-843; Plymouth Coal Co. v. L. V. R. R., 36 I. C. C. 143; Greer-Beatty Clay Co. v. P. Co., Unrep. Op. 1955; Gray Lumber Co. v. A. T. & N. Ry., 36 I. C. C. 376, 377; Cumberland Glass Mfg. Co. v. Penn. R. R. 37 I. C. C. 714; Paducah Board of Trade v. I. C. R. R. 37 I. C. C. 719, 721; Kirby & Co. v. P. R. R. Co., Unrep. Op. 2187; Hottelet & Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 220; Interstate Packing Co. v. C., M. & St. P. Ry. Co., 41 I. C. C. 396, 398; Perry & Co. v. A. E. R. R., 44 I. C. C. 755, 756; Prentice & Co. v. N. Y. C. R. R., 48 I. C. C. 405; Commercial Club of Greeley v. C. & S. Ry. Co., 53 I. C. C. 66, 69; Holmes & Hallowell v. G. N. Ry. Co., 60 I. C. C. 687, 708; Railroad Commissioners of Iowa v. M. St. L. R. R. Co., 64 I. C. C. 673, 676; Sulphur Company v. A. & W. R. Co., 81 I. C. C. 382, 387.

§10½. Divisions.

See Divisions.

IMPORTANT CASES SINCE 1908

(a) And a division of rates is not forceful evidence of unreasonableness of rate. Charges being reasonable, division of rate between carriers, is not usually of special interest to public, though in some cases divisions may have controlling significance. Pardee

Works v. C. R. R. Co. of N. J., 29 I. C. C. 500, 502.

(b) The total rate which the shipper must pay determines the cost of transportation and the divisions of a joint rate are not generally speaking a sound test of the reasonableness of the through rate itself. The Alaska Investigation, 44 I. C. C. 680, 691.

(c) Comparison of divisions accruing to initial lines and earnings accruing to line-haul carriers on traffic from points situated on other short lines found to be of little value in determining the reasonableness of rates from points on short line here involved as it is the through charge for the through carriage in which shippers are interested. Peerless Coal Co. v. A. T. & S. F. Ry. Co., 63 I. C. C. 335, 337.

ALL OTHER CITATIONS

West Virginia Rail Co. v. C. & O. Ry., 48 I. C. C. 600, 609; Chaney Co. v. G. N. Ry., 50 I. C. C. 332, 337; Cannon Mfg. Co. v. S. Ry. Co., 59 I. C. C. 594, 596; Lake Charles Rice Milling Co. v. L. W. R. R. Co., 69 I. C. C. 509, 511; 512; Cotton and Cotton Lintners, 69 I. C. C. 735; Wilson & Toomer Fertilizer Co. v. Director General, as Agent, 83 I. C. C. 264; Eric Corp. v. I. & G. N. Ry. Co., 83 I. C. C. 325; New Jersey Zinc Co. v. B. & A. R. R. Co., 83 I. C. C. 356; Abbott v. Director General, as Agent, 83 I. C. C. 508.

§11. Earnings.

See Infra §36; Evidence §5 §51.

IMPORTANT CASES SINCE 1908

(a) An increase in the cost of labor and materials, accompanied by a decrease in the net revenues of the carrier, is not necessarily inconsistent with the possibility that its net earnings may still suffice to afford it a fair return on the investment without an increase in its rate schedules. Shippers' & Receivers' Bureau of Newark v. N. Y. O. & W. Ry. Co., 15 I. C. C. 264, 265.

(b) The Commission is bound to consider whether any contemplated readjustment will result in serious impairment of business investments or undue depreciation in the revenues of the carrier. Black Mountain Land Co. v. So. Ry. Co., 15 I. C. C. 286, 295.

(c) If the present system of private ownership of railways is to be continued, sufficient inducement must be extended to private investors. City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 417.

(d) And the unfavorable financial condition of a carrier cannot lawfully be remedied by imposing unreasonable rates. Railroad Commissioners of Florida v. S. A. L. Ry., 16 I. C. C. 1, 5.

(e) Because the revenues of a carrier are high during a period of general prosperity, rates should not be reduced; the periods when it operated almost at a loss should be considered. Florida Fruit & Vegetable Ass'n v. A. C. L. R. R. Co., 17 I. C. C. 552, 564.

(f) The ultimate test of reasonableness of rates with the carrier itself is the return for the use of its equipment and facilities. National Hay Ass'n v. M. C. R. R. Co., 19 I. C. C. 34, 48.

(g) The fact that the net revenues of a carrier from its ownership of a bridge on which an arbitrary is charged for passengers and freight carried across the same may be greater than the returns on ordinary business enterprises is not sufficient in itself to justify a holding that the bridge tolls are excessive. Bridges are and have been regarded as precarious property. They may be damaged or entirely swept away by floods, and erection of other bridges nearby may draw away their tenants, and thus seriously affect their earning capacity. The net revenues have an undoubted and also an important bearing upon the question of the reasonableness of rates, but the value of the service to the shipper and the other elements so often referred to as entering into the reasonableness of rates must also be taken into consideration. A railroad company may be operated with a less return than it ought to enjoy, or even at a loss, but neither condition of affairs would justify the exaction by it of rates that are higher than they reasonably should be for service performed, all things being considered. So also the fact that the net earnings of a carrier may be large does not of itself justify the Commission fixing a rate at less than is reasonable for the service, all other things being considered. Railroad Commissioners of Iowa v. I. C. R. R. Co., 20 I. C. C. 181, 186.

(h) Commercial conditions may be considered in connection with other factors that determine the reasonableness of a particular rate, but the ad-

equacy of the revenue for the service performed by the carriers must not take precedence over market conditions affecting the commodity transported. Lindsay Bros. v. P. M. R. R. Co., 25 I. C. C. 368, 369.

(i) If any carrier is earning such a surplus that there ought to be a radical reduction in its revenue, the benefit of such reductions should be distributed, in some equitable manner among the various commodities. Pittsburgh Steel Co. v. L. S. & M. S. Ry. Co., 27 I. C. C. 173, 185.

(j) Rates found not unreasonable where the average revenue per car was approximately 5 per cent of the value of the load. Slater v. S. P. Co., 64 I. C. C. 647, 657.

(ja) Congress in enacting section 15a of the act, directing that rates should be so fixed as to give carriers as a whole a fair return on aggregate value of their railway property, recognized right of individual carriers to earnings in excess of that return in permitting them to retain one-half of their excess income above 6 per cent. Adriatic Mining Co. v. C. & N. W. Ry. Co., 75 I. C. C. 611, 617, 631, 632.

(k) While earnings may be considered in the fixing of a reasonable rate to be charged by a carrier for the transportation of freight, rates necessarily cannot be based upon earnings alone. This is made clearly to appear when it is considered that a just and reasonable rate is one which is just to the carrier and to the shipper. It is a rate which yields to the carrier a fair return upon the value of the property employed in the public service, and it is a rate which is fair to the shipper for the services rendered; and when this rate is established, if it results in large profits to the carrier, the carrier is fortunate in its business, and if it results in a loss of earning power, so that the business of the carrier is unprofitable, the carrier is unfortunate. But the rate may not be lowered or raised merely upon the ground that the carrier is either making or losing money, providing always the rate is a reasonable and just rate. Hooker v. I. C. C., 188 Fed. 242, 253.

ALL OTHER CITATIONS

City of Spokane v. N. P. Ry. Co. 15 I. C. C. 376, 418; Board of Trade of Winston-Salem v. N. & W. Ry. Co., 16 I. C. C. 12, 17; Minneapolis Threshing Machine Co. v. C. St. P. M. & O. Ry. Co., 17 I. C. C. 189, 192; Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co., 19 I. C. C. 218, 222; City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 173; Billings Chamber of Commerce v. C. B. & Q. R. R. Co., 19 I. C. C. 71, 75; In Re Advances in Rates—Western Case, 20 I. C. C. 307, 315; Lum. v. G. N. Ry., 33 I. C. C. 541.

§12. Economical Management.

See Advanced Rates §10; Transportation §13.

IMPORTANT CASES SINCE 1908

(a) It is for the public interest that every transportation service should be performed by the most economical method, since that must ultimately result in the lowest transportation charge. Albree v. B. & M. R. R. Co., 22 I. C. C. 303, 316.

(b) It is unfair to take from the carrier whatever of profit it may secure by reason of improvement in its plant and adoption of the most modern methods. If our railroad systems are to remain in private hands, stimulus must be given to the initiative and imagination of railroad operators. The community may not take with justice whatever comes by the labor or time saving devices adopted by those who serve the public, nor may the carriers absorb the profits of the shipper resulting from similar efforts. In Re Advances on Coal to Lake Ports, 22 I. C. C. 604, 625.

ALL OTHER CITATIONS

In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 285.

§12½. Equalizing Commercial Condition.

See Equalization of Rates §6.

IMPORTANT CASES SINCE 1908

(a) The interests of consumer and of producer must not be lost sight of in passing upon the reasonableness of rates. Commercial Club of Superior, Wis., v. G. N. Ry. Co., 24 I. C. C. 96, 102.

(b) The function of the market is not the controlling element in determining the reasonableness of rates. Commercial Club of Superior, Wis., v. G. N. Ry. Co., 24 I. C. C. 96, 121.

(c) A shipper's commercial needs cannot be made the basis of a finding that a rate is unreasonable. Slider v. S. Ry. Co., 24 I. C. C. 312, 313.

(d) Climatic conditions considered

in determining reasonableness of rates. Michigan Copper & Brass Co. v. D. S. S. & A. Ry. Co., 25 I. C. C. 357, 363.

(e) The inability of producers to realize profits under depressed market conditions will not of itself suffice to show that the rates are unjust or unreasonable. Nor is the desirability of developing a great wheat growing section in a particular region sufficient to show that rates which preclude such development are necessarily unjust or unreasonable. The national or public aspect of this matter is one of general governmental policy and not one which the law entrusts to the Commission for determination. Railroad Commrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641.

(f) The reasonableness or unreasonableness of freight rates cannot be gauged solely by the ability or inabliity of shippers under depressed prices, to market their products at the existing rates with a reasonable margin of profit. Such a doctrine would lead to the conclusion that the different burdens of production arising from natural disadvantages, distance from market, and other economic difficulties of all communities and industries should be neutralized and absorbed by the carriers which serve them. Railroad Commrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 644.

(g) The reasonableness of rates attacked cannot be determined solely by considering the geographical and economic disadvantages under which grain producers are laboring; nor can those disadvantages fairly be said to lessen materially the probative force of comparisons whose value the Commission has repeatedly recognized in determining the reasonableness of rates. Railroad Commrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 646.

(h) A shipper's commercial needs can not be made the basis of a finding that a rate is unreasonable, and in the absence of unjust discrimination or undue prejudice it is for a carrier to decide whether or not, in order to meet competition, it will establish lower rates than might be found reasonable. Lamb-Fish Lumber Co. v. A. C. & Y. Ry., 49 I. C. C. 187, 192.

ALL OTHER CITATIONS

Banner Milling Co. v. N. Y. C. & H. R. R. R. Co., 14 I. C. C. 398, 401; Sunflower Glass Co. v. M. P. Ry. Co., 22 I. C. C. 391; Boileau v. P. & L. E. R. R. Co., 22 I. C. C. 640; In re Advances on Cooperage, 24 I. C. C. 656, 659; New Roads Oil Mill & Mfg. Co. v. St. L. I. M. & S. Ry. Co., 24 I. C. C. 167; Wharton Steel Co. v. C. R. R. of N. J., 26 I. C. C. 166; Commercial Club of Superior, Wis., v. G. N. Ry. Co., 25 I. C. C. 96, 103; Superior Commercial Club v. G. N. Ry. Co., 25 I. C. C. 342, 348; Baker Commercial Club v. O. W. R. R. & Nav. Co., 25 I. C. C. 281; Dupont de Nemours Powder Co. v. C. R. Co. of N. J., 25 I. C. C. 19, 20; Waukesha Lime & Stone Co. v. C. M. & St. P. Ry. Co., 26 I. C. C. 515, 519; Little Rock Chamber of Commerce v. St. L. I. M. & S. R. R. Co., 26 I. C. C. 341; Lindsay Bros. v. C. & N. W. Ry., 26 I. C. C. 329; Edgar & Son v. L. & N. R. R., 26 I. C. C. 181; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 26 I. C. C. 53, 58; Wisconsin Steel Co. v. P. & L. E. R. R. Co., 27 I. C. C. 152, 158; Pulp & Paper Mfrs.' Traffic Assn. v. C. M. & St. P. Ry. Co., 27 I. C. C. 83, 95; Oklahoma-Colorado Potato Rates, 28 I. C. C. 298, 300; Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 576; Collier v. S. Ry. Co., Unrep. Op. A-554; Corning Glass Works v. E. R. R. Co., Unrep. Op. A-571; National Refining Co. v. A. T. & S. F. Ry. Co. Unrep. Op. A-567; Muskogee Wholesale Grocer Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-577; Chestnut-Gibbons Grocer Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-586; Nickey & Sons Co., Inc., v. M. & N. A. R. R. Co., Unrep. Op. A-600; Chattanooga Sewer Pipe & Fire Brick Co. v. S. Ry. Co., Unrep. Op. A-676; Railroad Commrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C 641, 653; 1915 Western Rate Advance Case, 37 I. C. C. 114, 150; La Crosse Shippers Asso. v. C. & N. W. Ry., 38 I. C. C. 453, 458; Hooker Lime Stone Co. v. N. C. & St. L. Ry. Unrep Op. 2225; Vanderbloom-Stimson Lumber v. St. L. I. M. & S. Ry. Co., 38 I. C. C. 432, 437; Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co., 39 I. C. C. 224, 235; Clay from Florida, 40 I. C. C. 175, 279; Molasses from Texas and Louisiana, 40 I. C. C. 435, 442.

§13. Equipment furnished.

See Evidence §22.

IMPORTANT CASES SINCE 1908

(a) The Commission frequently considers, in determining the reasonableness of rates, the equipment furnished. Bash Fertilizer Co. v. Wabash R. R. Co., 18 I. C. C. 522, 524.

(b) Loss of use of equipment result-

ing from method of handling hay traffic is an important factor to be considered in determining the reasonableness of a rate. 1915 Western Rate Advance Case, 35 I. C. C., 497, 630.

(c) A lower rate is justified on shipments moving in equipment furnished by shippers than would be reasonable for shipments moving in carriers,. Missouri Portlant Cement Co. v. Director General, as Agent, 64 I. C. C. 243, 246.

(d) Shipments which move in equipment furnished by the shipper are entitled to lower rates than would be reasonable for shipments in carrier's equipment. St. Louis Chamber of Commerce v. Director General, 74 I. C. C., 308, 321.

ALL OTHER CITATIONS

Rickards v. A. C. L. R. R. Co., 23 I. C. C. 239; Wharton Steel Co. v. D. L. & W. R. R. Co., 25 I. C. C. 303, 308; Casey-Hedges Mfg. Co. v. C. of G. Ry. Co., 26 I. C. C. 63, 64.

§13a. Erroneous Rate.

See Erroneous Rate.

IMPORTANT CASES SINCE 1908

(a) Rate on gasoline, in tank-car loads, from Shreveport, La., to Jacksonville, Fla., obtained by erroneous application of interterritorial increase under Increased Rates, 1920, 58 I. C. C., 220, to through combination rate, found unreasonable to extent it exceeded rate that would have resulted from authorized territorial increase to each factor, which rate so computed was subsequently established. Reparation awarded. Sun Co. v. L. Ry. & N. Co., 80 I. C. C. 127.

ALL OTHER CITATIONS

Roper v. Director General, as Agent, 80 I. C. C. 125; Atlantic Refining Co. v. Director General, as Agent, 80 I. C. C. 198; Lafayette Box Board Co. v. Director General, as Agent, 83 I. C. C. 307.

§14. Investment Relying on Rate.

See Evidence §15 §27;

IMPORTANT CASES SINCE 1908

(a) Where a plant has been established and money invested on the faith of certain rates and conditions, the carrier may not increase those rates to the serious disadvantage of such investment without good cause or reason. Douglas & Co. v. C. R. I. & P. Ry. Co., 16 I. C. C. 232, 237.

(b) Under certain circumstances where a business has ben built up and maintained under a certain rate, that rate should not be disturbed. Corporation Commission of N. C. v. N. & W. Ry. Co., 19 I. C. C. 303, 308.

(c) The Commission has never understood that it could dictate the policy of a carrier in the making of its rates in so far as there was just room for the exercise of a policy. It has several times explicitly so declared. It has, however, believed that it might consider what the policy of a carrier had been in determining whether the rates resulting from a change in that policy were just and reasonable. It often happens that the very existence of an industry depends upon the rate accorded to it. If, now, a carrier has established a particular rate for the express purpose of enabling an industry to exist, and if upon the strength of that rate money has been invested which must be destroyed if the rate is withdrawn, this fact might properly be considered in passing upon the reasonableness of the proposed change in the rate. Such fact is not controlling, but is one of the circumstances which may properly be kept in view. The Commission might in a proper case order the continued maintenance of a rate upon which the investment of money had been induced, even though it would not in the first instance as an original proposition have directed the establishment of that rate. Oregon & Washington Lumber Mfrs.' Ass'n v. S. P. Co., 21 I. C. C. 389, 394.

(d) The mere fact that shippers have invested money in reliance on certain rates during the period such rates were in force and built up their business, does not prove that such rates are reasonable, or that proposed increases are excessive. In re Advances on Furniture from Nappanee, Ind., to Chicago, Ill., 25 I. C. C. 331, 336.

(e) However reluctant the Commission may feel to sanction changes in rates which tend to impair or destroy the value of investments made in expectation of their continuance, it can not on that ground deny to carriers the right to charge rates which are just and reasonable. Chattanooga Log Rates, 35 I. C. C. 163, 168.

(f) Investments made in expectation of the continuance of existing rates will not be considered in determining the reasonableness of increased rates. Meyersdale Smokeless Coal Co. v. B. & O. R. R., 62 I. C. C. 429, 431.

ALL OTHER CITATIONS

Mountain Ice Co. v. D. L. & W. R. R. Co., 15 I. C. C. 305, 316; Order in O. & W. L., etc., v. S. P. Co., 21 I. C. C. 389, sustained. S. P. Co. v. U. S., 197 Fed. 167, 170; Meridian Fertilizer Factory v. L. & N. R. R. Co., 30 I. C. C. 494, 497; Lumber Rates from the Southwest to Points North, 29 I. C. C. 1, 15; Straw Rates from Stations in Missouri, 29 I. C. C. 562, 563; Goldfield Cases, 34 I. C C. 360, 373; Roanoke R. R. & Lumber Co. v. N. S. R. R. Co., 41 I. C. C. 431, 433; Cambria Steel Co. v. Director General, as Agent, 60 I. C. C. 459, 464.

§15. Investment of the Carrier.

See Advanced Rates §12 (2) Evidence §6.

CASES 1887-1908

(a) The amount invested in a railroad cannot be ignored in determining the reasonableness of rates fixed by law to be charged thereon, although such amount is far in excess of the present value of the property. Ames v. Union P. R. Co. (C. C. D. Neb.) 4 I. C. R. 835.

IMPORTANT CASES SINCE 1908

(b) Any outlay which is not required to keep a railroad's property up to its present standards, but which is necessary to provide for the handling of increased business, and which, therefore, adds to the permanent earning capacity of the property, should, as between the railway and the public, when the railway demands the right to increase a rate for the mere sake of additional revenue, be made, not out of the earnings, but out of the capital or surplus. Cattle Raisers' Ass'n of Texas v. M. K. & T. Ry. Co., 13 I. C. C. 418, 432.

(c) The original cost of a carrier's property devoted to the public use is an element to be considered in determining the reasonableness of rates. Portland Chamber of Commerce v. O. R. R. & N. Co., 19 I. C. C. 265, 280.

(d) A carrier is entitled to ask a fair return upon the value of its property devoted to the public use, and the public is entitled to demand rates not higher than the services are reasonably worth. Morgan Grain Co. v. A. C. L. R. R. Co., 19 I. C. C. 460, 471.

(e) Were it possible to determine the exact amount of money which has been put into the railroad properties inOfficial Classification territory, the amount of return which has been paid to the present time, the degree of prudence with which the property has been constructed and operated, the investment would furnish a very satisfactory basis in arriving at an equitable return. Advances in Rates—Eastern Case, 20 I. C. C. 243, 258.

(f) The ordinary considerations of justice require that money invested in railroads by invitation of the government should be allowed a fair return. This does not mean that the Commission should permit rates which will guarantee all railroad investment, nor which will guarantee any railroad investment at all times, but it should allow rates which will yield to this capital as large a return as it could have obtained from other investments of the same grade. If rates formerly in effect have become insufficient, then higher rates should be permitted. Rates should be such as to render possible a high-class, not an extravagant, transportation service. In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 262.

(g) The nearest approximation to the fair standard of rate regulation is that of bona-fide investment—the sacrifice made by the owners of the property—considering as part of the investment any shortage of return that there may be in the early years of the enterprise. and to the traffic and the earning power. Upon this, taking a life history of the road through a number of years, its promoters are entitled to a reasonable return. This, however, is limited; for a return should not be given upon wastefulness, mismanagement, or poor judgment, and always there is present the restriction that no more than a reasonable rate shall be charged. Advances in Rates—Western Case, 20 I. C. C. 307, 347.

(h) Rates should be sufficient to guarantee a fair annual return on the investment and to provide reasonably for keeping the property up to the improved modern methods. Meeker & Co. v. L. V. R. R. Co., 21 I. C. C. 129, 161.

(i) Even if lower proposed rate should not afford a reasonable return upon the investment, an unreasonable rate is not justified on ground that a rate higher than reasonable is necessary to afford an adequate return. Ladd & Co. v. Gould S. W. Ry. Co., 36 I. C. C. 179, 182.

(j) Money thrown away, dishonestly

or with wanton recklessness, or foolishly lost in nonrailroad enterprises, is not money put to public use upon which the rate payers are bound in law and in conscience to make a return. Proposed Increases in New England, 49 I. C. C. 421, 433.

ALL OTHER CITATIONS

Receivers & Shippers' Ass'n of Cincinnati v. C. N. O. & T. P. Ry. Co., 18 I. C. C. 440, 462; Union Tanning Co. v. S. Ry. Co., 26 I. C. C. 159, 164.

§15½. Loading.

See Loading and Unloading.

IMPORTANT CASES SINCE 1908

(a) The manner of loading is considered in determining the reasonableness of rates. Western Classification Case, 25 I. C. C. 442, 472.

(b) That an article loads heavily considered in determining reasonableness of rate. Duluth Log Rates, 29 I. C. C. 420, 422.

(c) The cost of loading one shipment is of little value in determining the reasonable charge to be levied on traffic in general. Roberts & Schaefer Co. v. Director General, 55 I. C. C. 277, 278.

ALL OTHER CITATIONS

In re Advances on Hay, 25 I. C. C. 680, 683; North Fork Cannel Coal Co. v. A. A. R. R. Co., 25 I. C. C. 241, 244; Pardee Works v. C. R. R. Co. of N. J., 29 I. C. C. 500, 503; Straw Rates from Points in Missouri, 29 I. C. C. 562, 564.

§16. Long Continued Adjustment.

See Evidence §29, §43, §66; Voluntary Rates.

CASES 1887-1908

(a) In the carriage of great staples which supply an enormous business and which in market value and actual cost of transportation are among the cheapest articles of commerce, rates yielding only moderate profit to the carrier are both necessary and justifiable, and where the carriers frequently put in force and continue for considerable periods of time tariffs of rates and charges, it is a fair inference that such rates and charges are profitable. In the matter of alleged excessive freight rates and charges on food products, 3 I. C. C. 93, 101.

(b) A railroad company by putting in force a rate of charges furnishes evidence that the rate is profitable, which is more convincing when such rate is long maintained; and where a carrier put in force and maintained for nearly two years, immediately after the Act to Regulate Commerce took effect, a scale of charges largely in excess of that maintained for two years next before the Act, and the lower rates were sufficient to meet all the obligations of the road, including income on investment,—HELD, The higher rate should be reduced. Cox Bro. & Co. v. Lehigh Valley R. Co. 3 I. C. R. 460.

(c) A railroad company had in force for a period of more than two years next before the act took effect a scale of charges on anthracite coal considerably lower than its present rates, which are higher on coal than on iron ore, pig iron, and other low grade freight, and also higher than the charges of said road on general freight, the expense of carrying which is much greater than the expense on coal. HELD, that such higher rates on coal are unreasonable. Coxe Bros. & Co. v. L. V. R. Co., 3 I. C. C. 460.

(d) Where carriers have maintained for a considerable period a relation of rates affecting an extensive territory, though somewhat more favorable to one community therein than appears to be justified, and commercial conditions there and elsewhere have become measurably dependent upon the continuance of that relation, it would ordinarily be inexpedient to increase rates at that point as the means of correcting relative injustice to another locality; in such case the only practicable remedy is to reduce the rates to the injured town. Daniels v. Chicago, R. I. & P. R. et al. 6 I. C. C. 458.

(e) Prior rates raises a presumption against the carrier of their reasonableness. National Hay Asso. v. Lake Shore & Michigan S. R. Co., 9 I. C. C. 264.

(f) The presumption as to reasonableness of rates long kept in effect by carriers as a voluntary Act on their part does not attach in a case where such rates have been established by carriers in compliance with the decision and order of the Commission. Proctor & Gamble Co. v. Cincinnati, H. & D. R. Co., 9 I. C. C. 440.

(g) It may often happen that a single rate out of an entire system of rates may, when examined by itself, appear to be unreasonable, even though, when considered as a part of the whole system, it is justifiable. To reduce this single rate would perhaps disarrange the entire system of rates in effect, and in a case of

this sort the Commission does not feel that it should interfere until strong reasons for such interference are presented. Hastings Malting Co. v. Chicago, M. & St. P. R. Co., 11 I. C. C. 675.

(h) The long-continued carriage of any article of freight at certain rates, while establishing a presumption that such rates are reasonable and remunerative, is not alone conclusive, but to carry such presumption must show a settled practice or policy. Warren Manufacturing Co. v. Southern Ry. Co. 12 I. C. C. 381.

IMPORTANT CASES SINCE 1908

(i) Where a rate is voluntarily established and maintained for a considerable period, this fact, altnough not conclusive, is strong evidence of the reasonableness of the rate. The force of this presumption is greatly weakened, and may be altogether destroyed by the circumstances under which the rate was established and maintained, but if no particular reason is shown for the putting in of the rate, if no commercial or competitive condition prevents the maintenance of a higher rate, if the maintenance of this rate has been voluntary upon the part of the carrier, the force of the admission becomes exceedingly strong. Burgess v. Transcontinental Freight Bureau, 13 I. C. C. 668, 677.

(j) The fact that a reduction of an unreasonable rate or the correction of an unjust discrimination will require reductions or corrections at other points cannot be accepted as a valid defense of an unreasonable rate or an unjust discrimination. Milburn Wagon Co. v. L. S. & M. S. Ry. Co., 22 I. C. C. 93, 101.

(k) To hold that a carrier may not withdraw a rate found by the Commission in another case to be unreasonably low merely because that rate was voluntarily established in the first place, would amount to requiring unjust preference, and to setting aside the fundamental principle that rates must be uniform under similar conditions. Fairmont Creamery Co. v. C. B. & Q. R. R. Co., 22 I. C. C. 252, 254.

(l) The long maintenance of a given rate is an admission of the reasonableness of that rate. Where, upon the strength of a given rate, capital has been invested and industrial conditions have become established, the rate cannot be discontinued without taking into account its effect upon these commercial and industrial conditions, but there is no absolute rule requiring for any reason the absolute continuance of such a rate. It is always a question of what, under all the circumstances, is just and reasonable. Coal Rates from Virginia Mines, 30 I. C. C. 635, 642.

(m) The voluntary maintenance of rates for a long period is one fact to be considered in determining the reasonableness of the rates. Kentucky Distilleries & Warehouse Co. v. L. & N. R. R., 36 I. C. C., 293, 301.

(n) The Commission has frequently held that a prima facie presumption of reasonableness attaches to a rate that has been long voluntarily maintained. But the continuance of a given rate is not conclusive evidence of the reasonableness of that rate and certainly the existence of a lower rate in the somewhat remote past, especially in view of the abrupt economic changes since the date when the lower rates were established, does not necessarily prove anything of value in ascertaining the reasonableness of rates in force during the period of federal control. Anaconda Copper Mining Co., v. Director General, 57 I. C. C. 723, 729.

(o) Carriers may, to meet competition, establish lower rates than they could justly be compelled to make. Hence, a voluntary rate, established to meet competition, is not to be taken as the measure of what is reasonable. L. & N. R. R. Co. v. I. C. C. 195 Fed. 541, 558.

ALL OTHER CITATIONS

Burgess v. Transportation Freight Bureau, 13 I. C. C. 668, 667; Anthony Wholesale Grocery Co. v. A. T. & S. F. Ry. Co., 13 I. C. C. 605, 608; Marshell Oil Co. v. C. & N. W. Ry. Co., 14 I. C. C. 210, 214; Beatrice Creamery Co. v. I. C. R. R. Co., 15 I. C. C. 109, 128; Green Bay Business Men's Ass'n v. B. & O. Ry. Co., 15 I. C. C. 59, 63, 64; Fort Dodge Commercial Club v. I. C. R. R. Co., 16 I. C. C. 572, 582; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 16 I. C. C. 56, 71; Avery Mfg. Co. v. A. T. & S. F. Ry. Co., 16 I. C. C. 20, 24; Liebold v. D. L. & W. R. R. Co., 17 I. C. C. 503, 505; Acme Cement Plaster Co. v. L. S. & M. S. Ry. 17 I. C. C. 30, 35; Andy's Ridge Coal Co. v. So. Ry. Co. 18 I. C. C. 405, 410; Consumers Ice Co. v. A. T. & S. F. Ry. Co., 18 I. C. C. 277, 278; Albree v. B. & M. R. R. Co., 22 I. C. C. 303, 315; Traugott Schmidt & Sons

v. M. C. R. R. 23 I. C. C. 684, 686; In Re Advances for the Transportation of Fresh Meats, 23 I. C. C. 652, 655; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 157; La Salle Paper Co. v. M. C. R. R. Co., 16 I. C. C. 149, 150; Commercial Club of Omaha v. Anderson & Slaine River Ry. Co., 18 I. C. C 532, 536; Federich & Kempe Co. v. N. Y. N. H. & H. R. R. Co., 18 I. C. C. 481, 484, 487; Breese-Trenton Mining Co. v. Wabash R. R. Co., 19 I. C. C. 598, 600; Pabst Brewing Co. v. C. M. & St. P. Ry. Co., 19 I. C. C. 584, 586, 587; Georgia-Carolina Brick Co. v. S. Ry. Co., 20 I. C. C. 148, 149; Simon Cook v. Wabash R. R. Co., 21 I. C. C. 563, 564; Chamber of Commerce, Ashburn, Ga., v. G. S. & F. Ry. Co., 23 I. C. C. 140, 149; L. & N. R. R. Co. v. I. C. C. 195 Fed. 541, 558; Darling & Co. v. B. & O. R. R. Co., 15 I. C. C. 79, 80; Sunderland Bros. Co. v. P. M. R. R. Co., 16 I. C. C. 450, 451; Kiser Co. v. C. of G. Ry. Co., 17 I. C. C. 430, 440; Memphis Cotton Oil Co. v. I. C. R. R. Co., 17 I. C. C 313, 318; Bartles Oil Co. v. C. M. & St. P. Ry. Co., 17 I. C. C. 146, 148; Clark Co. v. Buffalo & Susquehanna Ry. Co., 18 I. C. C. 380, 381; Morgan Grain Co. v. A. C. L. R. R. Co., 19 I. C. C. 460, 468; Gamble-Robinson Commission Co. v. St. L. & S. F. R. R. Co., 19 I. C. C. 114, 116; Miller v. N. Y. C. & H. R. R. Co., 19 I. C. C. 78; Commercial Club of Omaha v. S. P. Co., 20 I. C. C. 631, 636; Audley Hill & Co., v. S. Ry. Co., 20 I. C. C. 225, 226; Chattanooga Feed Co. v. A. G. S. R. R. Co., 22 I. C. C. 480, 484; Arlington Heights Fruit Exchange v. S. P. Co., 22 I. C. C. 149, 151; Dupont de Nemours Co. v. C. R. Co. of N. J., 25 I. C. C. 19, 20; McGregor-Noe Hardware Co. v. St. L. & S. F. R. R. Co., 26 I. C. C. 466; Esson Granite Co. v. So. R. R. Co., 26 I. C. C. 449; Robinson Land & Lumber Co., v. M. & O. R. R. Co., 26 I. C. C. 427, 429; Memphis Freight Bureau v. L. & N. R. R. Co., 26 I. C. C. 402, 404; Edgar & Son v. L. & N. R. R. Co., 26 I. C. C. 181, 182; Highland Park Mfg. Co., v. S. Ry. Co., 26 I. C. C. 67, 70; State of Kansas v. A. T. & S. F. Ry. Co., 27 I. C. C. 673, 689; Oklahoma Portland Cement Co. v. M. K. & T. Ry. Co., 27 I. C. C. 101, 104; Pulp & Paper Mfrs.' Traffic Assn. v. C. M. & St. P. Ry. Co., 27 I. C. C. 83, 96; Boldt Co. v. C. R. I. & P. Ry. Co., 27 I. C. C. 11, 13; In re Basket Rates, from Points East of to Points West of the Missouri River, Unrep. Op. A-490; Lumber Rates, S. Ry. Points to Eastern Points, 31 I. C. C. 244, 253; Nix & Co. v. S. Ry. Co., 31 I. C. C. 145, 149; Grain Rates to Pittsburg, 30 I. C. C. 383, 384; Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 515; Augusta Cotton Exchange and Board of Trade v. S. Ry. Co., 30 I. C. C. 704, 706; Freight Rates from Minnesota Points, 32 I. C. C. 361, 364; Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 625; Mississippi River Case, 28 I. C. C. 47, 54; Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 28 I. C. C. 250, 252; Rock Springs Distilling Co. v. I. C. R. R. Co., 29 I. C. C. 18, 24; Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 431; Rhindlander Paper Co. v. M. St. P. & S. Ste. M. Ry., 31 I. C. C. 555; Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 707, 708; Rates on Boots and Shoes from Boston, Mass., 31 I. C. C. 154, 158; Eastern Fruit Growers' Asso. v. B. & O. R. R. 33 I. C. C., 343, 354; National Assn. of Tanners v. L. C. R. R., 35 I. C. C. 175, 176; Western Laundry Machinery Co. v. L. & N. R. R., Unrep. Op. 2195; National Dock & Storage Warehouse Co. v. B. & M. R. R. 38 I. C. C. 643, 655; City of Memphis v. C. R. I. & P. Ry., 39 I. C. C. 256, 268; Pacific Coast-Southwest Lumber 40 I. C. C. 387, 394; Lumber to Eastern Colorado, 43 I. C. C. 687, 688; Cambria Steel Co., v. Director General, as Agent, 60 I. C. C. 459, 464; Atlantic Refining Co. v. Director General, as Agent, 64 I. C. C. 64; Coad v. C., St. P. M. & O. Ry. Co., 64 I. C. C. 178.

§16½ Low Prior Rate.
See Supra §16.

CASES 1887-1908

(a) Low rates to one place may not be just and fair if still lower rates are given to another. Re Chicago, St. Paul, & Kansas City R. Co., 2 I. C. R. 137.

(b) On complaint for unjust and unreasonable rates—HELD, that a former special and preferred rate is not a fair test of the reasonableness of a present rate. Myers, Survivor of Hostetter & Co. v. Pennsylvania, 2 I. C. R. 403.

IMPORTANT CASES SINCE 1908

(c) Many low rates have been established by carriers in times past because of competition or other circumstances which oftentimes have later ceased to exist. There is no principle of estoppel in the Act, and the Commission is vested with no power to restrain carriers from increasing unduly low rates to a basis which will yield just and rea-

sonable compensation for the services rendered. A rate may be unreasonable because it is too low as well as because it is too high. The Commission regards as unreasonable a rate which is so low as to be noncompensatory or which may or does transfer a portion of the cost of transportation to other traffic, and has on occasion, refused to find a challenged rate to be unreasonable even when a carrier was willing, for self-serving purposes more or less obvious, to admit unreasonableness in the rate. It has power to suspend a reduction in rates to prevent discrimination. Excelsior from St. Paul, Minn., 36 I. C. C., 349, 364.

§17. Manufactured Products.

See Evidence §31.

IMPORTANT CASES SINCE 1908

(a) The general rule is that manufactured products bear higher rates of transportation than does raw material, and is founded in reason, because ordinarily there is a substantial difference between the value of the one and that of the other, and frequently there is a greater degree of risk incident to the transportation and care of the manufactured product than of the raw material. The practice, however, is not universal, and is departed from in some instances because the reasons for the distinction are lacking, and in other cases because of countervailing commercial and market conditions and considerations. Within the last main class of exceptions would fall the case of grain and grain products, which are generally carried at the same rate. The rule, however, more nearly universally applies with respect to the primary or principal product or products than to the secondary products or by-products from the same raw material. East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co., 20 I. C. C. 37, 40.

(b) Carriers may make a reasonable differential between the rates on raw material and the article manufactured therefrom. Electric Malting Co. v. A. T. & S. F. Ry. Co., 23 I. C. C. 378, 380.

(c) The relation of rates to and from transit points is frequently a matter of importance to carriers in its bearing upon the control of traffic, but in fixing rates on raw sugar the fact that carriers secure additional haul of the refined sugar can not be taken into account in judging the reasonableness of the rates in issue. Drews Sugar Co. v. S. P. Co., 44 I. C. C. 533, 539.

ALL OTHER CITATIONS

American Milling Co. v. P. M. R. R. Co., Unrep. Op. 328; Bulte Milling Co. v. C. & A. R. R. Co., 15 I. C. C. 351, 364; McClung & Co. v. L. & N. R. R. Co., 23 I. C. C. 414, 416; Kent Co. v. N. Y. C. & H. R. R. R. Co., 15 I. C. C. 439, 441; Boldt Co v. C. R. I. & P. Ry. Co., 27 I. C. C. 11, 13.

§18. Mineral Lands Owned by Carrier..

See Evidence §34.

IMPORTANT CASES SINCE 1908

(a) Where the coal lands owned by a carrier are leased to an independent company, which makes a profit out of their operation, the carrier should not be permitted to use the value of such property for the purpose of swelling the amount upon which it may demand an income from rates to be paid by the public. City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 407.

(b) Ore properties belonging to carrier were transferred to an independent company in exchange for certificates entitling the holders thereof to participate in the profits of said company. These certificates were turned over gratis to the shareholders of the carrier. The Commission HELD, upon a question of reasonableness of rates such fact could not be urged to deny the right of the shareholders to receive a reasonable income on their stock. City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 408.

§18½. Motive of Carrier.

See Evidence §34½.

IMPORTANT CASES SINCE 1908

(a) The intent or motive actuating carriers in the establishment of rates cannot outweigh other considerations when determining the present reasonableness of such rates. But if it is sought to make use of a long existing basis of rates for the purpose of effecting reductions in other rates, it may be of special importance that consideration be given to the circumstances connected with the origination and continuance of the lower basis, in order to determine whether or not that basis is compensatory or reasonable and may properly be employed for testing purposes. Curry & Whyte Co. v. D. & I. R. R. R. Co., 32 I. C. C. 162, 164.

ALL OTHER CITATIONS

Louisville & Nashville Railroad Coal and Coke Rates, 26 I. C. C. 20, 24.

§19. Natural Advantages.

See Evidence §2.

IMPORTANT CASES SINCE 1908

(a) Every city is entitled to the advantage of its location, and may not lawfully be subjected to high freight charges merely because carriers, for reasons of convenience or otherwise, include it with a number of other points in surrounding territory, which later points are not similarly situated. Corporation Commission North Carolina v. N. W. Ry. Co., 19 I. C. C. 303, 309.

(b) It is not within the province of carriers to dictate where manufacturing shall or shall not be done, or by means of their rate adjustments or otherwise to select or control the markets where their shippers shall buy or sell. Every shipper is entitled to a reasonable rate; but if the nature or value of a commodity offered for transportation is such as to demand an unreasonably low rate, there is no lawful obligation upon the carrier to meet this demand. Boise Lumber Co. v. P. & I. N. Ry. 33 I. C. C., 109, 115.

(c) A point is entitled to the rate which its location and other advantages dictate, without taking into account conditions which bring about different rates to other points. Commercial conditions cannot be equalized by an adjustment of freight rates. Penn. R. R. v. International Coal Mining Co. 173 Fed. 1, 6.

ALL OTHER CITATIONS

Investigation of Alleged Unreasonable Rates on Meats, 22 I. C. C. 160, 163; Boviaird Supply Co. v. A. T. & S. F. Ry. Co., 13 I. C. C. 56, 64; Quimby v. Maine Central R. R. Co., 13 I. C. C. 246, 248; Hecker-Jones-Jewles Milling Co. v. B. & O. R. R. Co., 14 I. C. C. 356, 359; Burnham, Hanna, Munger Co. v. C. R. I. & P. Ry. Co., 14 I. C. C. 299, 303; Greater Des Moines Committee v. C. G. W. Ry. Co., 14 I. C. C. 294, 297, 298; George's Creek Basin Coal Co. v. B. & O. R. R. Co., 14 I. C. C. 127, 133; Kendel v. N. Y. N. H. & H. R. R. Co., 15 I. C. C. 555; Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co., 15 I. C. C. 491, 498; City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 419; Bulte Milling Co. v. C. & A. R. R. Co., 15 I. C. C. 351; Black Mountain Coal Land Co. v. So. Ry. Co., 15 I. C. C. 286; Hafey v. St. L. & S. F. R. R. Co., 15 I. C. C. 245, 246; Chicago Lumber & Coal Co. v. T. S. Ry. Co., 16 I. C. C. 323, 331; Board of Trade of Winston-Salem v. M. & W. Ry. Co. 16 I. C. C. 12, 16; Florida Fruit and Vegetable Ass'n v. A. C. L. R. R. 17 I. C. C. 552, 561; Saginaw Board of Trade v. Grand Trunk Ry. Co., 17 I. C. C. 128; Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co. 17 I. C. C. 30, 33; Colorado Coal Traffic Ass'n v. C. & S. Ry. Co., 18 I. C. C. 572, 576; Ponchatoula Farmers' Ass'n v. I. C. R. R. Co., 19 I. C. C. 513, 516; Harbor City Wholesale Co. v. S. P. Co., 19 I. C. C. 323, 331; Maricopa County Commercial Club v. S. F. P. & P. Ry. Co. 19 I. C. C. 257, 258; Railroad Commission of Nevada v. S. P. Co., 19 I. C. C. 238, 256; California Sugar Co. v. S. P. L. A. & S. L. R. R. Co., 19 I. C. C. 6, 9; National Refining Co. v. C. C. C. & St. L. Ry. Co. 20 I. C. C. 649; Truck Growers' Ass'n v. A. C. L. R. R. Co., 20 I. C. C. 190, 193; East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co., 20 I. C. C. 37, 41; Sinclair & Co. v. C. M. & St. P. Ry. Co., 21 I. C. C. 490, 507, 508; Norman Lumber Co. v. L. & N. R. R. Co., 22 I. C. C. 239; In Re Advances of Rates on Meats 22 I. C. C. 160, 163; Elk Cement & Lime v. B. & O. R. R. Co., 22 I. C. C. 84, 88; National Mfg. Co. v. A. T. & S. F. Ry. Co., 23 I. C. C. 86, 87; Meredith v. St. L. S. W. Ry. Co. 23 I. C. C. 31 34; Southwestern Shippers Traffic Assn. v. A. T. & S. F. Ry. Co., 24 I. C. C. 570, 576; Wichita Board of Trade v. A. T. & S. F. Ry. Co., 25 I. C. C. 625, 632; In re Wool, Hides and Pelts, 25 I. C. C. 185, 191; Greenbaum Co. v. C. & O. Ry. Co., 25 I. C. C. 352, 355; In re Advances on Furniture, 25 I. C. C. 331, 336; Chamber of Commerce of Beaumont v. T. & N. O. R. R. Co., 25 I. C. C. 695, 697; In re Mine Rating, 25 I. C. C. 286, 298; Lindsay Bros. v. P. M. R. R. Co., 25 I. C. C. 368, 369; Pulp and Paper Mfrs. Traffic Assn. v. C. M. & St. P. Ry. Co., 27 I. C. C. 83, 94; Globe Milling Co. v. C. M. & St. P. Ry. Co., 24 I. C. C. 594, 597; Bowling Green Business Men v. L. & N. R. R., 24 I. C. C. 315, 317; Lumberman's Exchange of St. Louis v. A. & S. R. R. R. Co., 24 I. C. C. 220, 224; Consolidated Fuel Co. v. A. T. & S. F. Ry. Co., 24 I. C. C. 220, 223; Commercial Club of Superior, Wis., v. G. N. Ry. Co., 24 I. C. C. 96, 102, 106, 109; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 70; In re Wharfage Charges, 26 I. C. C. 695, 703; National Refrigerator & Butchers' Supply Co. v. St. L. I. M. & S. Ry. Co., 26 I. C. C. 524, 526; Rate on Linseed Oil,

26 I. C. C. 265, 270; Davis Bros. Lumber Co. v. C. R. I. & P. Ry. Co., 26 I. C. C. 257, 263; Rates on Newsprint Paper from Sioux Ste. Marie, 26 I. C. C. 13, 17; Rates on Clay Products from Brickland, N. Mex., 26 I. C. C. 639, 657; Commercial Club of Duluth v. B. & O. R. R. Co. 27 I. C. C. 639, 657; Toledo Produce Exchange v. A. A. R. R. Co., 27 I. C. C. 536, 542, 639, 648; Western Fruit Jobbers' Assn. v. C. R. I. & P. Ry. Co., 27 I. C. C. 417, 420; The Mississippi River Case, 28 I. C. C. 47, 58; Trans-Continental Rates from Group F, 28 I. C. C. 1, 4; Atlanta Freight Bureau v. N. C. & St. L. Ry., 29 I. C. C. 476, 480; Board of Trade of Carrollton v. C. of G. Ry. Co., 28 I. C. C. 154, 168; Lebanon Commercial Club v. L. & N. R. R. Co., 28 I. C. C. 301, 303; Town of Pelham v. A. C. L. R. R. Co., 28 I. C. C. 433, 437; Mayor and Council of Douglas v. A. B. & A. R. R. Co., 28 I. C. C. 445, 450; Traffic Assn. of St. Louis Coffee Importers v. I. C. R. R. Co., 28 I. C. C. 484, 486; Springfield Commercial Assn. v. P. R. R. Co., 28 I. C. C. 511, 514; Memphis Freight Bureau v. B. & O. R. R. Co., 28 I. C. C. 543, 547; Bryant Co. v. Ft. W. & D. C. Ry. Co., 28 I. C. C. 594, 596; Heileman Brewing Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-233; Rates to North Carolina Points, 29 I. C. C. 550, 557; Royster Guano Co. v. A. C. L. R. R. Co., 31 I. C. C. 458, 461; Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 515; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597, 601; Chattanooga Sewer Pipe & Fire Brick Co. v. S. Ry. Co., Unrep. Op. A-676; Merchants' & Manufacturers' Asso. of Birmingham v. L. & N. R. R. Co., Unrep. Op. A-680; Nebraska State Railway Comm. v. C. V. Ry. Co., 32 I. C. C. 41, 46; Inman, Alters & Inman v. A. C. L. R. R. Co., 32 I. C. C. 146, 147; Chamber of Commerce, Houston, Tex. v. I. G. N. Ry. Co., 32 I. C. C. 247, 251; Trans-Continental Commodity Rates, 32 I. C. C. 449, 455; Milburn Wagon Co. v. A. A. R. R. Co., 32 I. C. C. 582, 587; Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 625, 632; Illinois Coal Cases, 32 I. C. C. 659, 667, 673, 674; Seattle Chamber of Commerce v. G. N. Ry. Co., 30 I. C. C. 683, 695.

§20. Need for Revenue.

See Infra §30 §36; Evidence §36 §51.

IMPORTANT CASES SINCE 1908

(a) Rates on a branch line may lawfully be higher than on main lines through well-developed territory where the density of traffic is much greater. Commercial Club of Omaha v. C. & N. W. Ry. Co., 19 I. C. C. 156, 159.

(b) So it has been said a new line ought to be worth what it cost and ought to earn a return upon that amount. City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 171.

(c) If the branch lines of a railroad are judiciously planned and constructed they should certainly be taken into account in determining the value of the railroad for although they may not earn a large return upon the cost considered as an independent proposition, they do add to the earning power of the entire system; but it must be assumed that the new branches which have been constructed are good investments, otherwise they would not have been built, and that they will add to the earnings of the property in proportion as they have added to its cost. No increase in rate should be called for on this account. City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 171.

(d) In considering the reasonableness of a whole schedule of rates the Commission may well at the outset make inquiries as to the general financial condition of the defendant railroad. R. R. Com. of Nev. v. N. C. O. Ry. Co., 22 I. C. C. 205, 210.

(e) If, contrary to general impression and logical expectation, a more highly developed and better equipped railway cannot do business on as low a basis per unit of traffic as a railway less developed and with poorer equipment, that conclusion should be clearly and unmistakably demonstrated and proven, and not be accepted on vague impression or general allegations before consequential action is taken based upon it in fixing rates. Boileau v. P. & L. E. R. R. Co., 22 I. C. C. 640, 651.

ALL OTHER CITATIONS

Railroad Commissioners of Florida v. S. A. L. Ry. 16 I. C. C. 1, 5; Billings Chamber of Commerce v. C. B. & Q. R. R. Co., 19 I. C. C. 71, 75; Railroad Commissioners of Iowa v. I. C. R. R. R. Co., 20 I. C. C. 181, 186; Boileau v. P. & L. E. R. R. Co., 22 I. C. C. 640, 655.

§21. Obsolescence.

IMPORTANT CASES SINCE 1908

(a) The cost of construction should contain no factor of obsolescence; when

a thing goes out of service, its value should be written off. In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 271.

§22. Origin of Traffic.

See Origin of Traffic.

CASES 1887-1908

(a) The fact which is made to appear in these cases, that rates on traffic of the numbered classes from Chicago and Cincinnati to southern territory are made higher than they otherwise would be, for the purpose of securing to the lines from northeastern cities the transportation of that traffic from the territory set apart to them under the Southern Railway & Steamboat Association Agreement, itself raises a prima facie presumption of the unreasonableness of those rates. Freight Bureau v. Cincinnati, N. O. & T. P. R. Co. et al. 6 I. C. C. 197.

(b) Shippers along the line of an interstate carrier are entitled to have their products moved in either direction at reasonable rates, and the Commission can not agree that a carrier may establish prohibitive rates on any commodity on the ground that it is not desirable traffic for that carrier. A. J. Poor Grain Co. v. C. B. & Q. Ry. 12 I. C. C. 418, 426.

IMPORTANT CASES SINCE 1908

(c) As a matter of everyday fairness a carrier should not be needlessly deprived of traffic which it originates. The Commission fully recognizes the right of a carrier to get the long haul out of traffic which it originates. But this right is strictly subordinate to the public interest, and when its assertion results in unreasonable and unjust rate or restrictions on the conduct of business it cannot be approved. Toledo Produce Exchange v. A. A. R. R. Co., 27 I. C. C. 536, 543.

(d) The power and right to determine whether certain cities or persons must transact their business, is a power and a right which are not lodged either with the carriers or with the Commission. There is nothing in the Act to indicate that the Commission may thus limit the trade of any community or shipper, and it has consistently denied the right of carriers to assign territory to one city or another. Railroad Comm. of La. v. A. H. T. Ry. Co., 48 I. C. C. 312, 362.

(e) It is well settled that the desire of a carrier to get the long hauls on traffic does not warrant it in maintaining rates that are unreasonable or otherwise unlawful to particular consuming territories. United Verde Extension Mining Co. v. A. T. & S. F. Ry., 89 I. C. C. 95, 100.

ALL OTHER CITATIONS

Patten v. Wisc. C. Ry. Co., 14 I. C. C. 189; Acme Cement Plaster Co. v. C. G. W. Ry. Co., 18 I. C. C. 19; Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co., 19 I. C. C. 218, 228; May Bros. v. Y. & M. V. R. R. R. Co., 26 I. C. C. 323, 328; Blue Grass Lumber Co. v. L. & N. R. R. Co., 26 I. C. C. 438, 444; Lumber rates Texas, etc., to Oklahoma and Missouri, 28 I. C. C. 471, 474; Chattanooga Imp. & Mfg. Co. v. L. & N. R. R., 40 I. C. C. 146, 149; Consolidated Fuel Co. v. A. T. & S. F. Ry. Co., 38 I. C. C. 474, 476; Bituminous Coal Rates to the Southeast, 37 I. C. C. 652, 667; Nashville Tie Co. v. L. & N. R. R. Co., 40 I. C. C., 377, 378; Railroad Commission of La. v. A. H. T. Ry. Co., 41 I. C. C., 83, 119.

§23. Ownership or Use of Commodity.

See Classification §10; Discrimination §6; Evidence §41½.

IMPORTANT CASES SINCE 1908

(a) The determination of a reasonable rate rests in the service performed, the risk involved, the value of the article, and the degree of care required to be exercised, but the use to which articles are put, without any difference between them and dissimilarity in conditions under which the transportation is performed, may not lawfully be made the basis for a difference in charge. Davis v. West Jersey Express Co., 16 I. C. C. 214, 216.

(b) The rule is well established that a rate cannot be based upon the use to which the commodity is to be devoted; neither can a rate be confined in its terms to an individual or to a class; it must be open to all shippers alike. Virginia-Carolina Chemical Co. v. A. C. L. R. R. Co., 22 I. C. C. 394, 397.

(c) A carrier cannot, when goods are tendered to it for transportation, make the mere ownership of the goods the test of the duty to carry, or discriminate in fixing the charge for carriage, not upon any difference inhering in the goods or in the cost of the service rendered in transporting them, but upon the mere circumstance that the shipper is or is not the real owner of the goods. I. C. C. v.

D. L. & W. R. R. Co., 220 U. S. 235, 252, 31 Sup. Ct., 392, 55 L. ed. 448.

ALL OTHER CITATIONS

Tennessee Lumber Mfg. Co. v. N. & W. Ry. Co., v. N. & W. Ry. Co., Unrep. Op. 371; Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co., 16 I. C. C. 405, 406; Anaconda Copper Mining Co. v. C. & E. R. R. Co., 19 I. C. C. 592, 596; Rehearing Denied, 21 I. C. C. 40; Nashville Tie Co. v. L. & N. R. R. Co., 40 I. C. C. 377, 378; Lake Cargo Rates, 46 I. C. C. 159, 171.

§24. Paper Rate.

See Paper Rates.

CASES 1887-1908

(a) To whatever extent long previous existence of lower rates in actual use may justify an inference or presumption that they are sufficiently high, the mere publication of such rates, under which there has been no appreciable movement of traffic, is not conclusive proof that they are reasonably remunerative. Shiel & Co. v. Ill. Central R. R. Co., 12 I. C. C. 210.

(b) Publication of paper rates not conclusive proof that they are reasonably remunerative. Shiel & Co. v. Ill. C. R. R. Co., 12 I. C. C. 210.

IMPORTANT CASES SINCE 1908

(c) A proposed industry has the right to ascertain in advance what rates will be established relative to its business. Suffern Grain Co. v. I. C. R. R. Co., 22 I. C. C. 178, 184.

(d) While the fact that traffic moves freely has some bearing upon the reasonableness of the rates, it is not true that merely because traffic does not move the rates are therefore unreasonable. Railroad Commissioners of Fla. v. S. Exp. Co., 28 I. C. C. 634, 635.

(e) An isolated movement during a comparatively short period from a nonproducing point is not proper basis for requiring establishment of rates for the future or for an award of reparation, but inasmuch as complainants are entitled to reasonable rates fact of shipments having been isolated is not sole determinative factor. Meigs Pulpwood Co. v. Director General, as Agent, 78 I. C. C. 473, 474.

ALL OTHER CITATIONS

Sligo Iron Store Co. v. A. T. & S. F. Co., 17 I. C. C. 139, 142; Scheuing v. L. & N. R. R. Co., 20 I. C. C. 550, 552; Lum. v. G. N. Ry. Co., 21 I. C. C. 558, 560, 561, 562; Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., Unrep. Op. A-728; Fox v. C. G. W. R. R. Co., Unrep. Op. A-800.

§25. Past Rates.

See Supra §16; Evidence §29, §43, §66; Passenger Fares and Facilities §7.

CASES 1887-1908

(a) A former special and preferred rate is not a fair test of the reasonableness of a present rate of freight, under the Act to Regulate Commerce. Myers v. Pennsylvania Co. (Com.) 2 I. C. R. 403.

(b) A railroad company had in force for a period of more than two years next before the Act to Regulate Commerce took effect a scale of charges on anthracite coal considerably lower than its present rates, which are higher on coal than on iron ore, pig iron and other low-grade freight, and also higher than the charges of said road on general freight, the expense of carrying which is much greater than the expense on coal. HELD, That such higher rates on coal are unreasonable. Coxe Bro. & Co. v. Lehigh Valley R. Y. C. 3 I. C. R. 460.

(c) It appears that the rate charged on first class goods, in less than carload lots, from Cincinnati to Atlanta, in 1878, was $1.39 per 100 lbs; that afterwards it was $1.10; and subsequently $1.07; except for a short time, when it was $1.01. The only testimony offered to, or heard by the Commission, as to the reasonableness of the rate, was that of the Vice President of the C. N. O. & T. P. R. Co., that he considered a rate of $1.01 reasonable. Upon that testimony, and upon the fact that the rate from Cincinnati to Birmingham is 89 cents, as compared with $1.07 to Atlanta, the distance being substantially the same, the Commission ordered that the defendants should not charge more than $1.00 from Cincinnati to Atlanta. In this court, a number of railroad experts testified that the present rate of $1.07 is reasonable. As to the rate to Birmingham, there was evidence before this court, which was not before the Commission; viz: That the rate from Cincinnati to Birmingham, which was previously $1.08, was forced down to 89 cents, by the building of a new road, known as the K. C. M. & B. R. R. HELD: That the existence of a lower rate from Cincinnati to Birmingham furnished no sufficient reason to determine that the

rate from Cincinnati to Atlanta is unreasonable, when such lower rate is caused by conditions at Birmingham which do not exist at Atlanta. HELD, further: That the evidence offered in this court is sufficient to overcome the prima facie case made by the findings of the Commission. On the whole testimony, as now before this court it is not believed that the Commission would have found the rate in question to be unreasonable. Certainly this court cannot so determine. Interstate Commerce Commission v. Cincinnati N. O. & T. P. Ry. Co. 4 I. C. R. 332.

(d) Continuance of a given rate is not conclusive of the reasonableness of that rate; but when a railroad company advances a rate which has been for some time in force, the fact of its continuance is in the nature of an admission against that company, which tends to show the unreasonableness of the advance; and the force of this admission becomes great in view of the general decline in the average of railway rates and the lessened cost of service. Holmes & Co. v. Southern R. Co., 8 I. C. C. 561.

(e) Continuance of rate is admission of its reasonableness. Holmes & Co. v. Southern R. Co., 8 I. C. C. 561.

(f) The continuance of a given rate is not conclusive evidence of the reasonableness of that rate; but when a railway company advances a rate which has been for some time in force, the fact of its continuance is in the nature of an admission against that company which tends to show the unreasonableness of the advance; and the force of this admission becomes great in view of the general decline in the average of railway rates and the lessened cost of service. Holmes & Co. v. Southern R. Co., 8 I. C. C. 561, 568.

(g) Evidence of prior rates, raises a presumption against the carrier as to their reasonableness. National Hay Asso. v. Lake Shore & Michigan S. R. Co. 9 I. C. C. 264.

(h) The continuance of a given rate is not conclusive evidence of the reasonableness of that rate; but when a railway company advances a rate which has been for sometime in force, the fact of its continuance is in the nature of an admission against that company which tends to show the unreasonableness of the advance. Central Yellow Pine Asso. v. I. C. R. R., 10 I. C. C. 506, 542.

(i) The existence of a lower rate in the somewhat remote past does not necessarily prove anything of value in ascertaining the reasonableness of a rate existing today. Enterprise Mfg. Co. v. Georgia R. R. Co., 12 I. C. C. 130, 133.

IMPORTANT CASES SINCE 1908

(j) The reasonableness of a rate must of necessity depend upon the conditions surrounding the traffic at the time it moves. The length of the haul, the competition to be met, the cost of the service, the value of the service, the density or volume of the tonnage, as well as the general transportation conditions then existing, are factors that have a more or less definite relation to the rate that a carrier may reasonably demand for a transportation service. And these factors, except, possibly, the length of the haul, the grades and other transportation conditions, are in their nature neither permanent nor fixed, but necessarily change with the general economic panorama. No presumption of law, therefore, can arise against an advanced rate simply because a lower rate previously existed. Memphis Cotton Oil Co. v. I. C. R. R. Co., 17 I. C. C. 313, 318.

(k) Class rates, long in effect, forming the basis of a rate fabric, to which business has adjusted itself, are not disturbed upon the mere suggestion that a better scheme might have been originally devised. In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 306.

(l) While the existence of a wrong cannot, of itself, justify its continuance, still, in determining what under all the circumstances is just and reasonable, in pursuance of the authority delegated to the Commission, it must be to some extent guided by conditions as it finds them. Bluefield Shippers' Ass'n v. N. & W. Ry. Co., 22 I. C. C. 519, 525.

(m) From a finding that a rate at the present time is unreasonable, it does not necessarily follow that such a rate has been unreasonable in the past; and where reparation is claimed because of an unreasonable rate, it is incumbent upon the Commission to enter upon a further consideration of whether or not the rate has in the past been unreasonable, and if so, to what extent and for what period. Hires Condensed Milk Co. v. P. R. R. Co., 38 I. C. C. 441, 447, 448.

(n) Lower rates having been maintained for many years does not necessarily show that the present rates are un-

reasonable. Old Vincennes Distillery Co. v. B. & O. S. W. R. R., 45 I. C. C. 447 452.

(o) A prima facie presumption of reasonableness attaches to a rate that has been long voluntarily maintained. But the continuance of a given rate is not conclusive evidence of its reasonableness, and certainly the existence of a lower rate in the past, especially in view of the abrupt economic changes since the date when the lower rates were established, does not necessarily prove of value in ascertaining the reasonableness of rates in force during the period of federal control. Anaconda Copper Mining Co. v. Director General, 57 I. C. C. 723, 729.

ALL OTHER CITATIONS

Burnham, Hanna, Munger Dry Goods Co. v. C. R. I. & P. Ry. Co., 14 I. C. C. 299; Board of Mayor and Alderman v. V. & S. W. Ry. Co., 15 I. C. C. 453, 458; Lagomaricino-Grupe Co. v. I. C. R. R. Co., 16 I. C. C. 151, 152; Corporation Commission of North Carolina v. N. & W. Ry. Co. 19 I. C. C. 303, 309, 310; Milburn Wagon Co. v. L. S. & M. S. Ry. Co., 22 I. C. C. 93, 100; Florida Fruit & Vegetable Shippers' Protective Ass'n v. A. C. L. R. R. Co., 22 I. C. C. 11, 16; In Re Advances in Rates for the Transportation of Fresh Meats, 23 I. C. C. 652, 655; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 162; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 23 I. C. C. 195, 208; Augusta & Savannah Steamboat Co. v. O. S. S. Co. of Savannah, 26 I. C. C. 380, 387; Bolt Co. v. C. R. I. & P. Ry. Co., 27 I. C. C. 11, 13; Northbound Rates on Hardwood, 32 I. C. C. 521, 525; Federal Glass Co. v. C. R. L. & P. Ry. Co., 38 I. C. C. 331, 332; Arlington Heights Fruit Exchange v. So. Pac. Co., 45 I. C. C. 248, 250;; Providence F. & P. Exchange v. Am. Exp. Co., 51 I. C. C. 167; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 51 I. C. C. 635, 639; Acme Cement Plaster Co. v. A., C. & Y. Ry. Co., 53 I. C. C. 46, 51; Swift & Co. v. Director General, 66 I. C. C. 615; Chevrolet Motor Company of Texas v. Director General, 66 I. C. C. 617.

§26. Permanent Improvements.

See Advanced Rates §6 (5); Evidence §43½.

IMPORTANT CASES SINCE 1908

(a) Both the Supreme Court and the Commission are committed to the proposition that in fixing a fair return upon railroad property, for the purpose of determining whether a given advance is reasonable, the railway ought not to treat as a part of its operating expenses the cost of permanent improvements or extensions, and this must of necessity mean that the rates should not be sufficient to allow both the payment of dividends to stockholders and interest to bondholders, and an additional sum for the purpose of improving and increasing the value of the property. Each generation may well be required to bear its own burden, and the stockholder should not obtain both an adequate dividend upon his stock and an addition to the value of his property. In Re Advances in Rates —Eastern Case, 20 I. C. C. 243, 266.

(b) A carrier cannot justify a higher rate from a mine on a connecting line to a certain destination because of the fact that it involves a haul across an expensive bridge, where published rates for mines on its own line to the same destination are materially lower than the one attacked. Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 26 I. C. C. 638, 651.

§26½. Prior Adjudication.

See Classification §17; Evidence §43½; V; Previous Decision of Commission; Reparation §8½.

CASES 1887-1908

(a) This case, involving the reasonableness and justice of freight rates from Chicago, St. Louis, and other Ohio River and Mississippi River points, is similar to, and was held to await the final disposition of the case of Wilmington Tariff Asso. v. Cincinnati, P. & V. R. Co. 9 I. C. C. Rep. 118, in which proceeding the Commission entered an order requiring correction of rates from the same points to Wilmington, N. C., but such order the United States circuit court declined to enforce. During the present year the rates from Chicago to Ohio River crossings have been materially reduced on shipments destined to south-eastern points, resulting in reduction of through rates from Chicago to Charleston and Wilmington Case, no enforceable order of relief can be predicated upon the facts shown in this case, and the complaint must be dismissed. Bureau of Freight & Transportation of Charleston, S. C. v. Norfolk & W. R. Co. 11 I. C. C. 235.

(b) The Commission having upheld a rate of $1.15 per one hundred pounds on

cotton goods from southern cotton mills to Pacific ports, in Enterprise Manufacturing Company v. Georgia R. R. Co. et al., 12 I. C. C. Rep. 130, and held a rate ten cents higher to Asiatic ports from the same points to be reasonable in China & Japan Trading Company v. Georgia R. R. Co. et al., 12 I. C. C. Rep. 236, the latter case is followed and the rate of $1.25 per one hundred pounds under present conditions again approved. Enterprise Mfg. Co. et al. v. Georgia R. R. Co. Et Al. 12 I. C. C. 452.

IMPORTANT CASES SINCE 1908

(c) Past decisions of the Commission do not necessarily preclude it from arriving at a different result under certain circumstances and conditions. Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 26 I. C. C. 638, 651.

(d) A rate which has been prescribed by the Commission must be regarded as reasonable. Crowdus Bros v. A. T. & S. F. Ry. Co., 32 I. C. C. 355, 359.

(e) The inclusion of commission made rates in tables of rate comparisons has the effect of bringing the average level of all the rates, so that the average obtained can not be said to represent what the carriers themselves deem just and reasonable rates. Dimmitt-Caudle-Smith L. S. C. Co. v. C. B. & Q. R. R., 47 I. C. C. 287, 305.

(f) Rates on coconut oil from Oklahoma City, Okla., to Chicago, Ill., found unreasonable to extent it exceeded the distance scale of rates on cottonseed oil prescribed in Oklahoma Cottonseed Crushers' Asso., 39 I. C. C., 497, projected to distance of movement, following Southport Mill, 68 I. C. C., 352. Reparation awarded and reasonable maximum rate prescribed. Morris & Co. v. Director General, as Agent, 74 I. C. C. 630.

ALL OTHER CITATIONS

Stone-Ordean-Wells Co. v. S. P. Co., 18 I. C. C. 15, 16; Southern Timber & Land Co. v. S. P. Co., 18 I. C. C. 232, 233; Refrigeration Charges on K. C. S. Ry., 26 I. C. C. 617, 620; Commercial Club of Omaha v. A. & S. R. Ry. Co., 27 I. C. C. 302, 315; American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 463; Northbound Rates on Hardwood, 32 I. C. C. 521, 525; Morgantown & Kingwood Divisions, 40 I. C. C. 509, 511; Superior Charcoal Iron Co. v. M. M. & S. E. Ry., 46 I. C. C. 329; Stanford Roofing Co. v. M. K. & T. Ry., 47 I. C. C. 212, 214; Bascom-French Co. v. A., T. & S. F. Ry. Co., 48 I. C. C. 62, 64; Railroad Commission of Louisiana, 48 I. C. C. 312; Anderson-Theobald Co. v. Vandala R. R. 50 I. C. C. 596; Cape Girardeau Com. Club v. I. C. R. R. 51 I. C. C. 105; Locust Mtn. Coal Co. v. L. V. R. R., 51 I. C. C. 137; E. I. Du Pont de Nemours & Co. v. Director General, 57 I. C. C. 507; Virginia-Carolina Chemical Co. v. Director General, as Agent, 60 I. C. C. 321; Silica Sand Producers' Traffic Asso. of Illinois v. Director General 60 I. C. C. 453; Inland Steel Co. v. Director General, 60 I. C. C. 640; Birdsboro Stone Co. v. P. R. R. R. Co., 61 I. C. C. 46; South Bend Chamber of Commerce v. Director General, 61 I. C. C. 67; Corp. Commission of N. C. v. Director General, 62 I. C. C. 64; Shreveport Producing & Refining Corp. v. Director General, as Agent, 62 I. C. C. 123; Swift & Co. v. Director General, as Agent, 62 I. C. C. 171; Providence Fruit & Producers Exchange v. Director General, as Agent, 62 I. C. C. 179; Grand Rapids Plaster Co. v. Director General, 62 I. C. C. 237; Kerr & Co. v. S. S. Ry. Co., 62 I. C. C. 296; Indiana Rates, Fares and Charges, 62 I. C. C. 648; Proctor & Gamble Co. v. Director General, as Agent, 62 I. C. C. 713; Lehigh & Wilkes-Barre Coal Co. v. Director General as Agent, 63 I. C. C. 3; Orange Rice Mill Co. v. Director General, as Agent, 63 I. C. C. 133; Selma Chamber of Commerce v. Director General, as Agent, 63 I. C. C. 157; Cincinnati Abatoir Co. v. Director General, as Agent, 66 I. C. C. 65; West Kentucky Coal Bureau v. I. C. R. R. Co., 66 I. C. C. 228; Channel Chemical Co. v. A., T. & S. F. Ry. Co., 66 I. C. C. 235; Grasselli Chemical Co. v. Director General, as Agent, 66 I. C. C. 263; La Crosse Shippers' Asso. v. A. A. R. R. Co., 66 I. C. C., 371; United Verde Extension Mining Co. v. U. V. & P. Ry. Co., 66 I. C. C., 377; Acid from Hillsboro to Ohio River Points, 66 I. C. C. 383; Iola Cement Mills Traffic Asso. v. Director General, as Agent, 66 I. C. C. 495; Roxana Petroleum Co. v. Director General as Agent, 68 I. C. C. 77; Loogootee Fire Clay Products, Co. v. Director General, as Agent, 68 I. C. C. 443; Central Pa. Lumber Co. v. Director General, as Agent 69 I. C. C. 398; National Paving Brick Mfrs. Asso., 68 I. C. C. 213; The Birmingham Traffic Bureau v. St. L. S. R. Ry. 68 I. C. C. 108; Hydraulic Press Brick Co. v. Director General, 68 I. C. C. 295; Fort Wayne Rolling Mill Corp. v. Director General, 68 I. C. C. 439; Ball

Seligman & Co. v. N. Y. & N. R. R. 73 I. C. C. 223; Dave Levite v. Director General 73 I. C. C. 443; Phoenix Chamber of Commerce v. Director General, as Agent, 73 I. C. C. 284; Chicago Sewer Pipe Co. v. Director General, as Agent, 73 I. C. C. 511; Dee Clay Mfg. Co. v. Director General, as Agent, 73 I. C. C., 557; Indiana Board & Filler Co. v. Director General, as Agent, 73 I. C. C., 601; Beaumont Chamber of Commerce v. Director General, 77 I. C. C. 195; Certain-Teed Products Corp. v. A. T. & S. F. Ry., 77 I. C. C. 444; Gila Water Co. v. A. E. R. R. Co., 78 I. C. C. 15; Magnola Provision Co. v. Director General, as Agent, 78 I. C. C. 151; Melzer Co. v. A. E. R. R. Co., 78 I. C. C. 319, 324, 326; Willard Coal Co. v. E. K. Ry. Co. 78 I. C. C. 455; Little Fork Coal Co. v. E. Ky. 78 I. C. C. 699; Penick & Ford v. Director General, 80 I. C. C. 152; Wisconsin Traffic Association v. A. C. & N. B. Ry., 80 I. C. C. 217; Detroit Coal Exchange v. Director General, 80 I. C. C. 258; Chicago Sewer Pipe Co. v. Director General, as Agent, 77 I. C. C. 171; Wearn & Co. v. B. & O. R. R. Co., 77 I. C. C. 373; MacGowan Coffee Co. v. N. O. N. E. R. R.R. Co., 77 I. C. C. 385; Kline Brick Co. v. Director General, as Agent, 77 I. C. C. 420; Iola Cement Mills Traffic Asso. v. Director General, as Agent, 77 I. C. C. 745; Fort Worth Cotton Oil Mill v. A. T. & S. F. Ry. Co., 80 I. C. C. 18; Fort Worth Freight Bureau v. Director General, 80 I. C. C. 243, 244; Lubrite Refining Co. v. D. G. C. Ry. Co., 80 I. C. C. 515; Detroit Coal Exchange v. Director General as Agent, 80 I. C. C. 258; Interstate Cotton Oil Refg. Co. v. St. L. S. W. Ry. Co. 81 I. C. C. 67; Wilson & Co. v. Director General, as Agent, 81 I. C. C. 79; Arizona Packing Co. v. A. E. R. R. Co., 81 I. C. C. 115, 123; Orange Rice Mill Co. v. Director General as Agent, 81 I. C. C. 285; Campion v. Director General, as Agent, 81 I. C. C. 557; Apache Cotton Oil & Mfg. Co. v. Director General, as Agent, 81 I. C. C. 569; Klein-Simpson Fruit Co. v. A. T. & S. F. Co., 83 I. C. C. 285; Hale-Halsell Co. v. C. R. I. & P. Ry. Co., 83 I. C. C. 313; Weldon, Williams & Lock v. A. T. & S. F. Ry. Co., 83 I. C. C. 371; Olney-Hart v. C. M. & St. P. Ry. Co., 83 I. C. C. 514.

§27. Profits of Shipper.

See Advanced Rates §6 (6); Equalization of Rates; Evidence §16; §27; §45; §62.

CASES 1887-1908

(a) The mere fact that at a given time an article cannot be profitably shipped at the existing tariff rate is by no means conclusive evidence that such rate is unreasonable. Riddle, Dean & Co. v. N. Y., L. E. & W. R. R. Co., 1 I. C. R. 787.

(b) That at certain time article can not be profitably shipped at existing tariff rate is not conclusive evidence that that rate is unreasonable. Riddle v. New York, L. E. & W. R. Co. 1 I. C. R. 787.

(c) Rates should bear a fair and reasonable relation to the antecedent cost of the traffic as delivered to the carrier and to the commercial value of such traffic as delivered to the carrier, but it is incumbent on parties invoking this rule to make satisfactory and reliable proof as to such antecedent cost and commercial value. Loud v. South Carolina R. Co., 4 I. C. R. R. 205.

(d) The reasonableness of a carrier's rate on fruit is not necessarily to be determined by the question of the profit or loss which the producer receives upon his product. Florida Fruit Exch. v. Savannah, F. & W. R. Co. (C. C. N. D. Fla.) 4 I. C. R. 400 Aff'd on 589.

(da) Excess of manufacturing costs to a shipper at one point over that of its competitors in other localities will not be considered in ascertaining the rightful relative adjustment of rates between the different places. Colorado Fuel & I. Co. v. Southern P. Co. 6 I. C. C. 488.

(e) Profits secured by complainant from the operation of a railway connecting with the defendant lines and from other lines and from other special advantages tending to diminish the amount of its transportation expenses would have very material bearing if the sole question involved was the reasonableness of rates charged to complainant, or if the rates exacted from it were drawn into comparison with those charged to competing soap manufacturers; but where, as in this case, the chief question is as to the justice of a change in the classification of soap, not only as regards complainant, but as affecting all soap shippers in the classification territory, no order could be made respecting such change in favor of complainant which would not apply with equal force on

shipments of other soap manufacturers in that territory; and as the case mainly involves the general question of classification, it must be decided in accordance with the principles which properly govern the classification of freight articles. Proctor & Gamble Co. v. C., H. & D. Ry. Co., 9 I. C. C. 440.

(f) The test of the reasonableness of a rate is not the amount of the profit in the business of the shipper or manufacturer, but whether the rate yields a reasonable compensation for the services performed. Carriers necessarily and justly participate in the prosperity of their patrons in the resultant enlargement of their own business, and no rule is more firmly grounded in reason, or more universally recognized by carriers, than that the greater the tonnage of the article transported the lower should be the rate. Tift v. Southern R. Co., 10 I. C. C. 548.

IMPORTANT CASES SINCE 1908

(g) For a carrier to make rates for transportation based solely upon the ability of the shipper to pay those rates is to make the charge for transportation depend upon the cost of production, rather than upon the cost of carriage—to measure a public service by the economy practiced by the private shipper. This necessarily gives to the carrier the right to measure the amount of profit which the shipper may make and fix its rate upon a traffic manager's judgment as to what profit he will be permitted. This theory entitles the railroad to enter the books of every enterprise which it serves and raise the lower rates without respect to its own earnings, but solely with respect to the earnings of those whose traffic it carries. This is not regulation of the railroads by the nation, but regulation of the industries and commerce of the country by its railroads. Advances in Rates—Western Case, 20 I. C. C. 307, 350.

(h) It has never been the view of the Commission that the prosperity of a shipper, a locality or a state was a reasonable excuse for the imposition of rates conditioned on such prosperity, but when coincident with very substantial reductions in rates the price of a commodity has nearly doubled in value and claims for loss and damage have materially increased, two of the essential factors of a reasonable rate, value and risk, have been charged in favor of the carrier's contention that proposed advances in rates should be allowed. In Re Investigation of Advances in Rates on Grain, 21 I. C. C. 22, 35.

(i) If the principle that a railroad should charge what the traffic will bear is the criterion of a railroad rates, no exception can be taken to the transcontinental situation, for it is masterfully designed to secure a maximum of revenue and yet develop such industries and benefit such communities as the railroad in its wisdom may wish to thrive, for the growth of the Pacific coast certainly is in no small part to be accredited to the discretion lodged in and exercised by the transcontinental traffic manager. Railroad Commission of Nevada v. S. P. Co., 21 I. C. C. 329, 368.

(j) The effect of a rate upon commercial conditions, whether an industry can exist under particular rates or particular adjustment of rates, are matters of consequences, and facts tending to show these circumstances and conditions are always pertinent. But they are only a single factor in determining the fundamental questions. A narrowing market, increased cost of production, overproduction and many other considerations may render an industry unprofitable without showing the freight rate to be unreasonable. R. R. Com. of Kans. v. A. T. & S. F. Ry. Co., 22 I. C. C. 407, 410.

(k) The Commission has never accepted the theory that if traffic moves freely under a given rate, that is the best test of the reasonableness of the rate; still the Commission has always deemed the state of an industry a pertinent fact in considering the reasonableness of a rate. In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 156.

(l) Each shipper is entitled to have his freight transported at reasonable rates, and each carrier is entitled to charge a reasonable rate on each commodity transported and any method of rate making that results in subordinating these basic principles to the equalization of manufacturing cost through the adjustment of freight rates on the raw material can not be sanctioned. Iron Ore Rate Cases, 41 I. C. C. 181, 214.

(m) The reasonableness of rates is not to be gauged by the ability or inability of shippers to market their products with a profit. Virginia Pine Timber Co. v. N. Y. P. & N. R. R., 50 I. C. C. 327, 329.

(n) If it be true that the Commission

may find existing rates unjust and unreasonable, and require that they be reduced below what would be justified by standards heretofore recognized, because an industry is not prospering, then the converse must be true, that at times when the industry prospers the Commission may find justified rates higher than those which under accepted standards would be just and reasonable. The foundation of what is just and reasonable are not set on such shifting sands. National Live Stock Shippers' League v. A., T. & S. F. Ry. Co., 63 I. C. C. 107, 116.

(o) The Commission has frequently held that the reasonableness of rates may not be measured by the commercial necessities of the shipper. Peninsular Portland Cement Co. v. Director General, 73 I. C. C. 542, 544.

(p) The reasonableness of rates may not be measured by the commercial necessities of shippers. Peninsular Portland Cement Co. v. Drrector General, as Agent, 73 I. C. C., 542, 544.

(q) Contention that from an economic standpoint a rate relationship should be condemned because of the resulting disadvantage under which it places shippers at particular localities, whose business has in a large measure grown up and expanded under a previously existing rate relationship. HELD, it is not within the commission's power "to adjust rates so as to equalize commercial opportunities." Boston Chamber of Commerce v. O. S. S. Co. of S., 73 I. C. C., 233, 239.

ALL OTHER CITATIONS

Oregon & Washington Lumber Mfrs. Ass'n v. U. P. R. R. Co., 14 I. C. C. 1, 14; Hitchman Coal & Coke Co. v. B. & O. R. R. Co., 16 I. C. C. 512, 519; Florida Fruit & Vegetable Ass'n v. A. C. L. R. R. Co., 17 I. C. C. 552, 560 Jennison Co. v. G. N. Ry. Co., 18 I. C. C. 113, 121; Commercial Club of Omaha v. A. & S. R. R. Co., 19 I. C. C. 419, 421; Portland Chamber of Commerce v. O. R. R. & N. Co., 19 I. C. C. 265, 280; City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 170; Superior Commercial Club v. G. N. Ry. Co., 25 I. C. C. 342, 348; Railroad Commissinoers of Fla. v. S. Exp. Co., 28 I. C. C. 634, 635; R. R. Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 642, 644, 646; McCormick & Co. v. S. P. Co., 37 I. C. C. 234, 235; Riddle v. N. C. & St. L. Ry., 37 I. C. C. 602, 603; Nashville Tie Co. v. L. & N. R. R. Co., 40 I. C. C., 377, 381; Fullerton Powell Hardwood Lumber Co. v. G. C. & S. F. Ry., 41 I. C. C. 25; Fruits and Vegetables, 43 I. C. C. 291, 313; Green v. A. & V. R. R. Co., 43 I. C. C. 662, 676; Utah-Idaho Millers and Grain Dealers Asso. v. D. & R. G. R. R. 44 I. C. C. 714, 726; Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 135; Showers Bros. Co. v. A. A. R. R. Co., 48 I. C. C. 518, 520; Ohio Valley Coal Operators Asso. v. I. C. R. R. Co., 53 I. C. C. 148, 151; National Livestock Shippers League v. A. T. & S. F. 63 I. C. C. 107, 117.

§27¼. Public Interest.

See Public Interest.

IMPORTANT CASES SINCE 1908

(a) In determining reasonableness of proposed rates, the interest of the public is paramount to private rights of parties, and Commission can not be controlled by private agreement. St. Louis, Mo.-Illinois Passenger Fares, 41 I. C. C., 584, 591.

§27½. Rate Via Competing Route.

See Evidence §30; §47; Routing and Misrouting §5; Through Routes and Joint Rates §15½.

CASES 1887-1908

(a) Complainant attacked commodity rates as unreasonable charged on coal from Glen Alum, W. Va., on the N. & W., to Alexandria, Ind., via N. & W., H. Va., and L. E. & W. Rate charged $1.90 per ton. During the period the rate via the N. & W., and Big Four was $1.65 per ton. There are two routes over which coal may be shipped and subsequently the rate via route of movement was reduced to $1.65. The evidence related solely to the rate itself, and the fact that a lower rate was in force over a competing short line. HELD, rate charged not unreasonable, and the tariffs did not provide for application of the rate via a competing route. J. J. Marley & Son v. N. & W. Ry. 11 I. C. C. 616.

(b) There is no provision in the law requiring that rates shall be the same over all lines between the same points, and the existence of a lower rate by a short line, while having some bearing, does not of itself indicate the unreasonableness of a higher rate by the route actually used. Marley & Son v. N. & W. R. Co., 11 I. C. C. 617, 618.

IMPORTANT CASES SINCE 1908

(c) Existence of lower rates over routes other than a particular route of movement and the subsequent reduction

of the rate over the particular route are not sufficient to establish the unreasonableness of the previous rate. Horris & Co. v. St. L. & S. F. R. R. Co., 42 I. C. C. 124, 125. Continental Paper Bag Co. v. L. & N. R. R. Co., 42 I. C. C. 489, 490.

(d) The existence of a lower rate over another line is not enough to establish the unreasonableness of a rate attacked. Rosenblatt v. L. H. & St. L. Ry., 46 I. C. C. 325.

(e) No presumption of unreasonableness attaches to a joint through rate applicable over a particular route because of the fact that the intermediate rates over another route would make a lower charge. Zelnicker Supply Co., v. C. & N. W. Ry., 51 I. C. C. 90, 91.

(f) Where a shorter route is available for the movement of the traffic, the reasonableness of the rate, so far as the distance factor is concerned, must be tested by that route. Circuitous lines which desire to participate in the traffic and elect to meet the rate of the short line can not properly claim consideration on account of their longer haul. Commercial Club of Greeley v. C. & S. Ry., 53 I. C. C. 66, 69.

(g) A shipper is not to be denied a reasonable rate merely because he could have secured a lower rate by designating another route. Old Ben Coal Corp. v. Director General, 58 I. C. C. 42, 44.

(h) Different rates were in effect over two routes between the same points. Routes practically the same in length and subject to the same transportation conditions. HELD, in view of the fact that carriers were operated under a unified and co-ordinated national control, and not in competition, it was unreasonable for the Director General to maintain a higher rate over one route than contemporaneously applied over the other. American Agricultural Chemical Co. v. Director General, as Agent, 66 I. C. C., 650.

(i) The Commission has found that without differences in transportation conditions or other justification, it was unreasonable for the director general to maintain a higher rate over one route than contemporaneously applied over another route between the same points. Kansas Rock Salt Co. v. A. T. & S. F. Ry. 69 I. C. C. 745,751.

(j) Fact that numerous lines were included in a route of movement is a matter of but slight significance in measuring the reasonableness of rates, where such lines were under Federal control and were being operated as one unified system. Melcroft Coal Co. v. Director General, as Agent, 74 I. C. C. 39, 41, 42.

(k) Rate on crushed phosphate rock from Mobile, Ala., to Shreveport, La., found unreasonable as compared with lower rate over routes other than route of movement. Transportation conditions over the various routes are substantially similar, and such lower rate compares favorably with rates on the same traffic between points in southern and southwestern territories generally, as well as with rates from Mobile to Shreveport on other similar commodities. Reparation awarded. Meridian Fertilizer Factory v. M. & O. R. R. Co., 77 I. C. C. 315.

(l) Rates on green coffee from New Orleans, La., to Jackson, Miss., via circuitous route involving a two-line haul, found unreasonable to extent they exceeded lower rate via direct routes involving a single line haul, which lower rate was subsequently established via all routes and was found reasonable in MacGowan Coffee Co., 66 I. C. C., 389. Reparation awarded. MacGowan Coffee Co. v. N. O. N. E. R. R. Co., 77 I. C. C. 385.

(m) The existence of lower rates over routes other than a particular route of movement and the subsequent reduction over the particular route are not sufficient to establish the unreasonableness of the previous rate. Winslow & Co. v. Director General, as Agent, 77 I. C. C. 387, 388.

(n) Where a higher rate was in effect over one route than over another between the same points, and the two routes were practically the same in length and subject to the same transportation conditions, the higher rate charged by the director general under unified and coordinated national control was unreasonable. Atlantic Refining Co. v. Director General, 80 I. C. C. 298, 299.

(o) The mere existence of a lower rate between the same points over another route and the subsequent reduction of a rate under attack do not furnish evidence sufficient to warrant a finding of unreasonableness in the absence of other supporting facts. C. Reiss Coal Co. v. P. M. R. Co., 87 I. C. C. 438, 440.

ALL OTHER CITATIONS

Struthers-Wells Co. v. Penn. R. R. Co., 14 I. C. C. 291, 293; Farley & Loetscher

Mfg. Co. v. C. M. & St. P. Ry. Co., 15 I. C. C. 602, 603; Central Commercial Co. v. A. T. & S. F. Ry. Co., 17 I. C. C. 166; Browne Grain Co. v. F. W. & R. G. Ry. Co., 20 I. C. C. 410; Railroad Commissioners of Montana v. N. P. Ry. Co., 26 I. C. C. 482; Young & Son v. C. P. Ry. Co., Unrep. Op. A-35; Lindsay & Co., Ltd., v. C. M. & St. P. Ry. Co., Unrep. Op. A-219; Lindsay Bros. v. C. B. & Q. R. R. Co., Unrep. Op. A-230; Vehicle Supply Co. v. L. Ry. & N. Co., Unrep. Op. A-252; Matthiessen & Hegeler Zinc Co. v. C. & N. W. Ry. Co., Unrep. Op. A-273; Stewart v. M. K. & T. Ry. Co., Unrep. Op. A-297; Hedden-Clark Lumber Co. v. B. & O. R. R. Co., Unrep. Op. A-301; West Co. v. I. & G. N. R. R. Co., Unrep. Op. A-317; Steinhardt & Co. v. T. & P. Ry. Co., Unrep. Op. A-325; Lagomarcino-Grupe Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-352; Templeton & Sons v. C. I. & S. R. R. Co., Unrep. Op. A-362; Standard Oil Co. v. P. Co. Unrep. Op. A-485; Helmers Mfg. Co. v. C. R. I. & P. Ry. Co. Unrep. Op. A-542; Brittain v. N. C. & St. L. Ry. Co., Unrep. Op. A-581; Kalamazoo Tank & Silo Co. v. M. C. R. R. Co., Unrep. Op. A-601; Railroad Commrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 648; Norcross-West Marble Co. v. Rutland R. R. Co., Unrep. Op. A-713; North American Smelting Co. v. B. & O. R. R. Co., Unrep. Op. A-804; Plymouth Clay Products Co. v. Ft. D. D. M. & S. R. R. Co., Unrep. Op. A-833; Caudle v. U. P. R. R. Co., Unrep. Op. A-870; Woolworth Co. v. Old Dominion S. S. Co., Unrep. Op. A-901; Trostel & Sons Co. v. L. V. R. R. Co., Unrep. Op. A-932; Alexandria Traffic Bureau v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-955; Massie & Pierce Lumber Co. v. N. & W. Ry. Co., 33 I. C. C. 14, 19; Boise Lumber Co. v. P. & I. N. Ry., 33 I. C. C. 109, 115; Maley & Wertz v. C. C. C. & St. L. Ry. Co., Unrep. Op. A-811; Ludowici-Celadon Co. v. M. K. & T. Ry., 37 I. C. C. 709, 710; Abel & Roberts v. M. P. Ry. Co., 37 I. C. C. 712, 713; Hettler Lum. Co. v. A. & V. Ry., 38 I. C. C. 117, 118; Tallahatchie Lum. Co. v. Y. & M. V. R. R., 38 I. C. C. 501, 502; Briggs & Turivas v. C. & N. W. Ry., 388 I. C. C. 505, 506; Paine Lumber Co. Case, 24 I. C. C. 626, followed. Stanley Works v. P. R. R. Co., Unrep. Op. 2147; Utah Wholesale Grocery Co. v. N. & W. Ry., 39 I. C. C. 345, 346; Julius Seidel Lum. Co. v. M. P. Ry., 39 I. C. C. 670; Bituminous Coal Rates to the Southeast, 37 I. C. C. 652, 658; Western Chemical Mfg. Co. v. D. & R. G. R. R. Co., 40 I. C. C. 529; Reigel Sack Co. v. C. R. R. Co. of N. J, 39 I. C. C. 222, 223; Armour & Co. v. C. & N. W. Ry., 40 I. C. C. 609; Fullerton-Powell Hardwood Lumber Co. v. G., C. & S. F. Ry. Co., 41 I. C. C. 625, 626; Morris & Co. v. St. L. & S. F. R. R. Co., 42 I. C. C. 124, 125; Swanson v. C. B. & Q. R. R. Co., 42 I. C. C. 285, 286; Terhune Lumber Co. v. S. Ry. Co. in Miss., 42 I. C. C. 317, 318; McClintock & Co. v. L. & N. R. R. Co., 42 I. C. C. 429, 430; Kelly-How-Thompson Co. v. N. P. Ry., 43 I. C. C. 199; Omaha Alfalfa Mill Co. v. U. P. R. R. Co., 43 I. C. C. 264, 265; Duluth Log Co. v. M. St. P. & E. Ste. M. Ry., 43 I. C. C. 415; Scott Paper Co. v. P. R. R., 44 I. C. C. 525, 526; Perry & Co. v. A. E. R. R. 44 I. C. C. 755; Beaumont Timber Co. v. I. & G. N. Ry., 45 I. C. C. 5; Brunswick-Balke-Collender Co. v. M. M. & S. E. Ry., 45 I. C. C. 175, 176; Lake Shore Stone Co. v. C. M. & St. P. Ry., 46 I. C. C. 320; Wyoming Shovel Works v. D. & H. Co., 45 I. C. C. 197, 198; Best-Clymer Mfg. Co. v. A. C. R. R., 45 I. C. C. 220; Dulweber Co. v. Y. & M. V. R. R., 45 I. C. C. 549, 550; Sunderland Bros. Co. v. C. & N. W. Ry., 45 I. C. C. 584, 586; Hollingshead & Blei Co. v. K. C. S. Ry., 49 I. C. C. 62, 63; Victor Chemical Works v. C. & E. I. R. R., 49 I. C. C. 599, 600; Sunderland Bros. Co. v. M. P. Ry., 49 I. C. C. 135; Ruddock Orleans Cypress Co. v. A. T. & S. F. Ry., 51 I. C. C. 114; Dewey Bros. Co. v. S. Ry., 51 I. C. C. 160; Syracuse Chamber of Commerce v. N. Y. C. R. R., 51 I. C. C. 197, 198; Herman Gross v. Director General, 53 I. C. C. 429, 430; National Shipbuilding Co. of Texas v. K. C. S. Ry., 55 I. C. C. 104; Illinois Glass Co. v. St. L. & S. F. Ry., 55 I. C. C. 8; Beaumont Chamber of Commerce v. Director General, 55 I. C. C. 110; Fort Smith Spelter Co. v. Director General, 55 I. C. C. 133; Du Pont de Nemours & Co. v. Director General, 55 I. C. C. 151; Roxana Petroleum Co. of Oklahoma v. Director General, 55 I. C. C. 607; Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 171; Meeker & Co. v. C. R. R. Co. of N. J., 57 I. C. C. 414, 416; Tuffli Bros. Pig Iron & Coke Co. v. L. & N. R. R. Co., 57 I. C. C. 491, 492; Burnham-Munger-Root Dry Goods Co. v. Director General, 58 I. C. C. 73, 75; Jennings-Jarrett Co. v. Director General, 59 I. C. C. 93; Gulf Refining Co. of La. v. T. St. L. & W. 59 I. C. C. 154; Acme Cement Plaster Co. v. Director eGneral, 59 I. C. C. 411, 412; Gill v. Director General, as

Agent, 59 I. C. C. 119; Empire Refineries, Inc., v. Director General, 60 I. C. C. 379; Little Cahara Coal Co. v. Director General, 61 I. C. C. 663; Ingram Day Lumber Co. v. L. & N. 62 I. C. C. 47, 48; Midwest Refining Co. v. Director General, 62 I. C. C. 135; Roberts Cotton Oil Co. v. Director General, as Agent, 60 I. C. C. 139; Holmes & Hallowell v. G. N. Ry. Co., 60 I. C. C. 678, 708; Memphis Freight Bureau v. Director General, as Agent, 61 I. C. C. 125; Little Cahaba Coal Co. v. Director General, as Agent, 64 I. C. C. 50; Empire Cotton Oil Co. v. Director General, as Agent, 64 I. C. C. 64; West Kentucky Coal Co. v. Director General 64 I. C. C. 151, 153; Bedford Pulp & Paper v. Director General, 64 I. C. C. 219, 220; Morris & Co. v Director General as Agent, 64 I. C. C. 435; Mississippi Valley Iron Co. v. C. B. & Q. R. R. 64 I. C. C. 441, 442; Midland Linseed Products Co. v. Director General, as Agent, 64 I. C. C. 753, 754; Midland Coal Co. v. M. V. R. R. Co., 66 I. C. C., 588; Salem Glass Works v. Director General 68 I. C. C. 643, 644; Roxana Petroleum Co. v. Director General, as Agent, 68 I. C. C. 77, 80; Midland Linseed Products Co. v. Director General, as Agent, 69 I. C. C. 756; Southern Carbon Co. v. M. P. R. R. 73 I. C. C. 123; Texas Pipe Line Co. v. Director General, 73 I. C. C. 429; American Magnesia Products Co. v. M. B. & S. R. R. Co. 73 I. C. C. 517; Multibestos Co. v. S. P. Co., 73 I. C. C. 491, 492; Armstrong Cork & Insulating Co. v. P. R. R. Co., 73 I. C. C. 279; New Orleans, Shreveport, Alexandra and Monroe, La., Levite v. Director General. as Agent, 73 I. C. C. 443; Phoenix Chamber of Commerce v. Director General, as Agent, 73 I. C. C., 514; Black v. C. & A. R. R. Co., 73 I. C. C. 519; Warner & Co. v. Director General, as Agent, 73 I. C. C. 523, Sugg & Johnson v. C. R. I. & P. Ry. Co., 73 I. C. C. 721; Standard Oil Co. v. Director General, as Agent, 73 I. C. C., 743; Western Carbon Co. v. C. B. & Q. R. R., 74 I. C. C. 707; Chicago Springfield Coal Co. v. Director General, as Agent, 74 I. C. C. 131; Hercules Powder Co. v. N. Y. C. R. R. Co., 78 I. C. C. 55; Pfitzenmayer Construction Co. v. Director General, as Agent, 78 I. C. C. 287; Manhattan Oil Co. v. A. T. & S. F. Ry. Co., 80 I. C. C. 61; North Manchester Foundry Co. v. C. C. C. & St. L. Ry. Co., 80 I. C. C. 69; Kempner v. Director General, as Agent, 80 I. C. C. 347; Taylor Co. v. Director General, as Agent, 81 I. C. C. 663; Jackson & Co. v. A. C. L. R. R. Co., 83 I. C. C. 14; Seaboard By-Product Coke Co. v. Director General, as Agent, 83 I. C. C. 315; Crown Williamette Paper Co. v. Director General, as Agent, 83 I. C. C. 320; American Stores Company v. P. R. R. 89 I. C. C. 41, 43.

§27¾. Rate in Opposite Direction.

See Classification §17; Differentials; Evidence §30; §56; §66; Relative Rates; Through Routes and Joint Rates §8.

CASES 1887-1908

(a) The fact that a rate in one direction is materially higher than that in the opposite direction does not, as in case of hauls over the same line in the same direction, establish prima facie the unreasonableness of the higher rate. This is especially true where the hauls are of great length. Duncan v. Atchison, T. & S. F. R. Co. (Com.) 4 I. C. R. 385.

(b) Upon complaint that a rate of 62 cents per 100 pounds on "wool in the grease" from Philadelphia, Pa., to Fort Wayne, Ind., is unreasonable and also unjust in comparison with a rate on the same commodity of 43 cents eastbound from Fort Wayne to Philadelphia. HELD, upon the evidence as presented, that the 62-cents westbound rate is not shown to be unreasonable or unjust and that the complaint should be dismissed. Weil v. Penn. R. Co. et al. 11 I. C. C. 627.

IMPORTANT CASES SINCE 1908

(c) Rates in one direction can not always be used as tests of the reasonableness of rates in the opposite direction. Massie & Pierce Lumber Co. v. N. & W. Ry. Co., 33 I. C. C. 14, 19.

(d) A rate in one direction in excess of the rate between the same points in the opposite direction does not demonstrate the unreasonableness of the higher rate, especially where it is a class rate and the movement of the particular traffic is not of sufficient volume to warrant the establishment of a commodity rate. Perlin & Orendorff Co. v. S. P. Co., 42 I. C. C. 29, 30.

(e) A rate in one direction in excess of the rates between the same points in the opposite direction does not demonstrate the unreasonableness of the higher rate, especially where it is a class rate and the movement of the particular traffic is not of sufficient volume to warrant the establishment of a commodity rate. Nor does the voluntary reduction of a rate, supplemented by the willingness of a carrier to make reparation on

the basis of the reduced rate, in the absence of supporting proof, necessarily justify an award of reparation. Fern Glen Distilling Co. v. St. L. & S. F. R. R. Co., 45 I. C. C. 101, 102.

(f) The fact that the rate in one direction is in excess of the rate between the same points in the opposite direction does not demonstrate the unreasonableness of the higher rate, especially when it is a class rate and the movement of the particular traffic is not of sufficient volume to warrant the establishment of a commodity rate. Mayo Milling Co. v. C. & O. R. R., 49 I. C. C. 26.

(g) A rate in one direction in excess of the rate between the same points in the opposite direction does not demonstrate that the higher rate is unreasonable. Multibestos Co. v. S. P. Co., 73 I. C. C. 491, 492.

(h) Class rate applicable on an isolated mixed carload shipment of breaklining fabric, brake linings, cabinets, metal signs, and advertising matter, from San Francisco, Calif., to Kansas City, Mo., found not unreasonable as compared with lower commodity rate in the opposite direction on "friction fabric." Multibestos Co. v. S. P. Co., 73 I. C. C., 491.

(i) Though maintenance of higher rate than that which applies for movement between same points in opposite direction ordinarily requires explanation, the higher rate can not be condemned solely on that circumstance. Hyman-Michael Co. v. Director General, as Agent 80 I. C. C. 705, 706.

ALL OTHER CITATIONS

Hull Vehicle Co. v. S. Ry. Co., 28 I. C. C. 619, 620; Zelnicker Supply Co. v. St. L. S. W. Ry., 45 I. C. C. 185, 186; Mayo Milling Co. v. C. & O. R. R., 49 I. C. C. 25; Morris & Co. v. M. K. & T. Ry., 49 I. C. C. 101; Little Rock Freight Bureau v. M. P. Ry., 51 I. C. C. 23, 24; Merchants' Freight Bureau of Little Rock, Ark. v. M. P. R. R., 50 I. C. C. 247; Simonds Manufacturing Co. v. A. T. & S. F. Ry., 51 I. C. C. 131; Bell Co. v. Director General, 53 I. C. C. 702; Walter A. Zelnicker Supply Co. v. Director General, 53 I. C. C. 567; Meridian Cellulose Co. v. Director General, 57 I. C. C. 283; National Refining Co. v. Director General, 57 I. C. C. 663, 666; Proctor & Gamble Co. v. C., N. O. & T. P. Ry. Co. 58 I. C. C. 108; Liggett & Meyers Tobacco Co. v. Director General, as Agent, 58 I. C. C. 196; Frank Samuel v. Director General, 59 I. C. C. 190, 191; Phelps Dodge Corporation v. Director General, 59 I. C. C. 561, 562; Proctor & Gamble Co. v. Director General, as Agent, 60 I. C. C. 757; Atlantic Ice & Coal Corp. v. Southern Ry., 61 I. C. C. 111; Interstate Cotton Seed Crusher's Asso. v. Director General, 61 I. C. C. 1, 7; United Iron Works Co. v. Director General, as Agent, 61 I. C. C. 33, 41, 42; San Diego & Arizona Ry. Co. v. A., T. & S. F. Ry. Co., 62 I. C. C. 675; Mississippi Valley Iron Co. v. C., B. & Q. R. R. Co., 64 I. C. C. 441; Pure Oil Co. v. Director General, as Agent, 64 I. C. C. 444; Raritan Copper Works v. Director General, as Agent, 64 I. C. C. 691, 692; Swift & Co. v. Director General, as Agent, 66 I. C. C. 615; Birmingham Traffic Bureau v. St. L. S. F. Ry. Co., 68 I. C. C. 108; Duluth Brewing & Malting Co. v. N. P. Ry. Co. 68 I C. C. 315; Turner Supply Co. v. Director General, as Agent, 77 I. C. C. 747; Webb-Summer Oil Mill v. Director General, as Agent, 78 I. C. C. 292; Thorp v. Director General, as Agent, 80 I. C. C. 1; Manhattan Oil Co. v. A. T. & S. F. Ry. Co., 80 I. C. C. 61 ;Hunt & Co. v. F. W. & R. G. Ry. Co., 80 I. C. C. 101; Atlantic Refining Co., v. Director General as Agent, 80 I. C. C. 298; Hyman-Micheals Co., v. Director General as Agent, 80 I. C. C. 703; National Petroleum Asso. v. Director General, as Agent, 81 I. C. C. 487; Hayward Bros. Shoe Co. v. C., M. & St. P. Ry. Co., 83 I. C. C. 525, 526; International Paper Co. v. Director General, 88 I. C. C. 211.

§28. Relativity of the Rate.

See Class Rates §2; Classification §17; Comparative Rates; Differentials; Discrimination; Evidence; Relative Rates; Through Routes and Joint Rates §8.

CASES 1887-1908

(a) Rates should be so relatively reasonable as to protect communities and business against unjust discrimination. Boards of Trade Union v. Chicago, M. & St. P. R. Co. 1 I. C. R. 608.

(ab) It is not a sufficient compliance with the Law that rates are reasonable in themselves, but they should be so relatively reasonable as to protect communities and business against unjust discrimination. That when the same carrier operates parallel lines, and for any cause accepts low rates on one line, it should furnish sufficient correspond-

ing advantages to the patrons of the other line to prevent undue prejudice and disadvantages, and to preserve the substantial equality contemplated by the statute. Board of Trade Union v. C. M. & St. P. R. Co., 1 I. C. C. 608, 610.

(b) The purpose of the Interstate Commerce Act requires that when circumstances will fairly admit of it, charges to all points for like service should be made relatively equal. Crews v. Richmond & D. R. Co. 1 I. C. R. 703.

(c) The relative reasonableness of rates on shipments from western points to cities on the Atlantic seaboard is to be determined by all the circumstances and conditions that affect the traffic to the respective points between which the rates are questioned, and not solely by one standard of comparison. Boston Chamber of Commerce v. Lake Shore & M. S. R. Co., 1. I. C. R. 754.

(d) The Commission is not willing to determine the relative reasonableness of rates at many stations, and in a large extent of territory, upon the mere face of tariffs, and without further proof. Spartanburg Board of Trade v. Richmond & Danville R. R. Co. 2 I. C. R. 193.

(e) A system of rates made by a number of carriers, covering a widely extended territory, and relatively fair and reasonable in themselves, will not be ordered by the Interstate Commerce Commission to be changed at one important point, thereby rendering other changes unavoidable at other points and throwing the entire system into confusion, unless this is necessary to be done in order to enforce compliance with the law. Detroit Board of Trade v. Grand Trunk R. Co. (Com.) 2 I. C. R. 199.

(f) Wherever cities and towns are relatively so situated with reference to transportation facilities, it is not enough that the rates to them should be reasonable in themselves, but it is necessary that they should be relatively fair and just to all of them. Detroit Board of Trade v. G. T. R. R. 2 I. C. C. 199, 202.

(g) Rates must be relatively fair and reasonable as between localities in essential respects similarly situated, having regard to the geographical position and relative positions of the localities, so that one will not be favored to the prejudice of the other. Detroit Board of Trade v. Grand Trunk R. Co. (Com.) 2 I. C. C. 199, 202; Milwaukee Chamb. of Com. v. Flint & P. M. R. Co. (Com.) 2 I. C. C. 393; Re Tariffs of Transcontinental Lines (Com.) 2 I. C. R. 203.

(h) Rates that are just and reasonable from selected manufacturing points east of the Missouri River and west of the Atlantic seaboard are prima facie just and reasonable from all other points in the same territory. Re Tariffs of Transcontinental Lines (Com.) 2 I. C. R. 203.

(i) The question of relative injustice must be viewed upon broader grounds than a mere balancing of one rate against another. A reduction which will throw into confusion an adjustment of rates over a large section of country which are not claimed to be unreasonable of themselves, should not be required without a clear right thereto exists under some direct provision of the Law. Rend v. Cg. & Northwestern R. Co., 2 I. C. R. 313.

(j) The Act does not require rates to be unreasonably low nor does it prevent the maintenance of rates that are just and reasonable to the carrier as well as to the shipper. On the contrary the act implies, first, the establishment of rates which are of themselves reasonable and fair; and next, their maintenance, without discrimination among shippers, and without capricious or arbitrary fluctuations. An exception arises when rates are so constructed that injustice is wrought by reason of their relation to other rates not withstanding that the rate attacked may not be itself unreasonable. Rend v. C. & N. W. Ry. 2 I. C. C. 313, 317.

(k) The doctrine of relatively fair rates to different localities is one that the Commission has frequently asserted. Milwaukee Chamber of Commerce v. F. & P. M. R. Co., 2 I. C. C. 393, 399.

(l) Where relative rates are the same at points not far distant from each other on the same system of railroads, it is the practice of the Commission, in determining the reasonableness of rates upon a complaint made at one of these points, to consider the bearings and relative equality of rates at all of the points so situated, before ordering a change at any one of them, in order to avoid preference to one and prejudice to another. Re Produce Exchange of Toledo, 2 I. C. C. 412.

(m) Transportation charges are required to be relatively reasonable as well as reasonable in themselves, to pre-

vent unjust discrimination between localities. A locality not widely dissimilar in situation and in respect of the transportation service of the same carrier to other localities where lower rates are given, is entitled to rates that bear a just relation to the lower charges made. The Manufacturers' & Jobbers Union v. Minn. & St. L. 3 I. C. R. 115, 117.

(n) A business like that involving the preparation for consumption of such a large and leading staple and necessity of life as meat, with all the competition that exists for it in different and competing localities, brought near to each other by the fast rail lines of the country, is too large to be done in a corner, and is a conspicuous instance of a commodity that requires at the hands of carriers rates that are not only reasonable and just in themselves but relatively reasonable and just in their bearing upon these different localities. Board of Trade of Chicago v. Chicago & A. R. Co. 3 I. C. R. 233.

(o) The element that must control in determining the reasonableness and justness of a rate, whether it be considered from the standpoint of relative reasonableness and justice or as to whether it is reasonable and just in itself, is one of substance. To make rates substantially reasonable and just is as much as can be done in either case. Mathematical equality of rates according to distance can rarely be obtained, nor does the law require it. The law only requires that rates shall be substantially reasonable and just in themselves, and that, as far as this can be done they shall be relatively reasonable and just as between localities and traffic. Poughkeepsie Iron Co. v. N. Y. C. & H. R. R. Co., 3 I. C. C. 248, 254.

(p) The relation of rates ought to rest upon fixed and staple conditions. The fluctuations of markets are so frequent, especially as to competitive articles, and oftentimes unexpected, that commercial considerations alone would not furnish a sufficiently stable and fixed rule for guidance in making a rate that should remain substantially permanent through all fluctuations. The Commission does not, by a fixing of rates, attempt to overcome advantages which one producer or dealer may have in his geographical location, and to produce equality between competitors in all markets. It would be a useless task, even if it had the power, to attempt to accomplish such a result. The proper relation of rates for transportation of strictly competitive articles over the same line should be determined by reference to respective costs of service ascertained with reasonable accuracy. Squire & Co. v. M. C. R. R. Co., 3 I. C. C. 515, 520.

(q) Defendants ordered to restore the relation of rates on shingles to Boston which they established after the filing of complainant herein but soon after discontinued, to wit, a rate from Fort Fairfield in Maine of not exceeding 6½ cents above the rate in force from Fredericton in Canada. Complainant's claim for reparation denied. James & Abbott v. Canadian Pacific R. Co. 4 I. C. R. 274.

(r) When the reasonableness or relative reasonableness of charges is challenged, every material consideration which enters into the making of such charges, including the apportionment thereof to connecting roads in a through line, is pertinent to the inquiry. James & Abbott v. Canadian Pacific R. Co., 4 I. C. R. 274.

(s) A given relation in rates between competing towns, fairly equitable at the time of its adoption, may become through business development and other changes in conditions, severely prejudicial to the town taking the higher schedule; and this is especially liable to occur when, additional lines of communication having been opened up to the latter locality, all the roads reaching that point agree to continue the old relation of rates to such points, notwithstanding its improved situation. Agreements between carriers, though designed to secure the orderly and lawful operation of the roads, cannot be permitted to fasten upon neighboring localities a relation of rates which is unnatural or unjust. The "basing point" method of rate making, to the extent it is now employed, believed to be unnecessary to an adequate scheme of tariff construction. Daniels v. Chicago, R. I. & P. R. Co. 6 I. C. C. 458; Page v. Delaware, L. & W. R. Co., 6 I. C. 548.

(t) The terms "reasonable and just," "undue or unreasonable preference or advantage," "undue or unreasonable prejudice or disadvantage in any respect whatsoever," as used in the Act to Regulate Commerce, imply comparison, and rates must bear just relation to each other as well as be reasonable per se, in order to be lawful. Daniels v. Chicago, R. I. & P. R. Co., 6 I. C. C. 458; Page v. Delaware, L. & W. R. Co., 6 I. C. C. 548.

(u) The rate upon corn and other grain than wheat to Chicago from all points in Iowa east of the Missouri River, and from Sioux City and points upon and east of the line of what was formerly the Sioux City & St. Paul Railroad, should not exceed 17 cents per 100 pounds; and other stations in Iowa west of said railroad, and in southeastern Dakota, should be readjusted in the same proportion. Grain Shippers' Asso. v. Illinois C. R. Co., 8 I. C. C. 158.

(ua) Defendants are engaged in carrying traffic over the short-line distance from New Orleans to Atlanta and intermediate points, including La Grange, Ga., 71 miles southwesterly of Atlanta, and there is possible railroad competition between New Orleans and La Grange. The relations of rates from New Orleans, New York, and other supply markets at Atlanta are, and for a long period have been, the subject of agreement or arbitration between the various lines. The rates from New Orleans to Atlanta are not unreasonably low. The rates from New Orleans to La Grange are made by combining the New Orleans-Atlanta rates with the local rates of the A. & W. P. road back from Atlanta to La Grange. Under these charges the competing Atlanta dealer can ship from New Orleans to Atlanta and then back to La Grange as cheaply as complainant can ship direct from New Orleans to La Grange, and complainant is unable to sell at points on the line bteween Atlanta and La Grange. The defendant roads are all solvent, and the delivering carrier for both Atlanta and La Grange earns 12 per cent annually for its stockholders. HELD, Upon all the facts, that the rates from New Orleans to La Grange are unreasonable in themselves and relatively as compared with the rates to Atlanta, and that higher rates from New Orleans to La Grange than those charged from that city on like traffic to Atlanta are and would be unlawful. Calloway v. Louisville & Nashville R. Co., 7 I. C. C. 431.

(v) Rates may be fair and reasonable for the service rendered, and, from the carriers standpoint, justly related to other charges; and yet if a low rate is granted upon conditions with which only a few can comply (a charge below the ordinary carload rate for shipments of a hundred or a thousand cars) that rate is presumably unfair and wrongfully prejudicial to all other shippers of like traffic, because they are practically unable to meet the terms upon which it is offered. This principle may properly be considered with reference to the class of cars employed by complainant, whcih only a limited number of dealers can afford to use for reaching their customers and exhibiting their wares. In the competitive struggle to supply consuming markets neither contestant should be favored through the facilities furnished or the rates enforced by public carriers. This is at once the aim of the law and the requirement of relative justice. Carr v. N. P. Ry. 9 I. C. C. 1, 14.

(va) Where rates from Cincinnati and Louisville to Norfolk are much lower than those from St. Louis and Chicago to Norfolk, and the competitive conditions governing rates from Cincinnati and Louisville appear to be of the same general character as those which apply from Chicago or St. Louis, and no substantial difference appears to exist in the real forceful conditions governing rates from these points of supply, except that of distance, which favors Cincinnati and St. Louis, just rate relations from Cincinnati and St. Louis to Norfolk and Wilmington are a fair basis for relative rates from St. Louis and Chicago. Wilmington Tariff Asso. of North Carolina v. Cincinnati, Portsmouth & Va. R. Co., 9 I. C. C., 118.

(w) The rates from Chicago to Norfolk, Neb., are unjust and unreasonable, and should not exceed those in force from Chicago to Columbus, Neb. And the rates in force from Duluth to Emerson, Neb., added to the present local rate in effect from Emerson to Norfolk. Johnson v. Chicago, St. Paul, Minneapolis & Omaha R. Co. 9 I. C. C. 221.

(wa) The freight rates in effect from Chicago, Ill., to Norfolk, Neb., and from Duluth, Minn., to Norfolk are unjust and unreasonable; and upon the facts and circumstances shown in this case the rates from Chicago to Norfolk should not exceed those in force from Chicago to Columbus, Neb., and the rates from Duluth to Norfolk should not exceed the rate in force from Duluth to Emerson, Neb., added to the present local rate in effect from Emerson to Norfolk. Reparation denied. Johnson v. Chicago, St. P., M. & O. R. Co., 9 I. C. C. 221.

(x) The Act provides that railway charges shall be reasonable and it further provides that the relation of the charges imposed upon different shippers

shall be just. Gardner & Clark v. Southern R. Co., 10 I. C. C. 342, 349.

(y) Complainant attacked as unreasonable rates charged on cotton goods and cotton waste from Georgia and South Carolina points to San Francisco and other Pacific coast terminals. The fact that rates from the southeastern states are higher than those obtaining from the New England states does not in and of itself establish the unreasonableness of the higher rates, as the conditions existing at the two localities are dissimilar. The New England mills which suffer by the competition of the more favorably situated southern mills from the standpoint of production, are entitled to such advantage in rates as they have from being situated at points closer to ports where cheap water competition has been established to the Pacific coast points of consumption. HELD, rates attacked not unreasonable, complaint dismissed. Enterprise Mfg. Co. v. Georgia R. R., 12 I. C. C. 130.

(z) Defendant's rates on cotton goods and cotton waste from Georgia and South Carolina points to San Francisco and other Pacific coast terminal points are $1.15 per 100 pounds, C. L., and $1.65, L. C. L., on cotton goods, and $1.12½ per 100, C. L., and $1.61, L. C. L., on cotton waste; in 1896 the rates on cotton goods were $1 per 100 pounds, C. L. and L. C. L., and on cotton waste 90 cents, C. L., and $1, L. C. L.; the rates on cotton goods from New York and Boston to such Pacific coast points are $1, C. L., and $1.50, L. C. L., and on cotton waste $1.10, C. L., and $1.50, L. C. L. Upon complaint of unreasonableness of the rates from such southeastern points to the Pacific Coast: HELD, That upon the present record such rates are not unreasonable. Enterprise Mfg. Co. v. Ga. R. R. Co. 12 I. C. C. 130.

(aa) The rates on coal and pig iron from Birmingham, Ala., to Cordele, Ga., are $1.70 per short ton and $2.75 per long ton, respectively, and from Birmingham to Macon, Ga., are $1.60 per short ton and $1.65 per long ton, respectively, Cordele being a nearer point. Upon complaint that such rates to Cordele are unreasonable and unduly discriminatory: HELD, upon the facts shown, that the coal rate is not unreasonable or discriminatory, but that the pig-iron rate is unjust and excessive. Defendants ordered to put in a rate of $2.15 per long ton on pig-iron from Birmingham to Cordele. Tomlin-Harris Machine Co. v. L. & N. R. R. Co. 12 I. C. C. 134.

(bb) New Orleans to McAlester, Ind., T., sugar reduced to Muskogee rate. Hale-Halsell Grocery Co. v. M. K. & T. Ry. Co. 12 I. C. C. 136 .

(cc) Rates on coke from Kentucky and Virginia ovens to Terre Haute, Ind., made same as those to Chicago. Manufacturers' Club of Terre Haute v. L. & M. R. Co. 12 I. C. C. 156.

(dd) Class rates from St. Louis to Amarillo, Tex., may properly be higher than from St. Louis to Ft. Worth. Nobles Bros. Grocery Co. v. Ft. W. & D. C. R. Co. 12 I. C. C. 242.

IMPORTANT CASES SINCE 1908

(ee) It is not sufficient for a carrier when called upon to justify a rate, the reasonableness of which is questioned, to assert that its rates generally are fair and just, and that no change may properly be made in any particular rate because it would disturb the integrity of the system as a whole and produce inconsistencies. This proposition is too general and theoretical for acceptance in the application of the requirements of the law to a practical situation. In dealing with a particular rate it is the purpose of the Commission to consider such other rates, as affording a basis for comparison, but where a given rate is found to be unreasonable, it will not hestitate to order such rate reduced, although the reduction might disarrange the relative adjustment existing between that rate and other rates. Reynolds v. Southern Express Co., 13 I. C. C. 536, 540.

(ff) A system of making rates on certain basing lines should not be abolished, since no system of rate making has been devised successfully as a substitute for it; but it must not be assumed that a basing line for rates may be established, and be made an impassable barrier for through rates, or that cities or markets located at or upon such basing line have any inviolable possession of, or hold upon, the right to distribute traffic in or from the territory lying beyond, and development of natural resources, increase of population, growth of manufacturing or producing facilities and increased traffic on railroads may create changed conditions, warranting changes in rates, in order to afford just and reasonable opportunity for interchange of traffic between points of production and points of consumption. Burnham, Hanna,

Munger Co. v. C. R. I. & P. Ry. Co., 14 I. C. C. 299, 312.

(gg) The Commission has no authority to establish general rate schedules but must deal with the interstate rates of this country, which have not been established upon any consistent theory, as it finds them. What the Commission takes off in one place it cannot add in another. Unless, therefore, the general results of all rates is to yield an undue revenue to the carrier, the Commission should not reduce a particular rate simply because it might think, if establishing that rate de novo as part of the general scheme, that it ought to be somewhat lower or somewhat higher in proportion to others. The rate attacked must be so out of proportion as to be unreasonable, or must so discriminate as to be undue, or must be unlawful for some other special reason. Corn Belt Meat Producers' Ass'n v. C. B. & Q. Ry. Co., 14 I. C. C. 376, 394.

(hh) The Commission is bound to consider the relation that rates involved in any case bear to rates at other points, and to take into account the probable result of a change in that relation. Board of Trade of Winston-Salem v. N. & W. Ry. Co., 16 I. C. C. 12, 18.

(ii) Where rates on a particular commodity bear a uniform relation to rates of a certain class, any inequalities in those rates, as between different places, are those peculiar to that class. A finding, therefore, that rates on such commodities made to conform to a class are relatively unjust would inferentially condemn the adjustment with respect of the entire class, and this is also true of the reasonableness of the rate. Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co. 17 I. C. C. 30, 35.

(jj) Rates can seldom be tested, even as to their reasonableness, strictly by themselves, but must be considered, to an extent, in reference to their environment. Southwestern Missouri Millers' Club v. M. K. & T. Ry. Co., 22 I. C. C. 422, 427.

(kk) A departure by carriers from a rate relation established by the Commission can be justified only on the ground that the Commission was not fully advised, or on the ground that there has been a material change since that time in the conditions surrounding the movement in question. Rates from Walsenburg Coal Field, 26 I. C. C. 85, 87.

(ll) Relative ton-mile rates for various distances considered in determining reasonableness of rates on cement. Board of Improvement, Waterworks District No. 1, Fort Smith, Ark. v. A. T. & S. F. Ry. Co., 26 I. C. C. 539.

(mm) In considering questions of unreasonableness per se and of discriminations in rates, the Commission must look more to the entire adjustment of these rates under consideration than to particular comparisons. Much can be ostensibly proved by either party in controversies before the Commission by care in the selecting of individual rates convenient for the purpose. Rates of this character are ever present in tariffs and cover a wide range. This is so for many reasons. Competitive conditions may affect certain rates and not others. Again, rate making is not an exact science, and the judgment of traffic managers may differ as to the proper level of noncompetitive rates, even when made under substantially similar circumstances and conditions on their respective lines. The various tariffs of a given carrier may also show inconsistencies through any rates published inadvertently to which attention has not been specifically called, because such rates are of little use. State of Kansas v. A. T. & S. F. Ry. Co., 27 I. C. C. 673, 689.

(nn) One of ways of showing unreasonableness of rates under Section 1 is by proving that rates are unduly high as compared with rates to other places similarly situated. Board of Trade of Carrollton v. C. of Ry. Co., 28 I. C. C. 154, 164.

(oo) Where one rate is compared with another for the purpose of showing it reasonable, the comparison is not of value without proof that the second rate is itself reasonable. Rates on Potatoes from Oklahoma to Points in Colorado, 28 I. C. C. 298, 299.

(pp) Comparisons of related rates by the Commission in determining reasonableness of rates criticized by shippers as "adjusting of differentials." The Commission decided that such a method may be employed in any proceeding before the Commission regarding the reasonableness of a rate and cannot be validly questioned. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 423.

(qq) A rate may be relatively unreasonable and yet contain none of the ele-

ments of absolute unreasonableness. Transcontinental Commodity Rates, 32 I. C. C. 449, 452.

(rr) In passing upon the reasonableness of a scale or system of rates the Commission may not properly consider only points of origin and destination, but is bound to consider and give due weight to findings in other cases involving rates applicable from and to points in same general territory where transportation conditions are substantially similar, in order that the structure of rates in any given territory may be properly related, and form as a whole a harmonious and consistent adjustment. New Orleans Texas Rates, 38 I. C. C. 1, 9.

(ss) If places A and B are competing in or for same markets, the fact that carrier serving them both has elected to make its rates to or from A with regard or relation to rates to or from another place, and its rates to or from B with regard or relation to rates to or from still another place, cannot be accepted as justification for depriving either A or B of the benefits of its natural location or for unjust discrimination against either A or B. Goldcamp Mill Co. v. N. & W. Ry. Co., 39 I. C. C. 433, 444.

(tt) A shipper is entitled to a reasonable rate and one of the tests of a reasonable rate is its relationship to other rates on the same or analogous commodities between points in the same general territory for similar distances. D. Nagase & Co. v. Director General, 62 I. C. C. 422, 426.

(uu) A shipper is entitled to a reasonable rate and one of the tests of a reasonable rate is its relationship to other rates on the same or analogous commodities between points in the same general territory for similar distances. Reparation as relating to increase of rates. 68 I. C. C. 5, 6.

(vv) Carrier can not be stopped from changing a relationship if the resulting rates are not unreasonable or otherwise inviolation of the Act. Boston Chamber of Commerce v. O. S. S. Co. 73 I. C. C. 233, 239.

(ww) Rates on petroleum and products from Devol, Frederick, and Altus, Okla., to Texas destinations, found unreasonable and unduly prejudicial to extent that they exceed for like distance the rates from Shreveport, La. Constantin Refining Co. v. Director General, 73 I. C. C., 197, 201.

(xx) Complainant cited a number of cases in which the commission has condemned the disruption of long-established rate relationships. While the potency of this argument is recognized, carriers can not be estopped from changing a relationship if the resulting rates are not unreasonable or otherwise in violation of the Act. Boston Chamber of Commerce v. O. S. S. Co. of S., 73 I. C. C., 233, 239.

(yy) Proposed establishment of a proportional rate on iron and steel articles from New Orleans, La., and group points, to Houston, Galveston, Beaumont, and Orange, Tex., and points taking the same rates for application on traffic from beyond New Orleans, found not justified. The relationship which would result would place shippers in Pittsburgh, St. Louis, and Chicago districts at an unwarranted disadvantage as the rail-and-water movement from eastern points and the all-rail movement from Middle Western points would be reduced while at the same time the movement from Birmingham, Ala., via New Orleans, would be increased, thereby threatening the stability of the present rate structure. Iron and Steel Articles from New Orleans, 74 I. C. C. 146.

(zz) Class rate from Portland, Medford, and other Oregon points south of Portland to points in northern California and southern Oregon, as compared with the class rates from San Francisco, Sacramento, Oakland, Stockton, and Marysville to the same destinations, found unduly prejudicial to the Oregon points, unduly preferential of the central California jobbing centers, and unjustly discriminatory against interstate commerce. Reasonable and nonprejudicial basis of distance rates prescribed. Klamath County Chamber of Commerce v. S. P. Co., 74 I. C. C. 207, 220.

(3a) A rate can seldom be considered in and of itself. It must be taken almost invariably in relation to and in connection with other rates. Tileston Mill Co., 8 I. C. C., 246, 361. Atchison Board of Trade v. A., T. & S. F. Ry. Co., 80 I. C. C. 350, 360.

(3aa) Where proceeding is one of investigation into reasonableness and propriety of rates the commission's determination might well result in fixation of rates related to each other, although relationship of rates as such may not have been contemplated within issue as originally presented. Rates on Grain,

Grain Products, and Hay, 80 I. C. C. 362, 365.

(3ab) When a complainant challenges reasonableness of rates on a commodity from only one point and it appears that, because of competitive or other practical trade or transportation considerations, a number of points of origin of the particular commodity are grouped under common rates, and also that there is a relationship between two or more groups, the Commissions must give due consideration to other factors than rate comparisons. Atlas Portland Cement Co., 44 I. C. C. 416, 422; Perry County Coal Corp. v. E. St. L. & S. Ry. Co., 80 I. C. C. 711, 715.

(3ac) One test of a reasonable rate is its relationship to other rates on same or analogous commodities between points in same general territory for similar distances. Nagase & Co., 62 I. C. C., 422. Pittman Co. v. Director General, as Agent, 83 I. C. C. 380.

(3b) Mere reference to tariffs that the rate is higher in one direction than in the other does not in itself justify a finding of unreasonableness. Lewis v. A. C. L. R. R. Co., Unrep. Op. A-883.

ALL OTHER CITATIONS

Central Commercial Co. v. M. J. & K. C. R. R. Co., 15 I. C. C. 25, 26; Maricopa County Commercial Club v. P. & E. R. R. Co., 22 I. C. C. 218, 220; Banner Milling Co. v. N. Y. N. H. & H. R. R. R. Co., 13 I. C. C. 31, 34; Kindel v. N. Y. N. H. & H. R. R. Co., 15 I. C. C. 555, 558; Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co., 15 I. C. C. 460, 466; Commercial Club of Hattiesburg v. Ala. Gt. So. R. R. Co., 17 I. C. C. 534, 543; Bash Fertilizer Co. v. Wabash R. R. Co., 18 I. C. C. 522, 523; Noble v. V. S. & P. Ry. Co., 18 I. C. C. 224, 225; Hainey & Rogers v. St. L. & S. F. R. R. Co., 18 I. C. C. 88, 89; Spiegle & Co. v. S. Ry. Co., 19 I. C. C. 522, 525; Commercial Club of Omaha v. B. & O. R. R. Co., 19 I. C. C. 397, 402; City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 176; East St. Louis Cotton Co. v. St. L. & S. F. R. R Co., 20 I. C. C. 37, 42; Reparation orders modified, and statement of facts concerning reparation, rewritten 21 I. C. C. 596; Mountain Ice Co. v. D. L. & W. R. R. Co. 21 I. C. C. 45; Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co., 22 I. C. C. 548, 555; Traugott Schmidt & Sons v. M. C. R. R. Co., 23 I. C. C. 684, 687; Ashgrove Cement Co. v. A. T. & S. F. Ry. Co., 23 I. C. C. 519, 525; New Orleans Board of Trade v. L. & N. R. R. Co., 23 I. C. C. 429, 431; Galveston Commercial Assn. v. G. H. & S. A. Ry. Co., 23 I. C. C. 512; In Re Advances of Cotton, 23 I. C. C. 404, 411; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 23 I. C. C. 195, 204; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 170; Robertson Bros. v. M. P. Ry. Co., Unrep. Op. 126; Sunderland Bros. Co. v. M. K. & T. Ry. Co., Unrep. Op. 128; Lamb Co., v. C. & N. W. Ry. Co. Unrep. Op. 133; Partridge Lumber Co. v. M. St. P. & S. Ste. M. Ry. Co., Unrep. Op. 138; Sunderland Bros. Co. v. C. & N. W. Ry. Co. Unrep. Op. 148; Great Western Sugar Co. v. U. P. R. R. Co., Unrep. Op. 157; Pabst Brewing Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 259; Lagomorcino-Grupe Company. v. C. B. & Q R. R. Company, Unrep. Op. 269; Central Phosphate Co. v. L. & N. R. R. Co., Unrep. Op. 446; Stover Mfg. Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 114; Sheboygan Mineral Water Co. v. N. P. Ry. Co., Unrep. Op. 116; Pabst Brewing Co. v. M. P. Ry. Co. Unrep. Op. 125; Chanute Refining Co. v. A. T. & S. F. Ry. Unrep. Op 348; Chanute Refining Co., v. A. T. & S. F. Ry. Co., Unrep. Op. 365; Post Co. v. D. L. & W. Ry. Co. Unrep. Op. 425; Goodman Mfg. Co., v. P. R. R. Co., Unrep. Op. 570; Goldfield Consolidated Mines Co. v. S. P. Co., Unrep. Op. 593; Oklahoma, Portland Cement Co. v. M. K. & T. Ry. Co., 27 I. C. C. 101, 104; Memphis Freight Bureau v. I. C. R. R. Co., 27 I. C. C. 507; 515; Patillo v. Atlanta & West Point Ry. Co., 26 I. C. C. 65; Rhinelander Paper Co. v. M. St. P. & S. S. M. Ry. Co., 26 I. C. C. 104; Echols & Co. v. A. T. & S. F. Ry. Co., 26 I. C. C. 110; New Pittsburgh Coal Co. v. N. V. Ry. 26 I. C. C. 121, 124, 125; Rates on Linseed Oil, 26 I. C. C. 265, 271; Disher Hoop & Lumber Co. v. St. L. & S. F. R. R. Co., 26 I. C. C. 488; Chamber of Commerce of Augusta, Ga., v. B. R. & P. Ry. Co., 26 I. C. C. 559, 560; Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 26 I. C. C. 638, 647; Appalachia Lumber Co. v. S. & N. R. R. Co., 25 I. C. C. 193, 195; In Re Advances in Class Rates, 25 I. C. C. 268, 271; In Re Advances on Furniture 25 I. C. C. 299, 302; In Re Advances in Class and Commodity Rates, 25 I. C. C. 401, 402; Wharton Steel Co. v. D. L. & W. R. R. Co., 25 I. C. C. 303,309; In Re Advances on Oil, 25 I. C. C. 349, 351; In Re Advances on Knitting-Factory Products, 25 I. C. C. 634, 639, 640; In Re

Advances on Manganese Ore, 25 I. C. C. 663, 667; Philadelphia Veneer & Lumber Co. v. C. R. R. Co. of N. J., 25 I. C. C. 653, 655; Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 645; In Re Advances on Hay, 25 I. C. C. 680, 684; Taylor v. N. & W. Ry. Co., 25 I. C. C. 613, 614; Wichita Board of Trade v. A. T. & S. F. Ry. Co., 25 I. C. C. 625, 633; Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 141, 152; In Re Advances on Live Stock, 25 I. C. C. 63, 64; In re lumber Rates 25 I. C. C. 50, 58; In Re Advances on Hops, 25 I. C. C. 16, 18; Superior Commercial Club v. G. N. Ry. Co., 25 I. C. C. 342, 343; Bahrenburg Bro. & Co. v. A. C. L. R. R. Co., 24 I. I. C. C. 560, 566; Southwestern Shippers Traffic Assn. v. A. T. & S. F. Ry. Co., 24 I. C. C. 570, 577; Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 193, 196; German Kali Works, Inc. v. A. T. & S. F. Ry. Co., 28 I. C. C. 223, 224; Columbia Chamber of Commerce v. S. Ry. Co., 28 I. C. C. 339, 345, 348; Boney & Harper Milling Co. v. A. C. L. R. R. Co., 28 I. C. C. 383, 388; Scrap Iron Rates between Duluth and Chicago, 28 I. C. C. 467, 468; Iowa-Minnesota Cement Rates, 28 I. C. C. 477, 482; Traffic Bureau of Nashville v. L. & N. R. R. Co., 28 I. C. C. 533, 535; Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 571, 580, 581; Alton Board of Trade v. C. & A. R. R. Co., 28 I. C. C. 589, 593; Rates on Soda Ash and other Commodities, 28 I. C. C. 613, 615; Fairmont Creamery Co. v. A. R. & S. F. Ry. Co., 28 I. C. C. 661, 663; Omaha Grain Exchange v. C. R. I. & P. Ry. Co., 28 I. C. C. 680, 684; Dewey Bros. Co. v. L. & N. R. R. Co., Unrep. Op. A-102; Williamson Veneer Co. v. T. C. R. R. Co., Unrep. Op. A-108; Douthitt & Crosswy Tobacco Co. v. N. C. & St. L. Ry. Co., Unrep. Op. A-118; Alfalfa Meal Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-127; Dewey Bros. Co. v. P. R. R. Co., Unrep. Op. A-130; Commercial Chemical Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-149; Jackson Lumber Co. v. L. & N. R. R. Co., Unrep. Op. A-154; Obion Hardware Co. v. V. R. R. Co., Unrep. Op. A-162; Major Co. v. D. L. & W. R. R. Co., Unrep. Op. A-165; Von Behren Mfg. Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-173; Leavitt Land & Lumber Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-174; Crystal Oil Works v. P. R. R. Co., Unrep. Op. A-178; Chanute Refining Co. v. M. K. & T. Ry. Co., Unrep. Op. A-180; Bullard v. C. & N. W. Ry. Co., Unrep. Op. A-186; Northwestern Marble & Tile Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-190; Homer Lumber Co. v. S. Ry. Co., Unrep. Op. A-204; Fort Smith Couch & Bedding Co. v. P. C. C. & St. L. Ry. Co., Unrep. Op. A-205; Dodd v. T. & P. Ry. Co., Unrep. Op. A-223; Heilman Brewing Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-233; El Paso Refining Co. v. R. G. & E. P. R. R. Co., Unrep. Op. A-248; Craig & Co. v. N. Y. C. & H. R. R. Co., Unrep. Op. A-260; Bushnell v. M. & N. A. R. R. Co., Unrep. Op. A-288; Smurthwaite Grain & Milling Co. v. O. S. L. R. R. Co., Unrep. Op. A-295; Stewart v. M. K. & T. Ry. Co., Unrep. Op. A-297; Bradford-Kennedy Lumber Co. v. T. & N. O. R. R. Co., Unrep. Op. A-307; Clapp & Co. v. Am. Exp. Co., Unrep. Op. A-335; Colorado Portland Cement Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-337; Du-Pre Co. v. B. R. & P. Ry. Co., Unrep. Op. A-354; Ramsey & Co. v. R. G. & E. P. R. R. Co., Unrep. Op. A-355; Pacific Creamery Co. v. S. P. Co., Unrep. Op. A-356; Scully Syrup Co. v. P. R. R. Co., Unrep. Op. A-360; Goldfield Consolidated Mines Co. v. S. P. L. A. & S. L. R. R. Co., Unrep. Op. A-379; Goldfield Consolidated Mines Co. v. M. P. Ry. Co., Unrep. Op. A-381; Goldfield Consolidated Mines Co. v. P. Co., Unrep. Op. A-386; Heger v. A. Exp. Co., Unrep. Op. A-397; Rock Spring Distilling Co. v. I. C. R. R. Co., 29 I. C. C. 18, 23; Oklahoma Traffic Assn. v. A. T. & S. F. Ry. Co., 29 I. C. C. 129, 131; Pacific Creamery Co. v. S. P. Ry. Co., 29 I. C. C. 405, 408; Arizona Corporation Comm. v. A. & N. M. Ry. Co., 29 I. C. C. 424; Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 433; Crowdus Bros. v. A. T. & S. F. Ry. Co., 29 I. C. C. 449, 451; Atlanta Freight Bureau v. N. C. & St. L. Ry. 29 I. C. C. 476, 479; Interior Iowa Cities Case, 29 I. C. C. 536, 537; Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co., 29 I. C. C. 539, 541; Colorado Mfrs. Assn. v. A. T. & S. F. Ry. Co., 29 I. C. C. 544, 546; Norman Lumber Co. v. L. & N. R. R. Co., 29 I. C. C. 565, 578; Rates on Potash and Other Commodities, 29 I. C. C. 626, 627; Fort Scottt Industrial Assn. v. St. L. & S. F. R. R. Co., 29 I. C. C. 629, 631; Rates on Flaxseed from Minneapolis to Fredonia, 29 I. C. C. 633, 637; Campbell's Creek Coal Co. v. A. A. R. R. Co., 29 I. C. C. 682, 687; Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C.

C. 415, 425; Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 676; National Petroleum Assn. v. A. T. & S. F. Ry. Co., Unrep. Op. A-410; Boyle Commission Co. v. O. S. L. R. R. Co., Unrep. Op. A-432; Gulf Lumber Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-447; Western Rock Salt Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-468; Dallas Lumber & Logging Co. v. S. P. Co., Unrep. Op. A-475; Browne v. S. Ry. Co., Unrep. Op. A-484; Collins Co. v. N. P. Ry. Co., Unrep. Op. A-504; Continental Paper Bag Co. v. M. C. R. R. Co., Unrep. Op. A-516; Davis Brothers Lumber Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-525; Kindel v. C. & S. Ry. Co. (Colo., 1914), 139 Pac. 1105, 1108; Sioux City Terminal Elevator Co. v. C. M. & St. P. Ry. Co., 31 I. C. C. 482; Low Moor Iron Co. v. C. & O. Ry. Co., 30 I. C. C. 615, 618; Nix & Co. v. S. Ry. Co., 31 I. C. C. 145; Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 576; Fourth Section Violations in the Southeast, 30 I. C. C. 153, 174; Lake Superior Paper Co., Ltd., v. D. S. S. & A. Ry. Co., 30 I. C. C. 403, 408; Merchants & Mfrs. Asso. v. C. R. R. Co. of N. J., 30 I. C. C. 396, 402; Memphis Freight Bureau v. I. C. R. R. Co., 30 I. C. C. 471, 475, 476; California-Colorado Lumber Rates, 30 I. C. C. 461, 463; Rates on Tropical Fruits from Gulf Ports, 30 I. C. C. 621, 628; Rates on Fencing and Fencing Material from Points in Indiana to Texarkana, Ark.-Tex., 30 I. C. C. 650,. 652; Rates on Sugar, 32 I. C. C. 495, 509; Lindsay-Walker Co. v. S. P. Co., Unrep. Op. A-684; North Vernon Lumber Co. v. I. C. R. R. Co., Unrep. Op. A-688; Macon Merc. Co. v. M. & O. R. R. Co., Unrep. Op. A-693; Traffic Bureau of Knoxville v. C. N. O. & T. P. Ry. Co., Unrep. Op. A-695; Drury Coal Co. v. I. C. R. R. Co., Unrep. Op. A-697; Miles Bros. Co. v. L. & N. R. R. Co., Unrep. Op. A-700; Helena Freight Bureau v. M. P. Ry. Co., Unrep. Op. A-701; Lebow v. A. T. & S. F. Ry. Co., Unrep. Op. A-704; Clement & Bray v. B. M. R. R. Co., Unrep. Op. A-711; Owensboro Wagon Co. v. S. Ry. Co., Unrep. Op. A-714; Union Trim & Lumber Co. v. G. R. & I. Ry. Co., Unrep. Op. A-716; Sonken-Galamba Iron & Metal Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-718; Florida Cypress Co. v. L. & N. R. R. Co., Unrep. Op. A-725; Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., Unrep. Op. A-728; Livingston Bros. v. C. M. & St. P. Ry. Co., Unrep. Op. A-729; Yarbrough & Bellinger Co. v. L. & N. R. R. Co., Unrep. Op. A-733; Bower & Co. v. L. H. & St. L. Ry. Co. Unrep. Op. A-744; Mount Pleasant Fertilizer Co. v. L. & N. R. R. Co., Unrep. Op. A-748; Lindsay & Co., Ltd., v. Wells Fargo & Co., Unrep. Op. A-755; Rates on Coke From Chicago and Peoria, Ill., 32 I. C. C. 543, 545; Walker v. M. P. Ry. Co., Unrep. Op. A-777; Red Wing Linseed Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-778; Swift & Co. v. C. G. W. R. R. Co., Unrep. Op. A-789; Cunningham v. B. & O. S. W. R. R. Co., Unrep. Op A-798; Fox v. C. G. W. R. R. Co., Unrep. Op. A-800; Reynolds Corporation v. N. & W. Ry. Co., Unrep. Op. A-803; Muskogee Refining Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-805; Dill & Collins Co. v. P. & R. Ry. Co., Unrep. Op. A-806; Bayway Chemical Co. v. C. R. R. Co., of N. J., Unrep. Op. A-810; Maley & Wertz v. C. C. C. & St. L. Ry. Co., Unrep. Op. A-811; Union Bag & Paper Co. v. D. & H. Co., Unrep. Op. A-814; Rhynsburger v. C. R. I. & P. Ry. Co., Unrep. Op. A-815; Penn Oil & Supply Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-817; Norris v. A. T. & S. F. Ry. Co., Unrep. Op. A-820; Beck & Corbitt Iron Co. v. K. C. S. Ry. Co., Unrep. Op. A-836; Beaumont Iron Works Co. v. G. C. & S. F. Ry. Co., Unrep. Op. A-853; Bradley Timber & Railway Supply Co. v. M. & I. Ry. Co., Unrep. Op. A-862; Limback v. L. S. & M. S. Ry. Co., Unrep. Op. A-864; Guilford Foundry Co., v. S. Ry. Co., Unrep. Op. A-873; Acme White Lead & Color Works v. N. P. Ry. Co., Unrep. Op. A-884; Bartlett Co. v. M. St. P. & S. Ste. M. Ry. Co., Unrep. Op. A-887; Oliver-Finnie Co. v. L. & N. R. R. Co., Unrep. Op. A-898; Fitzsimmons-Palmer Co. v. American Express Co., Unrep. Op. A-900; New Prague Flouring Mill Co. v. M. St. L. R. R. Co., Unrep. Op. A-902; Rates on Fresh Fruits and Vegetables to Seattle, Wash., and other Points, Unrep. Op. A-912; Ryan & Newton Co. v. O. W. R. R. & N. Co., Unrep. Op. A-914; Astor v. St. L. & S. F. R. R. Co., Unrep. Op. A-915; Atha Tool Co. v. N. C. & St. L. Ry. Co., Unrep. Op. A-919; Rates on Iron and Steel Articles from Coatesville, Pa., and other Points to Canadian Destinations, Unrep. Op. A-928; United States Glue Co. v. C. & N. W. Ry. Co., Unrep. Op. A-930; Trostel & Sons Co. v. L. V. R. R. Co., Unrep. Op. A-932; Hughes & McCoy v. C. R. I. & G. Ry. Co., Unrep. Op. A-935; East St. Louis Walnut Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-941;

Schreiber Hay & Grain Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-946; Scrap Iron Rates Between Chicago and Joliet, Ill., Unrep. Op. A-948; Leavitt & Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A-951; Alexandria Traffic Bureau v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-955; Drain Tile From Illinois Points, 35 I. C. C. 83, 85, quoting 32 I. C. C. 449; The Twin City Cases, 33 I. C. C. 577, 580; Proportional Rates on Grain Products, 33 I. C. C. 621; Milliken Refining Co. v. M. K. & T. Ry. 36 I. C. C. 109, 113; Retail Merchants Asso. of Montana v. N. P. Ry. Co., Unrep. Op. 1968; Paducah Board of Trade v. I. C. R. R., 37 I. C. C. 719, 722; Wenona Coal Co. v. C. M. & St. P. Ry. Co. Unrep Op. 2101; Rogers White Lime Co. v. St. L. & S. F. R. R. Co. Unrep. Op. 2107; Gund Brewing Co. v. C. B. Q. R. R. Co., Unrep. Op. 2114; Standard Lumber Co. v. A. B. & A. R. R. Co., Unrep. Op. 2115; Hinton Bros. Lumber Co. v. A. & M. R. R. Co., Unrep. Op. 2116; Dewey Bros. Co. v. P. C. C. & St. L. Ry. Co., Unrep. Op. 2117; Baer Creek Coal Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 2123; Herman Reel Co. v. Erie R. R. Co., Unrep. Op. 2186; National Pickle & Canning Co. v. C. R. I. & P. Ry. Co., Unrep. Op. 2189; McCracken & Son v. B. & O. R. R. Co., Unrep. Op. 2199; Hinton Bros. Lumber Co. v. G. & S. I. R. R. Co., Unrep. Op. 2207; Crook, Son & Co. v. N. Y. C. & St. L. R. R. Co., Unrep. Op. 2217; Herb Bros. & Martin v. W. R. R. Co., Unrep. Op. 2221; Midcontinent Oil Rates, 36 I. C. C. 109, 113; Paducah Board of Trade v. C. B. & Q. R. R. Co., 37 I. C. C. 743, 752; Axton v. K. & M. Ry. Co., 37 I. C. C. 389, 393; Cast-Iron Pipe from N. C. Points, 38 I. C. C. 183, 186; Cottonseed Products to Port Arthur, Tex., 38 I. C. C. 378, 388; Corp. Comm. of Va. v. C. & O. Ry. Co., 40 I. C. C. 24, 28; Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co., 39 I. C. C. 224, 247; Shreveport Chamber of Commerce v. K. C. S. Ry. Co., 39 I. C. C. 296, 300; Pulp & Paper Mfrs. Traffic Asso. v. Belt Ry. Co., 39 I. C. C. 360, 362; Drake Marble & Tile Co. v. N. Y. O. & W. Ry. Co., 39 I. C. C. 392, 398; Monroe Grocer Co. v. N.Y. N. H. & H. R. R. Co., 39 I. C. C. 561, 562; Concordia Commercial Club v. A. T. & S. F. Ry. Co., 39 I. C. C. 675, 684; Byrd-Mathews Lumber Co. v. G. & N. W. R. R. Co., 40 I. C. C. 116, 120, 121; Graham & Gila County Traffic Asso. v. A. E. R. R. Co., 40 I. C. C. 573, 579; Dallas Chamber of Commerce v. A. T. & S. F. Ry. Co., 40 I. C. C. 619, 635; Mount Pleasant Fertilizer Co. v. N. O. & N. E. R. R., 40 I. C. C. 698; Powell-Meyers Lumber Co. v. L. & N. R. R. Co., 41 I. C. C. 374, 375; Chattanooga Sewer Pipe & Fire Brick Co. v. S. Ry. Co., 41 I. C. C. 406; Roanoke Railroad & Lumber Co. v. N. S. R. R. Co., 41 I. C. C. 431, 433; Cameron & Co. v. A. & S. Ry. Co., 41 I. C. C. 521, 525; Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co., 41 I. C. C. 530, 532; Colorado Alfalfa Meal & Mfg. Co. v. M. P. Ry. Co., 41 I. C. C. 540; American Beet Sugar Co. v. S. P. Co., 41 I. C. C. 631, 639; Stimson v. B. & O. S. W. R. R. Co., 41 I. C. C. 640; Mesker & Co. v. L. & N. R. R. Co., 41 I. C. C. 675, 677; Lutcher & Moore Lumber Co. v. T. & N. O. R. R. Co., 42 I. C. C. 88, 92; Lake Superior Paper Co. (Ltd.) v. M. St. P. & S. S. M. Ry. Co., 42 I. C. C. 109; Wabash Sand & Gravel Co. v. C. & E. I. R. R. Co., 42 I. C. C. 138, 143; Oklahoma Portland Cement Co. v. L. W. R. R. Co., 42 I. C. C. 159; Inman-Poulsen Lumber Co. v. S. P. Co., 42 I. I. C. C. 275; Standard Oil Co., (Ind.) v. C. M. & St. P. Ry. Co., 42 I. C. C. 325; Lehigh Portland Cement Co. v. B. & O. S. W. R. R. Co., 42 I. C. C. 406, 414; Alliance Coal & Coke Co. v. C. & S. Ry. Co., 42 I. C. C. 499, 502; Southeastern Lumber, 42 I. C. C. 548, 561; Phoenix-American Pipe Works v. M. P. Ry. Co., 42 I. C. C. 585; Oragne Commercial Club v. T. & Ft. S. Ry. Co., 42 I. C. C. 587, 588; Mebius & Drescher Co. v. C. C. T. Co., 42 I. C. C. 599, 602; Drain Tile from Illinois Points (No. 3), 42 I. C. C. 707, 711; Drain Tile from Illinois Points (No. 2), 42 I. C. C. 707, 711; Chamber of Commerce of La Crosse v. G. L. T. Corp., 44 I. C. C. 506, 508; Milk and Cream Rates to Philadelphia, Pa., 45 I. C. C. 371, 386; Marinette-Green Bay Mfg. Co. v. I. C. R. R., 45 I. C. C. 507, 513; Himmelberger-Harrison Lumber Co. v. St. L. & S. F. R. R. Co., 46 I. C. C. 480, 481; Standard Oil Co., (Ky.) v. Y. & M. V. R. R. 46 I. C. C. 418, 420; Lake Charles Rice Milling Co. v. S. P. Co., 46 I. C. C. 661, 663; Standard Roofing Co. v. M. K. & T. Ry., 47 I. C. C. 212, 214; Michigan Percentage Cases, 47 I. C. C. 409, 427; National Utilization Corporation v. B. & A. R. R., 47 I. C. C. 567, 469; N. Y. Harbor Case, 47 I. C. C. 643, 714; Mayfield & Graves County Commercial Club v. B. & O. R. R. Co., 48 I. C. C. 46, 58; Shreveport-Texas Cattle, Lignite, Wood, and Tanbark, 48 I. C. C. 283, 292; Tulsa Traffic Asso. v. A., T. & S. F. Ry. Co., 48 I. C. C. 731, 732; Laird v. T. & N.

Ry. Co., 48 I. C. C. 733, 737; Bartlett-Collins G. Co. v. St. L. S. F. Ry., 49 I. C. C. 488; Traffic Bureau of Knoxville, Tenn., v. B. & O. R. R., 49 I. C. C. 205, 216; Pollak Steel Co. v. B. & O. R. R. 49 I. C. C. 238, 245; Pearce & Co. v. N. & W. Ry., 49 I. C. C. 395, 398; Mayfield & Graves County Commercial Club v. I. C. R. R., 49 I. C. C. 522, 521; Kansas Flour Mills Co. v. M. V. R. R. 49 I. C. C. 602; Natchez Chamber of Commerce v. Y. & M. V. R. R., 49 I. C. C. 631; Cooper Grocery Co. v. M. L. & T. R. R. & S. S. Co., 49 I. C. C. 641; Blackman & Griffin Co. v. A. C. & Y. Ry., 49 I. C. C. 649; Cotton from New Orleans, 49 I. C. C. 751, 755; Traffic Bureau of Knoxville, Tenn. v. B. & O. R. R. 49 I. C. C. 205, 225; Hale-Halsell Grocery Co. v. N. M. C. R. R., 50 I. C. C. 263; Bartlett-Collins Glass Co. v. A. T. & S. F. Ry., 51 I. C. C. 496; Cameron & Co. v. A. T. & S. F. Ry., 51 I. C. C. 18; Advance Lumber Co. v. S. A. L. Ry., 51 I. C. C. 149; Empire Refineries (Inc.) v. St. L. & S. F. Ry., 51 I. C. C. 151; American Sheet & Tin Plate Co. v. N. Y. C. R. R., 51 I. C. C. 187; Metropolis Commercial Club v. I. C. R. R., 51 I. C. C. 376, 383; Hercules Powder Co. v. N. & W. Ry., 51 I. C. C. 427; Du Pont de Nemours Powder Co. v. L. & N. R. R., 51 I. C. C. 589; Reliance Mfg. Co. v. I. C. R. R., 51 I. C. C. 81, 83 84; Reliance Mfg. Co., v. I. C. R. R. 51 I. C. C. 607, 610; Ohio Valley Coal Operators Asso. v. I. C. R. R. Co., 53 I. C. C. 148, 152, 163; Taliaferro & Co. v. S. A. L. Ry. Co., 53 I. C. C. 186; Codington County Oil Co. v. A., T. & S. F. Ry. Co., 53 I. C. C. 234, 243; Earle Cooperage Co. v. St. L., I. M. & S. Ry. Co., 53 I. C. C. 295, 302; San Antonio Freight Bureau v. A. & W. P. R. R. Co., 53 I. C. C. 326, 332; Michigan Paper Mills Traffic Asso. v. N. Y. C. R. R. Co., 53 I. C. C. 344, 352, 356; Clark-Davis Coal Co. v. Director General, 53 I. C. C. 357; Hinrichs (Inc.) v. Wells Fargo & Co., 53 I. C. C. 362; Public Utilities Commission of Colorado v. A., T. & S. F. Ry. Co., 53 I. C. C. 383; Continental Coal Corp. v. L. N. R. R. Co., 53 I. C. C. 377; World Publishing Co. v. Director General, 53 I. C. C. 491, 497; Marinette-Green Bay Mfg. Co. v. C. N. W. Ry. Co., 53 I. C. C. 499, 505; Fort Worth Freight Bureau v. C., R. I. & G. Co., 53 I. C. C. 545, 548; Diamond Alkali Co. v. F., P. & E. R. R. Co., 53 I. C. C. 549, 554; City of Springfield, Tenn. v. L. & N. R. R. Co., 53 I. C. C. 603, 606; United States v. S. V. Ry. Co., 53 I. C. C. 607, 617, 618; Guilford Lumber Mfg. Co., S. Ry. Co., 53 I. C. C. 669, 673; United Iron Works v. M. P. Ry. Co., 53 I. C. C. 705; Henderson v. Director General, 53 I. C. C. 713; Green Fire Brick Co. v. C. & A. R. R. Co., 53 I. C. C. 715; Cotton Mfrs.' Asso. of South Carolina v. C., C. & O. Ry. of S. C., 53 I. C. C. 741; Tribune Co. v. G. N. Ry. Co., 53 I. C. C. 745; Summerhays & Sons Co., v. A., T. & S. F. Ry. Co., 53 I. C. C. 753, 755; Coal Rates to the Northwest, 53 I. C. C. 590; Memphis Southwestern Investigation, 55 I. C. C. 515, 529, 551, 575; National Shipbuilding Co. of Texas v. K. C. S. Ry., 55 I. C. C. 104; Zelnicker Supply Co. v. Director General, 55 I. C. C. 135; Chop v. Director General, 55 I. C. C. 182; National Refining Co. v. Director General, 55 I. C. C. 341; Diamond Match Co. v. Director General, 55 I. C. C. 431; National Tube Co. v. L. T. R. R., 55 I. C. C. 469, 481, 482; Du Pont de Nemours & Co. v. Director General 55 I. C. C. 499; Helena Traffic Bureau v. Director General, 55 I. C. C. 708; Compton Coal Co. v. D. & R. G. R. R., 55 I. C. C. 718; Portland Traffic & Transportation Asso. v. B. & M. R. R., 55 I. C. C. 733; Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 171; Sugar Land Mfg. Co. v. B. S. L. & W. Ry., 56 I. C. C. 212; Model Mill Co. v. Director General, 56 I. C. C. 227; Weaver Bros & Looney v. Director General, 56 I. C. C. 255; Darragh Co. v. St. L. I. M. & S. Ry., 56 I. C. C. 282; Atwood Refining Co. v. Director General, 57 I. C. C. 22; South Bend Chamber of Commerce v. Director General, 57 I. C. C. 215; Arkansas Jobbers & Mfrs. Asso. v. Director General, 57 I. C. C. 231, 237; Haarmann Vinegar & Pickle Co. v. Director General, 57 I. C. C. 294, 295; Bare Paper Co. v. Director General, as Agent, 57 I. C. C. 329; Galveston Commercial Asso. v. Director General, 57 I. C. C. 390; Corporation Commission of North Carolina v. Director General, 57 I. C. C. 523, 542; St. Louis Chamber of Commerce v. B. & O. R. R. Co., 57 I. C. C. 639, 651;Phelps Dodge Co. v. Director General, 57 I. C. C. 714, 721; Cairo Board of Trade v. Director General 58 I. C. C. 35; Hubinger Bros. Co. v. Director Genera as Agent, 58 I. C. C. 53; Illinois Coal Traffic Bureau v. Director General, 58 I. C. C. 351; Du Pont de Nemours & Co. v. Director General 58 I. C. C. 412; Gazette Publishing Co. v. B. F. & I. F. Ry. Co., 58 I. C. C. 503; Dothan Chamber of Commerce v. Director General, 58 I. C. C. 537, 544; State of Washington ex rel

v. Director General, as Agent, 58 I. C. C. 701, 706; Rice Potato Co. v. C., B. & Q. R. R. Co., 58 I. C. C. 757; Kosmos Portland Cement Co. v. Director General, as Agent, 59 I. C. C. 1; Western Petroleum Refiners' Asso. v. Director General, as Agent, 59 I. C. C. 38; Coakley v. Director General, as Agent, 59 I. C. C. 141; Gulf Refining Co., v. T. St., L. & W. R. R. Co., 59 I. C. C. 154, 155; Bare Paper Co., v. Director General, as Agent, 59 I. C. C. 183; Western States Portland Cement Co. v. Director General, 59 I. C. C. 195; Empire Refineries (Inc.) v. Director General, 59 I. C. C. 215; Inland Empire Shippers' League v. Director General, 59 I. C. C. 321, 345; Spartanburg Chamber of Commerce v. S. Ry. Co., 59 I. C. C. 346; Independent Home Oil Co. v. Director General, as Agent, 59 I. C. C. 398, 402, 403; Waughan's Seed Store v. C., M. & St. P. Ry. Co., 59 I. C. C. 537; Texas Refining Co. v. Director General, as Agent, 59 I. C. C. 548; Michigan Paper Mills Traffic Asso. v. A., T. & S. F. Ry. Co., 59 I. C. C. 649; Barnett Oil & Gas Co. v. Director General, as Agent, 59 I. C. C. 689; Little Fork Coal Co. v. E. K. Ry. Co., 59 I. C. C. 693; Empress Coal Co. v. O. W. R. R. & N. Co., 59 I. C. C. 738; Interstate rates within Illinois, 60 I. C. C. 92, 102; Cambria Steel Co. v. Director General, 60 I. C. C. 459; Prince-Johnson Limestone Co. v. Director General, 61 I. C. C. 602; Security Mills & Feed Co. v. Director General, 62 I. C. C. 405, 409; D. Nagase & Co. v. Director General. 62 I. C. C. 422, 426; Tum-A-Lum Lumber Co. v. Director General, 62 I. C. C. 491; Everybody's Mercantile Co. v. C. & N. W. Ry. Co., 60 I. C. C. 143; Federal Oil & Supply Co. v. Director General, 60 I. C. C. 185; Buckeye Cotton Oil Co. v. Director General, as Agent, 60 I. C. C. 281; Jones & Laughlin Steel Co. v. Director General, as Agent, 60 I. C. C. 325; Seaboard Oil & Refining Co. of Texas v. Director General, as Agent, 60 I. C. C. 451; American Tobacco Co. v. Director General, as Agent, 60 I. C. C. 485, 488; Pittsburgh Crucible Steel Co. v. Director General, as Agent, 60 I. C. C. 503; Fish Oil from St. Mary, 60 I. C. C. 511; Pearson v. Director General, as Agent, 60 I. C. C. 619; Electric Coal Co. v. Director General, as Agent, 60 I. C. C. 683, 685; Holmes & Hallowell v. G. N. Ry. Co., 60 I. C. C. 687; Swift & Co. v. C. N. Rys. 60 I. C. C. 747; Oklanoma Petroleum & Gasoline Co. v. Director General, as Agent, 60 I. C. C. 750; Century Glass Sand Co. v. Director General, as Agent, 60 I. C. C. 759; National Asbestos Mfg. Co. v. Director General, as Agent, 61 I. C. C. 54; Illinois Zinc Co. v. Director General, as Agent, 61 I. C. C. 92, 102, 106; Goodman Drilling Co. v. Director General, as Agent, 61 I. C. C. 164; Great Falls Brick & Tile Co. v. Director General, 61 I. C. C. 178; Daughery & Son Refining Co. v. Director General, as Agent, 61 I. C. C. 197; Intermediate Rate Asso. v. Director General, 61 I. C. C.226; La Cross Chamber of Commerce v. A. A. R. R. Co. 61 I. C. C. 289; Rates to and from Nashville, 61 I. C. C. 308, 334; Hirth-Krause Co. v. Director General, as Agent, 61 I. C. C. 350; Climax Molybdenum Co. v. Director General, as Agent 61 I. C. C. 369; Schram Glass Mfg. Co. v. Director General, as Agent, 61 I. C. C. 433, 437; Lehigh Portland Cement Co. v. Director General, 61 I. C. C. 613; Ansaldo & Nicholes v. Director General, as Agent, 61 I. C. C. 664; Buckeye Veneer Co. v. Director General, as Agent, 61 I. C. C. 673; Dewey Fuel Co. v. Director General, as Agent, 61 I. C. C. 697; Proctor & Gamble Distributing Co. v. A. C. Ry., 61 I. C. C. 700, 707, 708; Lake Superior Paper Co. (Ltd.) v. Director General, 61 I. C. C. 709; Chattanooga Coke & Gas Co. v. Director General, as Agent, 61 I. C. C. 729; Miami Copper Co. v. Director General, as Agent, 62 I. C. C. 35; National Fireproofing Co. v. Director General, as Agent, 62 I. C. C. 49; Best Clymer Mfg. Co. v. Director General, as Agent, 62 I. C. C. 62; Corporation Commission of N. C. v. Director General, 62 I. C. C. 64; D'Arcy Spring Co. v. Director General, as Agent, 62 I. C. C. 129; Planters Fertilizer & Phosphate Co. v. Director General, as Agent, 62 I. C. C. 131; Pacific Coast Steel Co. v. Director General, as Agent, 62 I. C. C. 207; Texas Carnegie Steel Asso. v. Director General, as Agent, 62 I. C. C. 253; Empire Cotton Oil Co. v. Director General, as Agent, 62 I. C. C. 288; Seaboard By-Product Coke Co. v. Director General, as Agent, 62 I. C. C. 317, 326, 330; New Mexico Corp. Comm. v. Director General, 62 I. C. C. 352; Phoenix Chamber of Commerce v. Director General, as Agent, 62 I. C. C. 368, 412, 500; Security Mills & Feed Co. v. Director General, as Agent, 62 I. C. C. 405, 409; Interstate Rates within the State of Texas, 62 I. C. C. 591; Du Pont de Nemours & Co. v. Director General, as Agent, 62 I. C. C. 631; Southern Veneer Asso. v. A. C. L. R. R. Co., 62 I. C. C. 669; Capital Ice & Storage Co. v. St. L. S. F. Ry. Co., 62 I. C. C. 677;

Farley & Loetschler Mfg. Co. v. Director General, as Agent, 62 I. C. C. 721; Southern Carbon Co. v. A. & L. M. Ry. Co., 62 I. C. C. 733; Certain-Teed Products Corp. v. Director General, as Agent, 63 I. C. C. 93; Foster Lumber Co. v. Director General, as Agent, 63 I. C. C. 139 Vulcan Detinning Company v. Director General, as Agent, 63 I. C. C. 145; Aetna Explosives Co. (Inc.) v. B. & O. R. R. Co., 63 I. C. C. 213; Birmingham Rail & Locomotive Co. v. Director General, as Agent, 63 I. C. C. 249; Beaumont Chamber of Commerce v. Director General, as Agent, 63 I. C. C. 253; Natchez Chamber of Commerce v. L. & A. Ry. Co., 63 I. C. C. 288, 299; United Iron Works v. Director General, as Agent, 63 I. C. C. 310; East Tennessee Packing Co. v. Director General, as Agent, 63 I. C. C. 322; Walrath & Sherwood Lumber Co. v. Director General, as Agent, 63 I. C. C. 347; Werner Stave Co. v. Director General, as Agent, 63 I. C. C. 442; Stehley v. Director General, as Agent, 64 I. C. C. 59; Nebraska Seed Co. v. Director General, as Agent, 64 I. C. C. 75; St. Tammany Ice & Mfg. Co. (Ltd.) v. Director General, as Agent, 64 I. C. C. 491; Pacific Portland Cement Co. v. Director General, as Agent, 64 I. C. C. 507; Ideal Fuel Co. (Inc.) v. Director General, as Agent, 64 I. C. C. 555; Tribune v. B., A. & P. Ry. Co., 64 I. C. C. 557; Equity Co-Operative Packing Co. v. Director General, as Agent, 64 I. C. C. 615; Moore Oil Refining Co. v. Director General, as Agent, 64 I. C. C. 621; Utah State Automobile Asso. v. A., T. & S. F. Ry. Co., 66 I. C. C. 8; Nebraska Bridge Supply & Lumber Co. v. Director General, as Agent, 66 I. C. C., 42; Midcontinent Equipment & Machinery Co. v. C. & A. R. R. Co., 66 I. C. C., 151; Ault & Wilborg Co. v. Director General, as Agent, 66 I. C. C., 247; Mitsui & Co. (Ltd.) v. Director General, as Agent, 66 I. C. C. 269; Citizens Coal Mining Co. v. Director General, as Agent, 66 I. C. C., 271; Morris & Co. v. Director General, as Agent, 66 I. C. C., 282; Weaver Bros. Lumber Co. v. Director General, as Agent, 66 I. C. C. 297; Parkersburg Rig & Reel Co. v. T. & P. Ry. Co., 66 I. C. C., 327; Macgowan Coffee Co. v. I. C. R. R., 66 I. C. C., 389; Swift & Co. v. Director General, as Agent, 66 I. C. C., 409, 413; Buckland v. Director General, as Agent, 66 I. C. C., 503; Wofford Oil Co. v. Director General, as Agent, 66 I. C. C. 509, 510, 601; Public Service Commission of Indiana v. A., T. & S. F. Ry. Co., 66 I. C. C., 512; Traffic Bureau of Nashville v. Director General, as Agent, 66 I. C. C., 529; Choate Oil Corp. v. Director General, as Agent, 66 I. C. C., 562; Midland Coal Co. v. M. V. R. R. Co., 66 I. C. C., 588; Central Illinois Light Co. v. Director General, as Agent, 66 I. C. C. 623; Window Glass from Kansas and Oklahoma to Sioux Falls, 66 I. C. C., 757; Gulf City Mfg. Co. v. Director General, as Agent, 66 I. C. C. 763; Armour & Co. v. W. Ry. Co., 68 I. C. C. 43; Birmingham Traffic Bureau v. St. L. S. F. Ry. Co., 68 I. C. C. 108; Wagner & Steiner v. Director General, as Agent, 68 I. C. C. 138; Farmers Elevator Co. v. C. I. & L. Ry. Co., 68 I. C. C. 159; Empire Refineries (Inc.) v. Director General, as Agent, 68 I. C. C. 192; National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co., 68 I. C. C. 213, 249; Murray & Layne Co. v. A. T. & S. F. Ry. Co., 68 I. C. C. 277; Kahan & Falk Co. v. O. S. L. R. Co., 68 I. C. C. 313; Duluth Brewing & Malting Co., v. N. P. Ry. Co., 68 I. C. C. 315; Western Grain Co. v. Director General, as Agent, 68 I. C. C. 335, 339; Pacific Creamery Co. v. A. T. & S. F. Ry. Co. 68 I. C. C. 340; Central Wisconsin Supply Co. v. Director General, as Agent, 68 I.C. C. 409; Portland Traffic & Transportation Asso. v. S. P. & S. Ry. Co. 68 I. C. C. 589; Oliphant-Johnson Coal Co. v. C. & E. I. R. R. Co., 69 I. C. C. 1; Union Refining & Pipe Line Co. v. Director General, as Agent, 69 I. C. C. 79; Horses and Mules from Kansas City, Mo. 69 I. C. C. 97, 101; Heggem & Davis v. Director General, as Agent, 69 I. C. C. 162; Portland Traffic & Transportation Asso. v. Director General, as Agent, 69 I. C. C. 165; Green Rock Co. v. Director General, as Agent, 69 I. C. C. 175; Chevrolet Motor Co. v. Director General, as Agent, 69 I. C. C. 226; Silica Sand Producers' Asso. v. C. C. C. & St. L. Ry. Co., 69 I. C. C. 359; Northwestern Leather Co. v. Director General, as Agent, 69 I. C. C. 425; Grasselli Chemical Co. v. Director General, as Agent, 69 I. C. C. 441, 529; Rausch Co. v. Director General as Agent, 69 I. C. C. 451; West Virginia Metal Products Corp. v. B. & O. R. R. Co. 69 I. C. C. 474; Mayer & Co. v. C. M. & St. P. Ry. Co. 69 I. C. C. 519, 521; Hillebrand Co. v. Director General, as Agent, 69 I. C. C. 740, 742; Canby Milling Co., v. C. St. P. M. & O. Ry. 69 I. C. C. 758; Dewey Portland Cement Co. v. Director General, as Agent, 73 I. C. C. 419; Texas Pipe Line Co. v.

Director General, as Agent, 73 I. C. C. 429; Phoenix Chamber of Commerce v. Director General, as Agent, 74 I. C. C. 31; DuPont de Nemours & Co. v. Director General, as Agent, 74 I. C. C. 191; Silica Sand Producer's Asso. v. M. P. R. R. Co., 74 I. C. C. 471; Robinson v. C. & N. W. Ry. Co., 74 I. C. C. 482; Lexington Granite Co. v. Director General, as Agent, 74 I. C. C. 487; Wilson & Co. v. Director General as Agent, 74 I. C. C. 493, 547; Niedringhaus Metal Ware Corp. v. A., T. & S. F. Ry. Co., 74 I. C. C. 502; Texas Steel Co. v. Director General, 74 I. C. C. 535; Williamson Halsell Frazier Co. v. Director General, as Agent, 74 I. C. C. 549; West Virginia Pulp & Paper Co. v. Director General, as Agent, 74 I. C. C. 551; Cement from Ohio and Mississippi River Crossings, 74 I. C. C. 561; Kellogg Toasted Corn Flake Co. v. A., T. & S. F. Ry. Co., 74 I. C. C. 673; Alpha Portland Cement Co. v. P. R. R. Co., 74 I. C. C. 697; Western Carbon Co. v. C., B. & Q. R. R. Co., 74 I. C. C. 707; Hagerstown Chamber of Commerce v. W. M. Ry. Co., 74 I. C. C. 741; Ballou Brick Co. v. A., T. & S. F. Ry. Co., 77 I. C. C. 4; Mason City Brick & Tile Co. v. Director General, as Agent, 77 I. C. C. 22; California Grain Co. v. Director General, as Agent, 77 I. C. C. 35; Texas Chamber of Commerce v. A. & S. Ry. Co., 77 I. C. C. 67; Gillespie v. C., R. I. & P. Ry. Co., 77 I. C. C. 96; Detroit v. C. & O. Ry. Co., 77 I. C. C. 98; Nivison-Weiskopf Co. v. Director General, as Agent, 77 I. C. C. 107; Petroleum from Texas Points, 77 I. C. C. 228; Hardy Salt Co. v. Director General, as Agent, 77 I. C. C. 305; Cleveland Builders' Supply & Brick Co. v. P. R. R. Co., 77 I. C. C. 309; Wearn & Co. v. B. & O. R. R. Co., 77 I. C. C. 373, 374; Hamilton Furnace Co. v. B. & O. R. R. R. R. Co., 77 I. C. C. 373, 374; Hamilton Furnace Co. v. B. & O. R. R. Co., 77 I. C. C. 377; Kline Brick Co. v. Director General, as Agent, 77 I. C. C. 420; Memphis-Southwestern Investigation, 77 I. C. C. 473, 482, 484, 486; Washburn-Crosby Co. v. Director General, as Agent, 78 I. C. C. 51; Kaplan v. Director General, as Agent, 78 I. C. C. 75; California Packing Co. v. Director General, as Agent, 78 I. C. C. 190; Grain, Products, and Feed, 78 I. C. C. 209; McKell Coal & Coke Co. v. C. & O. Ry. Co., 78 I. C. 227; Maine Spinning Co. v. Director General as Agent, 78 I. C. C. 279; Bristol Brass Corp. v. Director General, as Agent, 78 I. C. C. 301; Sunlight Mining Co. v. L. & N. R. R. Co. 78 I. C. C. 305; Melozer Co. v. A. E. R. R. Co. 78 I. C. C. 319, 320, 321, 323, 324, 326; Wisc. Dairy Products Co. v. Director General, as Agent 78 I. C. C. 355; National Fibre & Insulating Co. v. N. & W. Ry. Co., 78 I. C. C. 361; Armour & Co. v. Director General, as Agent, 78 I. C. C. 373; Dietz Lumber Co. v. Director General, 78 I. C. C. 402, 407; Big Mandy Coal & Mining Co. v. L. R. R. Co., 78 I. C. C. 445; Borden Sales Co. v. Director General, as Agent, 78 I. C. C. 462; Murray v. Director General, as Agent, 78 I. C. C. 465; Meigs Pulpwood Co. v. Director General, as Agent, 78 I. C. C. 473; Pleasant Valley Farms Co. v. Director General, as Agent, 78 I. C. C. 671; Parkersburg Rig & Steel Co. v. W. F., R. & F. W. R. R. Co., 78 I. C. C. 556; Montrose Oil Refining Co. v. St. L. & S. F. Ry. Co., 78 I. C. C. 572; Milwaukee Western Fuel Co. v. Director General, as Agent, 78 I. C. C. 597; Hendrie & Bolthoff Mfg. & Supply Co. v. C. B. & Q. R. R. Co., 78 I. C. C. 609; Parkersburg Rig & Reel Co. v. P. R. R. Co. 78 I. C. C. 724; Thorp v. Director General as Agent, 80 I. C. C. 1; Gulf Production Co. v. Director General, as Agent, 80 I. C. C. 39; American Fibre Package Co. v. Director General, as Agent, 80 I. C. C. 43; Dupont de Nemours & Co. v Director General, as Agent, 80 I. C. C. 46; Armour & Co. v. Director General, as Agent, 80 I. C. C. 59; Northwestern Traffic & Service Bureau v. C. & N. W. Ry. Co., 80 I. C. C. 81; Morrill-Higgins Co. v. Director General, as Agent, 80 I. C. C. 117; Rudolph & Co. v. Director General, as Agent, 80 I. C. C. 129; Crystal Springs Mfg. Co. v. I. C. R. R. Co., 80 I. C. C. 132; Armour & Co. v. Director General, as Agent, 80 I. C. C. 210; Fort Worth Freight Bureau v. Director General, as Agent, 80 I. C. C. 237; Roxana Petroleum Corp. v. Director General, as Agent, 80 I. C. C. 292; Grain Belt Mills Co. v. A. T. & S. F. Ry. Co., 80 I. C. C. 74; Matthews & Son v. G. M. & N. R. R. Co., 80 I. C C. 99; Armour Co. v. Director General, as Agent, 80 I. C. C. 108; Cincinnati Grain & Hay Exchange Co. v. A. & R. Ry. Co., 80 I. C. C. 114; Homestead Valve Mfg. Co. v. Director General, as Agent, 80 I. C. C. 248; Standard Sanitary Mfg. Co. v. A. & A. R. R. Corp., 80 I. C. C. 318; Carlton Consolidated Lumber Co. v. Director General, as Agent, 80 I. C. C. 303; Cramp & Sons v. Director General, as Agent, 80 I. C. C. 341; Gorewitz v. P. R. R. Co., 80 I. C. C. 483;

Kellogg & Sons v. Director General, as Agent, 80 I. C. C. 507; Overland Tire & Rubber Co. v. M. P. R. R. Co., 80 I. C. C. 509; Elem Coal Co. v. L. V. R. R. Co., 80 I. C. C. 647; Northwestern Traffic & Service Bureau v. C. W. Ry. Co., 80 I. C. C. 659; Ohio-Michigan Coal Cases, 80 I. C. C. 663, 676; Atlas Portland Cement Co., 44 I. C. C. 416, 422; Perry County Coal Corp. v. E. St. L. & S. Ry. Co., 80 I. C. C. 711, 715; Grain Belt Mills Co. v. A. T. & S. F. Ry. Co., 80 I. C. C. 745. Arlington Silver Mining Co. v. Director General, as Agent, 80 I. C. C. 753; Rosenblum Case, 43 I. C. C. 67; Hercules Powder Co. v. A., T. & S. F. Ry. Co., 81 I. C. C. 431, 432; International Coal Products Corp. v. Director General, as Agent, 81 I. C. C. 436; Mid-Continent Equip. & Mach. Co. v. M. & O. R. R. Co., 81 I. C. C. 510; Heyward v. Director General, as Agent, 81 I. C. C. 529; International Paper Co. v. Director General as Agent, 81 I. C. C. 549; St. Clair Brick Co. v. Director General, as Agent, 81 I. C. C. 567; Muncie Sand Co. v. Director General, as Agent, 81 I. C. C. 594; Schuette Co. v. Director General, as Agent, 81 I. C. C. 619; National Supply Co. v. B. & O. R. R. Co., 81 I. C. C. 743; Wenatchee Valley Fruit Exchange v. N. P. Ry. Co., 83 I. C. C. 71, 72, 75, 79; West Kentucky Coal Bureau v. L. & N. R. R. Co., 83 I. C. C. 180; Boren-Stewart Co. v. B. & O. R. R. Co., 83 I. C. C. 215; Lester & Toner v. L. I. R. R. Co., 83 I. C. C. 251; United Iron Works, v. Director General, as Agent, 83 I. C. C. 282; Omaha Chamber of Commerce v. Director General, as Agent, 83 I. C. C. 310; Iten Biscuit Co. v. A. T. & S. F. Ry. Co., 83 I. C. C. 317; Du Pont de Nemours & Co. v. Director General, as Agent, 83 I. C. C. 374; Pittman Co. v. Director General, as Agent, 83 I. C. C. 380; Commercial Coal Co. v. L. & N. R. R. Co., 83 I. C. C. 464; Homer Furnace Co. v. Director General, as Agent, 83 I. C. C. 468; Trojan Powder Co. v. P. & R. Ry. Co., 83 I. C. C. 481; California Packing Corp. v. Director General, as Agent, 83 I. C. C. 490; General Chemical Co. v. B. & O. R. R. Co., 83 I. C. C. 582; Heacock Co. v. C. B. & Q. R. Co., 83 I. C. C. 691; Gypsum, Plaster and Stucco to North Pacific Coast, 83 I. C. C. 753; Piowaty & Sons v. Director General, 88 I. C. C. 597.

§29. Reproduction Value of Road.

See Evidence §49.

IMPORTANT CASES SINCE 1908

(a) If any importance whatever is to be attached to the cost of reproduction in the establishment of railway rates, the valuation must be undertaken by the Government itself. City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 403.

(b) In passing upon a question of reasonableness of rates the present value of the carrier's right of way is to be considered, despite the fact that its original cost may have been slight and its present value be great. City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 415.

(c) The Commission has for many years felt the necessity of having information regarding the value of the physical properties of the carriers in the United States as an element in the valuation of their entire properties. Boileau v. P. & L. E. R. R. Co., 22 I. C. C. 640, 652.

§30. Revenues of Road.

See Evidence §36; §50; §51.

CASES 1887-1908

(a) In determining what are reasonable rates the fact that a road earns little more than operating expenses is not to be overlooked; but it cannot be made to justify grossly excessive rates. Wherever there are more roads than the business at fair rates will remunerate they must rely upon future earnings for the return of investments and profits. New Orleans Cotton Exchange v. C. N. O. & T. P. R. R., 2 I. C. C. 289, 293.

(b) In fixing reasonable rates the requirements of operating expenses, bonded debt, fixed charges, and dividend on capital stock from the total traffic, are all to be considered; but the claim that any particular rate is to be measured by these as a fixed standard, below which the rate may not lawfully be reduced, is one rightly subject to some qualifications, one of which is that the obligations must be actual and in good faith. Re Rates & Charges on Food Products (Com.) 3 I. C. R., 93.

(c) In passing upon the reasonableness of rates, the question whether they afford the carrier a proper return for the service rendered is to be considered, as well as the result of the business to the shipper or producer of the traffic. Loud v. South Carolina R. Co. (Com.) 4 I. C. R. 205.

(d) Neither the absence nor the presence of competition by carriers alone,

nor the extent of their operations measured solely by their financial interests, can be relied on to adjust rates reasonable and just to all. Mayor and Council of Tifton, Ga. v. Louisville & Nashville R. Co. 9 I. C. C. 160.

IMPORTANT CASES SINCE 1908

(e) The fact that the net revenues of a carrier from its ownership of a bridge, on which an arbitrary is charged for passengers and freight carried across the same, may be greater than the returns on ordinary business enterprises is not sufficient in itself to justify a holding that the bridge tolls are excessive. Bridges are and have been regarded as precarious property. They may be damaged or entirely swept away by floods and erection of other bridges nearby may draw away their tenants, and thus seriously affect their earning capacity. The net revenues have an undoubted and also an important bearing upon the question of the reasonableness of rates, but the value of the service to the shipper and the other elements so often referred to as entering into the reasonableness of rates must also be taken into consideration. A railroad company may be operated with a less return than it ought to enjoy, or even at a loss, but neither condition of affairs would justify the exaction by it of rates than are higher than they reasonably should be for service performed, all things being considered. So also the fact that the net earnings of a carrier may be large does not of itself justify the Commission fixing a rate at less than is reasonable for the service, all other things being considered. Railroad Commissioners of Ia. v. I. C. R. R. Co., 20 I. C. C. 181, 186.

(f) A railroad company may be operated with a less return than it should enjoy, or even at a loss, but neither condition of affairs would justify the exaction by it of rates higher than they reasonably should be for the services performed, all things being considered. So also the fact that the net earnings of a carrier may be large does not of itself justify the Commission in fixing a rate at less than is reasonable for the service, all things considered. The Five Per Cent Rate Case, 31 I. C. C. 351, 359.

(g) Prosperity of a carrier does not indicate that rates on a particular commodity are unreasonable or contribute to undue profits. Bridgeman-Russell Co. v. G. L. T. Corp. 61 I. C. C. 260, 267.

ALL OTHER CITATIONS

The Five Per Cent Case, 31 I. C. C. 351, 435, 448. (Dissenting Opinion); Phelps Dodge Corporation v. Director General, 57 I. C. C. 714, 718; Swift Lumber Co. v. F. & G. 61 I. C. C. 485, 491.

§30½. Risk.

See Evidence §52.

IMPORTANT CASES SINCE 1908

(a) Hence, very rightfully loss and damage claims, are an element to be considered in determining reasonableness of rates. Rock Springs Distilling Co. v. I. C. R. R. Co., 29 I. C. C. 18, 23.

(b) Risk in transporting a shipment is considered to apply thereon, in determining the reasonableness of the rate. Kansas-California Flour Rates, 29 I. C. C. 459, 462; Paradee Works v. C. R. R. of N. J., 29 I. C. C. 500, 503; Rates on Flaxseed from Minneapolis to Fredonia, 29 I. C. C. 633, 636.

§31. Special Service.

See Additional Charges and Service; Special Rates and Service.

CASES 1887-1908

(a) An added and unusual terminal expense arising out of the special delivery of a certain class of express traffic does not justify any greater increase in the rate than will cover such terminal expense. Society American Florists Etc. v. U. S. Express Co. 12 I. C. C. 121.

IMPORTANT CASES SINCE 1908

(b) Where special dock and terminal services are included in a flat rate it is impracticable accurately to test the reasonableness of such rates without tearing them apart to analyze the component parts. Iron Ore Rate Cases, 41 I. C. C. 181, 204.

(c) The special expenses incurred in transporting meats and products constitute an important element to be considered in determining the reasonableness of the rates upon those commodities. Rath Packing Co. v. I. C. R. R., 56 I. C. C. 303, 305.

ALL OTHER CITATIONS

Mountain Ice Co. v. D. L. & W. R. R. Co., 17 I. C. C. 447.

§32. Standard for Carrier.

See Branch Lines §2; Evidence §55; §56.

CASES 1887-1908

(a) In fixing reasonable rates the requirements of operating charges, bonded

debt, fixed charges and dividend on capital stock from the total traffic are all to be considered, but the claim that any particular rate is to be measured by these as a fixed standard, below which the rate may not lawfully be reduced is one rightly subject to some qualifications, one of which is that the obligations must be actual and in good faith. In the matter of alleged excessive freight rates and charges on food products, 3 I. C. C. 93, 100.

IMPORTANT CASES SINCE 1908

(b) Before the Commission can conclude that a rate on a given commodity is too high, because it is higher than some other rate named, it must know that the rate selected as the standard for a comparison is a reasonable and a fair one. Darling & Co. v. B. & O. R. R. Co., 15 I. C. C. 79, 83.

(c) What may be a proper rate as between separate railroads may become unreasonable and unjust when these railroads are absorbed by a large system serving an extensive territory. Black Mountain Coal Land Co. v. S. Ry. Co., 15 I. C. C. 286, 292.

(d) In determining rates between two points, neither that railroad which can afford to handle traffic at the lowest rate nor that whose necessities might justify the highest rate should be exclusively considered. City of Spokane v. N. P. R. Co., 15 I. C. C. 376, 392.

(e) In a typical case the Commission said that in determining a freight rate which must of necessity be charged by competing lines the Commission would not look exclusively to that line which could handle the business the cheapest, or which was the strongest financially, but would consider as well the weaker rival. It has never intimated that the rate should be fixed solely with reference to the weakest line. So it said it would certainly be most unjust to the public in establishing rates to Utah common points to consider merely the expensive and circuitous route via the D. & R. G. R. R. The D. & R. G. R. R. handled about 40 per cent of the Utah business from the East at that time. It naturally would continue to handle a considerable part of it, and must accept a rate established by the Commission. This the Commission must and does take into account in the fixing of that rate, but it must be largely influenced by the cost of handling that business over the short and easy line, the U. P. R. R. While this traffic is important to the D. & R. G. R. R., its revenue from this source is but a small part of its entire income, and the Commission could not permit the maintenance of unreasonable rates simply because the entire result of the operations of this company might not be as favorable as would otherwise be proper. Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co., 19 I. C. C. 218, 222.

(f) In determining the reasonableness of an advance in rates by all the railroads in Official Classification territory, the Commission ought not to make the most opulent nor the poorest railroad the standard by which to measure the reasonableness of the rates. In this territory the Pennsylvania system, the New York Central lines and the Baltimore & Ohio Railroad may be taken as typical, and whatever rate might reasonably be imposed upon these three systems must be held to be a reasonable charge for that service by all lines. Under rates reasonable for these three systems there may be lines whose earnings will be extravagant, but that is their good fortune. There may be lines which cannot make sufficient earnings, but that is their misfortune. The Commission ought not to impose upon this territory, for the purpose of allowing defendants additional revenues, higher rates than are adequate to these three systems, considered as a whole. In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 274.

(g) The interests of all lines must be considered in question of reasonableness of rates, and not alone those of the line that can handle the traffic with the least cost. Commercial Club of Superior, Wis., v. G. N. Ry. Co., 24 I. C. C. 96, 102.

(h) There is no exact standard by which the reasonableness of a rate can be measured. In re Wool, Hides and Pelts, 25 I. C. C. 675, 677.

(i) In case a new railroad line were built between two points, A and B, between which other rail lines had long been operating, is an obligation cast on the new carrier to carry the same rate from A to B as is carried by the older lines? The Commission does not think this can fairly be assumed to be the case. The new carrier might choose to observe the fourth section, for example, which the older lines may not have done, and

thus might have warrant for carrying a different and a higher terminal rate. Manifestly, in the case supposed, it could make not the slightest difference that the new carrier had purchased or used equipment which had been used by the older lines. On the other hand, it is supposed a railroad had gone into the hands of a receiver, and that as the outcome a new corporate style or title had been assumed to distinguish the new corporation technically from its predecessor, it might well be argued that the new company, new in name only, succeeded to the obligations of its predecessor so far as the shipping public is concerned, and could not increase rates without justifying them under the requirement of section 15. If the new company were, of necessity, compelled to operate over the same physical route or routes as its predecessor, and were bound to serve the same shipping communities and to carry the same traffic, it would indeed be unreasonable to hold that it could escape the obligation to carry the same rate unless it sustained the burden of proving higher rates to be just and reasonable. Bay State Milling Co. v. Transit Corporation, 43 I. C. C. 338, 346.

(j) Rates of carriers in trunk-line and c. f. a. territories do not constitute a measure of reasonableness of rates maintained by southern carriers. Barnes Automobile Co. v. D., T. & I. R. R. Co., 83 I. C. C. 350, 352.

(k) A carrier owning and operating a railroad, however strong financially, however economical in its facilities, or favorably situated as to traffic, is not entitled as a constitutional right to more than a fair net operating income on the value of its properties which are being devoted to transportation. Dayton-Goose Ry. Co. v. United States, 44 Sup. Ct. 169.

(l) Rates which as a body enable all the railroads, necessary to do the business of a rate territory or section, to enjoy not more than a fair net operating income on the aggregate value of their properties therein economically and efficiently operated, are reasonable from the standpoint of the individual shipper in that section; for each shipper, being interested in having no congestion, is properly required, in the rates he pays, to share in the burden of maintaining adequate railway capacity. Dayton-Goose Creek Ry. Co. v. United States, 44 Sup. Ct. 169.

ALL OTHER CITATIONS

Gamble-Robinson Commission Co. v. St. L. I. M. & S. Ry. Co. 22 I. C. C. 138, 140. Receivers' & Shippers' Ass'n of Cincinnati v. C. N. O. & T. P. Ry. Co., 18 I. C. C. 440, 464; Brundred Bros. v. Prairie Pipe Line Co., 68 I. C. C. 458, 460; Grain Rates in Central Freight Assn. Territory, 28 I. C. C. 549, 558; Newport Mining Co. v. C. & N. W. Ry. Co., 33 I. C. C. 645, 656; Chamber of Commerce of Johnston City v. S. Ry., 46 I. C. C. 527, 532; Barrett Mfg. Co. v. A. T. & S. F. Ry., 47 I. C. C. 27, 30.

§32½. Subsequent Reduction.
See Commodity Rates §4; Evidence §64; Reparation §16.

CASES 1887-1908

(a) The continued reduction of relative rates when brought about by the removal of artificial and unnatural differences is not undesirable, but where the difference results from dissimilar circumstances and conditions, and the true difficulty appears to be a real and natural advantage which the one region has and enjoys over the other, such continuing disturbances of rates ought not to be inaugurated, especially when the charges are commodity rates not shown to be unreasonable in themselves. Anthony Salt Co. v. M. P. R. Co., 4 I. C. C. 33, 39.

(aa) A reduction in rates by a carrier is not per se evidence that the former rates were unreasonable, as such reduction may, as in the present case, be accounted for because of a decrease in cost of transportation and an increase in the volume of traffic to which such rates apply. Loud v. South Carolina R. Co. (Com.) 4 I. C. R. 205.

(b) Complainant attacked rates on watermelons from Williston, Blackville and other points in South Carolina to New York, Philadelphia, Baltimore, Washington, etc., as unreasonable. Subsequent to the filing of the complaint, defendants reduced the applicable rate. HELD, the reduction of the rate does not mean that the previous rate was unreasonable, complaint dismissed. Loud, v. South Carolina R. Co. 4 I. C. C. 205.

(c) A railway company may from considerations of policy grant a reduction in its rates which the Commission could not order as a matter of right under the act. Holmes & Company v. Southern Ry. 8 I. C. C. 561, 568.

(d) The action of a railway company in reducing a rate upon complaint of a

shipper is not conclusive evidence that the rate was unreasonable before the reduction. Holmes & Company v. Southern Ry. Co., 8 I. C. C. 561, 568.

(e) The act of a railway company in reducing a rate upon complaint of a shipper is not conclusive evidence that the rate was unreasonable before the reduction; but when the traffic manager of that company, after a careful examination of the facts, makes the reduction, that is in the nature of an admission against the reasonableness of the obnoxious rate at the time of the reduction. Holmes & Co. v. Southern R. Co. 8 I. C. C. 561.

(f) Complaint attacked rate charged on brick, carloads, from Cherryvale, Kan., to Duncan, Ind. T., via the Frisco to Chickasha thence Rock Island as unreasonable. Through rate charged 12c, while rate to Chickasha was 8c, beyond 3½c. Subsequently a rate of 11½c was published as a through rate. HELD, rate attacked unreasonable to extent it exceeded 11½c, reparation awarded. Coffeyville Vitrified Brick & Tile Co. v. St. L. & S. F. Ry., 12 I. C. C. 498.

IMPORTANT CASES SINCE 1908

(g) That prior lower rates were in effect for a long time and that complainants invested money on account of such rates, does not prove that present higher rates are excessive. In re Advances on Furniture, 25 I. C. C. 331, 336.

(h) Showing of a voluntary reduction in rates unsupported by other material and substantial evidence is not conclusive of the unreasonableness of the preexisting rates. American Trading Co. v. Director General, as Agent, 60 I. C. C. 272, 274.

(i) The Commission does not feel that particular reductions in rates should be encouraged during a period when it is considering the question of general reductions in rates, especially in view of the admissions and assertion that such proposed reduction, if allowed to become effective, would mark the beginning of a rate war between certain carriers. Reduced Rates on Coal to Kansas City, Mo., 66 I. C. C. 457, 467.

(j) Cancellation of the minimum car charge of $15 can not be considered as an admission that this charge was unreasonable. Edgar C. Foster v. Director General, 73 I. C. C. 723, 724.

(k) A mere showing of a reduction in a rating or a difference between the rating in different classifications affords no basis for a finding of unreasonableness. State Highway Department of Texas v. Director General, 73 I. C. C. 741, 742.

(l) Prior to the World War the limited tonnage of crude anthracene transported in official classification territory moved under apparently satisfactory first-class any-quantity rates. Subsequently, at request of shippers, lower c. l. rating established. HELD, this does not indicate unreasonableness in the former any-quantity rates for application on the comparatively few scattered shipments moved prior to the establishment of the c. l. rating. Du Pont de Nemours & Co. v. Director General, as Agent, 73 I. C. C. 129, 132.

(m) A mere showing that rates were subsequently reduced is insufficient to warrant a finding of unreasonableness. Walsh Fire Clay Products Co. v. Director General, as Agent, 73 I. C. C., 410, 412.

(n) A mere showing of a reduction in a rating or a difference between the ratings in different classifications affords no basis for a finding of unreasonableness. State Highway Department of Texas v. Director General, as Agent, 73 I. C. C., 741, 742.

(o) The voluntary reduction of a rate does not in itself constitute proof of unreasonableness. Salkeld Coal Co. v. Pennsylvania R. R., 74 I. C. C., 390.

(p) It does not follow that rates are unreasonable merely because they are subsequently reduced in the course of a rate adjustment. Atlas Portland Cement Co. v. Director General, 74 I. C. C., 611, 612.

(q) Third-class l. c. l. rates assessed on c. l. shipments of dried sweet corn from Union, Ohio, to Chicago, Ill., and Kansas City, Mo., found unreasonable to extent they exceeded fourth-class c. l. rates on dried vegetables, vegetable roots, cocoa beans and other similar articles, which lower rates formerly applied on dried sweet corn, were erroneously withdrawn, and subsequently restored. Reparation awarded. Hostetter Co. v. D., T. & C. Ry. Co., 74 I. C. C. 17.

(r) To avoid embargo via the usual route, shipments were specifically routed by shipper over route taking higher combination rate. HELD: Fact that a lower joint rate was subsequently established over the route traversed, does not prove

unreasonableness. International Paper Co. v. M. C. R. R. Co., 74 I. C. C. 385.

(st) Rate on bituminous coal from Walford, Pa., to Warren, Ohio, found not unreasonable as compared with lower rate subseqeuntly established. The voluntary reduction of a rate does not, in itself, constitute proof of unreasonableness. Salkeld Coal Co. v. P. R. R. Co., 74 I. C. C. 390.

(u) The lack of strict observance of the terms of General Order No. 28 of the director general does not establish unreasonableness. Nor does it follow that rates are unreasonable merely because they were subsequently reduced in the course of a rate adjustment. Atlas Portland Cement Co. v. Director General, as Agent, 74 I. C. C. 611.

(v) It is well settled that the subsequent establishment of a lower rate over the route of movement is not sufficient in itself to prove the unreasonableness of the preexisting rate. Zion Institutions & Industries v. E. N. & S. Ry. 77 I. C. C. 375.

(w) The subsequent establishment of a lower rate is not sufficient in itself to prove the unreasonableness of the preexisting rate. Zion Institutions & Industries v. E., S. & N. Ry. Co., 77 I. C. C. 375, 376.

(x) Subsequent voluntary reduction of rate over route of movement does not of itself establish unreasonableness of previous rate. Dubois Mill Co. v. S., P. & S. Ry. Co., 80 I. C. C. 31, 32.

(y) The commission does not regard the subsequent reduction of rates as establishing unreasonableness. Sprague Tire & Rubber Co. v. Director General, 80 I. C. C. 288.

ALL OTHER CITATIONS

Smith & Co. v. M. & N. A. R. R. Co., 15 I. C. C. 449, 450; Van Brunt Mfg. Co. v. C. M. & St. P. Ry. Co., 17 I. C. C. 195, 196; Advance Thresher Co., v. O. & N. W. R. R. Co. 15 I. C. C. 599, 601; Wisconsin Pearl Button Co. v. C. St. P. M. & O. Ry. Co., 16 I. C. C. 80, 81; Du Pont De Nemours Powder Co. v. N. Y. N. H. & H. R. R. Co., 16 I. C. C. 351, 352; Thomas v. C. M. & St. L. Ry. Co. 16 I. C. C. 364; Aetna Powder Co. v. C. M. & St. P. Ry. Co., 17 I. C. C. 165; U. S. v. N. Y. P. & N. R. R. Co., 15 I. C. C. 233; Davenport Pearl Button Co. v. C. B. & Q. R. R. Co., 17 I. C. C. 193, 194; Havemeyer & Co. v. U. P. R. R. Co., 17 I. C. C. 13; Quammen & Austad Lumber Co. v. C. G. W. R. R. Co., 18 I. C. C. 599, 600; Menefee Bros. v. V. S. & P. Ry. Co., 19 I. C. C. 117; Parfrey v. C. M. & St. P. Ry. Co., 20 I. C. C. 104; Harrah & Stewart Mfg. Co. v. A. T. & S. F. Ry. Co., 21 I. C. C. 484; Hammond Packing Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 120; Ottumwa Bridge Co. v. C. M. & St. P. Ry. Co., 14 I. C. C. 121, 125; Harlow Lumber Co. v. A. C. L. R. R. Co., 15 I. C. C. 501, 508; Commercial Coal Co. v. B. & O. R. R. Co., 15 I. C. C. 11, 14; Alphons Custodis Chimney Construction Co. v. S. Ry. Co., 16 I. C. C. 584, 586; Diehl v. C. M. & St. P. Ry. Co. 16 I. C. C. 190, 192; Armour Car Lines v. S. P. Co. 17 I. C. C. 461; Foster Lumber Co. v. G. C. & S. F. Ry. Co., 17 I. C. C. 385, 386; Stock Yards Cotton & Linseed Meal Co. v. M. K. & T. Ry. Co., 17 I. C. C. 295, 296; Kentucky Wagon Mfg. Co. v. I. C. R. R. Co., 18 I. C. C. 360, 363; Lamb Co. S. S. Co., 18 I. C. C. 279; Penn. Tobacco Co. v. Old Dominion S. S. Co., 18 I. C. C. 197, 199; Wabash Coasting Mills v. Wabash R. R. Co., 18 I. C. C. 91; Pabst Brewing Co. v. C. M. & St. P. Ry. Co., 19 I. C. C. 584, 586; Ullman v. American Express Co., 19 I. C. C. 354, 355; Parrey v. C.M.& St.P. Ry. Co., 20 I. C. C. 104; Maxwell v. W. T. & N. W. Ry. Co., 20 I. C. C. 197, 198; Carstens Packing Co. v. S. P. Co., 20 I. C. C. 165, 166; American Cigar Co. v. P. & R. Ry. Co., 20 I. C. C. 81, 82; Independent Supply Co. v. C. & P. R. R. Co., 20 I. C. C. 66, 67; Riverside Mills v. G. R. R. 20 I. C. C. 423, 425; Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co., 20 I. C. C. 43, 50; Steinfeld & Co. v. I. C. R. R. Co., 20 I. C. C. 12, 14; Roberts Cotton Oil Co. v. I. C. R. R. Co., 21 I. C. C. 248, 251; Victor Mfg. Co. v. S. Ry. Co. 21 I. C. C. 222, 226; Carter White Lead Co. v. N. & W. Ry. Co., 21 I. C. C. 41, 44; Harrah & Stewart Mfg. Co. v. A. T. & S. F. Ry. Co., 21 I. C. C. 484; Fairmont Creamery Co. v. C. B. & Q. R. R. Co., 22 I. C. C. 252, 253; Portsmouth Steel Co. v. B. & O. R. R. Co. 23 I. C. C. 510, 511; Pierce v. P. & L. E. R. R. 23 I. C. C. 89, 91; National Refining Co. v. M. K. & T. Ry. Co., 23 I. C. C. 527, 530; Chamber of Commerce v. G. H. & S. A. Ry. Co., 23 I. C. C. 214, 217; Pabst Brewing Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 259; Carstens Packing Co. v. M. K. & T. Ry. Co., of Tex., Unrep. Op. 323; Godfrey & Sons v. N. Y. C. & H. R. R. R. Co., Unrep. Op. 503; Edison Portland Cement Co. v. D. L. & W. R. R. Co., Unrep. Op. 538; Alaska Lumber Co. v. G. N. Ry. Co.,

Unrep. Op. 564; Winters Metallic Paint Co. v. C. M. & St. P. Ry. Co., 18 I. C. C. 596, 597; Western Lime & Cement Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 20; Southern Cotton Oil Co. v. A. C. L. R. R. Co., Unrep. Op. 119; Mead Auto Cycle Co. v. W. R. R. Co., Unrep. Op. 435; Whiting v. C. B. & Q. R. R. Co., Unrep. Op. 436; Paonia Packing Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 487; Burno v. M. K. & T. Ry. Co., Unrep. Op. 488; Platte Bros. v. C. M. & St. P. Ry. Co., Unrep. Op. 493; Moore v. S. Ry. Co., Unrep. Op. 574; Dunlevie Lumber Co. v. A. C. L. R. R. Co., Unrep. Op. A-39; Beebe Co. v. O. W. R. R. & N. Co., Unrep. Op. A-26; Johnson & Hunt v. St. L. I. M. & S. Ry. Co., 24 I. C. C. 648; Riverside Mills v. St. L. & S. F. R. R. Co., 24 I. C. C. 264; The Traffic Bureau of Sioux City v. A. & S. R. R. R. Co., 24 I. C. C. 177; Okla. Portland Cement Co. v. M. K. & T. Ry. Co., 24 I. C. C. 158; United States v. S. P. Co., 25 I. C. C. 255, 257; Moore v. D. & R. G. R. R. Co., 25 I. C. C. 1, 4; Berheim & Co. v. O. R. R. & N. Co., 25 I. C. C. 156, 158; Coffins Box & Lumber Co. v. C. & N. W. Ry. Co., 25 I. C. C. 249, 250; Esson Granite Co. v. S. Ry. Co., 26 I. C. C. 449, 450; Michigan Hardwood Mfrs. Assn. v. Freight Bureau, 27 I. C. C. 32, 34; Omaha Cooperage Co. v. I. C. R. R. Co., Unrep. Op. A-629; Pacific Fruit Exchange v. S. P. Co., 32 I. C. C. 48, 49; Dill & Collins Co. v. P. & R. Ry. Co., Unrep. Op. A-806; American Milling Co. v. C. I. & S. S. R. R. Co., Unrep. Op. A-795; General Construction Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-812; Lewis Mfg. Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-819; Beaumont Iron Works Co. v. G. C. & S. Ry. Co., Unrep. Op. A-853; Bradley Timber & Railway Supply Co. v. M. & I. Ry. Co., Unrep. Op. A-862; Lumback v. L. S. & M. S. Ry. Co., Unrep. Op. A-864; Waterman Lumber & Supply Co. v. St. L. & S. F. R. R. Co., Unrep. Op. 1935; Anheuser-Busch Brewing Asso. v. C. R. I. & P. Ry. Co., Unrep. Op 1961; Lookout Refining Co. v. L. & N. R. R. Co., 36 I. C. C. 667; Wattam v. N. P. Ry. Co., 37 I. C. C. 101, 102; Omaha Grain Exchange v. M. & O. R. R. Co., 37 I. C. C. 363, 364; Chattanooga Sewer Pipe & Fire Brick Co. v. C. of G. Ry. Co., 39 I. C. C. 615, 616; Riegel Sack Co. v. C. R. R. Co., of N. J., 39 I. C. C. 222, 223; American Refining Co. v. T. & P. Ry. Co., 39 I. C. C. 559, 560; Waddell-Williams Lumber Co. v. M. L. & T. R. R. & S. S. Co., 40 I. C. C. 402, 404; Graham & Gila County Traffic Asso v. A. E. R. R. Co., 40 I. C. C. 573, 587; Wicker v. St. L. & S. F. R. R. Co., 40 I. C. C. 695; Powell-Meyers Lumber Co. v. B. & O. S. W. R. R. Co., 41 I. C. C. 425, 426; Griswold Seed Co. v. C. & S. Ry. Co., 41 I. C. C. 462, 463; Colorado Alfalfa Meal & Mfrs. Co. v. M. P. Ry. Co., 41 I. C. C. 540, 543; Miller & Lux v. S. P. Co., 41 I. C. C. 617, 619; Stimson v. B. & O. S. W. R. R. Co., 41 I. C. C. 640, 641; Hartle Paper Mfg. Co. v. P. R. R. Co., 41 I. C. C. 661, 662; Hollister French Lum. Co. v. M. C. R. R., 41 I. C. C. 715; Crowe & Co. v. G. N. Co., 41 I. C. C. 742, 744; Reid Murdock & Co. v. C. & E. I. R. R., 41 I. C. C. 747; Morris & Co. v. St. L. & S. F. R. R. Co., 42 I. C. C. 124; Washburn-Crosby Co. v. C. R. I. & P. Ry. Co., 42 I. C. C. 177; Champion Fibre Co. v. S. Ry. Co., 42 I. C. C. 311; Travis Glass Co. v. B. & O. S. W. R. R. Co., 42 I. C. C. 169, 170; Hill Grain Co. v. I. C. R. R. Co., 42 I. C. C. 321, 322; Illinois Steel Co. v. C. & N. W. Ry. Co., 42 I. C. C. 383; Atlantic Refining Co. v. P. R. R. Co., 42 I. C. C. 483, 485; Continental Paper Bag Co. v. L. & N. R. R., 42 I. C. C. 489; Hallack & Howard Lumber Co., 42 I. C. C. 591; DuPont de Nemours Powder Co. v. P. & R. Co., 43 I. C. C. 1, 3; Rosenblum v. N. Y. P. & N. R. R. 43 I. C. C. 67, 68; Pierson-Lathrop Grain Co. v. C. B. & Q. R. R., 46 I. C. C. 359; Interstate Packing Co. v C. M. & St. P. Ry., 45 I. C. C. 365; Tunis-Cockey Lum. Co. v. L. O. P. & G. R. R., 46 I. C. C. 405; Beaumont Timber Co., Ltd., v. I. & G. N. Ry., 45 I. C. C. 5; Aberdeen Wholesale Grocery Co. v. C. M. & St. P. Ry., 45 I. C. C. 23; U. S. Brewing Co. of Chicago v. M. C. R. R. 45 I. C. C. 67, 68; Adams v. C. & S. Ry., 45 I. C. C. 69, 70; Harrison Bros. & Co. v. B. & O. R. R., 45 I. C. C. 85, 86; Friedman v. C. & N. W. Ry., 45 I. C. C. 91, 92; Swift & Co. v. B. & M. R. R. 45 I. C. C. 119, 120; Valley Creek Cotton Mills Co. v. W. Ry. of Ala., 45 I. C. C. 123, 124; Globe Lumber Co. v. S. L. B. & S. Ry., 45 I. C. C. 135, 136; Wilcox v. E. R. R., 45 I. C. C. 149, 150; Wheeling Corrugating Co. v. P. Co., 45 I. C. C. 165, 166; Proctor & Gamble Co. v. S. Ry., 45 I. C. C. 177, 178; Scudders Gale Grocer Co. v. S. Ry., 45 I. C. C. 181, 182; Empire Cotton Oil v. S. A. L. Ry., 45 I. C. C. 186, 187; Wyoming Shovel Works v. D. & H. Co. 45 I. C. C. 197, 198; Kieckhefer Box Co. v. C. M. & St. P. Ry., 45 I. C. C. 205, 206; Union Petroleum Co. v. T. & B. V. Ry. 45 I. C. C. 213, 214; Best-Clymer Mfg. Co. v. A. C. R. R. 45 I. C. C. 220;

International Paper Co. v. M. C. R. R. 45 I. C. C. 30, 31, 453, 454; Schram Glass Mfg. Co. v. St. L. & S. F. R. R., 45 I. C. C. 465, 466; Graves Bros. Co. v. A. N. R. R. 45 I. C. C. 470, 472; Mendel & Co. v. L. & N. R. R., 45 I. C. C. 545, 546; Hudson River Lumber Co. v. L. & P. Ry., 45 I. C. C. 571, 572; Stanton Co. v. N. P. Ry., 45 I. C. C. 583, 584; Creamery Package Mfg. Co. v. St. L. & S. F. R. R., 46 I. C. C. 303, 304; Ayer & Lord Tie Co. v. I. C. R. R., 46 I. C. C. 305, 306; Superior Charcoal Iron Co. v. M. M. & S. E. Ry, 46 I. C. C. 329, 330; Swift & Co. v. N. Y. C. R. R., 46 I. C. C. 356, 358; Du Pont de Nemours Powder Co. v. P. R. R., 46 I. C. C. 363, 364; Beaumont Timber Co. v. I. & G. N. Ry., 46 I. C. C. 410, 411; Blodgett Milling Co. v. C. & N. W. Ry., 46 I. C. C. 442, 444; Kanotex Refining Co. v. A. T. & S. F. Ry., 46 I. C. C. 495, 499; Heckle v. C. B. & Q. R. R., 46 I. C. C. 513, 514; Harrison Bros. & Co. v. L. & N. R. R. 46 I. C. C. 515, 517; Kath Co., Inc. v. A. T. & N. Ry., 47 I. C C. 42; Crown Willamette Paper Co. v. S. P. Co., 47 I. C. C. 44, 45; Continental Can Co. v. A. C. R. R., 47 I. C. C. 82; Proctor & Gamble Co. v. C. C. C. & St. L. Ry., 47 I. C. C. 231; Kansas Buff Brick & Mfg. Co. v. M. P. Ry. Co., 48 I. C. C. 473, 474; Standard Oil Co. v. Y. & M. V. R. R., 48 I. C. C. 493; Penrod, Jurden & McCowen v. M. & O. R. R. Co., 48 I. C. C. 486, 497; Flanley Grain Co. v. C., St. P., M. & O. Ry. Co., 48 I. C. C. 505, 506; Orange Rice & Mill Co. v. T. & N. O. R. R. Co., 48 I. C. C. 673, 674; Algonite Stone Mfg. Co. v. A. T. & S. F. Ry., 48 I. C. C. 689; Procter & Gamble Co. v. A. G. S. R. R. Co., 48 I. C. C. 701, 702; Flanley Grain Co. v. C. St. P. M. & O. Ry., 48 I. C. C. 505, 506; Du Pont de Nemours Powder Co. v. I. & G. N. Ry., 49 I. C. C. 35; Harmon & Co. v. E. J. & E. Ry. Co., 49 I. C. C. 105; Victor Chemical Works v. C. & E. I. R. R., 49 I. C. C. 599; Aetna Explosives Co. v. S. Ry., 49 I. C. C. 620; Lloyd v. A. & C. R. R., 51 I. C. C. 121; Empire Refineries, Incorporated v. St. L. S. F. Ry., 51 I. C. C. 151; Midland Coal Co. v. St. L. & S. F. R. R., 51 I. C. C. 313; Hercules Powder Co. v. N. W. Ry., 51 I. C. C. 427; Aetna Explosives Co. v. A. G. S. R. R., 51 I. C. C. 11; Loveland & Hinyan Co. v. D. & H. R. R., 51 I. C. C. 15; Swift & Co. v. G. N. Ry., 51 I. C. C. 115; Herrmann & Co. v. N. Y. N. H. & H. R. R., 51 I. C. C. 118; Dewey Bros. v. S. Ry., 51 I. C. C. 160; American Bridge Co. v. N. Y. N. H. & H. R. R., 51 I. C. C. 181; American Sheet & Tin Plate Co. v. N. Y. C. R. R., 51 I. C. C. 187; Syracuse Chamber of Commerce v. N. Y. C. R. R., 51 I. C. C. 197; Friedman Mfg. Co. v. W. P. R. R., 51 I. C. C. 225; Hercules Powder Co. v. C. G. W. R. R., 51 I. C. C. 229; Armour & Co. v. D. & R. G. R. R., 51 I. C. C. 233; Smith Cotton Products Co. v. L. & N. R. R., 51 I. C. C. 311; Cardwell v. C. R. I. & P. Ry., 51 I. C. C. 390, 391; Holt Mfg. Co. (Inc.) v. S. P. Co., 51 I. C. C. 397; Concrete Engineering Co. v. P. Ry., 51 I. C. C. 423; National Supply Co. v. C. B. & Q. R. R., 51 I. C. C. 429; Savage v. C. & N. W. Ry., 51 I. C. C. 482; Virginia-Carolina Chemical Co. v. A. & V. Ry., 51 I. C. C. 617; Du Pont de Nemours & Co. v. P. & R. Ry., 51 I. C. C. 671; Fluorspar Mining, Leasing & Transportation Co. v. Director General, 56 I. C. C. 267; Ruddock Orleans Cypress Co. v. Director General, 55 I. C. C. 236; Sturges & Burn Mfg. Co. v. Director General, 55 I. C. C. 345; Steel Cities Chemical Co. v. Director General, 56 I. C. C. 723, 725, 726; Paducah Board of Trade v. Illinois Central, 57 I. C. C. 37; Snyder & Co. v. Director General, 57 I. C. C. 179; Boldt Co. v. Director General, 57 I. C. C. 259, 260; Northern Grain & Warehouse Co. v. Director General, 57 I. C. C. 629; Thomas Iron Co. v. Director General, as Agent, 57 I. C. C. 657, 659; Whitehouse Barrel Co. v. Director General, 57 I. C. C. 753; Gulf Refining Co. v. D. L. & W., 58 I. C. C. 7; Gulf Refining Co. of Louisiana v. T. & Ft. S. Ry. Co., 58 I. C. C. 5; Ferrell & Co. v. C. & N. W. Ry. Co., 58 I. C. C. 38; Du Pont de Nemours Powder Co. v. Director General, 58 I. C. C. 146; Seaboard By-Product Coke Co. v. Director General, as Agent, 58 I. C. C. 177, 181, 183; Seaboard By-Product Coke Co. v. Director General, 59 I. C. C. 35, 37; Seaboard By-Product Co. v. Director General, 59 I. C. C. 453, 454, 455; St. Bernard Cypress Co. v. Director General 59 I. C. C. 232, 233; Atlantic Refining Co. v. Director General, 59 I. C. C. 316; Pine Plume Lumber Co. v. Director General, 59 I. C. C. 371; Rath Packing Co. v. Director General, 59 I. C. C. 427, 428; G. S. Tiffany & Co. v. St. L. S. W. 59 I. C. C. 719; Pacific Coast Shippers Asso. v. Director General, 59 I. C. C. 133; Bare Paper Co. v. Director General, as Agent 59 I. C. C. 183; Royal Bank of Canada v. S. A. I. Ry. Co. 59 I. C. C., 367; Acme Cement Plaster Co. v. Director General, as Agent, 59 I. C. C. 411; Chatterton & Son v. Director General, as Agent, 59 I. C. C. 484; Stout Lumber Co.

v. Director General, as Agent, 59 I. C. C. 495; Ohio Cities Gas Co. v. Director General, as Agent, 59 I. C. C. 541; Texas Refining Co. v. Director General, as Agent, 59 I. C. C. 548; Murray & Layne Co. v. S. P. Co., 59 I. C. C. 552; Parkersburg Rig & Reel Co. v. Director General, as Agent, 59 I. C. C. 563; Du Pont de Nemours & Co. v. Director General, as Agent, 59 I. C. C. 570; Birmingham Rail & Locomotive Co. v. S. Ry. Co., 59 I. C. C. 602; Columbian Rope Co. v. Director General, as Agent, 59 I. C. C. 605; Cleveland-Cliffs Iron Co. v. M., M. & S. E. Ry. Co., 59 I. C. C. 611; Leo-Greenwald Vinegar Co. v. Director General, as Agent, 59 I. C. C. 635, 638; Cosden Oil & Gas Co. v. Director General, as Agent, 59 I. C. C. 705; Lukens Steel Co. v. Director General, as Agent, 59 I. C. C. 707; Tiffany & Co. v. St. L. S. W. Ry. Co., 59 I. C. C. 719; Arcularius Bros. v. Director General, 59 I. C. C. 727; Nason Coal Co. v. Director General, 60 I. C. C. 214; Atlantic Refining Co. v. Director General 60 I. C. C. 355, 356; Memphis Freight Bureau for Blumenfeld Co. Inc., v. Director General, 60 I. C. C. 431; Standard Oil Co. v. Director General, 60 I. C. C. 449; Cambria Steel Co. v. Director General, 60 I. C. C. 459, 464; Robinson Clay Product Co. v. Director General, 60 I. C. C. 499; Pittsburgh Crucible Steel Co. v. Director General, 60 I. C. C. 503; Minnesota & Ontario Paper Co. v. Director General, 61 I. C. C. 403; E. I. Du Pont de Nemours & Co. v. Director General, 62 I. C. C. 39, 40; Lawton Refining Co. v. Director General, as Agent, 60 I. C. C. 480; Shaffer Oil & Refining Co. v. Director General, as Agent, 60 I. C. C. 110; Midland Refining Co. v. Director General, as Agent, 60 I. C. C. 125; Chap'n-Sacks Mfg. Co. v. Director General, as Agent, 60 I. C. C. 145; Best-Clymer Mfg. Co. v. Director General, as Agent, 60 I. C. C. 153; Nason Coal Co. v. Director General, as Agent, 60 I. C. C. 214 American Trading Co. v. Director General, as Agent, 60 I. C. C. 272, 274; Virginia-Carolina Chemical Co. v. Director General, as Agent, 60 I. C. C. 377; Atlantic Refining Co. v. Director General, as Agent, 60 I. C. C. 355, 356, 506; Lake Park Refining Co. v. Director General, as Agent, 60 I. C. C. 381, 383; General Steel Co., v. C. & O. Ry. Co., 60 I. C. C. 443; Proctor & Gamble Mfg. Co. v. Director General, as Agent, 60 I. C. C. 447, 757; Southern Fuel Co. v. Director General, as Agent, 60 I. C. C. 457; Robinson Clay Products Co. v. Director General, as Agent, 60 I. C. C. 499; Pittsburgh Crucible Steel Co. v. Director General, as Agent, 60 I. C. C. 503; Central Pennsylvania Lumber Co. v. Director General, as Agent, 723; Odell-Daly Material Co. v. Director General, as Agent, 737; Pittsburgh Crucible Steel Co. v. Director General, 61 I. C. C. 56, 57; Memphis Freight Bureau v. Director General, 61 I. C. C. 125; Sapulpa Refining Co. v. Director General, 62 I. C. C. 493; Swift & Co. v. Director General, 62 I. C. C. 618, 623; Pequest Co. v. Director General, as Agent, 61 I. C. C. 16; Sinclair Refining Co. v. Director General, as Agent, 61 I. C. C. 18; Illinois Zinc Co. v. Director General as Agent, 92, 102; Daugherty & Son Refining Co. v. Director General, as Agent, 61 I. C. C. 197; Harlan County Coal Asso. v. L. & N. R. R. R., 61 I. C. C. 394; Schram Glass Mfg. Co. v. Director General, as Agent, 61 I. C. C. 435, 437; United Paperboard Co. (Inc.) v. M. & E. R. R. Co., 61 I. C. C. 483; Steel & Tube Co. v. Director General, as Agent, 61 I. C. C. 526; Swift & Co. v. Director General, as Agent, 61 I. C. C. 567; Davis Mfg. Co. v. Director General, as Agent, 61 I. C. C. 607; Little Cahaba Coal Co. v. Director General, as Agent, 61 I. C. C. 663; Du Pont de Nemours & Co. v. Director General, as Agent, 62 I. C. C. 39; United Paperboard Co. (Inc.) v. M. C. R. R. Co., 62 I. C. C. 43; United Paperboard Co. (Inc.) v. N. Y. C. R. R. Co., 62 I. C. C. 59; De Jean v. Director General, as Agent, 62 I. C. C. 495; Swift & Co. v. Director General, as Agent, 62 I. C. C. 618, 623; Anaconda Copper Mining Co. v. Director General, 64 I. C. C. 136, 139; Old Dominion Co. v. Director General, as Agent, 63 I. C. C. 43; Selma Chamber of Commerce v. Director General, as Agent, 63 I. C. C. 157; Best-Clymer Co. v. L. & N. R. R. Co., 63 I. C. C. 207; Western Stoneware Co. v. C. B. & Q. R. R. Co., 63 I. C. C. 215; Michigan Builders' Supply Co. v. Director General, as Agent, 63 I. C. C. 349; Kaufman & Sons Co. v. Director General, as Agent, 63 I. C. C. 367; Stehley v. Director General, as Agent, 64 I. C. C. 59; Atlantic Refining Co. v. Director General, as Agent, 64 I. C. C. 64; Empire Cotton Oil Co. v. Director General, as Agent, 64 I. C. C. 71, 72; Anaconda Copper Mining Co. v. Director General, as Agent, 64 I. C. C. 136, 139; Armour & Co. v. O. S. L. R. R. Co., 64 I. C. C. 173; Cannon Mfg. Co. v. Director General, as Agent, 64 I. C. C. 183; Gulf Refining Co. v. St. L. S. F. Ry. Co., 64 I. C. C. 201; Jones v. Director General, as Agent, 64

I. C. C. 221; Carey Mfg. Co. v. Director General, as Agent, 64 I. C. C. 292; St. Tammany Ice & Mfg. Co. (Ltd.) v. Director General, as Agent, 64 I. C. C. 491; Moore Oil Refining Co. v. Director General, 64 I. C. C. 621; Raritan Copper Works v. Director General, 64 I. C. C. 691; Bedford Cut Stone Co. v. Director General, as Agent, 66 I. C. C. 26; Jerpe Commission Co. v. Director General, as Agent, 66 I. C. C. 131; Midcontinent Equipment & Machinery Co. v. C. & A. R. R. Co., 66 I. C. C., 151; Carol Ridge Clay Products Co. v. Director General, as Agent, 66 I. C. C., 172; Grasselli Chemical Co. v. Director General, as Agent, 66 I. C. C., 263; Minute Tapioca Co. v. Director General, as Agent, 66 I. C. C., 267; Weaver Bros. Lumber Co. v. Director General, as Agent, 66 I. C. C., 297; George M. Champlain, Receiver v. Director General, 66 I. C. C. 309, 310; Chevalier v. Director General, as Agent, 66 I. C. C. 421; General Chemical Co. v. Director General, as Aegnt, 66 I. C. C. 443; Wofford Oil Co. v. Director General, as Agent, 66 I. C. C., 509, 510; Traffic Bureau of Nashville v. Director General, as Agent, 66 I. C. C., 529; Botany Worsted Mills v. Director General, as Agent, 66 I. C. C., 556; Nickel Co. v. Director General, 66 I. C. C., 627; Armour & Co. v. Wabash Railway Co. 68 I. C. C. 43; Amalgamated Sugar Co. v. Director General, 68 I. C. C. 328; Anderson & Gustafson v. Director General, 68 I. C. C. 496; Lucas & Co. v. Director General, 68 I. C. C. 581; Union Refining & Pipe Line Co. v. Director General, 69 I. C. C. 79; Healy & Co., v. Director General, as Agent, 68 I. C. C. 45; Proctor & Gamble Co. v. A. N. R. R. Co., 68 I. C. C. 121; Gilpin, Langdon & Co., v. Director General, as Agent, 68 I. C. C. 292, 293; Wisconsin Dairy Products Co. v. C. M. & St. P. Ry. Co., 68 I. C. C. 307; Pacific Creamery Co., v. A. T. & S. F. Ry. Co., 68 I. C. C. 340; New York & New Jersey Lubricant Co. v. Director General, as Agent, 68 I. C. C. 477; Fox Paper Co. v. Director General, as Agent, 68 I. C. C. 479; Refinite Co. v. Director General, as Agent, 68 I. C. C. 545; Portland Traffic & Transportation Asso. v. S. P. & S. Ry. Co., 68 I. C. C. 589; Salem Glass Works v. Director General, as Agent, 68 I. C. C. 643; Glencoe Lime & Cement Co. v. Director General, as Agent, 69 I. C. C. 243; Ouachita Valley Glass Co. (Inc.) v. A. & V. Ry. Co. 69 I. C. C. 357; Vickers Petroleum Co. (Inc.) v. Director General, as Agent, 69 I. C. C. 401; Selz-Schwab & Co. v. C. & N. W. Ry. Co., 69 I. C. C. 455; Lehigh Valley Coal Co. v. Director General, as Agent, 69 I. C. C. 535, 542, 544; United Paperboard Co., v. Director General, as Agent, 69 I. C. C. 573; Central Refractories Co. v. Director General, as Agent, 69 I. C. C. 676; Lassen Lumber & Box Co. v. Director General, as Agent, 73 I. C. C. 212; West Virginia Pulp & Paper Co. v. Director General, 74 I. C. C. 551; David Kaufman & Sons Co. v. C. R. R. of N. J., 74 I. C. C. 713; Rockford Gas Light & Coke Co. v. A. T. & S. F. Ry., 74 I. C. C. 719; Centennial Mill v. Director General, 77 I. C. C., 91; Magnolia Petroleum Co. v. Director General, as Agent, 74 I. C. C. 133; Sligo Furnace Co. v. C. & N. W. Ry. Co., 74 I. C. C. 463; C., L. S. & S. B. Ry. Co. v. I. C. R. R., 74 I. C. C., 609; Kaufman & Sons Co. v. C. R. R. Co. of N. J., 74 I. C. C. 713; Rockford Gas, Light & Coke Co. v. A., T. & S. F. Ry. Co., 74 I. C. C. 719; J. A. McIntosh v. Director General, 77 I. C. C. 364; Wyoming Sugar Company v. Director General, 77 I. C. C. 470; C. H. Hammond v. Midland Continental R. R., 78 I. C. C. 87; Wisconsin Dairy Products Co. v. Director General, 78 I. C. C. 355; Gulf Production Co. v. Director General, 80 I. C. C. 39; Rudolph & Co. v. Director General, 80 I. C. C. 129; Contennill Mill Co. v. Director General, as Agent, 77 I. C. C. 91; Ozark Cider & Vinegar Co. v. Director General, as Agent, 77 I. C. C. 367; Golding Sons' Co. v. N. Y., N. H. R. R. Co., 77 I. C. C. 379; Winslow & Co. v. Director General, as Agent, 77 I. C. C. 387; Mason v. M., K. & T. Ry. Co., 77 I. C. C. 633; Iola Cement Mills Traffic Asso. v. Director General, as Agent, 77 I. C. C. 745; Electric Point Mining Co. v. Director General, as Agent, 78 I. C. C. 21; Sloss-Sheffield Steel & Iron Co. v. Director General, as Agent, 78 I. C. C. 123; Carnation Milk Products Co. v. Director General, as Agent, 78 I. C. C. 145; California Packing Corp. v. Director General, as Agent, 78 I. C. C. 190, 199; Pfitzenmayer Construction Co. v. Director General, as Agent, 78 I. C. C. 287; Archenhold Automobile Supply Co. v. A. S. R. R. Co., 78 I. C. C. 434; Borden Sales Co. v. Director General as Agent, 78 I. C. C. 462; Murray v. Director General, as Agent, 78 I. C. C. 465; Lissberger & Co. v. P. R. R. Co., 78 I. C. C. 469; Milwaukee Western Fuel Co. v. Director General, as Agent, 78 I. C. C. 597; Pleasant Valley Farms Co.

v. Director General, as Agent, 78 I. C. C. 671; Thorp v. Director General, as Agent, 80 I. C. C. 1; Rocbond Co. v. Director General as Agent, 80 I. C. C. 26; Menasha Printing & Carton Co. v. Director General as Agent, 80 I. C. C. 35; Forbes Timber Co. v. Director General, as Agent, 80 I. C. C. 36; Gulf Production Co. v. Director General, as Agent, 80 I. C. C. 39; American Fibre Packages Co. v. Director General, as Agent, 80 I. C. C. 43; Du Pont de Nemours & Co. v. Director General, as Agent, 80 I. C. C. 46; Armour & Co. v. C., B. & Q. R. R. Co., 80 I. C. C. 49; Lake Charles Naval Stores Co. v. Director General, as Agent, 80 I. C. C. 51; Eureka Flint & Spar Co. v. N. Y., N. H. & H. R. R. Co., 80 I. C. C. 57; Armour & Co. v. Director General, as Agent, 80 I. C. C. 59; American Radiator Co. v. Director General, as Agent, 80 I. C. C. 77; Matthews & Sons v. G., M. & N. R. R. Co., 80 I. C. C. 99. Henderson Lumber Co. v. Director General, as Agent, 80 I. C. C. 83; Morrill-Higgins Co. v. Director General, as Agent, 80 I. C. C. 117; Hercules Powder Co. v. Director General, as Agent, 80 I. C. C. 219; Brown's Tract Lumber Co. v. Director General, as Agent, 80 I. C. C. 111; Armour & Co. v. Director General, as Agent, 80 I. C. C. 108; Marion Machine, Foundry & Supply Co. v. Director General, as Agent, 80 I. C. C. 119; Rudolph Co. v. Director General as Agent, 80 I. C. C. 129; Detroit Coal Exchange v. Director General, as Agent, 80 I. C. C. 258; Kellogg & Sons v. Director General, as Agent, 80 I. C. C. 377; Standard Oil Co. v. Director General, as Agent, 80 I. C. C. 643; Marshall v. P. R. R. Co., 80 I. C. C. 653; Lyons Lumber Co. v. Director General, as Agent, 80 I. C. C. 761; Sprague Tire & Rubber Co. v. Director General, as Agent, 80 I. C. C. 285; Carlton Consolidated Lumber Co. v. Director General, as Agent, 80 I. C. C. 303; Overland Tire & Rubber Co. v. M. P. R. R. Co., 80 I. C. C. 509; Arlington Silver Mining Co., v. Director General, as Agent, 80 I. C. C. 753; Standard Portland Cement Co. v. Director General, as Agent, 81 I. C. C. 357; Wichita Board of Commerce v. Director General, as Agent 81 I. C. C. 423; Hercules Powder Co. v. A. T. & S. F. Ry. Co., 81 I. C. C. 431; Miller v. N. & W. Ry. Co., 81 I. C. C. 588; Aluminum Co. of America v. Director General, as Agent, 81 I. C. C. 599, 600; Taylor Co. v. Director General, as Agent, 81 I. C. C. 663; Tulare Mining Co. v. Director General as Agent, 81 I. C. C. 675; Clay Products Co. v. Director General, as Agent, 83 I. C. C. 193; Barnes Foundry Co. v. Director General, as Agent, 83 I. C. C. 233; United Iron Works v. Director General as Agent, 83 I. C. C. 282; Morgan & Miller v. Director General, as Agent, 83 I. C. C. 287; Du Pont de Nemours & Co. v. Director General, as Agent, 83 I. C. C. 374, 375, 719; Pittman Co. v. Director General, as Agent, 83 I. C. C. 380; Scharff & Co. v. S. Ry. Co., 83 I. C. C. 409; Holly Sugar Corp. v. Director General, as Agent, 83 I. C. C. 488; Texas Chamber of Commerce v. Director General, as Agent, 83 I. C. C. 538; Connecticut Mfrs. Asso. v. Director General, as Agent, 83 I. C. C. 563, 564; Heacock Co. v. C. B. & Q. R. R. Co., 83 I. C. C. 691; Brier Hill Steel Co. v. B. & O. R. R. Co., 83 I. C. C. 709; State Highway Department v. Director General, 87 I. C. C. 678, 679; Arizona Egyptian Cotton Co. v. Director General 88 I. C. C. 263; Grasselli Co. v. B. & O. R. R. 88 I. C. C. 337, 338; Sunderland Bros. Co. v. Director General, 88 I. C. C. 585, 586; Eagle Ottawa Leather Co. v. Director General, 89 I. C. C. 233;

§33. Surplus.

See Advanced Rates §6 (4)

IMPORTANT CASES SINCE 1908

(a) The Commission in fixing rates cannot assume that the surplus accumulated by a railroad has been derived from unreasonable exactions, and establish low rates with a view of returning it to the public. City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 416.

(b) In determining what will be reasonable rates for the future, the Commission may properly consider that under the rates in effect a large surplus has been accumulated in the past, but it should not make rates for the purpose of distributing that surplus to the public. City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 416.

(c) It seems proper that the accumulation of a surplus should be allowed a carrier to provide for the depreciation of way and structures. In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 271.

(d) A railroad in ordinary years should be permitted to show a substantial surplus over and above the payment of a reasonable dividend. This is nec-

essary to provide for interest on capital invested in improvements which will not yield an immediate return, to take care of the element of obsolescence and to tide over years of depression, the amount of this surplus, if estimated in comparison with the dividend of stockholders, must depend upon the relation between stocks and bonds and between value and capitalization. In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 271, 272.

ALL OTHER CITATIONS

In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 270; In Re Advances on Coal to Lake Ports, 22 I. C. C. 604, 625.

§34. Terminal Facilities.
See Terminal Facilities.

IMPORTANT CASES SINCE 1908

(a) Terminal facilities, such as team tracks located on an extensive switching system, are entitled to weight in the consideration of the reasonableness of a rate. Maritime Exchange v. Penn. R. R. Co., 21 I. C. C. 81, 84.

(b) A rate cannot be justified as reasonable on the ground that the carrier maintains an expensive terminal at one of the originating points, if the shipper shows that he provides trackage and terminal facilities in his own plant. Keogh v. M. St. P. & Sault Ste. M. Ry. Co., 26 I. C. C. 73, 77.

(c) Terminal expense is considered in determining the reasonableness of a rate. Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 678.

(d) While the necessity of absorbing terminal charges may affect the earnings of carriers, it does not determine the reasonableness of the rate paid by the shipper. Lumber between Points in Western Trunk Line, Territory, 38 I. C. C. 370, 375.

(e) The Commission has said there is no requirement of law that the rate shall be the same to all points of delivery in the same industrial district, even when the distance is all embraced within the municipal limits of one city instead of comprising two separate municipalities, as the industrial district of St. Louis and East St. Louis does. St. Louis Chamber of Commerce v. B. & O., 57 I. C. C. 639, 647.

ALL OTHER CITATIONS

Rates on Hay from the Northwest, 25 I. C. C. 680, 682.

§35. Time of Changing Rate.
See Season Rates.

IMPORTANT CASES SINCE 1908

(a) The public is entitled to demand within bounds upon the continuance of rates when they are once established. Western Oregon Lumber v. S. P. Co., 14 I. C. C. 61, 72.

(b) Carriers in changing rates, minima, or other rules which affect the transporation charges on a commodity moving only at a particular season, should give consideration to the shipping and selling seasons for that commodity, and arrange for such changes to become effective at a time when they will not seriously disarrange or unfavorably affect the movement or sale of the season's output. Hartville Celery Growers' Ass'n v. Pacific Express Co., 14 I. C. C. 590, 593.

(c) Higher rate on copper during the months when lake navigation is closed than that applied when competition by lake carrying vessels is in force is not in itself unlawful. American Insulated Wire & Cable Co. v. C. & N. W. Ry. Co., 26 I. C. C. 415, 416.

ALL OTHER CITATIONS

Michigan Copper & Brass Co. v. D. S. S. & A. Ry. Co., 25 I. C. C. 357, 359; Powell & England v. G. N. Ry. Co., Unrep. Op. A-37; Hinton Fruit & Produce Co. v. C. & O. Ry. Co., Unrep. Op. A-254.

§36. Ton-mile Revenue.
See Supra §11; Evidence §36 §58.

CASES 1887-1908

(a) The method of testing the freight rates of a railroad by the rate per ton mile cannot be considered a controlling rule in determining the reasonableness of rates. Business Mens Asso. v. Chicago, St. P. M. & O. R. Co., (Com.) 2 I. C. R. 41; Business Mens' Asso. v. Chicago & N. W. R. Co. (Com.) 2 I. C. R. 48.

(b) The rate per ton per mile is not always the measure of a reasonable rate, as that measure, rigidly applied, would make distance alone the gauge for transportation charges; but it affords a valuable basis of comparison for relative rate burdens. Farrar v. Southern R. Co. 11 I. C. C. 640.

IMPORTANT CASES SINCE 1908

(c) The rate per ton-mile rule brings rates down to the narrowest point of scrutiny, and for that purpose is valu-

able; but it excludes consideration of other circumstances and conditions which enter into the making of rates, no matter how compulsory or imperious they may be, and it cannot, therefore be accepted as controlling in determining the reasonableness of rates. Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co., 16 I. C. C. 387, 393.

(d) Per-ton-per-mile comparisons are often helpful in reaching a conclusion in respect to the reasonableness of rates, but to take that as the sole test would be a scrutiny from the narrowest viewpoint, which would deny consideration to many other potent and frequently controlling forces which must be given due weight in a proper determination. Muskogee Traffic Bureau v. A. T. & S. F. Ry. Co., 17 I. C. C. 169, 173.

(e) On no traffic, except it be lumber, are per ton-mile earnings more helpful in the determination of a reasonable rate than on grain. In Re Investigation of Advances in Rates on Grain, 21 I. C. C. 22, 33.

(f) The Commission has often recognized that rates over a two-line haul may properly exceed what would be reasonable rates for same distance and under same conditions over a one-line haul. Maricopa County Commercial Club v. S. P. Co., 22 I. C. C. 429, 431.

(g) It is fallacious to place reliance upon ton-mile earnings as a basis of rate-making. Much profitable freight is carried which yields the lowest rates per ton per mile. In Re Advances on Coal to Lake Ports, 22 I. C. C. 604, 620.

(h) The revenue per ton-mile in itself is not a sufficient basis for a judgment regarding the reasonableness of the rate which yields that revenue. Inquiry must be made regarding the expense incurred in doing the business. Nebraska State Ry. Commission v. C. B. & Q. R. R. Co., 23 I. C. C. 121, 125.

(i) The rate per ton-mile is but one of many influences in rate adjustments; and in the present case its value as a comparison is somewhat impaired. Ashgrove Cement Co. v. A. T. & S. F. Ry. Co. 23 I. C. C. 519, 524.

(j) The Commission has often had occassion to comment upon the limited value of the ton-mile test as a factor to be considered in determining the reasonableness of rates. Its rigidity excludes consideration of every circumstance and condition which surrounds the transportation and the making of rates upon the particular commodity to which the test is applied. Its rigid application would make distance the sole factor of transportation charges. Excelsior from St. Paul, Minn., 36 I. C. C., 349, 363.

(k) Rates per ton-mile, which may be compensatory in one section of the country and under given conditions, are not necessarily compensatory for transportation of similar commodities in other sections of the country by other carriers and under different conditions. National Wood Growers' Asso. v. B. G. R. R. Co., 48 I. C. C. 587, 588.

(l) While entitled to reasonable rates from its nearest source of supply, proof that rates from some of the points from which blanket rates are maintained, which are made to meet competition from nearer points, yield lower ton-mile earnings, is insufficient to establish that the rates for the shorter distances are unreasonable or unduly prejudicial. Traffic Bureau, Sioux Falls Commercial Club v. G. N. Ry., 50 I. C. C. 610, 611, 612.

(m) Ton-mile earnings alone are not controlling in determining reasonableness of rates, as competition between shippers, cities, and railroads may often force and justify departures from a mathematical decrease in ton-mile earnings as the hauls increase. Decker & Sons v. Director General, 59 I. C. C. 67, 69.

ALL OTHER CITATIONS

Bulte Milling Co. v. C. & A. R. R. Co., 15 I. C. C. 351, 362; National Hay Ass'n v. M. C. R. R. Co. 19 I. C. C. 34, 47; Danville Brick Co. v. C. & N. W. Ry. Co., 20 I. C. C. 239, 241; Ford Mfg. Co., v. I. C. R. R. Co., 25 I. C. C. 432; Board of Improvement, Waterworks District No 1, Fort Smith, Ark., v. A. T. & S. F. Ry. Co., 26 I. C. C. 539; Edgar & Son v. L. & N. R. R. Co., 26 I. C. C. 181, 184; Union Tanning Co. v. S. Ry. Co., 26 I. C. C. 159, 164; Rates from Walsenburg Coal Fields, 26 I. C. C. 85, 88; Rates on Newsprint Paper from Sioux Ste. Marie, 26 I. C. C. 13, 18; R. R. Commissioners of Montana v. D. & R. G. R. R. Co., 27 I. C. C. 522, 524; Coke Producers' Assn. of Connellsville v. B. & O. R. R. Co., 27 I. C. C. 125, 132; Brick Rates from Ohio Points to Huntington, W. Va., 28 I. C. C. 292, 295; Lumber Rates from the Southwest to Points North, 29 I. C. C. 1, 8; Emigrant Movables from South Dakota, 29 I. C. C. 40, 41; Maier & Co.

v. S. P. Co., 29 I. C. C. 103, 104, 105; Pacific Creamery Co. v. S. P. Co., 29 I. C. C. 405, 406; Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 429, 434, 436; Crowdus Bros. v. A. T. & S. F. Ry. Co., 29 I. C. C. 449, 452; Pardee Works v. C. R. R. Co. of N. J., 29 I. C. C. 500, 502; Interior Iowa Cities Case, 29 I. C. C. 536, 537; Norman Lumber Co. v. L. & N. R. R. Co., 29 I. C. C. 565, 577; Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C. 583, 591; Fort Scott Industrial Assn. v. St. L. & S. F. R. R. Co., 29 I. C. C. 629, 632; Rates on Flaxseed from Minneapolis to Fredonia, 29 I. C. C. 633, 636; Atlanta Freight Bureau v. N. C. & St. L. Ry. Co., 29 I. C. C. 476, 486; Douglas & Co. v. I. C. R. R. Co., 31 I. C. C. 587, 598; Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C., 272, 275; Pulp & Paper Mfrs. Traffic Asso. v. C. M. & St. P. Ry. Co. 34 I. C. C. 500, 507; Columbia Oil Co. of New York v. C. R. R. of N. J., 38 I. C. C. 725; Bagdad Land & Lumber Co. v. L. & N. R. R., 39 I. C. C. 473; Export Grain Products from Missouri River Points, 40 I. C. C. 195, 197; Portland Traffic & T. Asso. v. O. W. R. R. & N. Co., 45 I. C. C. 410, 411; Chicago Retort & Fire Brick Co. v. W. Ry., 45 I. C. C. 61, 62; Beaumont Chamber of Commerce v. Director General,, 55 I. C. C. 428, 429; State of New York Commission of Highways v. Director General, 55 I. C. C. 619, 622, 623; Lafayette Gravel Co. v. C. & E. I., 62 I. C. C. 729; Oklahoma State Shippers' Asso. v. Director General, as Agent, 62 I. C. C. 433; Beaumont Chamber of Commerce v. Director General, as Agent, 63 I. C. C. 151.

§37. Two-line Haul.

See Evidence §59.

IMPORTANT CASES SINCE 1908

(a) A mileage scale of rates ordinarily yields a much higher rate in proportion for a short haul than for the long one; and when two short hauls are combined it is usually unjust to require the two carriers to accept compensation at the rate per mile applied for the entire long haul. To a degree they are entitled to a higher rate in consideration of the fact that their individual hauls are short. In Re Investigation of Alleged Unreasonable Rate on Meats, 23 I. C. C. 656, 661.

(b) It is just and reasonable to charge a somewhat higher rate for a two-line haul than would be deemed reasonable for a single-line haul of equal distance. Meridian Fertilizer Factory v. A. & S. Ry. Co., 33 I. C. C. 160, 163.

(c) The mere fact that one haul is a two-line haul, as distinguished from another haul, which is a one line haul does not in and of itself justify a higher charge for the two line haul. The reasonableness of a higher charge for a two line haul than for a one line haul is a question of fact rather than a question of law, and depends solely on the facts and circumstances made to appear which show an increased cost or some other fact or circumstances which would warrant a higher charge. Seaboard By-Product Coke Co. v. Director General, 62 I. C. C. 317, 325.

(d) Fact that numerous lines were included in a route of movement is a matter of but slight significance in measuring the reasonableness of rates, where such lines were under Federal control and were being operated as one unified system. Melcroft Coal Co. v. Director General, as Agent, 74 I. C. C. 39, 41, 42.

ALL OTHER CITATIONS

In Re Investigation of Rates on Meats, 22 I. C. C. 160, 165; Maricopa County Club v. S. P. Co., 22 I. C. C. 429, 431; Ontario Iron Ore Co. v. N. Y. C. & H. R. R. Co., 21 I. C. C. 204, 206; Wells-Higman Co. v. St. L. I. M. & S. Ry. Co., 18 I. C. C. 175, 176; Snyder-Malone-Donahue Co. v. C. B. & Q. R. R. Co., 18 I. C. C. 498, 499; Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co., 17 I. C. C. 479, 485; Rates from the Walsenburg Coal Field, 26 I. C. C. 85, 88; Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 26 I. C. C. 638, 649; Davidson Bros. v. L. & N. R. R. R., 25 I. C. C. 103; Stonega Coke & Coal Co. v. L. & N. R. R. Co., 39 I. C. C. 523, 551; Perry & Co. v. A. E. R. R., 44 I. C. C. 755, 756; Southern Veneer Asso. v. A. C. L. R. R. Co., 62 I. C. C. 669; Aetna Explosives Co. (Inc.) v. C. & E. I. R. R. Co. 64 I. C. C. 635; Magarge Bros. v. D. & H. Co., 68 I. C. C. 203; Somers v. N. Y. O. & W. Ry. Co., 78 I. C. C. 243; French Battery & Carbon Co. v. C. & N. W. Ry., 80 I. C. C. 344, 346; Penick & Ford v. Director General, 80 I. C. C. 152, 156.

§38. Value of Commodity.

See Classification §11; Evidence §61.

CASES 1887-1908

(a) The value of the goods, the cost of the service, the degree of risk to the

carrier, among other considerations, have important bearing in the relation of rates on different kinds of traffic as well as the reasonableness of the rate on a specific article. Colorado Fuel & Iron Co. v. S. P. Co., 6 I. C. C. 488, 515.

IMPORTANT CASES SINCE 1908

(b) An element of importance in the fixing of rates is the value of the article shipped, since it affects the value of the service to the shipper. When, however, the carrier has established a reasonable rate on a given commodity, it cannot be required to change that rate to accord with the differing values of said commodity produced by complaining shippers. Hafey v. St. L. & S. F. R. R. Co., 15 I. C. C. 245, 246.

(c) A rate that nearly approaches the value of the shipment is suggestive of error or inadvertence in the adjustment of such. Beekman Lumber Co. v. St. L. I. M. & S. Ry. Co., 15 I. C. C. 274, 275.

(d) The ad valorem principle of rate-making can never be departed from. In Re Advances in Rates—Western Case, 20 I. C. C. 307, 355.

(e) It is a well-established theory of rate-making, and generally approved by the Commission, that raw material should be carried at a lower rate than its finished product, but there are exceptions to it, such as the rate on wheat and flour, which, because of commercial conditions, are ordinarily carried at the same rate. For many years in Official Classification territory petroleum and its products have been given the same rates; although refined oil is more valuable than crude petroleum there are a number of by-products of petroleum which are of small value, and the Commission is not prepared to say in this case that on the whole the practice of charging the same rate on petroleum and its products is improper. National Refining Co. v. C. C. C. & St. L. Ry. Co., 20 I. C. C. 649, 650.

(f) The fact that a commodity is very desirable traffic from a transportation standpoint, loading heavily, and not being liable to loss or damage in transit, can be handled at the convenience of the carrier, and affords a uniform business, and has a very low value at its point of production, are considerations which call for a low rate of transportation. R. R. Com. of Kan. v. A. T. & S. F. Ry. Co., 22 I. C. C. 407, 410.

(g) Nature of commodity is considered in determining the reasonableness of rates. Rates on Common Brick to Canada, 26 I. C. C. 129, 131; Meridian Fertilizer Factory v. T. & P. Ry. Co., 26 I. C. C. 351, 353.

(h) Value is not the sole criterion of the reasonableness of a rate. Berry Coal & Coke Co. v. C. & N. W. Ry., 38 I. C. C. 347, 348.

(i) The determination of the price of a commodity at certain destinations by adding to the price at a certain market certain arbitraries over the rates to given junction points, is a commercial consideration which cannot be regarded as controlling in determining the reasonableness of the proposed rates to such destinations. New England Lumber Rates, 43 I. C. C. 641, 646.

(j) Value is only one of the elements that must be considered. Other elemental tests must be applied of which a comparison of revenue under the rates attacked with revenue derived by defendants from the transportation of other commodities under similar circumstances and conditions is one of considerable importance. Anaconda Copper Mining Co. v. Director General 57 I. C. C. 723, 732.

(k) Value is an essential factor of a reasonable rate but is only one of the elements that must be considered. Other elemental tests must be applied of which a comparison of revenue derived from the transportation of other commodities under similar conditions is one of considerable importance. Anaconda Copper Mining Co. v. Director General, 57 I. C. C. 723, 731, 732.

(ka) Commission has repeatedly condemned rates on raw material higher than on products manufactured therefrom, but that fact does not in and of itself establish unreasonableness of such higher rates. Crown Willamette Paper Co. v. Director General, as Agent, 78 I. C. C. 273, 277.

(l) Value of commodity is only one element to be considered in determining reasonableness of a rate. French Battery & Carbon Co. v. C. & N. W. Ry. Co., 80 I. C. C. 344, 346.

ALL OTHER CITATIONS

William Plummer Co. v. N. P. Ry. Co. 18 I. C. C. 530, 531; Sawyer & Suatin Lumber Co. v. St. L. I. M. & S. Ry. Co., 19 I. C. C. 141; Abeles & Co. v. St. L. S.

W. Ry. Co., Unrep. Op. 326; In the Matter of Released Rates, 13 I. C. C. 550, 564; Cattle Raisers' Ass'n of Tex. v. M. K. & T. Ry. Co., 13 I. C. C. 418, 429; Union Pacific Tea Co. v. Penn. R. R. Co., 14 I. C. C. 545, 546; Darling & Co. v. B. & O. R. R. Co., 15 I. C. C. 79, 81; In Re Reduced Rates on Returned Shipments, 19 I. C. C. 409, 418; National Hay Ass'n v. M. C. R. R. Co. 19 I. C. 34, 47; Auto Vehicle Company v. C. M. & St. P. Ry., Co., 21 I. C. C. 286, 288; Mountain Ice Co., v. L. & W. R. R. Co., 15 I. C. C. 305, 320; James & Abbot Co. v. B. & M. R. R. Co., 17 I. C. C. 273, 274; Commercial Clubs v. O. S. L. R. R. Co., 18 I. C. C. 562, 564; Martime Exchange v. P. R. R. Co., 21 I. C. C. 81, 85; In Re Investigation of Advances in Rates on Grain, 21 I. C. C. 22, 35; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 159; Marian Coal Co. v. D. L. & W. R. R. Co., 24 I. C. C. 140; Bagley & Co. v. P. M. R. R. Co. 25 I. C. C. 698, 699; North Fork Cannel Coal Co. v. A. A. R. R. Co., 25 I. C. C. 241, 243; In re Advances on Flaxseed, 25 I. C. C. 337, 341; Cahill Iron Works v. N. C. & St. L. Ry. 25 I. C. C. 252, 254; In Re Advances on Drain Tile and Sewer Pipe, 25 I. C. C. 688, 693; Bartlesville Salvage Co. v. M. K. & T. Ry. Co., 25 I. C. C. 672, 673, 674; Central Commercial Club v. A. T. & S. F. Ry. Co., 26 I. C. C. 373, 375; Rates on Common Brick to Canada, 26 I. C. C. 129, 131; Sims v. M. & W. R. R. R. Co., 26 I. C. C. 275; Lumber Rates from Memphis and Other Points to New Orleans, 27 I. C. C. 471, 480; Vulcan Iron Works Company v. A. T. & S. F. Ry. Co., 27 I. C. C. 468; Milliken Refining Company v. S. L. & S. F. R. R. Co., 27 I. C. C. 445; Eggerss-O'Flying Co. v. C. G. W. R. R. Co., 27 I. C. C. 280; Coke Producers' Assn. of Connellsville v. B. & O. R. R. C. 27 I. C. C. 125, 147; Boldt Co. v. C. R. I. & P. Ry. Co., 27 I. C. C. 11; Brick Rates from Ohio Points to Huntington, W. Va., 28 I. C. C. 292, 297; Application of Fonthill Gravel Co., Ltd. (Can. Ry. Comm.), File 18265.3; Rates on Lumber from Southern Points, 34 I. C. C. 652, 693; Rates on Lumber from Southern Points, 34 I. C. C. 652, 693; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 35 I. C. C. 460, 464, 465; Tie Co. v. L. & N. R. R. Co., 40 I. C. C. 377, 379; Hydraulic-Press Brick Co. v. P. Co., 40 I. C. C. 669, 672; Silk Asso. of America, 44 I. C. C. 578; Lafayette Gravel Co. v. C. & E. I. R. R. Co., 62 I. C. C. 729, 731; Maltby v. S. V. Ry. Co., 63 I. C. C. 103, 106; American Stockmen's Supplies Asso. v. C. R. I. & P. Ry. Co., 83 I. C. C. 334, 336.

§39. Value of Service.
See Evidence §62.

CASES 1887-1908

(a) Rates should bear a fair and reasonable relation to the antecedent cost of the traffic as delivered to the carrier, and to the commercial value of such traffic. Loud v. South Carolina R. Co. (Conn.) 4 I. C. R. 205.

(b) Rates for the transportation of iron and steel articles from one place to another so great as to prohibit the movement of such articles is unreasonable and unjust, where much lower rates to the latter place from other and far more distant point than the former prevail on such traffic, and the carrier's cost of transportation is much less in the former case than in the latter. Colorado Fuel & I. Co. v. Southern P. Co. 6 I. C. C. 488.

IMPORTANT CASES SINCE 1908

(c) Though by no means the sole consideration, the rate level necessary to move a commodity is an element to be weighed in determining a reasonable rate thereon. Penick & Ford v. Director General 80 I. C. C. 152, 156.

(d) While commission has frequently condemned theory of "what traffic will bear" in rate making, rates based thereon are not unreasonable for that fact alone. Mid-Continent Equip. & Mach. Co. v. M. S. R. R. Co., 83 I. C. C. 393, 398.

ALL OTHER CITATIONS

Beekman Lumber Co. v. St. L. I. M. & S. Ry. Co., 15 I. C. C. 274, 275; Penrod Walnut & Veneer Co. v. C. B. & Q. R. R. Co., 15 I. C. C. 326, 327; Vulcan Detinning Co. v. U. P. R. R. Co., 21 I. C. C. 93; Wilson Produce Co. v. Penn. R. R. Co. 14 I. C. C. 170, 175; Memphis Cotton Oil Co. v. I. C. R. R. Co., 17 I. C. C. 313, 318; National Hay Ass'n v. M. C. R. R. Co., 19 I. C. C. 34, 47; In Re Advances on Coal to Lake Ports, 22 I. C. C. 604, 613; National Refining Co. v. M. K. & T. Ry. Co., 25 I. C. C. 374; Lindsay Bros. v. P. M. R. R. Co., 25 I. C. C. 368, 369; Coke Producers' Assn. of Connellsville v. B. & O. R. R. Co., 27 I. C. C. 125, 132; Rates in Chicago Switching District, 34 I. C. C. 234, 242; Cleveland Salt Co. v. P. Co., 34 I. C. C. 638, 639; Riddle v. N. C. & St. L. Ry., 37 I. C. C. 602, 603; Allegheny Ore & Iron Co. v. C. & O. Ry. Co., 53 I.

C. C. 415, 418; Kickapoo Sand & Gravel Co. v. Director General, 55 I. C. C. 657, 659; Rates on Grain, Grain Products, and Hay, 64 I. C. C. 85, 98; Box Shook from Southeast to Eastern Points, 64 I. C. C. 389, 394; Penick & Ford v. Director General, as Agent, 80 I. C. C. 152, 156.

§39½. Valuation of Carrier.

See Physical Valuation.

IMPORTANT CASES SINCE 1908

(a) In the administration of section 15a it becomes necessary to determine the aggregate value of the railway property defined in that section, and in making this determination the Commission is authorized to utilize the result of its investigation under section 19a, but is required to give to the proper investment account only that consideration which under such law it is entitled to, in establishing values for rate-making purposes. Increased Rates, 1920, 58 I. C. C. 220, 228.

§40. Volume of Traffic.

See Evidence §63.

CASES 1887-1908

(a) A variety of practical considerations must enter into the making of freight rates by a railroad company, and determine to a great extent in every instance the question whether such rates are reasonable or not. Railroad companies cannot be required to make freight rates upon mere theories or conjectures. They have to deal with business as they find it. Where, from the very sparsely settled country through which the defendant railroad company operates its lines, outside of the through business which is furnished to it at Wallula by the Northern Pacific Railway, and by the Oregon short line at Umatilla, one of the chief articles of freight on which it must depend is the transportation of wheat to Portland; where, as compared with other roads transporting wheat which pass through more populous communities, in addition to the through freights furnished by their connections, they have a greater variety of local and way freights, and are not compelled to depend, as is the defendant, so largely upon what they receive for the transportation of any one local commodity, such as wheat, and can for this reason alone safely make their rates less on wheat than the defendant; where the wheat hauled by the defendant is transported in sacks —a more expensive mode of shipping and delivering than that usually adopted by other roads with which it has been compared, which is in car loads of solid wheat received from and delivered to elevators along their lines; where the volume of through freights forming a large proportion of the business of the defendant fluctuates very greatly, influenced by causes beyond the control of a remote carrier like the defendant; where the expense of frequent hauling empty cars to reach wheat before it can be received for carriage back to Portland, largely affects the question of the reasonableness of the rate upon wheat shipped from Walla Walla to Portland, Oregon, where shortly after the petitions were filed the defendant, as it has a right to do under the statute, reduced its rate on wheat from Walla Walla to Portland from $6 per ton to $5 per ton or twenty-five cents per 100 weight, and made since April, 1887, large and general reductions on a fine line of freight; and as rates are to a considerable extent so related to each other in the manner in which they are laid for the revenue of a railroad, that the instances are very frequent, the present being one, where a change of rate upon one important article of commerce involves a consideration of the relative rates on other articles, and where the defendant's lines are phenomenally well situated in their relation to through transportation facilities, and the large field of growing commerce and agriculture, and upon the statement in the answer of the defendant that further reductions on wheat rates are intended to be made by defendant as soon as this can be done, and upon the general course of dealing of defendant, as shown in the proofs, that the rate for the next season on wheat will doubtless be further modified—it is ordered that on and after the 15th day of December, 1887, the defendant must cease to charge more than 23½ cents per 100 pounds, or $4.70 per ton, on wheat transported by it over its lines from Walla Walla, in Washington Territory, to Portland, in the State of Oregon, during the present grain season. Evans v. Ore. Ry. & Navigation Co., 1, I. C. R. 641.

(b) In arriving at what is a just and reasonable rate on freight transported by a carrier on a short local line having but a small volume of business, where the cost of transportation is exceptionally great, arising from steep grades, sparse population, and light

traffic, these are circumstances and conditions of controlling weight in the making of the rates, and can not be overlooked when a question of their reasonableness is involved; and under such circumstances the fact that an independent pipe line from Titusville to Buffalo transports oil between these points at lower rates than the railroad company, constitutes no just reason why the railroad company should be required to reduce its rates to those of the pipe line. Rice, Robinson & Witherop v. Western New York & Pa. R. Co., 2 I. C. R. 298, 301.

(c) On complaint of an unreasonable rate on butter in less than carloads from Lincoln, Kansas, to Denver, Colorado, it appeared that defendant's line between those points runs through a sparsely populated country, furnishing comparatively little business to the carrier, and also that the rate is common to numerous towns of importance at an equal or greater distance from Denver, and is maintained by all the roads extending into that territory; HELD, that the charge complained of is not shown to be unreasonable, nor does the evidence furnish sufficient reason for interfering with a rate established by a number of roads and common to many communities. Lincoln Creamery v. Union Pacific R. Co. 3 I. C. R. 794.

IMPORTANT CASES SINCE 1908

(d) If a rate remains the same and the cost of service continues the same, an increase in tonnage must produce increased revenue. Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co., 19 I. C. C. 218, 223.

(e) Where an article is shipped both in carloads and less-than-carload lots, the carrier must provide a less-than-carload rate, and cannot confine the movement to carloads. Albree v. B. & M. R. R. Co., 22 I. C. C. 303, 320.

(f) The Commission can not say that because tonnage is less than it would be under lower rates, the existing rates are unreasonable. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 46 I. C. C. 558, 563.

(g) The Commission has said in numerous cases that volume of tonnage is an important element in the determination of reasonable rates; but the Commission has repeatedly held that that element is only one of many that must be considered. Southport Mill, Ltd. v. Director General, 55 I. C. C. 154, 162.

(h) While volume of tonnage is an important element in the determination of reasonable rates, it is only one of the many elements to be considered. Car loading, value, earnings, similarity of transportation conditions, and general transportation characteristics of the commodities are other items of importance. Pillsbury Flour Mills Co. v. Director General, as Agent, 64 I. C. C. 81, 84.

(i) While volume of movement is, of course, an important element to be considered in arriving at a reasonable rate, an excessive rate can not be justified merely on account of the fact that movements thereunder are infrequent. The maintenance of a rate that is too high may be one of the causes of which a light movement is the effect. United Verde Extension Mining Co. v. U. V. & P. Ry., 66 I. C. C., 377, 379.

ALL OTHER CITATIONS

Rickards v. A. C. L. R. R. Co., 23 I. C. C. 239; In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 275; National Hay Ass'n v. M. C. R. R. Co., 19 I. C. C. 34, 37; Commercial Club of Omaha v. B. & O. R. R. Co., 19 I. C. C. 397, 402; Hydraulic-Press Brick Co. v. M. & O. R. R. Co., 19 I. C. C. 530, 531; Anaconda Copper Mining Co. v. C. & E. R. R. Co., 19 I. C. C. 592, 596; Virginia-Carolina Chemical Co. v. St. L. I. M. & S. Ry. Co., 18 I. C. C. 1; Hood & Sons v. Del. & Hud. Co., 17 I. C. C. 15, 20; Acme Plaster Co. v. L. S. & M. S. Ry. Co., 17 I. C. C. 30, 38; Bentley & Olmstead Co. v. L. S. & M. S. Ry. Co. 17 I. C. C. 56; Carstens Packing Co. v. O. S. L. R. R. Co., 17 I. C. C. 324, 328; Railroad Commission of Wisconsin v. C. & N. W. Ry. Co., 16 I. C. C. 85, 90; Ozark Fruit Growers Ass'n v. St. L. & S. F. R. R. Co., 16 I. C. C. 134, 139; Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co., 16 I. C. C. 323, 328; Moise Bros. Co. v. C. R. I. & P. Ry. Co., 16 I. C. C. 550, 555; Railroad Commission of Kentucky v. L. & N. R. R. Co., 13 I. C. C. 300, 308; Bureau v. Transcontinental Freight Bureau, 13 I. C. C. 668, 675; Boldt Co. v. C. R. I. & P. Ry. Co., 27 I. C. C. 11, 13; Dixie Dairymens' Asso. v. Y. & M. V. R. R. Co., 27 I. C. C. 618, 621; Union Tanning Co. v. S. Ry. Co., 26 I. C. C. 159, 164; Capital Electric Co. v. B. & O. C. T. R. R. Co., 26 I. C. C. 472, 474; In re Advances on Flaxseed, 25 I. C. C. 337, 341; Michigan

Copper & Brass Co. v. D. S. S. & A. Ry. Co., 25 I. C. C. 357, 363; Western Classification Case, 25 I. C. C. 442, 472; Commercial Club of Terre Haute v. V. R. R. Co., 29 I. C. C. 383, 389; Youngstown, Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 431; Kansas-California Flour Rates, 29 I. C. C. 459, 461; Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C. 593, 598; Woodward-Bennett Co. v. S. P. L. A. & S. L. R. R. Co., 29 I. C. C. 664, 665; Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 515; Am. Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 466; Commercial Club of Sioux Falls v. Pullman Co., 31 I. C. C. 654, 659; Nebraska State Ry. Comm. v. C. V. Ry. Co. 32 I. C. C., 41, 46; Utah-Idaho Millers and Grain Dealers Assn. v. D. & R. G. R. R. 44 I. C. C. 714, 723; Buffalo Grain Cases, 46 I. C. C. 570, 580; Kurth Malting Co. v. Director General 63 I. C. C. 446, 447.

§40½. Wages.

See Blanket Rates §4; Evidence §64½.

IMPORTANT CASES SINCE 1908

(a) From the point of view of public policy and humanity, considerations such as the profits of the operators and the carriers, the wages and standard of living of the miners and the railway employees should not be ignored in the fixing of rates on coal. Boileau v. P. & L. E. R. R. Co., 22 I. C. C. 640, 647.

§41. Weight.

See Evidence §65.

IMPORTANT CASES SINCE 1908

(a) The cost of the movement to the carrier depends upon the weight loaded into the car. The weight of the car must be hauled whether the contents weigh much or little. The expense of transporting a car containing 20,000 lbs. is not much greater than the expense of carrying the same car if it contains but 10,000 lbs. Montague & Co. v. A. T. & S. F. Ry. Co., 17 I. C. C. 72, 74.

(b) The minimum carload weight is a factor in the carload rate, and in contention with the rate per 100 lbs., determines the carload earnings. Any reduction in the minimum weight without an increase in the rate per 100 lbs. would therefore reduce the carload earnings of the carrier, and would be equivalent to a reduction in the rate itself. Georgia Fruit Exchange v. S. Ry. Co., 20 I. C. C. 623, 630.

(c) The total disregard of weight existing under the mileage basis of making rates is here manifestly unfair to the carrier and discriminatory as between shippers. The cost of transportation is likely to vary with some degree of directness with the weight of the object to be transported, and in so far as cost is a factor in rate making, weight must likewise be a factor. This disregard of weight existing under the mileage basis was and is fundamentally wrong and should be corrected. In Re Advances on Locomotives and Tenders, 21 I. C. C. 103, 105.

(d) Weight and distance are two universally recognized fundamental factors in rate making. In Re Advances in Rates on Locomotives and Tenders, 21 I. C. C. 103, 109.

(e) In passing upon the propriety of expressing the rates in terms of net tons instead of long tons the convenience neither of carrier nor shipper is to predominate. The net ton basis is plain and unambiguous, and being perhaps more readily applied than the long ton basis and very generally observed, can not be disapproved as in violation of section 1 of the Act. Virginia Iron, Coal & Coke Co. v. Director General, 53 I. C. C. 583, 588.

(f) Proposal to fix a rate on crude gas, and fuel oils, not to exceed 89 per cent of the rate on refined oils, HELD, plan gives emphasis to element of weight, and in determining the proper relationship of the rates, relative values and the nature of the commodities should also be taken into consideration. Pure Oil Co. v. Director General, 56 I. C. C. 218, 222.

ALL OTHER CITATIONS

In Re Advances on Locomotives and Tenders, 21 I. C. C. 103, 111.

REBATES

See Allowances VII; Common Carriers; Crimes VI; Evidence §48.

REBILLING

See Facilities and Privileges §15; Reshipping; Through Routes and Joint Rates §22.

RECEIVERS

CASES 1887-1908

(a) Charges by receiver of railroad in relation to interstate commerce business must be reasonable and just; and there can be no discrimination as to rates, charges or facilities for or against two

connecting steamship lines. Re Mallory (U. S. Ct. Fla.) 1 I. C. R. 294.

(b) Under the Interstate Commerce Act all charges made by the receiver of a railroad, in respect to such business as falls under the head of interstate commerce, for any services in the transportation of passengers or property, or for receiving, delivering, storing or handling property, must be reasonable and just; and such receiver may not discriminate in his rates, charges and facilities for or against either of two connecting steamship lines, but should give to both equal rates and facilities for trade and travel, for equal service, from all points. Re Petition of C. H. Mallory & Co. v. 1 I. C. R. 294.

(c) It cannot be assumed that a receiver operating a railroad had no power to make a contract for rebate to a shipper, where his lack of authority is not shown. Bayles v. Kansas P. R. Co. (Colo) 2 I. C. R. 643.

(d) A receiver is neither a necessary, nor a proper, party to any action, after his discharge, to reform a contract made with him as receiver. Bayles v. Kansas Pacific R. Co., 2 I. C. R. 643.

(e) The authority of a receiver of a railroad company, who is operating the road, to make a contract granting special transportation rates, will be presumed until the contrary is shown. Bayles v. Kansas Pacific R. Co., 2 I. C. R. 643.

(f) The receiver of a railroad company is not, after his discharge, either a proper or necessary party defendant to an action for a rebate of freight under a contract made by him. Bayles v. Kansas P. R. Co. (Colo.) 2 I. C. R. 643.

(g) The fact of a receivership for a defendant carrier subsequent to complaint should not interfere with the progress of a proceeding brought merely for the purpose of railway regulation. Trammell v. Clyde Steamship Co., 4 I. C. C. 120, 123.

(h) The question, whether property of a carrier in the hands of a receiver appointed after the matters complained of before this Commission are alleged to have occurred, is subject to an order of reparation issued by the Commission, is one to be presented to and disposed of by the courts on proceedings therein for the enforcement of such order. Loud, v. South Carolina R. Co., 4 I. C. C. 205, 206.

(i) The fact, that the property and affairs of a carrier have been placed by a United States court in the hands of a receiver, does not affect the jurisdiction of this Commission under a complaint charging such carrier with violations of the Act to Regulate Commerce. Board of Trade v. Alabama Midland R. Co. 4 I. C. R. 348.

(j) Instructions to a receiver of defendant under the Interstate Commerce Act, upon petition and answer in respect to discrimination. Cutting v. Florida R. & Nav. Co., 4 I. C. R. 424.

(k) Advice and instructions to receivers on application to the court, where ex parte are probably binding only upon the receivers; but where there are parties in interest, and they have their day in court, the advice may be decisive. Missouri Pac. R. Co., v. Texas & P. R. Co., 4. I. C. R. 434.

(l) The recommendation of the majority of the receivers of a railroad will not be accepted by the court as conclusive upon the questions of wage schedules, when such majority is not composed of practical railroad men. Ames v. Union Pacific Co., 4 I. C. R. 619.

(m) When a court of equity undertakes, through a receiver, the conduct and operation of a railroad, the men engaged in conducting the business and operating the road become the employees of the court, and are subject to its orders in all matters relating to the discharge of their duties and entitled to its protection. Ames v. Union Pacific Co., 4 I. C. R. 619.

(n) When the schedule of wages in force at the time a court assumes the management of a railroad is the result of mutual agreement between the company and its employes which has been in force for years, the court will presume the schedule to be reasonable and just and any one disputing that presumption must overthrow it by satisfactory proof. Ames v. Union Pacfiic Co., 4 I. C. R. 619.

(o) When a court of equity undertakes, through a receiver, the conduct and operation of a railroad, the men engaged in conducting the business and operating the road become the employes of the court, and are subject to its orders in all matters relating to the discharge of their duties, and entitled to its protection. Ames v. Union P. R. Co., (C. C. D. Neb.), 4 I. C. R. 619.

(p) An injunction will not be granted to prevent the employes of a railroad in the hands of a receiver from interfering with the property or other employes, since such an action is punishable as a contempt. Ames v. Union P. R. Co., (C. C. D. Neb.), 4 I. C. R. 619.

(q) It is a contempt of court to interfere with property in the hands of a receiver, or with men in their employ. Ames v. Union Pacific Co., 4 I. C. R. 619.

(r) Injunction is a proper remedy to restrain threatened acts of employes of a railroad receiver, which would inflict loss upon the property, and seriously prejudice the interests of the public involved in the regular continuous operation of the road. Arthur v. Oakes (C. C. App. 7th C.), 4 I. C. R. 744.

(s) Equity will enjoin any combination or conspiracy among the employes of the receiver of a railroad, which has for its object and intent the physical injury of the property in the receiver's possession, or actual intereference with the regular, continuous operation by him of the railroad. Arthur v. Oakes, (C. C. App. 7th C.), 4 I. C. R. 744.

(t) Employes of a receiver of a railroad may be enjoined from disabling rolling stock or other property in the receiver's possession, from interfering with its possessions or obstructing its management, and from using force, intimidation, threats, or other wrongful methods against the receiver, his agents or employes, or persons seeking employment. Arthur v. Oakes, (C. C. App. 7th C.), 4 I. C. R. 744.

(u) Employes of the receiver of a railroad may be enjoined from combining and conspiring to quit his service, with the object and intent of crippling the property in his custody or embarrasing the operation of the railroad. Arthur v. Oakes (C. C. App. 7th C.), 4 I. C. R. 744.

(v) Inciting the employes of a road in charge of a receiver to quit their service, in pursuance of the plans of an unlawful conspiracy, constitutes a contempt of court. Thomas v. Cincinnati, N. O. & T. P. R. R. Co., 4 I. C. R. 788.

(w) Instigating the employes to leave their employment may be a contempt without being a crime. Thomas v. Cincinnati, N. O. & T. P. R. R. Co., 4 I. C. R. 788.

(x) Any wilful attempt with knowledge that a railroad is in the hands of a court through its receiver, to prevent or impede the latter from complying with the order of the court in running the road which, as between private individuals, would give a right of action for damages, is a contempt of court. Thomas v. Cincinnati, N. O. & T. P. R. R. Co., 4 I. C. R. 788.

(y) Where the property of a railway or other corporation is being administered by a receiver, under the superintending power of a court of equity, it is competent for the court to adjust difficulties between the receiver and his employes, which, in the absence of such adjustment, would tend to injure the property and to defeat the purpose of the receivership. Waterhouse v. Comer (C. C. S. D. Ga.), 5 I. C. R. 564.

(z) It is in the power of the court, in the interest of public order and for the protection of property under its control to direct a suitable arrangement with employes or officers of a railroad in the hands of a receiver, to provide compensation and conditions of their employment and to avoid, if possible, an interruption of their labor and duty which will be disastrous to the trust and injurious to the public. Waterhouse v. Comer (C. C. S. D. Ga.), 5 I. C. R. 564.

(aa) The receivers of a railroad company located in another state may be sued in the courts of New York, where leave is granted by the court appointing them. Carrey v. Spencer (N. Y. Sup. Ct.), 5 I. C. R. 636.

(bb) The fact that the property and affairs of a carrier have been placed by a United States court in the hands of a receiver does not affect the jurisdiction of the Interstate Commerce Commission under a complaint charging such carrier with violations of the Act to Regulate Commerce. Troy Bd. of Trade v. Alabama M. R. Co., 6. I. C. C. 1.

(cc) Receivers of railroad companies are common carriers subject to the prohibition and requirements of, and to regulations under, the Act to Regulate Commerce. Independent Ref. Asso. v. Western N. Y. & P. R. Co., 6 I. C. C. 378.

(dd) Prior leave of a court which has appointed the receiver of a railroad company is not necessary to entitle a ship-

per to complain against such receiver in a proceeding before the Commission, nor is such leave necessary to give the Commission jurisdiction in such a proceeding. Evans v. U. P. R. Co., 6 I. C. C. 520, 527.

(ee) A railroad company purchasing from the purchaser at a foreclosure sale of a railroad is not liable where the purchaser itself is not liable in proceedings to enforce a finding of the Interstate Commerce Commission against the receiver of the original company, by virtue of the provision of the terms of sale that the purchaser will pay all claims made against the receiver, and all obligations contracted and incurred by him prior to the delivery and possession of the property. Behlmer v. Louisville & Nashville Ry. Co., et al., 7 I. C. C. App XII.

(ff) The refusal of the receiver of a railroad company to comply with an order of the Interstate Commerce Commission two months after the conveyance of the property on foreclosure, and fully a month after the purchaser is in exclusive possession in his own right, cannot bind the purchaser. Behlmer v. Louisville & Nashville Ry. Co., et al., 7. I. C. C. App. XII.

(gg) A receiver appointed for a railroad after it has entered into a joint traffic arrangement is not a party to the joint traffic within the meaning of the statute making it unlawful to charge more for transportation than the published rates, if he has not adopted, ratified, or recognized such tariff. U. S. v. De Coursey, 7 I. C. C. App. LVIII.

IMPORTANT CASES SINCE 1908

(hh) Road was operated by receiver, under authority from court to establish and collect compensatory rates, when road passed into Federal control. Receiver was continued as agent of director general for a time, and increased charges inaugurated prior to Federal control were collected. HELD, charges collected during Federal control not legalized by court order. Road was not under control of court after noon of December 28, 1917, but by proclamation of the President, was placed under control of the Director General. Terre Haute, Indianapolis & E. T. Co. v. Director General, as Agent, 77 I. C. C. 658, 659, 661.

(ii) Reparation awarded to corporation appearing by its receivers. American Lumber & Mfg. Co. v. G. R. R., 80 I. C. C. 759.

(jj) To entitle an unsecured creditor to priority of payment over the claims of bondholders or other prior recorded liens from the property of a railroad company administered in equity, it is indispensable that his claim should be for current expenses of ordinary operation, incurred in the ordinary course of business within six months before the impounding of the property. North American Co. v. St. Louis & S. F. R. Co., 288 Fed. 612.

(kk) In the administration of the property of an insolvent railroad company, it is the customary practice of a court of equity to make an order requiring all persons claiming a right to participate in the prosperity to file their claims by a stated date, and barring claims not so filed from participating in the property being administered, and such orders are necessary, lawful, and effective. North American Co. v. St. Louis & S. F. R. Co., 288 Fed. 612.

(ll) Where the property of a railroad company is in process of administration by a court of equity, in consolidated suits by general creditors and mortgagees, claims of shippers against the company for overcharges, which have been liquidated by an order or reparation made by the Interstate Commerce Commission ,are proper claims for filing and allowance by the court of administration. North American Co. v. St. Louis & S. F. R. Co., 288 Fed. 612.

(mm) A contract made by a railroad receiver's chief operating officer, whose duties were substantially those of a railroad company's general manager, for the transportation of chats to be used in ballasting a line of railway to be leased to the receiver for the cost of transportation in work trains, was binding on the receiver, though not approved by him personally. Oklahoma Belt R. Co. v. Schaff, 282 Fed. 128.

ALL OTHER CITATIONS

Beaumont S. L. & W. Ry. v. Milby, (Tex., 1918), 204 S. W. 444.

RECIPROCAL DEMURRAGE

See Demurrage §8.

RECIPROCAL SWITCHING

See Demurrage §18; Switch Tracks and Switching §6; §7½.

RECONSIGNMENT

I. LEGALITY.
§1. Right to grant privilege.
II. DISCRIMINATION.
§2. In general.
III. REASONABLENESS OF CHARGES.
§3. In general.
§3½. Duty of carrier to afford.
IV. TARIFFS AND PUBLICATION.
§4. Necessity of publishing.
§4½. Embargoed destination.
§5. Construction in general.
§5½. Notice.
§6. Retroactive application.
§6¼. Road haul rates applicable
§6½. Rules and regulations.
V. PROCEDURE AND REPARATION
§7. In general.
§8. Parties to complaint.
§9. Jurisdiction of Commission.
§10. Damages and reparation.

CROSS REFERENCES

See Demurrage §5¾; Embargoes; Express Companies §33; Routing and Misrouting §5¾; Through Routes and Joint Rates §19.

I. LEGALITY.

See Legality of Rates.

§1. Right to Grant Privilege.

IMPORTANT CASES SINCE 1908

(a) A carrier can limit the number of free reconsignments permitted on any car. Cresent Coal & Mining Co. v. B. & O. R. R. Co., 20 I. C. C. 559, 570.

(b) The reconsignment privilege has grown up in response to changes that have taken place in commercial adjustments in comparatively recent years. Formerly the large distributive centers of the country were the depots in which supplies were stored by jobbers preparatory to being shipped out in smaller lots through the adjacent territory. As, with the spread of population, this adjacent territory has developed smaller distributive centers of its own, and as the transportation facilities have reached more and more intimately over its area, shipments from the factory have come more directly to the consumer. In many lines the jobber of the city has become largely a broker who directs distribution without directly handling the goods distributed. In a sense, this distributive development in analogous to the earlier transportation development that came with the consolidation into railway systems and the establishment of through routes in place of the separate operation of local lines. In both cases an economic saving is secured through the elimination of unnecessary handlings of commodities. The through route has justified itself in experience, and has become firmly fixed as an essential function of the transportation system. Whether reconsignment shall ultimately win such recognition is for the future to prove; at present it is on probation and is generally regarded with limited favor save by those who profit from its extension. Detroit Traffic Ass'n v. L. S. & M. S. Ry. Co., 21 I. C. C. 257, 258.

(c) The primary economic advantage of reconsignment is found in the increase in the fluidity and regularity of the movement of commodities; there is an important elimination of economic waste in the reduction of the handling of goods between the producer and the consumer, celerity of movement is increased, the direction of commodities to the point of most active demand is facilitated. In other words, reconsignment increases the efficiency of transportation facilities in performing their most important function of bringing together supply and demand. The shipper of perishable products is enabled to divert his shipment from a market already overstocked, thus often converting a prospective loss into a gain; he is enabled to take advantage of his latest possible information as to market conditions. Similar advantages are seen in the movement of lumber and grain and other commodities of universal necessity. Detroit Traffic Ass'n v. L. S. & M. S. Ry. Co., 21 I. C. C. 257, 259.

(d) Reconsignment is allowed under the tariffs of the several carriers in two distinct classes of cases. A shipment while in transit to a given point may be diverted to another market, provided the order is received before the car has passed the proper junction point. A modification of this privilege is seen where the final destination of a shipment is not announced by the shipper until the car has arrived at a designated junction. Reconsignment in transit is usually allowed by the carrier without any additional charge being made. Reconsignment at terminal on the other hand usually involves a special charge. In most cases cars for reconsignment are so designated at the time of shipment, and upon arrival at the original destination, they are placed on storage or

"hold" tracks awaiting the reconsignment order. When the terminal tracks are congested, the carrier often, as a matter of convenience, holds them at some point short of destination, and provided this involves no disadvantage to the consignee, such holding is constructively equivalent to holding at destination. Detroit Traffic Ass'n v. L. S. & M. S. Ry. Co., 21 I. C. C. 257, 259.

(e) It is the privilege of reconsignment that enables the jobber of coal to anticipate the orders of his customers, and to direct the flow of traffic to the points where it will do the most good. Were this privilege withdrawn, he would be obliged either to place his orders with the mines after instead of before receipt of orders from his customers, or to provide storage facilities at the points where such facilities are necessarily most expensive. The added expense of such service would be reflected in the price he would be compelled to make to his customer. Were the privilege of reconsignment withdrawn, it would probably mean the elimination or at least the minimizing of the broker as a factor in economic distribution. The expense of storage in a large city would be so much greater than the cost of storage at the point of consumption that the small dealer in the isolated community and the manufacturer would be compelled to draw their supplies direct from the mine. The greater the distance from which supplies are drawn, the greater the uncertainty as to the time of delivery. The proper use of reconsignment has the effect of substituting nearby supplies for the distant supplies at the mines. Were Detroit eliminated as a distributive factor, the coal purchasers in Michigan would be obliged to order their supplies five or six weeks earlier, which in many cases would be a material hardship. Manufacturing development has been very active throughout the state of Michigan, and any such disturbance of the fuel supply would be a serious blow to those interests. Detroit Traffic Ass'n v. L. S. & M. S. Ry. Co., 21 I. C. C. 257, 260.

(f) The dealer in a small community, who handles but a limited number of cars of coal each year, usually has a small capital, and is unprepared to tie up any part of that capital in holding coal to insure meeting a prospective demand. It is to his interest to postpone such investment to the last possible moment. The irregularity of seasonal changes, the uncertainty of transportation on account of weather conditions, the congestion of orders at the mines and of demands upon the carriers at the season of active demand, the vastly increased distance from which supplies must be drawn—all of these are factors working to extend the time during which coal must be held by the dealer if he is to be denied the privilege of reconsignment. To the consumer, who is, after all, the person most vitally interested, reconsignment means not merely regularity and timeliness of supply, but economy in securing that supply. Whatever increased expense in handling coal the dealer is put to, whatever additional cost is imposed upon the broker who supplies his dealer, is transferred to the consumers' shoulders, with some slight additions in the way of insurance and interest for the use of capital. Nor is the practice without its advantages to the carrier in the increased regularity of movement, in the greater efficiency in direction of supply, both in quantity and in kind, in the opportunity to relieve congestion at terminals by holding at points short of the terminal, and in the economy of handling that results in the consolidation of shipments to the distributing point, which usually means over by far the greater part of the haul. Detroit Traffic Ass'n v. L. S. & M. S. Ry. Co., 21 I. C. C. 257, 260.

(g) It may therefore be considered as a settled principle that within reasonable limits reconsigning privileges are necessary and proper. In re Advances in Demurrage, 25 I. C. C. 314, 316.

(h) If the destination of a shipment is changed before arrival at the original billed destination it constitutes a diversion, but if made after arrival at such destination it is a reconsignment. C. G. Justice Co. v. Penn R. R. Co., 26 I. C. 478, 479.

(i) Where the contents of the car remain unchanged, where the change of destination or route does not involve an out-of-line haul, and request is made in reasonable time, consignment and diversion on the basis of the through rate from point of origin to new destinations, with a fair charge for the extra services performed and reasonable practices, and the denial thereof is unreasonable and unlawful. Central Commercial

C. v. L. & N. R. R. Co., 27 I. C. C. 114, 116.

(j) But there is no right inherent with the shipper to demand that any transfer resulting from the reconsignment at his request of freight originally consigned and billed to a given destination, shall be performed by the carrier, either at its own expense or otherwise; nor is there any provision of law under which a carrier may be compelled to possess itself of special equipment in such amount that a considerable portion of it would remain idle for six months in the year. C. & N. W. Ry., Reconsignment Rules, 29 I. C. C. 620, 624.

(k) Reconsignment, although often referred to as a privilege, is primarily a service in connection with the transportation of property. An accurate conception of what is meant by the term is afforded by Conference Ruling No. 72 (c), which states that "without specific qualification the term reconsignment includes changes in destination, routing, or consignee." Diversion is the same as reconsigning except that the destination is changed prior to the arrival of the shipment at the original billed destination. The service differs in no material respect whether a specific through rate or a combination rate is applied. The total charges payable by the shipper may or may not be affected by the reconsignment. Whether the charges are increased is determined by the manner in which the rates are adjusted and whether the carrier provides in its tariffs for a diversion or reconsignment charge in addition to the rate. Doran & Co. v. N. C. & St. L. Ry, 33 I. C. C. 523, 527.

(l) In no case has the Commission condemned reconsignment as a service. The abuse and not the reasonable use of the practice has been the subject of criticism. If granted, subject to such restrictions as may be necessary to prevent the abuses to which the practice is susceptible, and conditioned upon the payment of a reasonable charge for the additional labor, cost, and liability which the service imposes upon the carriers, there appear to be no substantial reasons for apprehension that a modification of the present rules of the carriers to the extent of permitting reconsignment on basis of the through rate will be attended with injurious results. Reconsignment prevails throughout the greater portion of the United States, and although many carriers have failed to confine the practice within proper bounds, or to make a charge for the service, it has not produced the disastrous effects which some professed to believe would follow the adoption of a more liberal policy in this regard. These facts tend to strengthen the conclusion that reconsignment within reasonable limits is of benefit to the public and not without its advantages to the carriers. The specific objections that reconsignment tends to congestion of trackage facilities and excessive detention of cars at reconsignment points have been considered in other cases. It is only necessary to repeat that these evils may be obviated and that the advantages of reconsignment should not be thrown away in order to avoid abuses which may be controlled by remedies more appropriate to the end sought to be attained. Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C. 523, 528.

(m) The Commission has held that a tariff rule limiting shipments to one reconsignment at the through rate is not unreasonable. Texas State Highway Department v. Director General, 69 I. C. C. 252, 253.

ALL OTHER CITATIONS

Bayou City Rice Mills v. Texas & New Orleans R. R. Co., 18 I. C. C. 490, 491; Kalmbach-Ford Co., Ltd., v. K. C. S. Ry. Co., 26 I. C. C. 289, 290; Weyl-Zuckerman & Co. v. C. M. Ry. Co., 27 I. C. 493, 495; Reconsignment and Storage of Lumber and Shingles, 27 I. C. C. 451, 455; Commercial Club of Omaha v. A. & S. R. Ry. Co., 27 I. C. C. 302, 320; C. & N. W. Ry. Reconsignment Rules, 29 I. C. C. 620, 623; Charles Becker v. P. M. R. R. Co., 28 I. C. C. 645, 651, 654, 655; Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C. 523, 527, 528, 529 531; Stopping Cars in Transit to Complete Loading, 36 I. C. C. 130, 135; Strobel Co. v. I. C. R. R., 38 I. C. C. 707, 708; Commercial Exchange of Philadelphia v. N. Y. C. & H. R. R. R. Co., 38 I. C. C. 551, 555, 557, 559; Red Cedar Shingle Mfrs. Asso. v. C., B. & Q. R. R. Co., 41 I. C. C. 422, 424; Concentrated Cotton Routing, 44 I. C. C. 663, 665; Callaway Fuel Co. v. C. M. & St. P. Ry., 51 I. C. C. 227; Wood v. N. Y. P. & N., 53 I. C. C. 183, 185; Reconsignment Case, No. 3, 53 I. C. C. 455, 468; Hines Lumber Co. v. Director General,

58 I. C. C. 365, 582; Northern Brokerage Co. v. Director General, as Agent, 60 I. C. C. 182, 183.

II. DISCRIMINATION

See Discrimination.

§2. In General.

CASES 1887-1908

(a) Although shippers cannot compel carriers to stop a commodity in transit for treatment or reconsignment, the carriers in granting such a privilege must not discriminate. St. Louis Hay & Grain Co. v. Mobile & O. R. Co., 11 I. C. C. 90.

(b) The services of defendants in handling reconsigned hay at and from East St. Louis is more expensive as a general rule, if not invariably, than the service performed in case of shipments through East St. Louis, while the privilege of reconsigning hay from that point at a charge less than the established local rate is of substantial value to dealers in that city. HELD, 1. The fact that through rates are less than the sum of in and out rates is not of itself a valid ground for objection, nor is it unlawful for defendants to maintain reconsignment rates which are higher in some cases than their proportions of through rates. 2. The fact that the reconsignment rate is sometimes the same as the proportion of the through rate does not warrant an inference of illegal conduct or support a charge of unjust discrimination. St. Louis Hay & Grain Co. v. Illinois Co. et al, 11 I. C. C. 486.

(c) The fact that the reconsignment rate is sometimes the same as the proportion of the through rate does not warrant an inference of illegal conduct, or support a charge of unjust discrimination. St. Louis Hay & Grain Co. v. Illinois Cent. R. Co., 11 I. C. C. 486.

(d) On complaint that defendants reconsigning charges of $2 per car on grain shipped to Kansas City, and from Kansas City to other markets, is unreasonable and unjust, as compared with reconsigning practices at St. Louis, Minneapolis, and Chicago, it appeared that the cars are held by the carriers bringing grain into Kansas City on their "hold tracks" for inspection, sale, and reconsignment order, with forty-eight hours free time before demurrage accrues; that this involves additional service, labor and expense to the carriers and is a valuable privilege to Kansas City dealers, involving also withholding cars from other shipments for the time so detained; that this charge is absorbed by the carrier when reconsigned over its own line, and by other carriers when reconsigned over their lines, when the destination is a competitive point with another line from Kansas City, except by the defendant, the Chicago, Rock Island & Pacific Railway Company, which makes no distinction as between competitive and noncompetitive destinations; that when the grain is milled or consumed in Kansas City the billing is used by shippers to claim absorption of the charge on some other car that does go forward from Kansas City; that any reconsignment charge not absorbed by the carrier is charged back, by the Kansas City dealer, against the country shipper of the grain; that some roads do make a reconsignment charge at St. Louis and Chicago, and that at Minneapolis a charge of $2 per car, called a "running through charge," is assessed when a car is set at an elevator or a mill and is ordered to another destination without being unloaded. Upon the whole record, HELD, that the reconsignment privilege is apparently wholly in the interest of the grain dealers and of Kansas City as a market, and that the reconsignment charge of $2 per car as applied by defendants is not excessive, unjust or discriminatory. Board of Trade, Kansas City, Mo. v. C. B. & Q. Ry. Co., 12 I. C. C. 173.

IMPORTANT CASES SINCE 1908

(e) Granting a free reconsignment privilege to competitors at another station may constitute undue prejudice. American Hay Co. v. L. V. R. R. Co., 21 I. C. C. 166, 169.

(f) A reconsignment privilege whereby the application of the joint rate is secured is not one to be demanded by the public as a matter of right, but is a concession voluntarily granted by the carriers, but its application must be uniform. Dietz Lumber Co. v. A., T. & S. F. Ry. Co., 22 I. C. C. 75, 76.

(g) So long as the handling of order-notify shipments held for surrender of the bill of lading or of shipments placed for inspection is, to all practical intents and purposes, identical with that of other shipments held and reconsigned within switching limits before placement, dis-

similarity of service can not be invoked to justify the application of different rules and charges. Diversion and Reconsignment Rules, 61 I. C. C. 385, 390.

(h) To accord to order-notify shippers a free transportation service that is not required by most others and that is so nearly akin to reconsignment, for which latter service a charge is made, would be an undue preference to that particular class of shippers and traffic. Diversion and Reconsignment Rules, 61 I. C. C. 385, 391.

(i) Negligence can not be imputed to carrier's agent for failure to divert a shipment before arrival at originally billed destination where only information shown in reconsignment order was car number and initial and that car was in transit to shipper at original destination. Shipper failed to give point of origin, route of movement, commodity, or other information, and made no request to protect the through rate. Facts sufficient to justify agent in holding the order until arrival of the car and executing the instructions of the shipper at that time. Reeves Coal & Dock Co. v. Director General, as Agent, 66 I. C. C. 469.

ALL OTHER CITATIONS

Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co., 16 I. C. C. 558; Colorado Coal Traffic Ass'n v. C. & S. Ry. Co., 19 I. C. C. 478; Cedar Hill Coal & Coke Co. v. Colo. & So. Ry. Co., 16 I. C. C. 387, 393; Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co., 17 I. C. C. 479, 487; Sinclair & Co. v. C. M. & St. P. Ry. Co., 21 I. C. C. 490, 502; Reconsignment and Storage of Lumber and Shingles, 27 I. C. C. 451; Charles Becker v. P. M. R. R. Co., 28 I. C. C. 645, 653, 655 Berthold & Jennings Lumber Co. v. M. & O. R. R. Co., Unrep. Op. A140; C. & N. W. Ry. Reconsignment Rules, 29 I. C. C. 620, 623; Southern Lumber Co. v. L. R. & N. Co., Unrep. Op. A-566; Campbell Coal Co. v. L. & N. R. R. Co., Unrep. Op. A-604; Less Carload Freight Reconsignment Privileges, 434, 32 I. C. C. 85; Cranston Lumber Co. v. N. S. R. R. Co., Unrep. Op. A-779; Alliance Alfalfa Hay Co. v. S. Ry. Co., Unrep. Op. A-837; Colonial Salt Co. v. P. Co., Unrep. Op. 2075; Fort Worth Elevators Co. v. A., T. & S. F. Ry. Co., Unrep. Op. 2235; Lehigh Valley R. Co. v. American Hay Co., 219 Fed. 539, 541; Commercial Exchange of Philadelphia v. N. Y. C. & H. R. R. R. Co., 38 I. C. C. 551, 559; Clonger v. C. M. & St. P. Ry. Co., 42 I. C. C. 250, 252; Atwood & Co., v. C. B. & Q. R. R. Co., 42 I. C. C. 385, 387; Minneapolis Traffic Asso. v. C. M. & St. P. Ry. 46 I. C. C. 685, 689; New York Lighterage Case, 47 I C. C. 643, 726, 728; National Wholesale Lumber Dealers' Asso. v. S. Ry., 50 I. C. C. 405; Pittsburgh Grain & Hay Exchange v. Director General, as Agent, 62 I. C. C. 506; Reeves Coal & Coke Co. v. Director General, as Agent, 66 I. C. C. 469, 471.

III. REASONABLENESS OF CHARGES.

See Reasonableness of Rates.

§3. In General.

CASES 1887-1908

(a) Defendants' rates on reconsignment of hay from warehouses in East St. Louis to points south of the Ohio river, amounting to 2 cents more than their proportional rate from East St. Louis on through shipments, are unjust and unreasonable. St. Louis Hay & Grain Co. v. Mobile & O. R. Co., 11 I. C. C. 90.

(aa) In allowing the privilege of reconsigning hay from East St. Louis to Southern destinations, the defendants are entitled to charge for such privilege what it actually costs them. St. Louis Hay & Grain Co. v. Mobile & O. R. Co., 11 I. C. C. 90.

(ab) Complainant attacked as unreasonable and unjustly discriminatory proportional rates on hay to southeastern points 2c above the rate from the Ohio river when the shipment is made directly through East St. Louis, but if the hay is reconsigned at East St. Louis the charge is 4c above the Ohio river rate. In allowing the privilege of reconsigning hay at East St. Louis to southern destinations, defendants are entitled to charge for such privilege what it actually costs them; and the fair average cost to the carrier when complainant or others handle the hay through warehouses at East St. Louis, over and above the cost of handling in East St. Louis a through shipment via East St. Louis to southern destinations, is $2 to $2.50 per car, or about 1c per 100 pounds. Shipments routed through East St. Louis are carried from that point to southern destinations at a proportional rate, which is 2c above the rate from Ohio river crossings to the same destinations. Hay reconsigned

to such points from warehouses in East St. Louis is charged 4c above the Ohio river rate. Hay appears to be reconsigned from warehouses at Ohio river points, and at Nashville and Memphis, to southern points without additional charge. HELD, that defendant's rates on reconsignments of hay from warehouses in East St. Louis to points south of the Ohio river, amounting to 2c more than their proportional rate from East St. Louis on through shipments, are unjust and unreasonable, complaint entitled to reparation. St. Louis Hay & Grain Company v. M. & O. R. R., 11 I. C. C. 90.

(b) In allowing the privilege of reconsigning hay from East St. Louis to southern destination, the defendants are entitled to charge for such privilege what it actually costs them. St. Louis Hay & Grain Co. v. Mobile & O. R. Co., 11 I. C. C. 90.

(c) The fact that the reconsignment rate is sometimes the same as the proportion of the through rate does not warrant an inference of illegal conduct, or support a charge of unjust discrimination. St. Louis Hay & Grain Co. v. Illinois Cent. R. Co., 11 I. C. C. 486.

(ca) Privilege of reconsigning grain at Kansas City for which a charge of $2 per car is made, which is absorbed by the carrier when reconsigned over its own line, and by all roads but one when reconsigned to a competitive point with another line from Kansas City, any charge not so absorbed being charged back by the Kansas City dealer against the country shipper, as compared with reconsigning practices at St. Louis, Minneapolis and Chicago, held to be apparently wholly in the interest of the grain dealers and of Kansas City as a market, and the charge, therefor not excessive, unjust or discriminatory. Board of Trade of Kansas City v. C. B. & Q. R. Co., 12 I. C. C. 171.

(cb) Reconsignment charge of $2 per car held reasonable as compared with reconsigning practices at St. Louis, Minneapolis and Chicago. Board of Trade of Kansas City v. C. B. & Q. Ry. Co., 12 I. C. C. 173.

(d) Complainant attacked as unreasonable and unjust defendants reconsigning charge of $2 per car on grain shipped to Kansas City, Mo., and from Kansas City to other markets, as compared with reconsigning practices at St. Louis, Minneapolis and Chicago. It appears that the cars are held by the carriers bringing grain into Kansas City on their "hold tracks" for inspection, sale, and reconsignment order, with forty-eight hours free time before demurrage accrues; that this involves additional service, labor and expense to the carriers and is a valuable privilege to Kansas City dealers, involving also withholding cars from other shipments for the time so detained; that this charge is absorbed by the carrier when reconsigned over its own line, and by other carriers when reconsigned over their lines, when the destination is a competitive point with another line from Kansas City; that when the grain is milled or consumed at Kansas City the billing is used by shippers to claim absorption of the charge on some other car that does go forward from Kansas City; that any reconsignment charge not absorbed by the carrier is charged back by the Kansas City dealer, against the country shipper of the grain; that some roads do make a reconsignment charge at St. Louis and Chicago, and that at Minneapolis a charge of $2 per car, called a "running through charge" is assessed when a car is set at an elevator or a mill and is ordered to another destination without being unloaded. HELD, the reconsignment privilege is apparently wholly in the interest of the grain dealers and of Kansas City as a market, and that the reconsignment charge of $2 per car is not excessive, unjust or discriminatory, complaint dismissed. Board of Trade of Kansas City v. C. B. & Q. R. R., 12 I. C. C. 173.

IMPORTANT CASES SINCE 1908

(e) The reconsignment privilege involves extra labor in handling and in clerical work on the part of the carrier, and it is an established principle that the carrier is entitled to repayment of the cost of the service, together with a reasonable profit on that cost. On the other hand, while reconsignment may be granted or withheld at the option of the carrier, when the privilege is voluntarily granted it must be on terms that are reasonable and that do not result in undue discrimination. The first question to be considered in this proceeding is whether the reconsignment charge imposed at Detroit is unreasonable. It may be remarked that the fact of $2 being fixed upon as the charge throughout the greater part of

the country raises at least a presumption that this rate covers not only the cost of the service, but a reasonable profit as well. This being so, there is a stronger presumption that the charge of $3 at Detroit is unreasonable unless the local conditions are such as to justify a higher rate there than at other places. Detroit Traffic Ass'n v. L. S. & M. S. Ry. Co., 21 I. C. C. 257, 262.

(f) So it has been said that the privilege of trying the market is of great benefit to the producer of live stock, and ought to be continued under reasonable terms and conditions, but as these markets multiply it becomes more and more evident that carriers may with propriety impose a reasonable charge for the performance of the service granted in connection with transit privileges. Investigation of Alleged Unreasonable Rates on Meats, 22 I. C. C. 160, 174.

(g) A rule providing that when the original destination is not out of the direct route of the ultimate destination and the published rate of freight from the point of origin to the original destination is higher than the published rate of freight from the point of origin to the ultimate destination, reconsignment will be made at a charge of $2 per car in addition to the published tariff rate in effect from the point of origin to the original destination, is reasonable. Atlas Coal & Coke Co. v. Penn. R. R., 36 I. C. C. 239.

(h) Reconsignment as a special service, warrants a proper charge in addition to the rate. Reconsignment Case, 47 I. C. C. 590, 630.

(i) If the cost of the service were the controlling factor, it would also be necessary to weigh carefully certain differences in comparison with the service afforded in the case of ordinary diversion or reconsignment, for there is comparatively little of the tracing, letter writing, telegraphing, long distance telephoning and clerical labor upon which so much stress was laid in the Reconsignment case; cars are seldom handled individually, but are moved as a rule in large numbers at the same time. In Minnesota, where so much of the sampling is done at outside points, the cost is brought within still lower limits; and the practice is in certain respects of definite financial advantage to the carriers themselves. However, as the Commission views it, an extended analysis of this phase of the matter is unnecessary, even if it were practicable, since the service is primarily one which by long continued general custom and usage has been treated as covered by the line haul rate. Reconsignment Case No. 3, 53 I. C. C. 455, 469.

(j) One of the conditions precedent to the reconsignment privilege is that the contents of the car should remain unchanged. The David Kaufman & Sons Co. v. C. R. R. of N. J., 55 I. C. C. 268, 270.

(k) Where contents of car remain unchanged, change of destination or route does not necessitate an out-of-line-haul, and request is made in a reasonable time, reconsignment and diversion on basis of through rate from point of origin to new destination, with a fair charge for extra service performed, are reasonable practices. Denial thereof is unreasonable and unlawful and the Commission has power to require their establishment. Du Pont de Nemours & Co. v. Director General, 57 I. C. C. 461, 463.

(l) If some reconsignment service has been and is included in the line haul rates, as contended by shippers ,it does not follow that reconsignment as now practiced is included. In other words, the line of demarcation between those that may have been included when the rates were established and the reconsignment service now rendered is not shown. Reconsignment and diversion rules, 58 I. C. C. 568, 580.

(m) An ordinary reconsignment within or beyond switching limits is not a necessary incident of transportation and only occurs on a minority of shipments. Diversion and Reconsignment Rules, 61 I. C. C. 385, 390.

(n) To accord to order-notify shippers a free transportation service that is not required by most others and that is so nearly akin to reconsignment, for which latter service a charge is made, would be an undue preference to that particular class of shippers and traffic. Diversion and Reconsignment Rules, 61 I. C. C. 385, 391.

(o) In exercising emergency powers under section 1 of the act, the Commission authorized the publication of special rules and charges to reduce the promiscuous reconsignment of cars which tended to reduce the available car supply. After emergency had passed such rules and charges were promptly can-

celled. HELD, establishment thereof was fully justified even though instances might be shown in which they failed of their intended purpose and carriers should not be required to respond in damages for increased charges arising thereunder. Omaha Chamber of Commerce v. C. B. & Q. R. R. Co., 62 I. C. C. 655.

(p) Commission approves a tariff providing that if a car has been placed for unloading at the original billed destination, and is reforwarded therefrom without being unloaded, it will be subject to the published rates to and from the point of reconsignment, plus $5 reconsignment charge. Silica Sand Producers Ass'n v. C. B. & Q. R. R., 63 I. C. C. 217, 218.

(q) Generally speaking, a carrier is not an insurer of its ability to change the destination of a shipment. It is only required to exercise due diligence in following or transmitting such instructions. In the instant case it appeared the request for diversion could not be complied with owing to shipments having left the originating carrier's rails. The request was transmitted to connecting carriers but due to the rapid movement of shipments, which were forwarded under special orders of the government, shipments had also left connecting carriers' rails and arrived at originally billed destination whence they were reconsigned. HELD, since the tariff of originating carrier only provided for transmission of such request to direct connection and connecting lines exercised due diligence in endeavoring to intercept shipments for diversion, charges to and from reconsignment point assessed found not unreasonable or unlawful. Du Pont de Nemours & Co. v. Director General, as Agent, 64 I. C. C. 667.

(r) The contention that carrier having established through rates and provided for reconsignment it was unlawful to assess penalty charges upon shipments held on account of embargoes, notwithstanding tariff provisions to the effect that reconsignment orders would not be accepted to a point against which an embargo was in force at the time the shipment was forwarded from point of origin, not sustained. American Wholesale Lumber Asso. v. Director General, as Agent, 66 I. C. C. 393, 398.

(ra) Reconsignment rules are usually more liberal on fruit and vegetables than on dead freight Texas State Highway Dept. v. Director General, as Agent, 69 I. C. C. 252, 253.

(s) Charges on shipments reconsigned from Angora to Paschal and Fifty-second street, within the corporate limits of Philadelphia, Pa., assessed under a tariff rule which provided that cars placed and reforwarded, without being unloaded, to points outside switching limits would be subject to rate from point of reshipment plus reconsignment charges, found unreasonable to extent they exceeded charges based upon a rule which provided that such shipments forwarded to points within switching limits would not be subject to reconsignment charges but would be subject to switching or local rate in addition to rate from point of origin to billed destination. Reparation awarded. Newton Coal Co. v. Director General, as Agent, 73 I. C. C. 33.

(t) Tariff authorized diversion or reconsignment at joint rates but provided that such orders would not be accepted to embargoed points except under authorized permits. Delivering line declined to issue permits to divert en route, but shipments were permitted to move to embargoed points by being first billed to an open destination on its line and then rebilled therefrom under permits, for which combination rates were assessed. HELD, purpose of embargo defeated and permits issued negatived prohibition against diversion or reconsignment to embargoed points. The legal rates were thus the joint rates to final destination, plus diversion or reconsignment charges. Reparation awarded. Humble Oil & Refining Co. v. Director General, as Agent, 73 I. C. C. 275.

(u) Proposal of the Missouri Pacific to reduce its charges for reconsigning lumber and other forest products at Dupo, Ill., when reconsignment instructions are received after arrival of the car, thereby making the charge the same as when instructions are received before such arrival, found not justified. Similar proposals were found not justified in 66 I. C. C. 393 and 68 I. C. C. 161. Futhermore, uniform reconsigning charges approved in the Reconsignment Case, 47 I. C. C. 590, are in effect throughout the country except in instance herein complained of. Reconsignment of Lumber at Dupo, Ill., 73 I. C. C. 404.

(v) Tariff provided for reconsignment

charge of $2.50 per car if order received in time to permit instructions to be given yard employees prior to arrival of shipment at billed destination, with higher charge when such instruction not so received. Shipper gave reconsignment instructions complying with such rule but carrier delayed transmission of the order. HELD, higher charge assessed found inapplicable and reparation awarded. Independent Elevator Co. v. M., St. P. & S. S. M. Ry. Co., 73 I. C. C. 521.

(w) Complainant attacked diversion and reconsignment rules applicable on hay and straw as unreasonable and unduly prejudicial. The rules provide in substance for but one reconsignment at the through rate, and for a subsequent movement of the car the assessment of a charge of $7 in addition to the combination of rates to and from the point of the subsequent diversion and reconsignment. Kansas City is the largest hay market in the world. Upon arrival the cars are switched to public team tracks and part of the cars are unloaded and placed alongside the car to permit inspection. Hay is not officially inspected and graded, as is grain, and, while apparently there are standard rules governing its inspection and grading, each car of hay is sold as the result of bargaining between the producer and the buyer upon inspection. Following the sale, the bales that have been unloaded are replaced in the car and the commission merchant gives the buyer a memo directing the carrier to deliver possession. This ends the transaction so far as the producer and commission merchant are concerned. The buyer then secures a customer and issues appropriate shipping instruction to the carrier. The inspection at Kansas City as outlined is not a diversion or reconsignment. The record here made is not sufficient to reverse the findings in 47 I. C. C. 590. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Kansas City Hay Dealers Asso. v. A. T. & S. F. Ry., 74 I. C. C. 352.

(x) Tariff rule governing reconsignment for export shipments consigned locally to New Orleans, La., provided that notice of desire to export be given carrier within 48 hours after arrival at the port, otherwise, local rates and demurrage rules apply. Complainant gave such notice within free time but not within 48 hours as provided by the rule. HELD, demurrage charges collected and rule assailed found not unreasonable or discriminatory. A similar rule is in effect on lines of various carriers serving other ports and it can not be condemned as unreasonable merely because it is not published by all carriers serving New Orleans. Foxley Stave & Lumber Co. v. L. & N. R. R. Co., 74 I. C. C. 43.

(y) Rules providing for one diversion or reconsignment at the through rate of c. l. shipments of hay and straw, and for a reconsignment charge of $7 in addition to combination of rates to and from the point of subsequent diversion or reconsignment, found not unreasonable or otherwise unlawful. Kansas City Hay Dealers v. A., T. & S. F. Ry. Co., 74 I. C. C. 352.

(z) Diversion requested "with understanding that it be not made unless through rate could be protected." Charges assessed at applicable rate. HELD, failure of carrier to comply with condition attached to diversion order does not constitute violation of the act. Every shipper is bound to take notice of terms and conditions of tariffs governing his shipments. Northwestern Traffic & Service Bureau v. C. & N. W. Ry. Co., 80 I. C. C. 81.

ALL OTHER CITATIONS

Hathaway Lumber Co. v. L. & N. R. R. Co., Unrep. Op. 544; Follmer & Co. v. G. N. Ry. Co., Unrep. Op. 510; Kehoe & Co. v. I. C. R. R. Co., 14 I. C. C. 541, 544; Beekman Lumber Co. v. St. L. S. W. Ry. Co., 14 I. C. C. 532, 534; Cedar Hill Coal & Coke v. C. & S. Ry. Co., 15 I. C. C. 546, 549; Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co., 16 I. C. C. 560; Beekman Lumber Co. v. K. C. S. Ry. Co., 17 I. C. C. 86, 87; St. Louis Hay & Grain Co. v. M. & O. R. R. Co., 19 I. C. C. 533, 534, 535; Arlington Heights Fruit Exchange v. S. P. Co., 19 I. C. C. 148, 152; Detroit Traffic Ass'n v. L. S. & M. S. Ry. Co., 21 I. C. C. 257, 263; In re Express Rates, 24 I. C. C. 380, 412; The Detroit Reconsigning Case, 25 I. C. C. 392, 394; In re Advances in Demurrage Charges, 25 I. C. C. 314, 316; In re Advances on Potatoes, 25 I. C. C. 159, 170; Justice Co. v. Penn R. R. Co., 26 I. C. C. 478, 479; Central Commercial Co. v. L. & N. R. R. Co., 27 I. C. C. 114, 116; Mason Bros v. S. P. Co., 28 I. C C. 402. 404; Chicago & Northwestern Railway Reconsignment Rules, 29 I. C. C. 620, 623, 624; Charles Becker v. P.

M. Ry. Co., 28 I. C. C. 645, 653, 655; Scattergood & Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-497; Scatergood & Co. v. St. L. S. W. Ry. Co., Unrep. Op. A-423 Illinois Leather Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A. 497; Scattergood & Co. v. P. M. R. R. Co., Unrep. Op. A-511; Carpenter-Olwell Lumber Co. v. N. P. Ry. Co., Unrep. Op. A-658; Central Commercial Co. v. L. & N. R. R. Co., 33 I. C. C. 164; Doran & Co. v. N. C. & St. L. Ry. 33 I. C. C. 523; Rayner & Parker v. L. & N. R. R. Co., 33 I. C. C. 595; Cranston Lumber Co. v. N. S. R. R. Co., Unrep. Op. A-779; Brodnax & McLiney v. St. L. & S. F. R. R. Co., Unrep. Op. A-848; Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C. 523, 530, 531; Rayner & Parker v. L. & N. R. R. Co., 33 I. C. C. 595, 596; Warner Iron Co. v. L. & N. R. R. Co., Unrep. Op. 2006; Beekman Lum. Co. v. T. & G. Ry., 36 I. C. C. 368; Stopping of Cars in Transit to Complete Loading, 36 I. C. C. 130, 135; The Detroit Reconsigning Case, 37 I. C. C. 274, 281, 282; Commercial Exch. of Philadelphia v. N. Y. C. & H. A. R. R., 38 I. C. C. 551; Woodland Lumber Co. v. N. S. R. R. Co., 38 I. C. C. 709; Colorado Fuel Co. v. M. K. & T. Ry. Co., of Tex., 39 I. C. C. 491, 493; Becker v. P. M. R. R., 39 I. C. C. 739; Western Consolidated Coal Co. v. C. T. H. & S. E. Ry., 40 I. C. C. 543, 545; Kern & Sons v. C. M. & St. P. Ry. Co., 40 I. C. C. 552, 615; Knudson & Mercer Lumber Co. v. L. & N. R. R., 41 I. C. C. 436; Powell-Meyers Lum. Co. v. L. & N. R. R. Co., 41 I. C. C. 372; Red Cedar Shingle Mfrs. Assn. v. C. B. & Q. R. R. Co., 41 I. C. C. 422, 424; Parry v. L. & N. R. R., 41 I. C. C. 623; Fullerton Powell Hardwood Lumber Co. v. G. C. & S. F. Ry., 41 I. C. C. 625; Spahn & Rose Lum. Co. v. L. & N. R. R., 45 I. C. C. 111; Pittman & Harrison Co v. St. L. S. F. & T. Ry., 45 I. C. C. 170, 179, 180; Sunderland Bros. Co. v. C. B. & Q. R. R., 45 I. C. C. 209; Northern Potato Traffic Asso. v. C. & A. R. R., 44 I. C. C. 426; Webster v. N. O. & N. E. R. R., 45 I. C. C. 566, 567; Watters-Tonge Lumber Co. v. C. N. O. & T. P. Ry., 45 I. C. C. 575; Detroit Coal Co. v. M. C. R. R., 46 I. C. C. 231; Natl. Wholesale Lum. Deal. Assn v. L. & N. R. R., 46 I. C. C. 307; Independent Cooperage Co. v. C. of G. Ry., 46 I. C. C. 361; Shafer Lumber Co. v. St. L. I. M. & S. Ry. Co., 45 I. C. C. 71, 72, 73; Pittman & Harris Co. v. St. L. S. F. & T. Ry., 45 I. C. C. 179, 180; Watters-Tonge Lumber Co. v. C. N. O. & T. P. Ry., 45 I. C. C. 575, 576; Detroit Coal Co. v. M. C. R. R., 46 I. C. C. 231, 235; New York Produce Exchange v. B. & O. R. R., 46 I. C. C. 666, 670; Flaney Grain Co. v. G. N. Ry., 47 I. C. C. 74; Harrison v. M. C. R. R., 47 I. C. C. 259; Reconsignment Case, 47 I. C. C. 590, 595, 600, 613, 616, 617, 625, 626, 627, 630, 632, 633; New York Lighterage Case, 47 I. C. C. 643, 726, 728; Harrison et al v. M. C. R. R., 47 I. C. C. 259; Carlisle Commission Co. v. C. B. & Q. R. R. Co., 49 I. C. C. 78, 80; National Wholesale Lumber Dealers' Asso. v. S. Ry., 50 I. C. C. 405; Stevens-Eaton Co. v. T. F. Ry., 51 I. C. C. 471; Schaefer & Son v. L. V. R. R., 51 I. C. C. 596; Germain Co. v. L. & N. R. R., 51 I. C. C. 605; Brabston v. A. G. S. R. R. Co., 53 I. C. C. 134; Wood v. N. Y., P. & N. R. R. Co., 53 I. C. C. 183; Reconsignment Case (No 3), 53 I. C. C. 455, 468, 474; Natchez Chamber of Commerce v. Director General, 56 I. C. C. 261; Bennett Grain Co. v. Director General, 55 I. C. C. 744; Lowry Lumber Co. v. Director General 55 I. C. C. 751; Du Pont de Nemours & Company v. Director General, 57 I. C. C. 461, 464; Lukens Steel Company v. Director General, 57 I. C. C. 621; Hines Lumber Co. v. Director General, 58 I. C. C. 365, 583; Reconsignment and Diversion Rules, 58 I. C. C. 568, 573; Conover v. M. & St. L. R. R. Co., 58 I. C. C. 729; McGowin Lumber & Export Co. C. 238; Seaboard By-Products Coke Co. v. Director General, as Agent, 59 I. C. C. 35; Express Classification, 1920, 59 I. C. C. 265, 271, 272; Ohio Iron & Metal Co. v. Director General, 59 I. C. C. 314; Lowry Lumber Co. v. Director General, as Agent, 59 I. C. C. 510, 709; Northern Brokerage Co. v. Director General, 60 I. C. C. 182; Detroit Produce Assn. v. Director General, 62 I. C. C. 283; Grain and Hay Exchange of Pittsburgh, 62 I. C. C. 506; Tuffli Bros. Pig Iron & Coke Co. v. Director General, as Agent, 62 I. C. C. 497; Boston Chamber of Commerce v. Director General, 66 I. C. C. 142; American Wholesale Lumber Asso. v. Director General, as Agent, 66 I. C. C. 393, 408; Reconsignment of Lumber and other forest products at Boston, Ind., 68 I. C. C. 161; Reconsignment of Lumber at Dupo, Ill., 73 I. C. C. 404; Flanley Grain Co. v. Director General 89 I. C. C. 33.

§3½. Duty of Carrier to Afford.

CASES 1887-1908

(a) Carrier or carriers' agent acting

as forwarding or reconsigning agent for shipper for purpose of evading or defeating the terms or purposes of the law, or in such manner as to defeat or evade the intent of the law, an unlawful device. Morgan v. M. K. & T. Ry. Co., 12 I. C. C. 525.

(b) Agents of carriers may not reconsign for shipper. Morgan v. M. K. & T. Ry., 12 I. C. C. 525.

IMPORTANT CASES SINCE 1908

(c) A provision that a carrier will make reasonable efforts to stop cars on its line and forward to new destination, but will not be responsible in case of failure on the part of any of its employees to make such reconsignment, is both insufficient and unreasonable. It affords the widest opportunity for unjust discrimination between shippers and represents an attempt to evade responsibility which the law requires to be assumed. Reeves Coal v. P. M. R. R. 34 I. C. C. 621, 622.

(d) Less-than-carload shipments generally are not subject to diversion en route. Strobel Co. v. I. C. R. R. Co., 38 I. C. C. 707, 708.

(e) Reconsigning services should be performed by the carriers in connection with their transportation services, and a charge for the service, in addition to the freight rate, based upon cost and including a reasonable profit is proper. Reconsignment Case, 47 I. C. C. 590, 613.

(f) Under modern practice the owner of goods may usually direct the carrier to stop his goods in transit; he may then reconsign them to another consignee; take delivery of them at a point intermediate to the original destination: order them diverted to a different destination, or returned to the original point of shipment. Such control over their property during transportation is freely exercised by shippers in this country and where regularly done in accordance with commercial customs and practices, is customarily provided for by carriers in their tariffs. Sometimes the service is included in the stated rate or charge for transportation, in other instances an additional charge is made. Bills of Lading, 52 I. C. C. 671, 704.

(g) The Commission has repeatedly said that where the contents of the car remain unchanged, where the change of destination or route does not necessitate an out of line haul, and request is made in reasonable time, reconsignment and diversion on the basis of the through rate from point of origin to new destination, with a fair charge for the extra service performed, are reasonable practices; that denial thereof is unreasonable and unlawful and that the Commission has power to require their establishment. E. I. Du Pont de Nemours Powder Co. v. Director General, 57 I. C. C. 461, 463.

(h) There is no right inherent with the shipper to demand that any transfer resulting from the reconsignment at his request of freight originally consigned and billed to a given destination shall be performed by the carrier, either at its own expense or otherwise. William Schuette v. Director General, 57 I. C. C. 709, 712.

(i) Shippers are entitled, under the Act to Regulate Commerce, to use any through route available under the tariffs. If the tariffs are so worded that routes other than a direct route are possible, such routes should be available alike to all shippers whether availed of under a reconsignment order or upon original billing. The through rate applicable via such route should be assessed against all shipments of the same kind of freight regardless of whether the shipment traveled the particular route because of a reconsignment order or under original billing. The haul for which this rate is assessed in the one instance is identical with that in the other. Reconsignment and Diversion Rules, 58 I. C. C. 568, 573.

(j) The rule under which carriers refuse to reconsign a car after arrival at original destination, to a point which at that time is open for freight, but which at the time shipment was made was embargoed, found unreasonable. The rule approved in the Reconsignment Case, 47 I. C. C. 590, which simply finds "no freight can be reconsigned or diverted . . . . . to a station or point of delivery against which an embargo has been placed," should be reestablished. Boston Chamber of Commerce v. Director General, as Agent, 59 I. C. C. 73, 75.

(k) So long as the handling of order notify shipments held for surrender of the bill of lading, or of shipments placed for inspection, is, to all practical intents and purposes, identical with that of other shipments held and reconsigned within switching limits before placement, dissimilarity of service can not be invoked

to justify the application of different rules and charges. Diversion and Reconsignment Rules, 61 I. C. C. 385, 390.

(l) The holding of order-notify shipments at destination for surrender of the bill of lading before placement properly is, always has been, and necessarily will continue to be inseparable from the transportation of every shipment consigned to the shipper's order. Diversion and Reconsignment Rules, 61 I. C. C. 385, 390, 391.

(m) To accord to order-notify shippers a free transportation service that is not required by most others and that is so nearly akin to reconsignment, for which latter service a charge is made, would be an undue preference to that particular class of shippers and traffic. Diversion and Reconsignment Rules, 61 I. C. C. 385, 391.

(n) Reconsignment rules are usually more liberal on fruit and vegetables than on dead freight. Texas State Highway Department v. Director General, 69 I. C. C. 252, 253.

(o) Three separate l. c. l. shipments loaded in one car were billed to three consignees at two destinations, and three separate bills of lading and three separate freight bills were issued. Failure of carriers, after shipment left point of origin, to divert to one of the consignees as a c. l. shipment, or to provide by rule for such diversion, found not unreasonable or otherwise unlawful. Consolidated Rendering Co. v. B. & M. R. R., 77 I. C. C. 101.

(p) By operating directions carrier prohibited diversion of cars to points off its line. Carrier at reconsignment point transferred lading to car of foreign line, assessing switching, demurrage, penalty, and transfer charges for this service. HELD, Carriers can not by operating instructions restrict equipment to their own rails when it results in additional expense to shippers when they publish rates to points on rails of other carriers and do not publish equipment restriction in tariff. Charges assessed at reconsignment point found unreasonable and unlawful and reparation awarded. Hixon Lumber Co. v. C., B. & Q. R. R. Co., 80 I. C. C. 295.

ALL OTHER CITATIONS

Commercial Exchange of Philadelphia v. N. Y. C. & H. R. R. R., 38 I. C. C. 551, 555, 557, 559; Interior Lumber Co. v. S. Ry. Co., Unrep. Op. 2104; American Lumber & Mfg. Co. v. L. & N. R. R. Co., Unrep. Op. 2177; United Lumber Co. v. L. & N. R. R. Co., Unrep. Op. 2223; Woodland Lumber Co. v. N. S. R. R. Co., 38 I. C. C. 709; Becker v. P. M. R. R. Co., 39 I. C. C. 739, 742; Kern & Sons v. C. M. & St. P. Ry., 40 I. C. C. 552; Standard Lum. Co. v. N. O. & G. E. R. R. Co., 42 I. C. C. 39, 40; Central Foundry Co. v. S. Ry. Co. 42 I. C. C. 333.334; Minneapolis Traffic Assn. v. C. M. & St. P. Ry., 46 I. C. C. 685, 689; Independent Cooperage Co. v. C. of G. Ry., 46 I. C. C. 361, 362; Am. Window Glass Co. v. S. Ry. Co., 48 I. C. C. 451; Carlisle Commission Co. v. C. B. & Q. R. R., 49 I. C. C. 78; Sunderland Bros. Co. v. M. P. Ry., 49 I. C. C. 135; Stevens-Eaton Co. v. Tallilah Falls Ry., 51 I. C. C. 471; Nichols & Cox Lumber Co. v. N. Y. C. R. R., 51 I. C. C. 174; Callaway Fuel Co. v. C. M. & St. P. Ry., 51 I. C. C. 227; Sligo Iron Store Co. v. W. M. Ry. Co., 53 I. C. C. 520; Reconsignment Case No. 3, 53 I. C. C. 455, 468; Southern Lumber & Mfg. Co. v. C. of G. Ry., 55 I. C. C. 225; Kaufman & Sons v. C. R. R. of N. J., 55 I. C. C. 268, 270; E. B. Conover et al v. M. & St. L. Ry, 58 I. C. C. 729; Hines Lumber Co. v. Director General, 58 I. C. C. 365, 573, 580; Reconsignment and Diversion Rules, 58 I. C. C. 568, 570, 571, 583; Conover v. M. & St. L. R. R. Co., 58 I. C. C. 729; Watters- Tonge Lumber Co. v. B. & O. S. W., 59 I. C. C. 229, 231; Ohio Iron & Metal Co. v. Director General. 59 I. C. C. 312, 314, 315; Boston Chamber of Commerce v. Director General, 59 I. C. C. 73, 80; Detroit Produce Assn. v. Director General, 62 I. C. C. 283, 285; Northern Brokerage Co. v. Director General, as Agent, 60 I. C. C. 182, 184; Omaha Chamber of Commerce v. C., B. & Q. R. R. Co., 62 I. C. C. 655; Independent Elevator Co. v. Soo Line. 73 I. C. C. 521; Foxley Stave & Lumber Co. v. L. & N. R. R., 74 I. C. C. 43; Consolidated Rendering Co. v. B. & M. R. R., 77 I. C. C. 101; Watters-Tonge Lumber Co. v. Director General, as Agent, 83 I. C. C. 512; Bender Streibig & Company v. I. C. R. R., 88 I. C. C. 474, 476.

IV. TARIFFS AND PUBLICATION.

See Tariffs.

§4. Necessity of Publishing.

IMPORTANT CASES SINCE 1908

(a) So a reconsignment privilege not filed with the Commission cannot afford

a basis for reparation. Kile & Morgan Co. v. Deepwater Ry. Co., 15 I. C. C. 235, 238.

(b) Coal forwarded from Dell Rapids to Sioux Falls, S. Dak., under reconsigning order which provided that order was not to be executed unless lowest published rate from Roosevelt, Tenn., could be applied. Local rate collected. Complainant did not demand return of shipment to Dell Rapids without expense but accepted delivery. Act not violated. Reeves Coal Co. v. C. M. & St. P. Ry. Co., 37 I. C. C. 707, 708.

(c) Carriers subject to the Act may not lawfully extend reconsignment without tariff authority. Kern & Sons v. C. M. & St. P. Ry. Co., 40 I. C. C. 552, 554.

(d) Reparation will not be awarded on the basis of a reconsignment privilege customarily extended by the carrier, but not duly published in its tariff. Sunderland Bros. Co. v. B. & O. S. W. R. R. Co., Unrep. Op. 267.

ALL OTHER CITATIONS

Kansas City Hay Co. v. St. L. & S. F. R. R. Co., 14 I. C. C. 631, 633; Kile & Morgan Co. v. Deepwater Ry. Co., 15 I. C. C. 235, 238, 137; Gifford Co. v. I. C. R. R. Co., Unrep. Op. A-24; C. & N. W. Ry. Reconsignment Rules, 29 I. C. C. 620, 625; Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C. 523, 530; Caudle v. U. P. R. R. Co., Unrep. Op. A-872; Sunderland Bros. Co. v. C. & A. R. R. Co., Unrep. Op. A-875; Van Dusen Harrington Co. v. G. N. Ry. Co., Unrep. Op. 2236; Pioneer Trust Co. v. Nashville, C. & St. L. R. Co., (Mo., 1920), 224 S. W. 109.

§4½. Embargoed destination.

IMPORTANT CASES SINCE 1908

(a) Carriers may provide in their tariffs that they will not reconsign to an embargoed point, in which event the responsibility for detention at a reconsigning point of a shipment ordered reconsigned to an embargoed point rests upon the shipper, who, under the published tariffs. assumes the responsibility of such detention when the shipment leaves point of origin. Brabston v. C. of G. Ry., 51 I. C. C. 459, 461.

(b) Reconsigning tariff providing that orders for diversion or reconsignment would not be accepted at or to a station or to a point of delivery against which an embargo was in force, or to a point of delivery against which an embargo was in force at the time that the shipment was forwarded from point of origin held to be sufficient authority under which to refuse reconsignment of car, inview of embargo which had been laid. Lowry Lumber Co. v. Director General, 58 I. C. C. 113, 118.

(c) When tariffs contain no restriction against reconsignment to embargoed points, demurrage charges may not be assessed for the car detention resulting therefrom. Krauss Bros. Lumber Co. v. Director General, 66 I. C. C. 637, 638.

(d) Complainant attacked rates charged on 13 carloads of oil well supplies shipped from eastern points to St. Louis, Mo., and Fort Worth and Dublin, Tex., and diverted on authorized permits to embargoed stations in the Texas oil fields, as illegal and unreasonable. No evidence was adduced in support of the allegation of unreasonableness. Embargoes were in force against the points of ultimate destinations and reconsignment tariffs stated that reconsigning instructions would not be accepted to embargoed points except under authorized permits. Permits were allowed but after shipments left point of origin and while they were in transit. HELD, Charge collected illegal to extent they exceeded through rate points of origin to destinations plus reconsigning, switching or other special Charges. reparation awarded. Frick-Reid Supply Co. v. Director General, 68 I. C. C. 151.

(e) The theory of reconsignment is that the shipment is one from point of origin to ultimate destination. Assuming in the case of a direct shipment that the car had started from point of origin before the embargo had been laid, all delays between point of origin and point of destination would be chargeable to the carrier and no demurrage would be assessable against the car; and the same would be true, except as provided by tariff, with respect to a diverted or reconsigned shipment. John E. Murray v. Director General, 69 I. C. C. 477, 482.

(f) Tariff authorized diversion or reconsignment at joint rates, but provided that such orders would not be accepted to embargoed points except under authorized permits. Delivering line declined to issue permits to divert en route, but

shipments were permitted to move to embargoed points by being first billed to an open destination on its line, and then rebilled therefrom under permits, for which combination rates were assessed. HELD, purpose of embargo defeated and permits issued negative prohibition against diversion or reconsignment to embargoed points. The legal rates were thus the joint rates to final destination, plus diversion or reconsignment charges. Reparation awarded. Humble Oil & Refining Co. v. Director General, as Agent, 73 I. C. C. 275.

(g) Under the tariffs in effect when the shipments moved there was no provision that the defendant would not reconsign to an embargoed point; the embargo was a disability of the defendant; the orders for reconsignment should have been accepted in accordance with its tariffs. American Lumber & Mfg. Co. v. Georgia R. R., 80 I. C. C. 759, 760.

(h) Shipment moved under permit during existence of embargo. Prior to arrival at originally billed destination reconsignment requested and denied. Shipment arrived at originally billed destination where demurrage accrued and subsequently upon instructions from shipper, was forwarded to destination requested in reconsignment instructions. HELD, following Skilton case, 56 I. C. C. 251, and Wood case, 53 I. C. C. 183, demurrage charges, and combinations rates to extent they exceeded joint rate to ultimate destination, found illegal. Effective reconsignment tariff did not prohibit reconsignment to embargoed points and fact that shipment moved into embargoed territory under permit did not make tariff applicable. Reparation awarded. American Lumber & Mfg. Co. v. G. R. R., 80 I. C. C. 759.

ALL OTHER CITATIONS

Sellen v. L. V. Ry., 55 I. C. C. 117, 119; William Schutte & Co. v. Director General, 57 I. C. C. 709, 712; Lowry Lumber Co. v. Director General, as Agent, 58 I. C. C. 112, 113, 117, 118, 199; Hines Lumber Co. v. Director General, 58 I. C. C. 365; McGowin Lumber & Export Co. v. Director General, 64 I. C. C. 694, 697; Louisa Schaeffer v. L. V. R. R. Co., 66 I. C. C. 549, 551; Krauss Bros. Lumber Co. v. Director General, 66 I. C. C. 637; Gerhard & Hay v. Director General 88 I. C. C. 293.

§5. Construction in General

IMPORTANT CASES SINCE 1908

(a) There is an ever-present temptation before the shipper to convert the reconsignment privilege into a means of indefinite storage. So long as the demurrage fees are paid, the consignee regards it as his right to delay reconsignment as long as he pleases. The privilege of reconsignment properly carries no such right. Not a little consideration has been given to this question of unnecessary detention and its relation to the shortage of cars that work such a hardship upon the shipping community generally, and it is not among dealers is coal alone that practices have grown up that do absolute injustice to other shippers. This question of detention, however, is one that must be worked out by itself, and it is not well that the advantages of reconsignment should be thrown away in order to avoid abuses that can be remedied in other ways. If the demurrage charge of $1 a day is not sufficient to eliminate the abuse of excessive and unreasonable detention the remedy lies in increasing the fee to an effective amount, not in the denial of a privilege that has elements of extreme value. Detroit Traffic Ass'n v. L. S. & M. S. Ry. Co., 21 I. C. C. 257, 261.

(b) While reconsignment is as a general rule, associated with the application of a specific through rate, which is often less than the sum of the intermediate rates, in and out of the point of original destination, and largely derives its value from that fact, this rule is not without exception. Not infrequently shipments are reconsigned on basis of the sum of the local rates, under authority of tariffs which provide for reconsignment at the through rate, and this may be done without violation of such tariffs for the reason that no specific through rate from the point of origin to the new destination is in effect. The through rate in such cases is made by combining two or more rates instead of by the use of a single rate factor, but the reconsignment rules and charges apply to the same extent as if a specific thru rate were in force. Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C. 523, 527.

(c) Where carriers hold themselves out to perform a reconsignment service after shipment is accepted for transportation at point of origin, the fact that reconsignment is refused and shipment is forwarded to destination from reconsigning point on new bill of lading, does not change its essential character as a

through shipment. Nicols & Cox Lumber Co. v. N. Y. C. R. R., 51 I. C. C. 174, 176; Brabston v. C. of G. Ry., 51 I. C. C. 459, 461, 469.

(d) A contention that mere mailing of a reconsignment or diversion order, without regard to its delivery, was in law a compliance with requirements of governing tariffs, by the terms of which, only orders "received" sufficed not sustained. Wheeler v. Director General, 55 I. C. C. 149, 150.

(e) A proposed tariff rule governing reconsignment or diversion before and after placement, where back haul or out of line movements involved, found not justified in so far as it fails to provide for the exception covering shipments placed on public delivery tracks. Diversion and Reconsignment Rules, 61 I. C. C. 385, 388, 389.

(f) The right to reconsign depends entirely upon the construction of rules, which are required to be filed in the same manner as rates, and if the carriers do not restrict such rules to the extent of their capacity to perform the service, the shipper cannot be held liable for the detention of cars when it is not directly responsible for such detention, and can not abate the cause thereof, as in the case of an embargo, which is a disability of the carrier. Krauss Bros. Lumber Co. v. Director General, 66 I. C. C. 637, 639.

(g) Because of an accumulation of barges alongside vessel, delivery from car float to vessel could not be made. Cars were floated to float bridge adjacent to pier and thence moved along tracks and out upon the pier for delivery, for which service a class rate was assessed. HELD, extra movement to float bridge and beyond amounted to a reconsignment. Charges assessed found unreasonable to extent they exceeded those provided in a local switching tariff for similar movements to cold storage warehouses, plus a reconsignment charge. Reparation awarded. Armour & Co. v. Director General, as Agent, 66 I. C. C. 700.

(h) Tariff provided for reconsignment charge of $2.50 per car if order received in time to permit instructions to be given yard employees prior to arrival of shipment at billed destination, with higher charge when such instructions not so received. Shipper gave reconsignment instructions complying with such rule but carrier delayed transmission of the order. HELD, higher charge assessed found inapplicable and reparation awarded. Independent Elevator Co. v. M., St. P. & S. S. M. Ry. Co., 73 I. C. C. 521.

(i) Diversion and reconsignment are governed by the rules of the carrier upon whose rails the diversion or reconsignment is effected. Kansas City Hay Dealers Asso. v. A., T. & S. F. Ry., 74 I. C. C. 352, 356.

(ia) Uniform reconsignment rule under which only one reconsignment may be made at through rates on carload shipments, approved by commission Reconsignment Case, 47 I. C. C., 590, found not unreasonable. Romann & Bush Co. v. Director General, as Agent, 78 I. C. C. 159.

(ib) Car diverted by complainant, consignee, and subsequently reconsigned to itself at Chicago, Ill., where it maintained no office. Carrier mailed notices of arrival to complainant at Chicago and at point of origin. Contention that demurrage charges accruing at Chicago were unreasonable and in violation of tariff provisions, inasmuch as notice of arrival not received, not sustained. Carrier's duty was fully performed when it placed in mail notice properly addressed to consignee, and notices here given constituted full compliance with tariffs. Sullivan Lumber Co. v. Director General, as Agent, 78 I. C. C. 393.

(j) Where a carrier's tariff, imposing a reconsignment charge on each car of coal reconsigned after it reached the city, required the carrier to notify the consignee when the cars passed certain points outside of the city, but the Interstate Commerce Commission had found that the giving of such notice was impracticable, and that the requirement of such notice as a condition precedent would have worked inequitably with discriminatory results, the notice was not a condition precedent to the recovery of the reconsignment charge, and such charge can be recovered, even though one railroad was both carrier and delivering railroad within the meaning of that tariff. New York Cent. Ry. Co. v. Calvert (Mich., 1923), 193 N. W. 295.

ALL OTHER CITATIONS

Wood Butter Co. v. C. C. C. & St. L. Ry. Co., 16 I. C. C. 374, 375; Acme Cement Plaster Co. v. C. & A. R. R. Co., 17 I. C. C. 220, 222; Lull & Co. v. M. St. P. & S. Ste. M. Ry. Co., 18 I. C. C.

355; Hanley Milling Co. v. Penn Co., 19 I. C. C. 475; Wilson Produce Co. v Penn R. R. Co., 19 I. C. C. 1; Gamble-Robinson Commission Co. v. C. & N. W. Ry. Co., Unrep. Op. A-96; Ohio River Lumber Co. v. C. C. C. & St. L. Ry. Co., Unrep. Op. A-93; Talge Mahogany Co. v. S. Ry. Co., 25 I. C. C. 44; Nicola, Stone & Meyers Co. v. T. St. L. & W. R. R. Co., Unrep. Op. A-52; Justice Co. v. P. R. R. Co., 26 I. C. C. 478, 479; Chas. Becker v. M. P. Ry. Co., 28 I. C. C. 645, 651; Less Carload Freight Reconsignment Privileges, 32 I. C. C. 85, 86; Jung & Sons Co. v. L. & N. R. R. Co., 31 I. C. C. 455, 457; Reeves Coal Co. v. C. M. & St. P. Ry., 34 I. C. C. 122; Doran & Co., 33 I. C. C. 523, 527, 533; Great Western Sugar Co. v. Y. & M. G. R. R. Co., 34 I. C. C. 45, 46; Reeves Coal Co. v. C. M. & St. P. Ry. Co., 34 I. C. C. 122, 123; Miller & Co. v. N. P. Ry. Co., 34 I. C. C. 154, 156; Reeves Coal Co. v. P. M. R. R. Co., 34 I. C. C. 621, 622; Morse Lumber Co. v. L. & N. R. R. Co., Urep. Op. 1919; Reeves Coal Co. v. C. G. W. R. R. Co., Unrep. Op. 2064; Scattergood & Co. v. E. & W. Transp. Co., 36 I. C. C. 15, 16; Jewett, Bigelow & Brooks v. C. H. & D. Ry. Co., 36 I. C. C. 655, 656; Reeves Coal Co. v. C. M. & St. P. Ry. Co., 37 I. C. C. 707; Woodland Lumber Co. v. N. S. R. R., 38 I. C. C. 709; Fullerton-Powell Hardwood Lumber Co. v. C. & E. I. R. R. Co., 41 I. C. C. 444, 445; Western Carolina Lumber & Timber Asso. v. S. Ry. Co., 41 I. C. C. 753; Cloniger v. C. M. & St. P. Ry. Co., 42 I. C. C. 250, 253; Haugh v. O. W. R. R. & N. Co., 42 I. C. C. 713; Shafer Lumber Co. v. St. L. I. M. & S. Ry., 45 I C. C. 71; Van Dusen Harrington Co. v. C. M. & St. P. Ry., 47 I. C. C. 59, 61; National Wholesale Lumber Dealers' Asso. v. S. Ry., 50 I. C. C. 405; Reconsignment Case No. 3. 53 I. C. C. 455, 473; Kaufman & Sons Co. v. C. R. R. Co. of N. J., 55 I. C. C. 268, 270; Natchez Chamber of Commerce v. Director General, 56 I. C. C. 261; Merchants Elevator Co. v. Great Northern Ry. Co., (Minn., 1920), 180 N. W. 105; Porter v. Lehigh Valley R. Co., 184 N. Y. S. 870; E. I. Du Pont de Nemours & Co. v. Director General, 57 I. C. C. 461; Schuette & Co. v. Director General, 57 I. C. C. 709, 712; Hines Lumber Co. v. Director General, 58 I. C. C. 365, 573; Reconsignment and Diversion Rules, 58 I. C. C. 568, 576, 582; Conover v. M. & St. L. R. R. Co., 58 I. C. C. 729; McGowin Lumber & Export Co. v. Director General, 59 I. C. C. 238, 240; Meeds Lumber Co. v. Director General, 59 I. C. C. 243, 244, 245; Lowry Lumber Co. v. Director General, 59 I. C. C. 159 709, 758; Seaboard By-Product Coke Co. v. Director General, as Agent, 59 I. C. C. 35; Boston Chamber of Commerce v. Director General, as Agent, 59 I. C. C. 73, 74, 77; Watter-Tonge Lumber Co. v. B. & O. S. W. R. R. Co., 59 I. C. C. 229, 231; Ohio Iron and Metal Co. v. Director General, 59 I. C. C. 314, 315; Northern Brokerage Co. v. Director General, 60 I. C. C. 182, 183; Rockford Lumber and Fuel Co. v. Director General, 60 I. C. C. 217; Pittsburgh Grain & Hay Exchange v. Director General, as Agent, 62 I. C. C. 506; Marfield Grain Co. v. A. & W. Ry., 88 I. C. C. 126.

§5½. **Notice.**

See Notice.

IMPORTANT CASES SINCE 1908

(a) Notice should be given consignees before arrival of cars at destination, and if disposition is not made, a charge of $2 per car for reconsignment should be assessed. Becker v. P. M. R. R. Co., 28 I. C. C. 645, 656.

(b) Reconsignment charges assessed on cars to which no notice was given prior to arrival of cars should be refunded. Becker v. P. M. R. R. Co., 28 I. C. C. 645, 659.

(c) Reason and common prudence would dictate that a shipper asking for diversion of a car in transit should give such information concerning it as will enable the carriers to determine not only the character of the shipment but also between what points it is moving, in order that they may form some idea of where it can be intercepted. Reeves Coal & Dock Co. v. Director General, 66 I. C. C. 469, 471.

ALL OTHER CITATIONS

Miller & Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. A-462; Scattergood & Co., v. E. W. Transp. Co., 36 I. C. C. 15, 16; Becker v. P. M. R. R. Co., 39 I. C. C. 739, 741; Kern & Sons v. C. M. & St. P. Ry., 40 I. C. C. 615, 617; Cloniger v. C. M. & St. P. Ry. Co., 42 I. C. C. 250; Central Foundry Co. v. So. Ry., 42 I. C. C. 333, 334; Chicago Creosoting Co. v. C. & E. I. R. R., 42 I. C. C. 722; Webster v. N. O. & N. E. R. R., 45 I. C. C. 566, 567; Shafer Lumber Co. v. St. L. I. M. & S. Ry., 45 I. C. C. 71, 73; The David Kaufman & Sons Co. v. C. R. R. of N. J., 55 I. C C. 268, 270; E. I. Du

Pont de Nemours & Co., v. Director General, 57 I. C. C. 461, 463; Reconsignment and Diversion Rules, 58 I. C. C. 568, 576; Boston Chamber of Commerce v. Director General, 59 I. C. C. 73, 77; Wheler Co. v. N. Y. C. R. R. Co., 59 I. C. C. 161; Du Pont de Nemours & Co. v. Director General, as Agent, 64 I. C. C. 667, 670; Sullivan Lumber Co. v. Director General, 66 I. C. C. 119.

§6. Retroactive Application.

See Facilities and Privileges §19.

IMPORTANT CASES SINCE 1908

(a) The retroactive applicatoin of a reconsignment privilege cannot be sanctioned, even though the carrier's custom was to permit reconsignment without tariff authority. Cady Lumber Co. v. M. P. Ry. Co., 19 I. C. C. 12, 13.

(b) If the rate from point of origin to ultimate destination applies as of the date of shipment, so too, must the right of reconsignment speak as of the date of shipment, even if the order was given subsequently. Wood v. N. Y. P. & N. Ry., 53 I. C. C. 183, 184.

(ba) The commission has ruled informally that a reconsigning privilege can not be applied retroactively. Conf. Rulings 6 and 166. Carolina Portland Cement Co. v. Director General, as Agent, 83 I. C. C. 388, 391.

(c) A reconsignment privilege will not be given retroactive effect unless necessary to correct an unjust discrimination. Menefee Bros. v. R. & W. R. R. Co., Unrep. Op. 359.

ALL OTHER CITATIONS

Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co., 16 I. C. C. 558, 559; Miller & Co., v. C. M. & St. P. Ry. Co., Unrep. Op. 60; Gamble-Robinson Commission Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-345.

§6¼. Road Haul Rates Applicable.

CASES 1887-1908

(a) Complainant attacked as unreasonable and discriminatory the fact that on through shipments from points of origin to Memphis the carriers south of East St. Louis get 10c as their proportion of the through rate, which is exactly the same as their reconsignment rate, whereas on through shipments to Mobile and New Orleans the carriers south of East St. Louis accept 16c as their proportion of the through rate, while maintaining a reconsignment rate of 17½c. Complainant contended that when hay moves to Memphis the total charge is the same whether it is transported as a through shipment or carried locally to East St. Louis and there reconsigned while on hay to Mobile and New Orleans the through rate is 1½c less than the local rate to East St. Louis, plus the reconsignment rate from that point. The service of defendants in handling reconsigned hay at and from East St. Louis is more expensive as a general rule, if not invariably, than the services performed in case of shipments through East St. Louis, while the privilege of reconsigning hay from that point at a charge less than the established local rate is of substantial value to dealers n that city. HELD, the fact that through rates are less than the sum of in and out rates is not of itself a valid ground of objection, nor is it unlawful for defendants to maintain reconsignment rates which are higher in some cases than their proportions of through rates. The fact that the reconsignment rate is sometimes the same as the proportion of the through rate does not warrant an inference of illegal conduct or support a charge of unjust discrimination. St. Louis Hay & Grain Exchange v. I. C. R. R., 11 I. C. C. 486.

IMPORTANT CASES SINCE 1908

(aa) The through rate can not be protected where reconsignment is effected to a point not on a through route to which the rate applied or where a back hauls becomes necessary, except under special tariff provisions. Northern Brokerage Co. v. Director General, as Agent, 60 I. C. C. 182, 183.

(b) Because of an embargo shipper authorized change in destination and ultimately reconsigned shipment to originally billed point. Shipper might have stood upon his right to have joint rate specified in original billing protected, but since he consented to the substitution of a different contract in the face of a warning that change in destination could not be made the effective means of diversion after arrival at new destination, he thereby assumed liability for the combination rates charged and legally applicable over route of movement. George Pottery Co. v. Director General, as Agent, 60 I. C. C. 372.

(c) Reconsignment after placement on public team track at originally billed destination, shipment was refused by consignee and reconsigned. Joint rate in effect from point of origin to final

destination but as tariff provision approved in several cases provided that if cars are placed at original billed destination, and is reforwarded therefrom without being unloaded, it will be subject to the published rates to and from point of reconsignment, combination rates charged found not unreasonable or unlawul. Silica Sand Producers Asso. v. C. B. & Q. R. R. Co., 63 I. C. C. 217.

(d) So in another case the request was received too late to accomplish diversion and the shipment arrived at original billed destination, where it was placed upon public delivery tracks. Refused by order notify consignee and subsequently reconsigned. HELD, fact that this was an order notify shipment did not preclude carrier from placing car for unloading prior to surrender of bill of lading in absence of instructions to the contrary, and as tariff provided that if a car was placed at original destination and reforwarded without being unloaded it would be subject to rates to and from reconsignment point, combination charged found not unreasonable or unlawful. Sullivan Lumber Co. v. Director General, as Agent, 66 I. C. C. 119.

(e) The Commission has approved tariff rules applicable to the reconsignment of carload shipments of fruit and vegetable under which, when a car is stopped short of billed destination after it has had the benefit of such changes of destination as are permitted, transportation charges will be made on the basis of the rates to and from the point at which the last diversion or reconsignment was accomplished. Texas State Highway Department v. Director General, 69 I. C. C. 252, 253.

(f) Complainant attacked rates charged on three carloads of lumber from Birmingham, Perrys Mill and Wetumka, Ala., to Canton, O., Detroit, Mich., and Dayton, O., as illegal and unreasonable. From Perrys Mills to Detroit shipment was billed to East St. Louis and reconsigned to Detroit moving via the C. of G., to Montgomery, L. & N., through Evansville to East St. Louis and Wabash beyond, charged 22c to East St. Louis and 12.6c beyond. The tariff nauing the rates was subject to the L. & N. reconsignment circular which authorized reconsignment after a car had reached billed destination at a charge of $5 per car on basis of through rate from point of origin to destination. The rates to and from Cairo of 15 and 14.7 cents made the lowest combination. The shipment from Wetumpka was billed to Herrick, Ill., routed L. & N., to St. Louis and T. St. L. & W. beyond. Because of an embargo against Herrick the car was reconsigned to East St. Louis over the Pan Handle to Dayton, charged 25 cents and 10.5 cents to and from East St. Louis. Tariff naming a through rate of 30 cents contained no routing restrictions and was governed by L. & N. reconsignment circular. HELD, Cairo combination rate of 27.7 cents was applicable from Perrys Mill to Detroit and 30 cents applicable from Weumpka to Dayton, reparation awarded. Baker Reid Lumber Co. v. B. & O. R. R., 74 I. C. C. 489.

IMPORTANT CASES SINCE 1908

(g) When the assessment of a reconsigning charge results in greater aggregate compensation to the carrier than the sum of intermediate rates, it can not be considered that section 4 has thereby been violated for the services performed are not the same in the two instances. Romann & Bush v. Director General, 78 I. C. C. 159, 161.

(h) Complainants attacked rates charged on a carload of hard coal from Milwaukee, Wis., consigned to Vesta, Minn., diverted to Darfur, Minn., as unreasonable, unjustly discriminatory, unduly prejudicial and unlawful. Shipment moved via C. & N. W. via Winona, and while shipment was at Sanborn, Minn., enroute to Vesta, the consignee requested it be diverted to Darfur, a point south of Sanborn, with the understanding that diversion should not be made unless the through rate could be protected. Charged at combination on Sanborn, plus diversion charge. A rate of $3.645 was contemporaneously in effect from Milwaukee to Darfur over defendant's line via Clinton, Iowa. Distance from Milwaukee to Darfur via Winona and Sanborn is 443 miles, via Clinton it is 546 miles. HELD, rate charged not unreasonable, complaint dismissed. Northwestern Traffic & Service Bureau v. C. & N. W. Ry., 80 I. C. C. 81.

(i) Diversion requested "with understanding that it be not made unless thru rate could be protected." Charges assessed at applicable combination rate. HELD, failure of carrier to comply with condition attached to diversion order does not constitute violation of the act. Every shipper is bound to take notice of terms and conditions of tariffs governing

his shipments. Northwestern Traffic & Service Bureau v. C. & N. W. Ry. Co., 80 I. C. C. 81.

(j) Complainant attacked rate charged on a carload of grapes from Fresno, Calif., to Chicago, Ill., reconsigned to Kansas City, Nov. 25, 1919, as illegal. Shipment moved via Santa Fe through Kansas City to Chicago, reconsigned and moved back over the same line of road to Kansas City, charged at the combination on Chicago. At time of movement the $1.44 commodity rate applied from Fresno to Kansas City, no routing instruction in the tariff naming the rate, the tariff of the Santa Fe permitting reconsignment at through published rate providing there is a published through rate via any route from point of origin through point of diversion to point of final destination. The through rate Fresno to Kansas City was not restricted to any particular routes and would have been applicable via the S. P., through El Paso, Tex., to New Orleans, thence I. C. to Chicago and any carrier party to the tariff beyond. HELD, shipment overcharged to extent it exceeded $1.44, reparation awarded. Ginocchio Jones Fruit Co. v. Director General, 81 I. C. C. 495.

(k) Reconsignment charges assessed on basis of those in effect on date of reconsignment found illegal to extent that they exceeded those effective on date of original shipment. Reparation awarded. Carolina Portland Cement Co. v. Director General, as Agent, 83 I. C. C. 388.

(l) Shipments reconsigned become through shipments from original shipping points to final destinations, and applicable rates are those in effect for through movements as of dates of shipment from point of origin, whether joint or combination rates. Carolina Portland Cement Co. v. Director General as Agent, 83 I. C. C. 388, 391.

(m) Contention that service of reconsignment and charge therefor are independent of line-haul service and rate, and should, as is demurrage, be controlled by tariffs in effect contemporaneously with performance of service, not sustained. Demurrage is in part penalty for detention of carriers' equipment and to be effective as such must be controlled by tariffs in effect contemporaneously with detention. Reconsignment, on other hand is a special service and in some respects is not unlike a transit arrangement, which the commission has repeatedly found to be determined as of date of origin of shipment. Carolina Portland Cement Co. v. Director General, as Agent, 83 I. C. C. 388, 391.

ALL OTHER CITATIONS

Lowry Lumber Co. v. Director General, as Agent, 60 I. C. C. 718; Tuffi Brothers Pig Iron & Coke Co., v. Director General, 62 I. C. C. 497; Boston Chamber of Commerce v. Director General, as Agent, 66 I. C. C. 142; Standard Asphalt & Refining Co. v. Director General, as Agent, 66 I. C. C. 313; Standard Oil Co. v. Director General, 68 I . C. C. 143; Mid-Continent Equip. & Mach. Co. v. M. S. R. R. Co., 83 I. C. C. 393, 394; Globe Grain & Milling Co. v. Director General, as Agent, 83 I. C. C. 483; Memphis Freight Bureau v. L. & N. R. R. Co., 83 I. C. C. 589; Krauss Brothers Lumber Co. v. G. M. & N. R. Co., 87 I. C. C. 412; Texas Highway Department v. Director General, 87 I. C. C. 678; C. W. Hull Co. v. Director General, 89 I. C. C. 44; Western Petroleum Refiners Asso. v. C. R. I. & P. Ry., 89 I. C. C. 241.

§6½. Rules and Regulations.

IMPORTANT CASES SINCE 1908

(a) When new bills of lading are issued on reconsigned shipments they should not disclose to the ultimate consignee the name of the original consignor without the consent of the original consignee. Atwood & Co. v. C. B. & Q. R. R. 42 I. C. C. 385, 387.

(b) A provision in a tariff providing for reconsignment on basis of thru rate when "all the roads over which the shipment travels will join in protecting the through rate," found uncertain and unlawful. National Wholesole Lumber Dealers' Asso. v. L. & N. R. R., 46 I. C. C. 307, 308.

(c) A rule providing that if a request is made for the diversion or reconsignment of freight the carrier will make diligent effort to locate the shipment and effect the desired service, but will not be repsonsible for failure to do so unless such failure is due to negligence of its employees, justified. Reconsignment Case, 47 I. C. C. 590, 617.

(d) The proposed charge of local tariff rates for reforwarding to a point within the switching limits cars which have been placed for unloading but have not been unloaded, found justified. Reconsignment Case, 47 I. C. C. 590, 626.

(e) Experience should enable carriers and shippers to determine where to draw the line between ordinary and extraordinary delays. Reconsignment Case, 47 I. C. C. 590, 631.

(f) While a rule providing that an order designating delivery must be accompanied by the surrender of bill of lading or execution of suitable indemnity bond may be entirely reasonable as related to ordinary reconsignment, where new bill of lading is issued upon the surrender of original bill, there can not be any warrant in law for requiring surrender of a bill of lading unless carrier is able to make delivery of the freight covered by such bill. Reconsignment and Diversion Rules, 58 I. C. C. 568, 576.

(g) To the extent that car shortage brought about by improper detention through reconsignments the shipping public has a right to demand that the Commission prescribe and carriers observe such rules as shall insure the largest possible use of cars, and to this end some restraining rules respecting reconsignment are justifiable. Reconsignment and Diversion Rules, 58 I. C. C. 568, 580.

(h) A tariff rule providing that orders for diversion or reconsignment of commodities other than perishable freight, coal, coke, or fuel oil will not be accepted to a station or point of delivery against which an embargo was in force when the shipment left point of origin, disapproved. Diversion and Reconsignment Rules, 61 I. C. C. 385, 388.

(i) A tariff rule under which order-notify shipments placed for inspection upon request of consignees or in conformity with billing instructions, and which require subsequent movements, are subject to the same rule and charges as "straight" consignments placed for inspection, found justifid. Diversion and Reconsignment Rules, 61 I. C. C. 385, 389.

(j) Diversion and reconsignment are governed by the rules of the carriers upon whose rails the diversion or reconsignment is effected. Kansas City Hay Dealers v. A. T. & S. F. Ry. Co., 74 I. C. C. 356.

(k) Complainant alleged that the uniform reconsignment rule under which only one reconsignment may be made at the through rataes on carload shipments is unreasonable, unjustly discriminatory and in violation of section 4. Shipments involved, one car of smithing coal originally consigned June 16, 1919, from Douglas, W. Va., to Benton, Ill., reconsigned first to Tulia, Tex., and then to Clifton, Ariz. Shipment moved via W. M. to Elkins, W. Va., B. & O., to Salem, Ill., C. & E. I. to Benton, reconsigned to Tulia via I. C. to New Orleans, G. C. L., to Beaumont, Tex., and Santa Fe. Shipment was refused and consignor ordered it forwarded to Clifton, via Santa Fe, Armillo, Tex., Rock Island to El Paso, E. P. & S. W. to Hatichita, N. W., and A. & N. M. beyond. Combination of locals was assessed plus $2 and $5 for reconsignments at Benton and Tulia. The complainant does not attack the reasonableness of the applicable rates, but is founded solely on the alleged unreasonable application of the rates under the reconsignment rule. HELD, rule attacked not unreasonable or otherwise unlawful, overcharge ordered refunded. Romann & Bush Co. v. Director General, 78 I. C. C. 159.

ALL OTHER CITATIONS

Boldt Co. v. P. C. C. & St. L. Ry. Co., 42 I. C. C. 308; Reconsignment Case, 47 I. C. C. 590, 633, 635; Callaway Fuel Co. v. C. M. & St. P. Ry., 51 I. C. C. 227; Sullivan Lumber Co. v. G. N. Ry. Co., 58 I. C. C. 110; Hines Lumber Co. v. Director General, 58 I. C. C. 365, 577; Boston Chamber of Commerce v. Director General, as Agent, 59 I. C. C. 73, 74, 75; Rockford Lumber & Fuel Co. v. Director General, as Agent, 60 I. C. C. 217; Omaha Chamber of Commerce v. C. B. & Q., 62 I. C. C. 655; Romann & Bush Co. v. Director General As Agent, 78 I. C. C. 159; Northwestern Traffic & Service Bureau v. C. & N. W. Ry. Co., 80 I. C. C. 81; Ginocchio-Jones Fruit Co. v. Director General, 81 I. C. C. 495.

V. PROCEDURE AND REPARATION

See Procedure Before Commission; Reparation.

§7. In General.

IMPORTANT CASES SINCE 1908

(a) So damages, including demurrage charges, will be awarded where complainant was deprived of a reconsignment privilege through misrouting of carrier. Beekman Lumber Co. v. L. Ry. & N. Co., 25 I. C. C. 171, 173.

(b) Reparation may be awarded for damages caused by failure of a carrier

to cancel reconsigning instructions. Pemeroy & Co. v. Wabash R. R. Co., Unrep. Op. 8.

(c) Through an error of the carrier's agent by not knowing the correct rate when the consignor asked for the shipment to be diverted in transit, the complainant is entitled to reparation. Welisch & Co. v. St. L. S. W. Ry. Co., Unrep. Op. A-423.

ALL OTHER CITATIONS

Conifer Lumber Co. v. L. & N. R. R. Co., 25 I. C. C. 272; Wheeler Lumber Bridge & Supply Co. v. C. & N. W. Ry. Co., Unrep. Op. A-66; Goodhart-Hartman Co. v. S. P. Co., Unrep. Op. A-781; Calumet & Arizona Mining Co. v. S. P. Co., Unrep. Op. A-825; Newett v. C. B. & Q. R. R. Co., Unrep. Op. A-878; Fullerton-Powell Hardwood Lumber Co. v. T. & P. Ry. Co., Unrep. Op. A-896; Chicago Creosoting Co. v. C. & E. I. R. R. Co., 42 I. C. C. 722.

§8. Parties to Complaint.

IMPORTANT CASES SINCE 1908

(a) The Commission cannot enter an order respecting privileges at New Orleans on rice shipped from New Orleans to Houston, where the initial carriers on whose lines the reconsigning privileges are asked are not made parties. Bayou City Rice Mills v. Texas & New Orleans R. R. Co., 18 I. C. C. 490, 491.

ALL OTHER CITATIONS

Brown v. Southern Ry., (S. C. 1918), 96 S. E. 298.

§9. Jurisdiction of Commission.

See Jurisdiction of Commission; Interstate Commerce Commission I.

CASES 1887-1908

(a) The fact that the property and affairs of a carrier have been placed by a United States court in the hands of a receiver, does not affect the jurisdiction of this Commission under a complaint charging such carrier with violations of the Act. Board of Trade of Troy, Ala. v. A. M. R. Co., 4 I. C. C. 348, 351.

(b) When a carload of hay destined to East St. Louis, Ill., is delivered by the carrier at a warehouse designated by the shipper or consignee prior to arrival in that city, or to the proper switching road, or is placed upon the team track of the carrier if no specific delivery is named, the car has been properly delivered, and the carrier may insist that the consignee shall accept such delivery; and in case the consignee intercepts and sells the carload while upon a hold track, after arrival at East St. Louis but before such delivery, he thereby accepts delivery. If the consignee, instead of removing the hay from the car so delivered, sells it to complainant, and a carrier, upon an order of the original consignee or of complainant, moves the car to complainant's storehouse in East St. Louis, that is a new and independent service on reconsignment performed entirely within the state of Illinois, of which this Commission has no jurisdiction; but it is considered that Congress might, directly or through the Commission, require that shippers should be allowed a certain time after arrival in East St. Louis to designate the point of delivery for interstate shipments, and that such delivery be made accordingly. St. Louis Hay & Grain Co. v. Chicago, B. & Q. R. Co., 11 I. C. C. 82.

IMPORTANT CASES SINCE 1908

(c) The Commission has jurisdiction under section 15 of the Act as amended in 1906 to require reasonable reconsignment charges. Central Commercial Co. v. L. & N. R. R. Co., 27 I. C. C. 114, 116.

(d) Reconsignment is, under the Act, a service which the carrier may be properly expected to furnish. Becker v. P. M. R. R. Co., 28 I. C. C. 645, 655.

(e) In exercising emergency powers under section 1 of the act, the Commission authorized the publication of special rules and charges to reduce the promiscuous reconsignment of cars which tended to reduce the available car supply. After emergency had passed such rules and charges were promptly cancelled. HELD, establishment thereof was fully justified even though instances might be shown in which they failed of their intended purpose and carriers should not be required to respond in damages for increased charges arising thereunder. Omaha Chamber of Commerce v. C. B. & Q. R. R. Co., 62 I. C. C. 655.

(f) Shipment consigned to intrastate destination, order of shipper notify complainant. Before actual movement complainant sold shipment to another party, who did not take delivery at originally billed destination but reconsigned to destination in other State. Contention

that initial movement was intrastate and therefore not within jurisdiction of commission, not sustained. Change of ownership en route did not affect through interstate movement of shipment. Mid-Continent Equip. & Mach. Co. v. M. S. R. R. Co., 83 I. C. C. 393, 394, 395, 396.

ALL OTHER CITATIONS

Charles Becker v. P. M. R. R. Co., 28 I. C. C. 645, 652; Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C. 523, 526; Reconsignment Case, 47 I. C. C. 590, 630.

§10. Damages and Reparation.

See Damages; Reparation.

CASES 1887-1908

(a) In allowing the privilege of reconsigning hay at East St. Louis to southern destinations, defendants are entitled to charge for such privilege what it actually costs them; and the fair average cost to the carrier when complainant or other handle the hay through warehouses at East St. Louis, over and above the cost of handling in East St. Louis a through shipment via East St. Louis to southern destinations, is $2 to $2.50 per car, or approximately 1c per 100 pounds. Shipments routed through East St. Louis are carried from that point to southern destinations at a proportional rate, which is 2c per 100 lbs. above the rates from Ohio river crossings to the same destinations. Hay reconsigned to such points from warehouses in East St. Louis is charged 4c per 100 lbs. above the Ohio river rate. Hay appears to be reconsigned from warehouses at Ohio river points, and at Nashville and Memphis to southern points without additional charge. HELD, upon all the facts, that defendants' rates on reconsignments of hay from warehouses in East St. Louis to points south of the Ohio river, amounting to 2 cents more than their proportional rate from East St. Louis on through shipments, are unjust and unreasonable, and that complainant is entitled to reparation. St. Louis Hay & Grain Co. v. Mobile & O. R. Co., et al., 11 I. C. C. 90.

IMPORTANT CASES SINCE 1908

(b) Where a reasonable rate is prescribed for a transportation service, reparation will not be awarded to the basis of that rate on shipments which have been diverted or reconsigned, but there will be taken into consideration a reasonable maximum charge for the additional service performed. Advance Lumber Co. v. S. A. L. Ry., 51 I. C. C. 149, 150.

(c) The failure of defendant to comply with a condition attached to the diversion order does not constitute a violation of the act, when such condition is to the effect that car should be diverted if through rate could be protected. Northwestern Traffic & Service Bureau v. C. & N. W. Ry., 80 I. C. C. 81, 82.

ALL OTHER CITATIONS

Reeves Coal Co. v. P. M. R. R. Co., 34 I. C. C. 621; Consolidated Fuel Co. v. C. B. & Q. R. R. Co., Unrep. Op. 1993; Lord & Bushnell v. T. & P. Ry. Co., Unrep. Op. 2021; Lehigh V. R. Co. v. American Hay Co., 219 Fed. 539, 541; Detroit Coal Co. v. M. C. R. R., 46 I. C. C. 231, 235; Lowry Lumber Co. v. Director General, 57 I. C. C. 623; Conover v. M. & St. L. R. R. Co., 58 I. C. C. 729, 730.

REDUCED RATES

I. CONTROL AND REGULATION.
- § 1. Jurisdiction of Commission.
- § 2. Power to suspend.

II. LEGALITY OF REDUCED RATES
- § 2. In general.
- § 3. Charitable institutions, fairs or emergency.
- § 4. Government or municipal shipments.
- § 4½. Reasonableness and discrimination.
- § 4½a. Land grant roads.
- § 5. Returned or old shipments.
- § 5½. Used containers.
- § 6. Company material.
- § 6½. To encourage markets.

III. TARIFFS AND PUBLICATION.
- § 7. In general.

IV. PROCEDURE.
- § 8. In general.
- § 9. Evidence and burden of proof.

CROSS REFERENCES

See Discrimination §2, §3½a, §12; Division §5; Eating Houses; Loss and Damages §9; Released Rates; Reparation §16; Passenger Fares and Facilities §5, §7¼.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Jurisdiction of Commission; Interstate Commerce Commission.

CASES 1887-1908

(a) The Interstate Commerce Commission may determine in respect to the past what was reasonable and just, but as to rates found to be unreasonable, unjust, and unlawful, can make no provision or order for their reduction which the courts are required to enforce or the carrier obliged to obey, except to notify the carrier to cease and desist from violation of the statute. Cary v. Eureka Springs R. Co., 7 I. C. C. 286.

(b) The Interstate Commerce Commission is not authorized to fix a reduced or lower rate of charges which the carriers can be required to respect in the future, even if the ascertained facts warrant a finding as to the extent of the reduction which should be made. Montell v. Baltimore & O. R. Co., 7 I. C. C. 412.

(c) Defendants' aggregate charge for the transportation of coal in carloads from Cumberland, Md., to North Garden, Va., and their respective divisions thereof, found excessive in comparison with rates charged by defendants and other carriers to various points; but the Commission is not authorized to fix a reduced or lower rate of charges which carriers can be required to respect in the future, even if the ascertained facts warranted a finding as to the extent of the reduction which should be made. Montell v. Baltimore & Ohio R. Co., 7 I. C. C. 412.

(d) Although railroad companies which carry grain to only one of two competing cities may, by a reduction of the rates charged by them, prevent the correction of an unjust relation of rates in favor of such city, it is the duty of the Interstate Commerce Commission to condemn the existing relation of rates if it believes it to be unjust, and indicate the basis on which the rate should be readjusted. Milwaukee Chamber of Commerce v. Chicago, M. & St. P. R. Co., 7 I. C. C. 481.

(da) The Interstate Commerce Commission is authorized to make a reduction in rates only when, upon complaint made, it is of the opinion that such rates are unjust, or unreasonable, or unjustly discriminatory, or unduly preferential. Dallas Freight Bureau v. M. K. & T. R. Co., 12 I. C. C. 427.

(e) The Commission is authorized under the act to order a reduction in rates only when upon complaint made it is of the opinion that such rates are unjust, or unreasonable, or unjustly discriminatory, or unduly preferential. Complainants must therefore prove the issues that they raise by competent testimony or make out a prima facie case sufficiently clear and strong as to require the Commission in the public interest to enter upon an investigation of its own to ascertain the merits of the complaint. Neither of these requirements is satified by a comparison, without any other showing, of the rates complained of, from St. Louis to Dallas, with rates between points in other and distant localities where different physical, competitive, and traffic conditions exist. Dallas Freight Bureau v. Mo., Kans. & Tex. Ry. Co., 12 I. C. C. 428, 433.

IMPORTANT CASES SINCE 1908

(f) It is within the power of the Commission to end a discrimination as between points of origin by a reduction in the rate from a certain point that is discriminated against. Scott Paper Co. v. P. R. R. Co., 26 I. C. C. 601, 603.

(g) Even before the passage of the Elkins act the Commission was empowered to issue a general order requiring the publication of payments by a carrier to a shipper which indirectly had the effect of reducing the transportation charges. Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 14.

(h) Objection by state commission to introduction of evidence relating to intrastate rates on stone and gravel when for use in construction of public highways and consigned to federal, state, county or municipal authorities or their agents, on ground that no order affecting such rates could be made by the Commission because of provision of section 22 of the act, HELD, such a construction of section 22 would make it mandatory on carriers to maintain lower rates on such traffic; that section has been construed as being permissive in character; and in granting such reduced rates carriers must not violate sections 2 and 3 of the act. Tennessee Rates and Charges, 63 I. C. C. 160, 172.

(i) Contention that as proposed rates represent reductions, there is no burden upon carrier to justify them, and that in absence of affirmative showing by protestants that undue prejudice will result the Commission must permit them to become effective, not sustained.

following Grain and Flaxseed from Twin Cities, 78 I. C. C. 575. Reduced rates from New York, 81 I. C. C. 312.

(j) In proceedings involving general reduction in rates, the commission has to look to future and exercise its best judgment on record before it. Kansas Public Utilities Com. v. A., T. & S. F. Ry. Co., 83 I. C. C. 105, 114

ALL OTHER CITATIONS

Chicago Lumber & Coal Co. v. Tioga Southwestern Ry. Co., 16 I. C. C. 323, 334; Malt Rates to New Orleans, La., 30 I. C. C. 587, 590, 591; Rates on Railroad Fuel and other Coal, 36 I. C. C. 1, 13; Excelsior from St. Paul, Minn., 36 I. C. C. 349, 365; Iron Ore Rate Case, 41 I. C. C. 181, 194; St. Louis Southwestern Ry. Co. v. United States, 234 Fed. 668, 681; Winona Oil Co. v. Director General, 57 I. C. C. 152, 154; Roasted Coffee from Atlantic Seaboard, 83 I. C. C. 131.

§2. Power to Suspend.

See Interstate Commerce Commission.

IMPORTANT CASES SINCE 1908

(a) The Commission has power to suspend reductions in rates where the effect of such suspension will prevent an unjust discrimination, and a prima facie case is presented to justify the exercise that power. Board of Trade of Chicago v. I. C. R. R. Co., 26 I. C. C. 545, 552.

(b) It may therefore be stated that the Commission is authorized under the act to order a reduction in rates only when it is made to appear that they are unjust, or unreasonable, or unjustly discriminatory, or unduly preferential. Complainants must, therefore, prove the issues that they raise by competent testimony or make out a prima facie case sufficiently clear and strong to require the Commission in the public interest to enter upon an investigation of its own to ascertain the merits of the complaint. Rosenblatt & Sons v. A. A. R. R. Co., 33 I. C. C. 324, 329.

ALL OTHER CITATIONS

In Re Suspension of Rates on Packing-House Products, 21 I. C. C. 68, 70; Scott Paper Co. v. P. R. R. Co., 26 I. C. C. 601, 603; Export Rates an Grain and Grain Products, 31 I. C. C. 617, 622; Wickwire Steel Co. v. N. Y. C. & H. R. R. Co., 30 I. C. C. 415, 420.

II.. LEGALITY OF REDUCED RATES

See Legality of Rates.

§2½. In General.

CASES 1887-1908

(a) A railway company may from considerations of policy grant a reduction in its rates which this Commission could not order as a matter of right under the Act to Regulate Commerce. Holmes & Co. v. Southern R. Co., 8 I. C. C. 561.

IMPORTANT CASES SINCE 1908

(b) If it be true that the Commission may find existing rates unjust and unresonable, and require that they be reduced below what would be justified by standards heretofore recognized, because an industry is not prospering, then the converse must be true, that at times when the industry prospers the Commission may find justified rates higher than those which under accepted standards would be just and reasonable. The foundations of what is just and reasonable are not set on such shifting sands. National Live Stock Shippers' League v. A., T. & S. F. Ry. Co., 63 I. C. C. 107, 116.

(c) The Commission does not feel that particular reductions in rates should be encouraged during a period when it is considering the question of general reductions in rates, especially in view of the admissions and assertions that such proposed reductions, if allowed to become effective, would mark the beginning of a rate war between certain carriers. Reduced Rates on Coal to Kansas City, Mo., 66 I. C. C. 457, 467.

(d) To upset and seriously to menace a general structure lawfully established suffices to make proposed rates calculated to effect such a disruption unreasonable and unlawful. Trunk Line and Ex Lake Iron Ore Rates, 69 I. C. C. 589, 611.

(da) Where a suspicion that proposed reduced rates are noncompensatory is not satisfactorily refuted, even though proposed rates are not shown to be otherwise unlawful, power of the commission, under the law, is not so limited that it may not prevent rates from becoming effective. Import and Domestic Rates on Vegetable Oils, 78 I. C. C. 421, 427.

(e) In all proceedings involving reductions in rates, the Commission has to look to the future, and excercise its best judgment on the record before it.

Kansas Public Utilities Commission v. A. T. & S. F. R. Co., 83 I. C. C. 105, 114.

ALL OTHER CITATIONS

Board of Trade of Chicago v. I. C. R. R. Co., 26 I. C. C. 545, 547; May Bros. v. Y. & M. V. R. R. Co., 27 I. C. C. 323, 328; Oklahoma Portland Cement Co. v. M. K. & T. Ry. Co., 27 I. C. C. 101, 104; Pardee Works v. C. R. R. Co. of N. J., 29 I. C. C. 500, 502; Malt Rates to New Orleans, La., 30 I. C. C. 587, 591; Cement Rates to Stations on the M. C. R. R., 32 I. C. C. 540; Lindsay & Co. v. N. P. Ry. Co., 33 I. C. C. 150, 156; Northern Pine Mfrs. Asso. v. C. & N. W. Ry. Co., 33 I. C. C. 360, 362; Pacific Creamery Co. v. S. P. Co., 34 I. C. C. 586, 590, 591; Mace v. P. R. R. Co., 37 I. C. C. 268, 273; Cameron & Co. v. A. & S. Ry. Co., 41 I. C. C. 521; Pacific Creamery Co. v. S. P. Co., 42 I. C. C. 93, 95, 97; Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 144, 146; Whiteville Lumber Co. v. A. C. L. R. R., 46 I. C. C. 622, 627; Goodyear Tire & Rubber Co. v. A. C. & Y. Ry. Co., 57 I. C. C. 206, 210; Salt from Utah to San Francisco, 61 I. C. C. 58; Oil from Texas ports to Sulphur Mine, 63 I. C. C. 74; Smelter Products from Nevada and Utah, 61 I. C. C. 374; Rail-and-Water Rates from Atlantic Seaboard, 61 I. C. C. 740; Aluminum Ore Co. v. Director General, as Agent, 62 I. C. C. 498; Anthracite coal to stations in New York, 63 I. C. C. 193; Railroad Commission of Louisiana v. A. H. T. Ry. Co., 64 I. C. C. 197; Coal from Detroit, Toledo & Ironton R. R. Mines, 64 I. C. C. 564; Brick and articles taking same rates from Danville, Ill., to Chicago rate points, 64 I. C. C. 624; Hilb & Bauer v. Director General, as Agent, 66 I. C. C. 279.

§3. Charitable Institutions, Fairs or Emergency.

CASES 1887-1908

(a) Missionaries may have reduced rates. Re Religious Teachers, 1 I. C. C. 21.

IMPORTANT CASES SINCE 1908

(b) Clergymen acting as editors of officially recognized church papers, as college presidents or professors; as financial agents for a church, or other religious or charitable institutions, including educational institutions under church government; as workers in Christian Temperance of Y. M. C. A. work, and as brothers of religious orders, and sisters of charity devoting their entire time to religious work, who habitually wear a garb distinctive of their order, are not excluded from the privilege of receiving reduced-rate transportation. A clergyman does not lose his ministerial standing by reason of the fact that he leaves the pastorate for some other field of religious activity. Passes to Clergymen and Others, 15 I. C. C. 45, 46.

(c) A charitable institution, as the term bears upon the right of carriers to issue free transportation, is one which is administered in the public interest, and in which the element of private gain is wanting, and the definition includes hospitals, almshouses, orphanages, asylums and missionary societies. Such an institution does not necessarily lose its charitable character from the fact that it is under the management of a particular denomination or sect, or because a charge is collected from some or all of those who enjoy its privileges. It is only necessary that it be conducted in the public interest and not for private gain. In Re Passes to Clergymen and Others, 15 I. C. C. 45, 46.

(d) Where section 22 of the Act authorizes the free transportation of property to and from fairs and expositions, it does not require the carriers to grant such transportation. It follows that they may grant or deny it as they deem best, provided their practices in that respect do not result in unjust discrimination under section 2, or undue preferences or prejudices under section 3 of the Act. Dairymen's Supply Co. v. P. R. R. Co., 28 I. C. C. 406, 408.

(e) While the Act authorizes the free transportation of property for exhibition purposes, it does not require the carriers to grant such transportation. Dairymen's Supply Co. v. P. R. R. Co., 28 I. C. C. 406, 408.

(f) In regard to carriage, storage or handling of property free or at reduced rates to and from fairs and expositions for exhibition thereat, carriers may grant or deny free transportation provided unjust discrimination under section 2 or undue preference or prejudice under section 3 does not result. C. B. & Q. R. R. Co., Unrep. Op. A-797.

(g) Upon complaint seeking a reduction of 50 per cent in the rates on cotton-seed products, hay, grain, and other feedstuff for cattle from points in Oklahoma, Arkansas, Louisiana, Colora-

do and Kansas, and from points in Texas over interstate routes, to afford relief to drought-stricken points in Western Texas, such rates to expire by limitation. HELD, present rates are not unreasonably high, per se, nor under normal conditions and the freight rate factor is a comparatively small item in the total cost of stock feed laid down in Western Texas. American National Live Stock Asso. v. S. P. Co., 74 I. C. C. 760.

ALL OTHER CITATIONS

Mogul Motor Truck Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-797.

§4. Government or Municipal Shipments.

CASES 1887-1908

(a) A carrier may make special rates with individuals to enable the latter to make proposals to the Interior Department for transportation of Indian supplies, such transportation being for the United States. Re Indian Supplies, 1 I. C. R. 22.

(b) As the United States Commission of Fish and Fisheries is one of the agencies of the government, and the distribution of fish and eggs by that Commission is by authority of the government, the transportation of fish and eggs so distributed falls within the exception of section 22 of the Act. Re U. S. Commission of Fish and Fisheries, 1 I. C. R. 606.

(c) Fish and eggs, distributed by the United States Commission of Fish and Fisheries, are entitled to free transportation. Re United States Commission of Fish and Fisheries, 1 I. C. C. 606.

(d) The transportation of fish and eggs, distributed by the United States Commission of Fish and Fisheries, is within the exception of section 22 of the Act. Re United States Commission of Fish and Fisheries, 1 I. C. R. 609.

IMPORTANT CASES SINCE 1908

(e) The Commission has no power under the law to require reduced rates for the United States, state or municipal governments. Metropolitan Paving Brick Co. v. A. A. R. R. Co., 17 I. C. C. 197, 204.

(f) So far as the laws administered by the Commission are concerned, the right of carriers to transport government property free or at reduced rates is elective and not mandatory. No duties are delegated to the Commission under, nor can it assume to interpret or determine the purpose or scope of, the so-called public highways act or of statutes under which rights and privileges may be reserved to the United States in return for subsidies in lands or bonds or loan of credit. United States v. U. P. Ry. Co., 28 I. C. C. 518, 524.

(g) What carriers may do is one thing and what they ought to be required to do is quite another thing. Certainly the Commission has no power under the law to order carriers to transport traffic for the United States, state, or municipal governments at reduced rates. Furthermore, it is a matter of common knowledge that the United States, state and municipal authorities rarely lay pavements themselves. Work of this kind is usually let by contract. We know of no reason why lower rates should be made for contractors of brick paving than should be made in favor of any other party who may have contracts for other work for public authorities. Tennessee rates and charges, 63 I. C. C. 160, 173.

(h) Authority is given under section 22 of the act for carriers to transport property free of charge or at reduced rates for the United States, state or municipal governments. Police Jury of Caddo v. St. L. S. W. Ry., 78 I. C. C. 235, 236.

(ha) The commission is without authority to order special rates on sand and gravel for use in building public highways. Sand and Gravel to the Southeast, 83 I. C. C. 436, 440.

(i) Carriers have the right under section 22 of the act to extend special rates to the government, but the Commission cannot compel the carriers to do solely for the United States government what they may not be required to do for other shippers similarly situated. United States v. P. R. R. Co., Unrep. Op. A-957.

(j) Under Acts Tenn. 1897, c. 10, §§8, 15, 17, and 24, the Tennessee Railroad and Public Utilities Commission, in the absence of action by the Interstate Commerce Commission, had power to prescribe a reduced rate for the transportation of materials for the state of its municipalities. State of Tennessee v. United States, 284 Fed. 371.

(k) As, under the Interstate Commerce Act, §22, the Interstate Commerce Commission cannot forbid the carrying of freight for a state or municipality at

a less price than it charges individuals, its right to regulate or fix an intrastate rate, whether arising under former laws or under Transportation Act Feb. 28, 1920, is subject to the same limitation. State of Tennessee v. United States, 284 Fed. 371.

(l) Under the Interstate Commerce Act, permitting carriage of property free or at reduced rates for state or municipal governments, the preference should not be determined by the mere fact that the government is or is not the shipper or consignee, and apparently is permitted only where title passes to the government, as is vested in it at the shipping point. State of Tennessee v. United State, 284 Fed. 371.

(m) The Interstate Commerce Act, 22, providing that nothing therein shall prevent the carriage of property free or at reduced rates for the United States, state or municipal governments, does not necessarily make it improper that such reduced rates be given pursuant to a tariff regularly filed, or be subject to a measure of regulation or supervision, so that the authorized preference may not be abused, or become a pretext or cover for forbidden discriminations. State of Tennessee v. United States, 284 Fed. 371.

(n) The Interstate Commerce Act, §22, providing that nothing therein shall prevent the carriage of property free, or at reduced rates, for the United States, state, or municipal governments, leaves the Interstate Commerce Commissioin without jurisdiction to forbid the railroads from carrying freight for a state or municipalities at a less price than it charges individuals, notwithstanding sections 2 and 3, forbidding discrimination, or undue or unreasonable preferences. State of Tennessee v. United States, 284 Fed. 371.

(o) Interstate Commerce Act, §22, as amended by Act March 2, 1889, §9, providing that nothing therein shall prevent carriage, free or at reduced rates, for state or municipal governments, etc., must be read in connection with the rest of the act, and interpreted with due regard to its manifest purpose. Nashville, C. & St. L. Ry. v. State of Tenn., (1923), 43 Sup. Ct. 583.

(p) Interstate Commerce Act, §22, as amended by Act March 2, 1889, §9 providing that nothing therein shall prevent carriage at reduced rates for state governments, etc., was intended to settle beyond doubt that such preferential treatment was not necessarily prohibited, but does not authorize carrier to subject interstate commerce to undue prejudice, or the state to compel it to do so, as by granting lower rate on road material to state government, when this will give all governmental business to single quarry, to prejudice of others within or without the state. Nashville, C. & St. L. Ry. v. State of Tenn., (1923), 43 Sup. Ct. 583.

(q) Interstate Commerce Act, §22, as amended by Act March 2, 1889, §9, providing that nothing therein shall prevent carriage, at reduced rates, for state or municipal governments, etc., confers no new right on the carrier, but only preserves the right theretofore enjoyed of granting, in its discretion, preferential treatment to particular classes in certain cases. Nashville, C. & St. L. Ry. v. State of Tenn., (1923), 43 Sup. Ct. 583.

(r) In suit to set aside order of Interstate Commerce Commission increasing intrastate rate on shipments of stone and gravel consigned to state and municipal authorities to the level of the interstate rates, the Commission's finding of undue discrimination is conclusive, when the evidence on which it acted was introduced. Nashville, C. & St. L. Ry. v. State of Tenn., (1923), 43 Sup. Ct. 583.

ALL OTHER CITATIONS

Havens & Co. v. C. & N. W. Ry. Co., 20 I. C. C. 156, 158; U. S. v. S. P. Co., 25 I. C. C. 255, 257, 258; United States v. U. P. Ry. Co., 28 I. C. C. 518, 523; Rates on Crushed Stone, 30 I. C. C. 22, 24; McAlester Fuel Co. v. M. K. & T. Ry. Co., Unrep. Op. A-839; United States v. A. & V. Ry. Co., 40 I. C. C. 401, 406; Swift & Co., v. Director General, 55 I. C. C. 324; New York Commission of Highways v. Director General, 55 I. C. C. 619, 620, 624; Railway-Mail Pay, 56 I. C. C. 1, 46, 47; Atchison, T. &. S. F. Ry. Co., v. United States, 41 Sup. Ct. 456; Natchez Chamber of Commerce v. L. & A. Ry. Co., 63 I. C. C. 288, 298; State Highway Dept. of Texas v. C. B. & Q. R. R. Co., 81 I. C. C. 433, 434.

§4½. Reasonableness and Discrimination.

See Classification §29; Passenger Fares and Facilities §6½.

CASES 1887-1908

(a) When a reduction is demanded

which will apparently throw into confusion an adjustment of rates over a large section of the country, which are not claimed to be unreasonable of themselves, and in respect to which any modification upon one line will result in general disturbance and friction among a large number of shippers and carriers of the same product, there should be a clear right to the relief under some direct provision of the law in order to justify the Commission requiring it. Rend v. C. & N. W. Ry., 2 I. C. C. 313, 317.

(b) In a suit to restrain the enforcement of unreasonable rates it is no defense that the reduced rates may increase the volume of business and make it the more renumerative in the future. Chicago & N. W. R. Co. v. Dey (C. C. S. D. Iowa), 2 I. C. R. 325.

(c) The continued reduction of relative rates when brought about by the removal of artificial and unnatural differences is not undesirable, but where the difference results from dissimilar circumstances and conditions, and the true difficuty appears to be a real and natural advantage which the one region has and enjoys over the other, such continuing disturbances of rates ought not to be inaugurated, especially when the charges are commodity rates not shown to be unreasonable in themselves. Anthony Salt Co. v. Missouri Pacific R. Co., 4 I. C. R. 3.

(d) A rate of $1 per ton from certain mines to Nashville, charged upon coal "run of mines nut and slack," being about 1 cent per ton per mile and $1.15 on screened coal, is not unreasonably low nor disproportionate to a rate of $1.40 per ton to Memphis, which is a little over ½ cent per ton per mile; and any reduction in the Memphis rate should be accompanied by a proportionate reduction in the Nashville rates. Re Louisville & N. R. Co., (Com), 4 I. C. R. 157.

(e) When an article of traffic does not move on account of burdensome rates, and the carrier is hauling a considerable number of empty cars in the direction such article would naturally move if accorded a lower rate, the carrier may be justified in carrying at a rate sufficient to induce the movement of such traffic, provided no extra or additional charge is in consequence put upon other articles carried; but the fact that freight will furnish return loads for empty cars is not a reason for the reduction of rates on such freight, when it does not appear that the rates are unreasonable. F. Schumacher Milling Co. v. Chicago, R. I. & P. R. Co., (Com.) 4 I. C. R. 373.

(f) Complainant attacked rates on carload and less carloads of emigrant moveables and limitation or release of liability for damages from Louisville, Ky., to Los Angeles, as unreasonable and unjust. Under the western classification and tariff there are two westbound carload rates from Mississippi river territory to Pacific coast terminals on goods termed "emigrant movables" (including household goods) one a general class rate and the other designated a commodity rate and less than the general rate; the latter rate is published as being open to intending settlers only, but in practice it is given to shippers indiscriminately, and does not appear to be unreasonable in itself. HELD, that there is neither propriety in, nor necessity for, retaining in the classification and tariff either the two rates, or the statement in connection with the commodity rate that it is open to intending settlers only as their retention can only serve to mislead the public and afford opportunity for the practice of favoritism and unjust discrimination as between shippers; that the westbound rate on emigrant movable including household goods from Louisville to Los Angeles should not be in excess of the amount of said commodity rate thereon. Duncan v. A. T. & S. F. R. Co., 4 I. C. C. 385.

(g) The only practicable remedy where carriers have maintained, for a considerable period, a relation of rates affecting an extensive territory somewhat more favorable to one community as compared with another than is justified, is by reducing the rates to the latter community. Daniels v. Chicago, R. I. & P. R. Co., 6 I. C. C. 458.

(h) Where a carrier charges 70 and 80 cents per 100 pounds on cotton from Indian territory points to St. Louis, and 75 for distances of 400 to 600 miles longer, and had long had in force rates of 60 and 65 cents per 100 pounds from these Indian territory points when it did not reach St. Louis over it own line, and at a time when the value of cotton was much higher, and its transportation more expensive than now; when it had made considerable reductions in its rates and charges generally, and upon 99 per cent or practically all its cotton rates except

those in dispute; and when its rate on other freight, hauled and handled at greater expense, is much less than cotton rates; and where other roads in the same territory for like rates have much longer hauls, HELD, that such charges of 70 and 80 cents are unreasonable, and to be reasonable should not exceed 60 and 65 cents per 100 pounds. Jerome Hill Cotton Co. v. Missouri, K. & T. R. Co., 6 I. C. C. 601.

(i) The average annual earnings for a term of years would warrant a reduction of the Eureka Springs rates to the basis of rates conceded to the Harrison district, but the current annual earnings do not justify a reduction to the full extent of such discriminations and a moderate reduction is recommended. Cary v. Eureka Springs R. Co., 7 I. C. C. 286.

(j) A slight reduction in freight rates from a large extent of territory upon a staple commodity like grain may result in very largely diminishing the revenues of the carrier, as well as determining whether or not grain can be raised at a profit, and, ultimately, whether it shall be raised at all. Questions of this nature, involving as they do, great interests to both parties, and interests which mean, not the loss or gain of a given sum for a single year, but similar loss or gain year after year, ought not to be determined except upon some reasonable satisfactory showing, if the material for such showing exists. Grain Shippers Asso. of Northwest Iowa v. I. C. R. Co., 8 I. C. C. 158, 174.

(k) A railway company may, from considerations of policy, grant a reduction in its rates which the Interstate Commerce Commission could not order as a matter of right under the Act to Regulate Commerce. Holmes & Co. v. Southern R. Co., 8 I. C. C. 561.

(l) The action of a railway company in reducing a rate upon complaint of a shipper is not conclusive that the rate was unreasonable before the reduction, but when the traffic manager of that company, after a careful examination of the facts, makes the reduction, that, too, is in the nature of an admission against the reasonableness of the obnoxious rate at the time of the reduction. Holmes & Co. v. Southern R. Co., 8 I. C. C. 561.

(m) Where a rate is comparatively the lowest in its territory on a given article of freight and by reason thereof has been made the basis of reductions from competitive points, it will not be further reduced on the ground alone that it had at stated periods in the past been somewhat lower, unless it be shown that it is unreasonably high for the service performed. Warren Mfg. Co. et al. v. Southern Ry. Co., et al., 12 I. C. C. 381.

IMPORTANT CASES SINCE 1908

(n) This proceeding was instituted upon motion of the Commission for the purpose of determining whether, and to what extent, if any, further general reductions in rates, fares, and charges of carriers by railroad applicable in interstate or foreign commerce may lawfully be required under section 1 or other provisions of the act upon any commodities or descriptions of traffic; and also to determine what will constitute a fair return on and after March 1, 1922, under section 15a (3) of the act. In 58 I. C. C. 220, the Commission exercised the discretion conferred on it and to the 5½ per cent return as stated in law added the one half of 1 per cent during the two year period to make provision for improvements, betterments, or equipment. Since August 1920, the carriers as a whole, or as a whole in their respective rate groups, have failed by a considerable margin to earn the authorized return. It is obvious that large additions of capital must continually be made. The carriers must attract money to rates of return and stability of investment. Issuance of bonds in a disportionate degree unduly increases fixed charges and tends to weaken the credit of the carriers. In such a process eventually a point must be reached where no new capital can be raised, except for short terms at high rates. The intent of Congress was to create a steady flow of money for enlarging such facilities in order to provide the people of the United States with adequate transportation. The Commission may observe that a fair return of 5.75 percent, representing an aggregate annual net railway operating income arrived at after deducting, among other things, the federal income tax on a return of 6 per cent, would be approximately the equivalent of a fair return of 6 per cent, out of which the Federal income tax was payable. The Commission finds no reason to disturb the value of carriers as shown in 58 I. C. C. 220, as except to the extent that subsequent additions to

or withdrawals from the property in service, including materials and supplies and working capital, but further depreciation makes adjustment necessary. One of the greatest problems confronting the railroads today is to provide efficient service at a reasonable cost. If the purpose of section 15a to afford carriers a reasonable return is to be attained, earnest efforts toward reduction of operating expenses in all possible ways consistent with good service must be continued. The record does not disclose any general lack of efficiency. FREIGHT RATES AND CHARGES. In 58 I. C. C. 20, the Commission allowed advances of 40 per cent in eastern group; 35 per cent in western group; 25 per cent in southern and mountain Pacific groups; and 33 1-3 per cent interritorially. General reduction ranging from 10 to 22 per cent ordered by the Commission with respect to carload rates on grain, grain products, and hay in the western and mountain Pacific groups became effective during January, 1922, and upon recommendation of the Commission rates on livestock in the same groups in excess of 50c per 100 pounds had been reduced 20 per cent, but not below 50c, in October, 1921. Practically all other carload rates upon products of the farm in the country were reduced 10 per cent in January, 1922. All of these expire by tariff limitation on June 30, 1922. Many rate adjustments, resulting in reductions, have been made since the increases of 1920. Carriers admit that rates are too high and must come down, but they insist that rates can not be further reduced until the costs of transportation are further reduced. Rate stability is one of the important needs of commerce. It is a fundamental law of business that the anticipation of a falling market tends to restrict purchase. The public does not accept the present rate level as stable because of the belief that rates are too high and must come down. One of the needs of commerce is the lessening of the spread in rates between commodities and localities created by the percentage increases of 1918 and 1920. This applies to commodities in general and not merely to basic commodities. The wide range of evidence presented, the numerous and diverse interests concerned, and the competitive relationship of many commodities, accentuate the difficulty of selecting individual commodities for specific reductions. The ratio of coal traffic to other traffic on different roads varies materially, being in some cases 85 per cent and in others as low as 4 per cent of the total tonnage. It is evident, therefore, that loss in revenue from coal rate reductions would affect some carriers greatly and others but little. Some of the less prosperous carriers are among those carrying a high proportion of coal. The Commission feels warranted in taking notice of the fact that since this case was submitted the general condition of the iron and steel industry has materially improved. Transportation charges on the different raw materials are of varying importance to the different manufacturers. Manifestly changes in rates on one raw material unaccompanied by like changes on others tend to cause dislocation of relative production costs. A number of readjustments resulting in reductions of rates on raw materials and finished products have been made by carriers since 1920. Except in particular situations, or to the extent that rates on one or more raw materials are from a transportation standpoint too high as compared with rates on others, it would appear that reductions in rates on the raw materials should, in so far as possible, be made upon all alike. FOREST PRODUCTS. More than 90 per cent of the lumber consumed in South Dakota originates on the Pacific slope. It is not possible upon this record to prescribe specific rates to South Dakota, but the attention of carriers is called to the apparent necessity for some readjustment. AGRICULTURAL PRODUCTS AND LIVESTOCK. Reductions 64 I. C. C. 85, should include carload rates on nursery stock and farm and field seeds in all rate groups; rates on potatoes from Maine, watermelons from points in the southern group, peanuts raw, in the shell, cottonseed and peanut cake and meal, rice and rice products, in carloads, and on cotton and leaf tobacco, any quantity, were not now included. PACKING HOUSE PRODUCTS. It is not practicable to prescribe a specific relationship between the rates on the live animal and on the product, but the carriers should make some revision of these rates from the Mississippi river eastward. WASTE MATERIALS. It is not possible on this record to prescribe definite adjustment, but carriers should promptly revise their rates on waste materials. PETROLEUM AND PRO-

DUCTS. Many short haul rates are materially higher than on other commodities of like transportation characteristics. The rail lines are losing some short haul traffic which they might retain at lower but still renumerative rates. Self interest would seem to dictate revision by them of their short haul rates. Carriers should promptly revise their rates from the southwest to the eastern group in order to lessen the spread as compared with rates between points in central and trunk line territories. ROOFING SLATE. Carriers should promptly revise their rates on other roofing materials. PASSENGER FARES. Carriers may themselves establish party fares, or change their practices in the handling of baggage, if they do so without unlawful discrimination. ELECTRIC RAILROADS. Record is too meager to permit of specific findings as to individual electric lines, or electric lines as a whole. It is the duty of the Commission to initiate such rates as will enable the carriers to earn as nearly as may be a fair return, qualified as provided in the act. High rates do not necessarily mean high revenues, for, if the public can not or will not ship in normal volume, less revenue may result than from lower rates. Manifestly the depression of 1921 resulted primarily from causes other than transportation charges. But it does not follow that under present conditions existing high rates do not tend to retard the return to a more normal flow of commerce. Deflation has taken place to a greater or less extent in wages and origin prices of commodities in nearly all branches of industry but most transportation charges are still near the peak. Practically all agree that stability of freight rates is highly desirable and that normal traffic may not well be expected until the present widespread expectation of rate reductions is realized or dispelled. To essume that rates can or should be stabilized on the present high basis is futile. The Commission finds: That on and after March 1, 1922, a fair return upon the aggregate value of the railway property of the carriers defined in section 15a of the act, determined as therein provided will be 5.75 per cent of such aggregate property value as a uniform percentage for all rate groups or territories designated by this Commission. That the existing freight rates and charges, including charges for switching and other accessorial services and all other charges applicable to freight service which were increased by authority of 58 I. C. C. 220, will be on and after July 1, 1922, unjust and unreasonable to the extent that they may respectively include more than the following percentages of increases over the rates in effect immediately prior to August 26, 1920, in and between the various rate groups as defined in 58 I. C. C. 220, 489. In the eastern group, also between points in Illinois territory and between Illinois territory and the eastern group, 26 per cent instead of 40 per cent. In the western group, and between western group and Illinois, 21.5 per cent instead of 35 per cent. In the southern and mountain Pacific groups, 12.5 per cent instead of 25 per cent. On interterritorial traffic, except as otherwise provided herein, 20 per cent instead of 33 1-3 per cent. Freight rates herein determined should enable carriers to earn 5.75 per cent. That in applying the reductions above prescribed, rates between points within a group and points on the border line of that group shall be reduced as provided for the group. Where a river constitutes a boundary line between two groups, points on both banks thereof shall be considered as border line points. Where rates are constructed by the use of combinations upon gateways between any two groups, each of the factors comprising such through rates shall be reduced separately according to the group in which it occurrs. Under the circumstances described in paragraphs a, b, and c below, carriers should consider existing freight rates and charges as representing those made effective by authority of 58 I. C. C. 220, and shall apply the reductions herein prescribed accordingly, even though in some instances some individual rates or charges may be higher and others lower than those which would result from exact application of the bases above described: a. Where, since August 26, 1920, rates or charges have been readjusted primarily to remove discriminations, prejudices or discrepancies with material effect upon the aggregate level of the rates or charges so adjusted. This does not apply to rates or charges which have been reduced since August 26, 1920, primarily for the purpose of removing all or a part of the general increase of 1920. b. Where previously existing recognized

rate relationships were maintained in applying the increases of August, 1920, or where rates have been readjusted since August 26, 1920, to restore previously existing recognized rate relasionships. In these cases, such recognized rate relationships should be maintained in applying the reductions herein prescribed; or, if that is impracticable in the first instance, the rates should be readjusted to restore such relationships as soon as practicable. c. Where, pursuant to decisions by the Commission, rates or charges shall have been changed since August 26, 1920. This does not apply to rates resulting from 64 I. C. C. 85; 63 I. C. C. 107; 66 I. C. C. 68. Where outstanding decisions by the Commission require changes in rates or changes subsequent to June 30, 1922, the rates or charges existing on June 30, 1922 shall be reduced as herein provided, effective July 1, 1922. In proceeding thereafter to comply with such outstanding decisions, the rates or charges which would result therefrom shall be considered as those effective by authority of 58 I. C. C. 220, and the reductions herein prescribed shall be applied thereto except that this provision shall not apply to rates on brick and related articles as prescribed in the eastern group in 68 I. C. C. 213. Those rates are not required to be further reduced hereunder. Where rates on live stock have been reduced under 63 I. C. C. 107, and are now less than the rates herein prescribed the expiration date thereon should be cancelled and the rates maintained in effect. Fractions are to be treated as named in the findings. Where carriers earn specific amounts as their divisions or compensation out of joint rates or charges, such amounts shall be reduced in the same manner as provided for the through rates and charges. Where the divisions of carriers participating in joint rates or charges are in fixed amounts per unit and are absorbed by other carriers, such absorptions shall be reduced in the same manner as the through rate or charge. In instances where application of the bases herein prescribed results in departures from the fourth section, the carriers will be expected to correct such departures by tariffs filed not later than October, 1, 1922. Temporary fourth section relief will be granted by appropriate order. If necessary, interested carriers may bring to the attention of the Commission any of its orders which may require modification to permit prompt and full compliance with the findings herein. The findings apply to all respondents other than electrical lines not operated as a part of a steam railroad system. They do not apply to milk and cream when the revenue from transportation thereof is not included in freight revenue. Nothing herein shall be construed as applying to the proportions of joint through rates or charges to or from points in foreign countries accruing in such foreign countries, or as authority to increase any existing rates or charges. Reduced Rates, 1922, 68 I. C. C. 676.

(na) The needs of commerce can not be met if rates are to fluctuate with market prices of commodities. In bringing down a rate level to meet lowered expenses reductions should be made generally upon all commodities in substantially equal ratio. Reduced Rates, 1922 68 I. C. C. 676, 734.

(o) Horizontal reductions within a limited area necessarily requires some readjustment or rates beyond or across the border, wherever it may be. Rates on grain, grain products and hay, 69 I. C. C. 562, 567.

(p) Where a carrier is not named as a defendant, though it is the delivering line, it would be unjust in view of such a defect in parties, to require a reduction in the rate via a route that carrier participates in. Silica Sand Producers Asso. v. C. B. & Q. R. R., 73 I. C. C. 588, 592.

(q) Proof that a carrier is not earning operating expenses on its State and interstate freight traffic as a whole does not establish that the joint interstate rates on a particular commodity, if reduced in accordance with findings in Reduced Rates, 1922, 68 I. C. C. 676, would be less than just and reasonable. Reduced Rates, 1922, 73 I. C. C. 189, 191.

(r) The Commission's findings in Reduced Rates, 1922, 68 I. C. C. 676, were made with full knowledge that some carriers would incur deficits, that others would earn considerably more than the average, and that subsequent readjustments of rates on particular commodities or of individual lines or divisions of joint rates would doubtless be necessary. These general findings should not be reconsidered or modified in the interest of individual carriers except in cases of extreme necessity. Reduced Rates, 1922, 73 I. C. C. 189, 193.

(s) Rates on gas and fuel oils, in tank-car loads, from Kansas and Oklahoma refineries to Fremont, Nebr., found unreasonable and unduly prejudicial in favor of Omaha, Nebr. Following Fairmont Creamery Co., 43 I. C. C. 515, carriers established rates on fuel and gas oil to Omaha, 5 cents less than on refined oils. Fremont had always enjoyed a parity of rates with Omaha but carriers continued to apply the same rates on all grades of petroleum oil and its products to that point. Reasonable maximum rates prescribed and reparation awarded. Empire Refineries v. Director General, as Agent, 73 I. C. C. 207.

(t) Where carriers voluntarily propose to reduce certain rates to an out of pocket plus basis in order to augment the total traffic carried, a wholly different situation is presented. The menace of compensation is absent, for volenti non fit injuria; and the additional traffic is secured with a resulting augmentation of net revenue instead of laying a burden upon other traffic, affords the possibility of lightening the burden thereon by bringing a greater tonnage under contribution to net revenue. Trancontinental Cases of 1922, 74 I. C. C. 48, 69.

(u) Proposed reduced local rate on iron and steel articles from New Orleans, La., and group points, to Houston, Galveston, Beaumont, and Orange, Tex., and points taking the same rates, found justified. Car-mile and ton-mile earnings under proposed rates compare favorably, distance considered, with earning under the rates from St. Louis, Mo., to the same destinations and from New Orleans, Memphis, and St. Louis to other points in the Southwest. Furthermore, the local movement from New Orleans is very light, and it is stated that a substantial movement could be developed from Jobbers at that point. Iron and Steel Articles from New Orleans, 74 I. C. C. 146.

(v) Rates on containers, beverage, returned empty from points in southern classification territory and points taking the same rates, to Chattanooga, Tenn., found unreasonable to the extent they exceeded the rates on cereal beverages, or the sixth class rates if lower, contemporaneously in effect between the same points in opposite direction. Reasonable basis for rates prescribed, and reparation awarded. Purity Extract & Tonic Company v. Director General, as Agent, 74 I. C. C. 263.

(w) Proposed reduced rates on pig iron from producing points in Alabama and Tennessee to St. Louis, Mo., Ohio River crossings, and related points in c. f. a. territory, found unduly preferential of shippers in Alabama and Tennessee and unduly prejudicial to producers in the southern Ohio district. Pig Iron from Southern Producing Points, 74 I. C. C. 330.

(x) Proposed reductions on salt from Michigan and Ohio producing points and Chicago, Ill., to certain destinations west of the Mississippi River crossings in Iowa and Missouri, found justified. Recommended that Mason City, Iowa, and other important salt-consuming points in northeastern and central Iowa similarly situated be given same reductions as Des Moines, Iowa. Salt from C. F. A. to Western Trunk Line Destinations, 74 I. C. C. 409, 414, 415.

(y) Proposed reduced rates on bulk salt from Detroit and other eastern Michigan points to Chicago, Ill., group points, and intermediate points in Indiana, Ohio, and Michigan, found not justified. Proposed reduction would result in undue preference and advantage to shippers at Detroit and other eastern Michigan points, and subject shippers from Halite, N. Y., to undue prejudice and disadvantage. Salt from C. F. A. to Western Trunk Line Destinations, 74 I. C. C. 418.

(z) Proposed reduced rates on crude petroleum oil, for coastwise movement, from certain Louisiana points to points in the Beaumont-Port Arthur, Texas, group, found justified. Proposed rates will enable carriers to meet pipe line competition, and while subnormal, will yield considerably more than the out-of-pocket cost of transportation. The oil traffic gained can be handled with approximately the present motive power during the greater portion of the year, and will serve to fill out the tonnage of regularly operated trains. Furthermore, if the suspended rates are not permitted to become effective, the oil will continue to move by pipe line, and respondents will be deprived of revenue which they need. Crude Oil from Louisiana Points, 74 I. C. C. 623.

(aa) Respondents proposed reduced rates of 10 cents on crude petroleum oil, carloads, when for coastwise move-

ment, from certain points on the L. & A. Ry., Shreveport, La., and certain points south thereof on the K. C. S., to points in the Beaumont-Port Arthur, Texas, group. At the present time the Atlantic Oil Producing Co. is moving its product from Gilark, Near Minden, La., to Port Arthur exclusively by pipe line. None is moving by rail. If the rates are not permittted to become effective, the Atlantic Refining Co., will seek the acquirement or construction of additional pipe line capacity to move the full volume. Respondent admits the suspended rates are subnormal, but asserts they were published to meet the competition of the lower pipe line rate, because the additional tonnage, which otherwise would be lost, can be handled for considerably less than the out of pocket cost of transportation. These rates, being competitive, cannot be used as the measure of maximum reasonable rates in the southwest. HELD, suspended rates justified. Crude Oil from Louisiana Points, 74 I. C. C. 623.

(bb) Proposed reduced rates should not be disapproved because of possible reductions of other rates as a result thereof. Slack Coal from Arkansas-Oklahoma Mines, 80 I. C. C. 203.

(cc) In initiation of rates, and until they are proven unduly prejudicial in an appropriate proceeding, there is nothing in the regulating statute to prevent the carrier from carrying nut coal between points on its own line on slack coal basis, or to require it to make same screen regulations as obtained at mines served by different carriers. Slack Coal from Arkansas-Oklahoma Mines, 80 I. C. C. 194, 203, 204.

ALL OTHER CITATIONS

Railway Pay, 56 I. C. C. 1, 77; Coal from Illinois to destinations in Arkansas, Louisiana and Texas, 68 I. C. C. 1; Class and Commodity Rates from Chicago and other points to South Atlantic and Gulf Ports for transshipment via Panama Canal, 68 I. C. C. 74; Sublimed Lead to Trunk Line Points, 68 I. C. C. 343; Brick Clay and Clay Products, 68 I. C. C. 455; Petroleum and its Products from Shreveport, 68 I. C. C. 564; Reduction on Coal from Detroit, Toledo & Ironton R. R., 69 I. C. C. 112; Reduced Rates, 1922, 69 I. C. C. 138; Proportional Class Rates between Seattle and Tacoma, Wash., and Portland, Ore., 69 I. C. C. 197; Salt from Louisiana Mines to Chicago, 69 I. C. C. 312; Oil from Texas Ports to Sulphur Mine, 69 I. C. C. 345; Cement from Leeds, Ala., to Virginia Cities, 69 I. C. C. 353; Reduced Rates on Coal to Kansas City, Mo., 69 I. C. C. 363; Clayed or Cotton-burlap Bags from various points to Texas, 69 I. C. C. 458; Trunk Line and Ex-Lake Iron Ore Rates, 69 I. C. C. 589; Cotton and Cotton Linters to Pacific Coast Ports or Export, 69 I. C. C. 735; Constantin Refining Co. v. Director General, 73 I. C. C. 197, 200; Iron and Steel Articles from New Orleans Group Points to Texas, 74 I. C. C. 146; National Asso. of Sand and Gravel Producers v. Pennsylvania R. R. Co., 74 I. C. C. 615; Iron and Steel Articles, Steel Rails, and Rail Fastenings between Midvale, Utah, Boise, Idaho, and North Pacific Coast Points, 77 I. C. C. 234; Earthenware or Stoneware from Red Wing, Minn., to Points in North Pacific Coast and Intermediate Territories, Transcontinental, 81 I. C. C. 64; Petroleum from Texas Points, 77 I. C. C. 228; Brick between Stations on C. & O. Ry., 77 I. C. C. 416; Walter A. Zelnicker Supply Co. v. D. & R. G. W. R. Co., 81 I. C. C. 367; Vinegar Rates from Pacific Coast to Middle West Territory, 81 I. C. C. 666; Pittsburgh Coal Producers Asso. v. P. C. C. & St. L. R. Co., 83 I. C. C. 145; Cement from Bonner Springs, Kans., to Kansas City, 83 I. C. C. 176; Corotto v. Director General, as Agent, 77 I. C. C. 89; Rates from River Crossings to Nebraska, 78 I. C. C. 439; Clay Grain Co. v. A. T. & S. F. Ry. Co., 78 I. C. C. 539; Grain and Flaxseed from Twin Cities, 78 I. C. C. 575; Paper and Paper articles to Southwestern Points, 78 I. C. C. 600; Book Shooks to Eastern Trunk Line Territory, 78 I. C. C. 653; Reduced Rates, 1922, 81 I. C. C. 170; Sash and Doors from Pacific Coast, 81 I. C. C. 279; Reduced Rates from New York Piers, 81 I. C. C. 312; Standard Portland Cement Co. v. Director General, as Agent, 81 I. C. C. 357; Standard Rail & Steel Co v. T. R. R. Asso. of St. L., 81 I. C. C. 395; Class Rates to and from Delaware Division Stations, 81 I. C. C. 758, 761; Commodity Rates from Jacksonville to Miami, 83 I. C. C. 207, 210.

§4½a. Land Grant Roads.

See Land Grant Railroads.

ALL CITATIONS

Railway Pay, 56 I. C. C. 1, 77.

§5. Returned or Old Shipments

See Classification §12⅞.

CASES 1887-1908

(a) Whether the rate on a second

hand dynamo shipped from the electric light station to the repair shop should be lower than is charged upon either a new or a second hand dynamo sent to the station for use, is a question of policy for the railways; and this Commission cannot say that it is unjust or unreasonable to exact the same charge for the new and the second hand dynamo. National Machinery & W. Co. v. Pittsburgh, C. C. & St. L. R. Co., 11 I. C. C. 581.

(aa) Old dynamos which have become merely combinations of copper, brass and iron scrap and valuable only as junk should, under suitable regulations fixed by the carrier, be given the rating for junk, basing the same on the highest class metal used in the construction. Natl. Machinery & W. Co., v. P. C. C. & St. L. R. Co., et al., 11 I. C. C. 581.

IMPORTANT CASES SINCE 1908

(b) The fact that freight has been shipped once and paid one way cannot be taken into consideration in fixing charges for a subsequent transaction. The principle underlying the ordinary transit privilege cannot be relied upon in support of the return shipment rule. Transit arrangement in the most common form at least are susceptible of defense only upon the theory that the inbound and outbound movements are, in fact, part of a single continuous transaction. While the freight is delayed at the transit point the shipment is merely suspended temporarily, the present intention of the shipper being to forward the goods to their ultimate destination. Once let it be conceded that the inbound and outbound movements are separate and distinct and the impropriety of applying any rates other than the regularly established locals would be self evident. It is clear that there is no real connection between an outbound shipment today and a "returned shipment" one year hence. There is no room whatever for the argument that the shipment is suspended during the period intervening between the two transactions, for there is no present intent to accomplish the return movement. It is therefore impossible to relate the two services and urge the one as reason for granting special terms to the other. In Re Reduced Rates on Returned Shipments, 19 I. C. C. 409, 417.

(c) It is obvious that application of a different rating to new and second hand articles of same kind would be impracticable. Hirsch & Son Iron & Rail Co. v. W. B. & A. E. R. R. Co., 26 I. C. C. 480, 481.

(d) In principle rates should be no lower on an empty carrier, returned, than on a similar second hand empty carrier. The return element should be disregarded. Rates on Tin Cans and Other Commodities, 37 I. C. C. 360, 362.

(e) The Commission has repeatedly declined to sanction the principle that old and second hand articles are necessarily entitled to lower ratings than the same articles when new. Industrial Traffic Asso. v. N. Y. C. & H. R. R. R., 37 I. C. C. 607, 608.

(f) While it is not unlawful or improper for carriers, within reasonable limits and without discrimination, to provide for the return free or at reduced rates, of shipments which are refused by consignees, the Commission has never required the granting of such reduced rates. Samuel v. Director General, 59 I. C. C. 190, 192.

(g) Complainant attacked third class rates on 68 carloads of canvas in the form of tents shipped during 1919 and 1920 from certain Army camps and supply bases to Kansas City, Mo., as unreasonable, unjustly discriminatory and unduly prejudicial. In these territories tents, new and old, with or without fixtures, are rated third class in carloads. Complainant does not question the reasonableness of this rating on new tents. Ratings are asked for goods rejected and sold by the Government, and not for second hand tents generally. In the trade a complete tent is understood to include not only the canvas but the necessary stakes, poles and guy ropes. Only two of these shipments included stakes and poles and fully 50 per cent of the guy ropes had been removed, were broken, or had rotted off. These tents could be loaded in any kind of a closed car if the roof was tight, and their liability to damage was slight as compared with that of new tents. Complainant admits that 85 per cent of the material purchased was in the form of tents, and that a considerable portion after being repaired was sold as tents, and that some of the cars contained new tents which had never been used and were still in the original bales. HELD, rates and ratings attacked not unreasonable or otherwise unlawful, complaint dismissed. Carnie-Goudie Mfg. Co. v. A. T. & S. F. Ry., 68 I. C. C. 40.

(h) Complainant attacked the rate charged on a carload of scrap iron shipped March 3, 1919, from Andrews, S. C., to Harrisburg, Pa., as unjust and unreasonable. Shipment consisted of old worn out log car wheels, originally billed as scrap iron, set up at destination to second hand car wheels, charged at sixth class rate of 52c applicable on car wheels. There was ineffect a carload commodity rate of $5.40 per gross ton on scrap iron and scrap steel, all kinds (except old rails suitable for relaying purposes.) The wheels were not broken into scraps or pieces when tendered for shipment. The description under the commodity rate is sufficiently broad and comprehensive to include scrap iron both in its original form and when broken into scraps or pieces. HELD, shipment consisted of scrap iron and entitled to commodity rate of $5.40 per gross ton, reparation awarded. Queen City Iron & Metal Co. v. Director General, 73 I. C. C. 618.

(i) Class rates on a sporadic shipment of second hand iron and steel articles in straight and mixed carloads, from Coalton, Okla., to Swartz, La., found unreasonable as compared with lower commodity rates from various other points to the same destinations. Reparation awarded. Southern Carbon Co. v. M. P. R. R. Co., 73 I. C. C. 123, 124.

(j) Fourth-class rates charged on l. c. l. shipments of returned cereal beverage cases, empty, or partially or entirely filled with empty bottles, found inapplicable. The United States Railroad Adminstration with the intention of applying foruth-class rates generally, canceled a provision in the western classification which provided a rating of one-half fourth-class but failed to make a similar change in an agency tariff which governed shipments here involved. Reparation awarded. Duluth Brewing & Malting Co. v. G. N. Ry. Co., 73 I. C. C. 637.

(k) Fourth-class rates charged on l. c. l. shipments of returned cereal beverage casks, empty, or partially or entirely filled with empty bottles, found unreasonable to extent they exceeded one-half of the contemporaneous fourth-class rates applicable on returned cases, with or without empty bottles. Reparation awarded. Duluth Brewing & Malting Co. v. G. N. Ry. Co., 73 I. C. C. 637.

(l) Complainant attacked as unreasonable, unjustly discriminatory, and unduly prejudicial rates in effect since Dec. 30, 1919, on returned empty beverage containers, carloads, from all points in southern classification territory and from points from which the rates are subject to the southern classification to Chattanooga. Complainants shipments are made in half barrels and quarter barrels and in bottles packed in casks and boxes or carriers. For many years the rates on returned empty beverage carriers were one-half the rate on the beverage, carloads, from and to the same points in the reverse direction. On Dec. 30, 1919, sixth class rates were made applicable to returned beverage containers of all styles. Subsequently most of the carriers in this territory have established rates of 66 2-3 per cent of the outbound rate on the beverage. The movement of returned carriers is regular and of substantial volume, and provides lading for many returning refrigerator cars that would otherwise be hauled empty. The evidence is clear that commercial and other conditions, together with the rates on the beverages outbound, prevent the marketing of complainant's products at a profit except upon low rates for the return movement of the empty containers. HELD, rates attacked not unreasonable or unduly prejudicial except in those instances where, since Dec. 30, 1919, they exceeded rates on beverages, or sixth class rates applicable in the opposite direction; in such instances they are unreasonable to extent they exceeded such beverage rates or sixth-class rates where lower, reparation awarded. Purity Extract & Tonic Co. v. Director General, 74 I. C. C. 263.

(m) The Commission has repeatedly approved the cancellation of exceptionally low rates on empty used packages or containers. Purity Extract & Tonic Co. v. Director General, 74 I. C. C. 263, 269.

(n) Complainant attacked fourth class rates charged between March 1, and Oct. 18, 1920, on numerous less carloads of returned empty beverage containers from points in North Dakota, Minnesota, Iowa, Illinois and Nebraska, to Duluth via the G. N., as unreasonable and unjustly discriminatory to extent they exceeded one-half fourth class rates. Western classification from April 1, 1918, to Dec. 20, 1919, provided for one-fourth class rates but it was eliminated on that date. An agency tariff was not changed. The shipments consisted of

wooden cases and casks the large majority of which were entirely filled with empty bottles. The word: "Cases" has generally been construed as including both the shell and the shell containing one or more empty bottles. The word does not cover casks. One-half of fourth class has been uniformly applicable in western trunk line territory for many years. HELD, rates applicable one-half fourth class, reparation awarded. Duluth Brewing & Malting Co. v. G. N. Ry., 75 I. C. C. 637.

(o) The Commission will not ordinarily establish a lower rate on second hand articles than on new articles of the same kind. Arizona Copper Company v. A. & N. M. Ry., 78 I. C. C. 358, 360.

(p) It is not a necessary conclusion that, by prescribing for future a lower rate on secondhand boilers and machinery having value for remelting purposes only than on new articles of same kind, the commission has departed from policy that it will not ordinarily establish a lower rate on secondhand articles than on new articles of same kind. Arizona Copper Co. v. A. & N. M. Ry. Co., 78 I. C. C., 358, 360.

(q) In support of contention that burnt cotton should take lower rates than uninjured cotton, complainant refers to practice of according lower rates on old rubber tires than on new rubber tires and other rubber goods. Such old articles are not analogous to burnt cotton. They are, in fact, scrap, and have no value for purposes for which originally manufactured, whereas burnt cotton if damage is not material, may be used for same purposes as uninjured cotton. This distinction has been recognized as material in Minneapolis Traffic Asso., 23 I. C. C., 432. Floyd & Co. v. A. & M. R. R. Co, 83 I. C. C. 485, 487.

ALL OTHER CITATIONS

Northern Lumber Mfg. Co. v. T. & P. Ry. Co., 19 I. C. C. 54; Port Huron Engine & Thresher Co. v. G. C. & S. F. Ry. Co., Unrep. Op. 352; Minneapolis Threshing Machine Co. v. C. R. I. & P. Ry. Co., 13 I. C. C. 128, 130; In Re Reduced Rates on Returned Shipment, 19 I. C. C. 409, 418; Minneapolis Traffic Ass'n v. C. & N. W. Ry. Co., 23 I. C. C. 432, 436, 437; In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 497; Portner Brewing Co. v. S. Ry. Co., 25 I. C. C. 659; In Re Rates on Empty Beer Packages Returned, 26 I. C. C. 4, 6; E. Danciger v. P. C. C. & St. L. R. R. Co., 29 I. C. C. 99; Minneapolis Brewing Co. v. A. T. & S. F. Ry. Co., 28 I. C. C. 688; Swedish Iron and Steel Corporation v. Bush Terminal Co., Unrep. Op. A-323; Diana Paper Co. v. N. Y. C. & H. R. R. R. Co., Unrep. Op. 409; Perrine Mfg. Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-730; Ochsenreiter v. A. T. & S. F. Ry., 33 I. C. C. 518; Western Newspaper Union v. A. & R. R. R. Co., 34 I. C. C. 326, 329; Western Trunk Lines Rules, 34 I. C. C. 554, 568; Meril & Bro. v. I. C. R. R., 36 I. C. C. 523; Rates on Tin Cans, etc., 37 I. C. C. 360, 361; Cohen-Schwartz Rail & Steel Co. v. St. L. & S. F. R. R. Co., Unrep. Op. 2167; Goodwin Car Co. v. M. K. & T. Ry. Co., Unrep. Op. 2239; Beekman Sawmill Co. v. St. L. I. M. & S. Ry. Co., 39 I. C. C. 215, 216; Bibb Brick Co. v. C. of G. Ry. Co., 39 I. C. C. 625, 626; Memphis Freight Bureau v. I. C. R. R. Co., 39 I. C. C. 641; Tex-O-Cide Chemical Co. v. T. & P. Ry., 40 I. C. C. 594; Baer Bros. Merc. Co. v. P. & S. R. Ry. Co., 41 I. C. C. 427; Parlin & Orendorff Co. v. S. P. Co., 42 I. C. C. 29; Hudson Motor Car Co. v. M. C. R. R. Co., 42 I. C. C. 1; Independent Brewing Asso. v. C. M. & St. P. Ry. Co., 42 I. C. C. 129, 132; Independent Harv. Co. v. C. I. & L. Ry., 45 I. C. C. 151, 152; Dulweber Co. v. Y. & M. V. R. R., 45 I. C. C. 549, 550; Empty Carrier Ratings, 46 I. C. C. 520, 522; Official Classification Ratings, 46 I. C. C. 383, 385, 387; West Virginia Rail Co. v. P. C. C. & St. L. Ry., 48 I. C. C. 675, 678; El Paso Iron & Metal Co. v. A. T. & S. F. Ry., 48 I. C. C. 479, 480; Lexington Flouring Mills v. M. P. Ry., 48 I. C. C. 687, 688; Joseph Iron Co. v. Corwall & Lebanon R. R., 49 I. C. C. 111; Schwartz v. St. L. S. F. Ry., 51 I. C. C. 145; Heilman Brewing Co. v. C. B. & Q. R. R., 50 I. C. C. 273; Standard Oil Co. (Cal.) v. N. P. Ry., 50 I. C. C. 350; In Re Private Cars, 50 I. C. C. 652, 708; National Steel Rail Co. v. St. L. & S. F. Ry. Co., et al., 52 I. C. C. 325; Anheuser-Busch Brewing Asso. v. C. R. I. & P. Ry., 52 I. C. C. 555; Aetna Exposives Co. v. Director General, 53 I. C. C. 175; Valley & Siletz R. R. Co. v. S. P. Co., 53 I. C. C. 397, 399; Weissbaum & Co. v. Director General, 53 I. C. C. 681, 683; West Virginia Rail Co. v. I. C. Ry., 53 I. C. C. 21; West Virginia Rail Co. v. P. C. C. & St. L. Ry., 53 I. C. C. 225; National Steel Rail Co. v. Director General, 53 I. C. C. 338; Walter A. Zelnicker Supply Co. v. Director Gen-

eral, 53 I. C. C. 643; Zelnicker Supply Co. v. Hines, 55 I. C. C. 135, 137; Radinsky v. C. & N. Ry., 55 I. C. C. 203; Fargo Iron & Metal Co. v. N. P. Ry. Co., 55 I. C. C. 65; Assets Realizing Mines Corpn. v. A. T. & S. F. Ry., 57 I. C. C. 39; New Jersey Zinc Co. v. Director General, 57 I. C. C. 201; Cohen-Schwartz Rail & Steel Co. v. M. L. & T., 57 I. C. C. 479; Griess-Pfleeger Tanning Co. v. Director General, as Agent, 57 I. C. C. 499; Feenburg & Co. v. Director General, as Agent, 58 I. C. C. 191; The Prairie Pipe Line Co. v. Director General, 59 I. C. C. 157; Frank Samuel v. Director General, 58 I. C. C. 190, 192; West Virginia Rail Co. v. P. C. C. & St. L., 59 I. C. C. 241, 242; M. S. Goldstein v. Director General, 59 I. C. C. 373; John J. Bateman v. Director General, 59 I. C. C. 559; L. Feedburg & Co. v. Director General, 58 I. C. C. 191; West Virginia Rail Co. v. P. C. C. & St. L. Ry. Co., 59 I. C. C. 241; Prairie Pipe Line Co. v. Director General, 60 I. C. C. 263; United States Importing & Exporting Co. v. Director General, 60 I. C. C. 500; Central Pennsylvania Lumber Co. v. Director General, 60 I. C. C. 723; D'Arcy Spring Co. v. Director General, 62 I. C. C. 129, 130; Mexican Gulf Oil Co. v. Director General, 62 I. C. C. 141; S. Schwartz v. T. & N. O., 61 I. C. C. 29, 30; Marshall-Young Co. v. Director General, 61 I. C. C. 61, 62; Sinclair Refining Co. v. Director General, as Agent, 61 I. C. C. 18, 31; Pusey & Jones Co. v. Director General, as Agent, 62 I. C. C. 291; Gunnison Valley Sugar Co. v. D. & R. G. R. R. Co., 62 I. C. C. 483; Parks v. Director General, as Agent, 64 I. C. C. 147; Du Pont de Nemours & Co. v. Director General, as Agent, 64 I. C. C. 170; Raritan Copper Works v. Director General, as Agent, 64 I. C. C. 691; Tennessee Copper Co. v. Director General, 66 I. C. C. 238; Florida Citrus Exchange v. Director General, as Agent, 66 I. C. C. 307; Chicago Roller Co. v. Director General, as Agent, 66 I. C. C. 657; Indiahoma Refining Co. v. Director General, as Agent, 74 I. C. C. 392; Western Cartridge Co. v. Director General, as Agent,, 74 I. C. C. 654; Gunnison Valley Sugar Co. v. D. & R. G. R. R., 78 I. C. C. 673; Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 9; Divisions of Joint Rates on Railway Fuel Coal, 37 I. C. C. 265; California Packing Corp. v. Director General, as Agent, 78 I. C. C. 190; Gunnison Valley Sugar Co. v. D. & R. G. R. R. Co., 78 I. C. C. 673; Chase Companies v. Director General, as Agent, 81 I. C. C. 207; Zelnicker Supply Co. v. D. & R. G. R. R. Co., 81 I. C. C. 367; Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 546; New Mexico Central Ry. v. A. T. & S. F. R. Co., 81 I. C. C. 718, 721.

§5½. Used Containers.

CASES 1887-1908

(a) A rate which may be reasonable when applied to the transportation of egg cases as a disconnected service may be unreasonable if the carriage of returned cases at favorable rates is in fact a special serivce, the discontinuance of which would unduly durden the business of shipping eggs to points of sale. Rhode Island Egg & Butter Co. v. Lake Shore & M. S. R. Co., 4 I. C. R. 512.

(b) Upon complaint of unreasonable classification and rating on returned empty egg cases from Providence, R. I. to Chicago, Ill., Burlington, Ia., and other western points. HELD, that the evidence presented is insufficient to enable the Commission to determine the question. HELD FURTHER, that the defendants and other carriers concerned should be allowed time to consider whether shippers generally are not unduly prejudiced by the increased rating complained of and take or refrain from taking action accordingly, and if the carriers fail to take satisfactory action, that the complainants and any other interested shipper or consignee should have leave, after a specified time, to ask to have the case reopened; and thereupon such other direction be given as will serve to bring in necessary parties defendant, by amended or supplemental complaint or otherwise, as may appear to be required. Rhode Island Egg & Butter Co. v. L. S. & M. S. R. Co., et al., 6. I. C. C. 176.

(c) A rate which may reasonable when applied to the transportation of egg cases as a disconnected service may be unreasonable if the carriage of returned cases at favorable rates is in fact a special serivce, the discontinuance of which would unduly burden the business of shipping eggs to points of sale. Rhode Island Egg & Butter Co. v. L. S. & M. S. R. Co., et al., 6 I. C. C. 176.

(d) Rates on cut flowers from New Jersey and Pennsylvania points of $1 per 100 pounds; and on empty boxes returned folded from New York City, graduated from 50 to 75 cents per 100 pounds;

on empty boxes not folded, $1 per 100 pounds, excessive and unreasonable. Society of American Florists v. United State Express Co., 12 I. C. C. 120.

(e) Complainant attacked rates charged on petroleum and its products from Pennsylvania and Ohio to Pacific coast terminals as unreasonable as well as the return charge on the empty oil cars. The rates charged were considerably higher than the rates from Chicago and a charge of $105 was made for return of empty tank cars. Subsequently the rates from Chicago and from the eastern points were made uniform, and the charge for return of empty tank cars was abolished. HELD, Complaint dismissed. National Petroleum Association v. Pennsylvania R. R., 12 I. C. C. 151.

IMPORTANT CASES SINCE 1908

(f) Original report in this proceeding was issued in 51 I. C. C. 686. Carriers tariffs provided rates for the transportation of articles in suitable containers, the charges under these rates to be calculated upon the gross weight of goods and containers. Complainant asks that freight charges on goods shipped in a steel container be assessed on the basis of the net weight, and that the returned empty container, knocked down, be accorded one-half the fourth class rates in western and southern classification territories and fifth class rate in official classification. The container may be used repeatedly and certain other advantages to the shipper are claimed, but apparently they are insufficient to offset the added expense under existing freight tariffs from the heavier weight as compared with the ordinary wooden box or fibre package. Evidence given is largely speculative as no opportunity has been given to ascertain definitely what saving if any would accrue to the carrier by the use of this steel container. Some ratings in the classification on certain commodities confined them to wooden boxes only, thus excluding the use of complainants container, which should be corrected. HELD, complaint dismissed. Pnuematic Scales Corporation, Ltd. v. A. & R. R. Co., 57 I. C. C. 308.

(g) While it is not unlawful or improper for carriers, within reasonable limits and without discrimination, to provide for the return free or at reduced rates, of shipments which are refused by consignees, the Commission has never required the granting of such reduced rates. Samuel v. Director General, 59 I. C. C. 190, 192.

(h) Proposal to increase present charges on empty shipping containers or carriers, returned, found not justified, except on bread and cake empties on which a charge of 10 cents each is approved, to include pick-up and delivery service. Express Classification, 1920, 59 I. C. C. 265, 273, 274.

(i) Contention that a return shipment constitutes a part of the whole movement, as a carload of empty beer carriers is generally ready to be sent back when a car of filled carriers is delivered. HELD, the "returned" element should be disregarded. Marshall Young Co. v. Director General, as Agent, 61 I. C. C. 61, 62.

ALL OTHER CITATIONS

Rupert Milling Co. v. O. S. L., 61 I. C. C. 475.

§6. Company Material.

See Advanced Rates §9½; Discrimination §6.

IMPORTANT CASES SINCE 1908

(a) It is unlawful to apply one rule when shipment is for a railroad and a different rule when for a private individual, if traffic is of like kind moving under similar conditions. Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C. 523, 531.

(b) A carrier may transport its own material free of charge over its own line. Carriers may, if they so desire, and by proper handling, take possession of coal at the junction point and transport it free over their entire line. However, if this is done, the local rate is the lawfully published rate up to the junction points and must be paid. This method has much to commend it not only for fuel coal, but for all so-called company material. Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 8.

(c) The railroad company as a shipper or consignee is entitled to the same consideration as any commercial shipper or consignee and no more, and this is true when the shipment moves partly over the rails of the carrier that is in fact the shipper or consignee. It necessarily follows that in such cases the carrier is entitled to a division of the joint through rate. But the division must be fixed by the same consideration which would determine the division upon through commercial shipments in which

the railroads have no other interest than that of a carrier. Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 9.

(d) The character of a shipment and not formal incidents, such as billing determines the rate and divisions applicable. The rates and divisions to points of actual destination must be applied to railway fuel coal shipments here involved, and the application of rates and divisions to fictitious billed destinations are unlawful and cannot be justified by the theory that such rates and divisions would be proper rates and divisions to the average point of actual destination. Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 10.

(e) Carriers are permitted to bill fuel coal purchased at points on connecting lines to local points on their own lines beyond their junctions with their connections, in order to secure tranportation to the junction points at their connections' divisions of the joint rates applicable to the destinations selected instead of the full rates applicable to the junction points. The only limitations are that the billing shall be genuine, that the shipments shall move to the points to which they are billed, and that they shall be given no rate advantage over commercial shipments from and to the same points. Usually the practice benefits the consignee carrier adopting it. But the consequences of the practice in particular cases can not determine the rate legally applicable. If the billing to the actual destination on the consignee's line is genuine the shipment must be treated by the connecting line exactly like an ordinary commercial shipment, whatever the disposition by the consignee carrier of the charges that accrue for the movement over its own rails. Marquette Coal Co. v. Penn R. R. Co., 40 I. C. C. 4, 6.

(f) In Conference Ruling 225 the Commission expressed the opinion that a carrier as a shipper over the lines of another carrier may not be given a preference in the application of rates on interstate shipments, but that it may lawfully and properly take advantage of legal tariff joint rates applying to a convenient junction or other point on its own line provided shipments are consigned though to such point from point of origin and are in good faith sent to such billed destination. It was later held, Conference Ruling 324, that it was unlawful for carriers to make special and discriminatory divisions of joints rates upon railroad fuel as between an originating or participating carrier and a purchasing carrier; that in the division of joint rates a shipping railroad must be treated precisely as any other shipper is treated; and that divisions upon fuel coal must be made in good faith without respect to the fact that one of the carriers is the purchaser of the coal. Tuckerton R. R. Co. v. Penn. R. R. Co., 52 I. C. C. 319, 321.

(g) A railway, as a shipper over the lines of other carriers, is lawfully entited to take advantage of joint rates applying to points on its own line, providing its shipments are, in good faith, sent to such billed destinations. Mississippi River & Boone Terre Ry. v. Director General, 55 I. C. C. 674, 677.

(h) Where stock in one carrier company is owned by another carrier company but both maintain separate organizations and report separately to the Commission, they may not lawfully carry property free for each other. Arizona Rates, Fares and Charges, 61 I. C. C. 572, 583.

(i) Proposed reduced rates on limestone from points on the Western Maryland Ry. to points in western Pennsylvania and northeastern Ohio, found justified. Similar rates from points on the B. & O. to Youngstown, Ohio, found not justified as the ex-lake competition encountered is not such a controling factor as to warrant a reduction in the Youngstown district rates on the ground of dissimilarity of conditions, without making a similar reduction at Beaver Valley, Pa., points. Reduced Rates on Limestone, 74 I. C. C. 249.

(j) Joint rate on bituminous coal, for use of complainant railroad and moving from Cass, Ind., to Kensington, Ill., over the Illinois Central, thence to Michigan City, Ind., over complainant's rails, found not unreasonable, discriminatory, or unduly prejudicial as compared with lower rate contemporaneously in effect from and to the same points over other routes. Rates assessed compare favorably with other rates on coal from same origin group to Indiana points, and mere fact of contemporaneous maintenance of lower rates over other routes does not warrant an award of reparation. C., L. S. & S. B. Ry. Co., v. I. C. R. R. Co., 74 I. C. C. 609.

(k) When a railroad company becom-

es a purchaser of coal upon lines of a connection, and ships to itself as consignee, it is entitled to same consideration as any commercial shipper or consignee and no more, and this is true when shipment moves partly over rails of carrier that is in fact shipper or consignee. Rates and Railroad Fuel and Other Coal, 36 I. C. C. 1, 9; Divisions of Joint Rates on Railway Fuel Coal, 37 I. C. C. 265; Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 546.

(ka) When a railroad company becomes a purchaser of coal upon lines of a connection, and ships to itself as consignee, it is entitled to same consideration as any commercial shipper or consignee and no more, and this is true when shipment moves partly over rails of carrier that is in fact shipper or consignee. Rates on Railroad Fuel and Other Coal, 36 I. C. C. 265. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 546.

(l) A carrier as a shipper over the lines of another carrier may not have any preference in the application of transportation rates and charges. Conversely, it may have the same privileges under the tariffs as any other shipper. New Mexico Central Ry. v. A. T. & S. F. R. Co., 81 I. C. C. 718, 721.

(m) Paragraph (6) of section 15 of the act deals with authority of Commission to prescribe just, reasonable, and equitable divisions of joint rates, fares, and charges. It must be conceded that on company fuel there are no joint rates to be divided and that therefore this section has no application to this species of traffic. New Mexico Central Ry. Co. v. A. T. & S. F. Ry. Co., 81 I. C. C. 718, 721.

(n) Contention that paragraph (2), (5) and (6) of section 15a of the act, taken together, empower Commission to require a railroad to turn over its company material to another road, for transportation via shorter route between points on line of the former, when it is shown that by so doing it wil result in an actual saving to former company, not sustained. While Commission has power and duty, as occasion may require, to investigate and determine whether or not a carrier is operated efficiently and economically, to be taken into consideration in fixing level of rates, the Commission is unable to find any provision of the act which authorizes it by order to require a carrier to conduct its affairs along lines which may seem more efficient and economical than those now followed. New Mexico Central Ry. Co. v. A. T. & S. F. Ry. Co., 81 I. C. C. 721, 722.

(o) Contention that a carrier is not a "shipper" as that term is used in paragraph (10) of section 15 of the act, and that company material therefore must be considered unrouted traffic, not sustained. On contrary, Commission has repeatedly referred to carriers as shippers when engaged in transporting material belonging to them. In the Matter of Transportation of Company Material, 22 I. C. C. 439, 440. As a shipper, therefor, it necessarily follows that such carrier has right to route its traffic as it sees fit so far as this provision of the act is concerned. New Mexico Central Ry. Co. v. A. T. & S. F. Ry. Co., 81 I. C. C. 721, 722

(p) Interstate Commerce Act, §6, par, 7 (U. S. Comp. St. §8569), requiring uniform charges for interstate transportation, does not apply where the carrier is transporting material to be used by a contractor for the upkeep of the carrier's own road, in view of the provision of U. S. Comp. §8563, cl. 6, prohibiting the transportation of all articles produced by the carrier except such as may be intended for its own use. Devine v. Meramec Portland Cement & Material Co., (Missouri, 1923), 253 S. W. 444.

ALL OTHER CITATIONS

S. F. P. & P. R. R. Co. v. Grant Bros. Construction Co., 33 Sup. Ct. 474, 478, 228 U. S. 177; Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 4, 11, 14; Texas, Oklahoma & Eastern R. R. v. St. L. & S. F. R. R., 44 I. C. C. 653, 656; Willard Storage Bat. Co. v. N. Y. C. R. R., 49 I. C. C. 141, 142; Romann & Bush Pig Iron & Coke Co v. C. & O. Ry., 49 I. C. C. 338; Weaver Bros. & Looney v. Director General, 56 I. C. C. 225; West Virginia Rail Co. v. P. C. C. & St. L. Ry. Co., 59 I. C. C. 241, 242; Arizona rates, fares and charges, 61 I. C. C. 572, 582.

§6½. To Encourage Markets.

See Market Competitions.

IMPORTANT CASES SINCE 1908

(a) Proposed reductions in rates on coal from Kansas, Missouri, Arkansas, and Oklahoma to Omaha and Lincoln, Nebr., St. Joseph, Mo., and related points for the purpose of placing the southwestern fields on a parity with southern

Illinois, found not justified. Such reductions without a concurrent reduction to Kansas City would result in undue prejudice to the latter point. Coal from Southwest to Omaha, 73 I. C. C. 536.

(b) Respondents, Wetern Maryland Ry. Co., and Baltimore & Ohio R. R. Co., proposed to reduce their rates on limestone crude, fluxing, foundry and furnace, carloads, from points on their lines to points in western Pennsylvania and northeastern Ohio. Points of origin are in the Cavetown, Md., and Thomasville, Pa., groups, about 240 and 300 miles east of Pittsburgh. Points of origin on the B. & O., are in the Martinsburg, W. Va., just south of the Cavetown group about 240 miles from Pittsburgh. Heretofore limestone producers in the Martinsburg and Cavetown groups have always had a parity of rates to the consuming points shown, and rates from those two groups have in turn to most destinations been the same as those applicable from points on the Pennsylvania in the Union Furnace group about 130 miles from Pittsburgh. No protests were received against the proposed rates from the Thomasville group to Pittsburgh district points, and the proposed rates from Cavetown and Thomasville to Youngstown were not protested. Protests were made as to the proposed rate of $1.51 from Cavetown and Thomasville groups to destinations in the Beaver Valley district. Limestone is brought into this destination territory ex-lake, but this competition is not such a controlling factor as to warrant a reduction in the Youngstown district rate on the ground of dissimilarity of conditions, without making a similar reduction at Beaver Valley points. HELD, suspended schedules of the Western Maryland have been justified, but the $1.75 rate proposed by B. & O. from Martinsburg group to Youngstown not justified. Reduced Rates on Limestone from B. & O., and Wetren Maryland Ry. Points to P. & L. E. R. R. Points, 74 I. C. C. 249.

(c) Respondents proposed to reduce the rate on pig iron, carloads, from producing points in Alabama and Tennessee to St. Louis, Mo., Ohio River crossings and related points in central territory. In 30 I. C. C. 597, the Commission found rates on pig iron from these points of origin to Ohio river and points north and east were unreasonable to extent they exceeded $3.40 to St. Louis and $2.65 to Louisville, and as increases are still in effect. The southern producers in marketing their pig iron in this territory encounter strong competition from northern furnaces, including those at Chicago, Granite City, Ill., and points in southern Ohio. Because of this, they requested respondents to so reduce their rates as to give them better access to the northern markets, and as a result the present schedules were filed. St. Louis is the largest pig iron consuming point to which reductions are filed. Prior to June 24, 1918, the relationship between Birmingham and Chicago was $1.82 in favor of Chicago and restoration of this relationship required the establishment of a rate from Birmingham of $4.62. To the Ohio River the basic rate from Birmingham is the rate to Louisville. This was increased 25 per cent on August 26, 1920, as against an increase of 33 1-3 percent to St. Louis. Respondents proposed to remove the effect of this difference in increase by reducing the rate to Louisville so that it will reflect the same percentage relationship to the proposed rate to St. Louis as existed on August 25, 1920. The rate from Birmingham to St. Louis, 475 miles, would be 57 cents less than the rate from the southern Ohio district for the same distance, and the rate to Louisville, 392 miles, would be 29c less than the rate from the southern Ohio district 232 miles. It is evident that the primary purpose of the suspended schedules is to remove the increase in spread to St. Louis, Chicago under Birmingham, and that the proposed reductions to Ohio River crossings are only incidental. HELD, proposed rate would result in undue prejudice to protestants and would unlawful. Pig Iiron from Southern Producing Points, 74 I. C. C. 330.

(d) If carriers elect to reduce rates in order to enable shippers to find a market for their products in a particular field, they must, under the law, accord equal opportunity to competing shippers at other points who are dependent upon them for transportation. Pig Iron from Southern Producing Points, 74 I. C. C. 334.

(e) Proposed reduced rates on crude petroleum oil, for coastwise movement, from certain Louisiana points to points in the Beaumont-Port Arthur, Tex., group, found justified. Proposed rates will enable carriers to meet pipe-line competition, and while subnormal, will

yield considerably more than the out-of-pocket cost of transportation. The oil traffic gained can be handled with approximately the present motive power during the greater portion of the year, and will serve to fill out the tonnage of regularly operated trains. Furthermore, if the susupended rates are not permitted to become effective, the oil will continue to move by pipe line, and respondents will be deprived of revenue which they need. Crude Oil from Louisiana Points, 74 I. C. C. 623.

(f) Respondents proposed a reduction in rates on nut and slack coal from Oklahoma and Arkansas mines on the Frisco to Texas destinations on its lines beginning at Adams, just south of the Red river and extending thence to and including Brownwood, also Fort Worth and Dallas, a length of line of some 250 miles. Coal is shipped into Texas from the Trinidad, Canon City and Walsenburg groups in Colorado, and the Raton and Dawson groups in New Mexico. The rates today are lower from Colorado and New Mexico mines. The immediate precipitant of the reductions here proposed from the Oklahoma and Arkansas mines was the readjustment from the Colorado and New Mexico mines. They are not the same in cents per ton but the differential of slack under lump coal will be the same as obtained from those mines. The record does not establish that the proposed rates are below the cost of the service or unreasonably low by comparison with other rates. HELD, proposed rates justified. Slack Coal from Arkansas and Oklahoma Mines to Texas, 80 I. C. C. 194.

ALL OTHER CITATIONS

Onion Rate to New York, N. Y., 30 I. C. C. 528; Oil from Texas Ports to Sulphur Mine, 63 I. C. C. 74; Brick from Danville, 64 I. C. C. 624; Tennesee, and West Virginia Mines to Southern Railway points in Indiana and Illinois, 68 I. C. C. 29; Coal from Yyoming mines, 68 I. C. C. 254; Southwest to Omaha, 73 I. C. C. 536; Reduced Rates on Limestone from B. & O. and Western Maryland Ry. 74 I. C. C. 249; Earthenware or Stoneware from Red Wing, 81 I. C. C. 64; Sugar Cases of 1922, 81 I. C. C. 448, 473, 475.

III. TARIFFS AND PUBLICATION.

See Tariffs.

§7. In General.

IMPORTANT CASES SINCE 1908

(a) Special rates or fares for transportation of property or troops of the Federal Government need not be posted. United States v. S. P. Co., 25 I. C. C. 255, 258.

(b) Divisions applicable on fuel coal traffic are, in effect, rates, and there is good reason why they should be published by filing with the Commission and open to public inspection. Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 13.

(c) In all cases where a carrier receives divisions out of joint rates applicable upon shipments of coal intended for its use such divisions must be filled with the Commission on or before the date of their taking effect, together with a statement of the facts upon which the carrier relies in justifying the amount of the division. All such divisions will be subject to careful scrutiny, and frequent or precipitate changes in the amounts of the divisions will require clear explanation. Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 14.

(d) The provisions of section 6 as clearly require the publication of divisions received by a consuming carrier out of the joint rates applicable on its supply coal as they require the publication of allowances made to shippers under section 15. This does not mean that such divisions paid to a consuming carrier aredeemed to be allowances, since the consuming carrier concurs in the joint rates, and the divisions paid, therefore, are paid to it in its capacity as a carrier and not as a shipper. Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 13, 14.

ALL OTHER CITATIONS

In re Express Rates, 28 I. C. C. 132, 147; Rules Governing Return Transportation of Brine, Etc., Unrep. Op. 2059; Fargo Iron & Metal Co. v. N. P. Ry., 55 I. C. C. 65; Pacific Rice Mills Co. v. Director General, as Agent, 78 I. C. C. 459, 460.

IV. PROCEDURE.

§8. In General

IMPORTANT CASES SINCE 1908

(a) Respondents urge that because the suspended schedules contain reductions the burden of justification is not upon them. The Commission has held to the contrary. Grain and Flaxseed from Twin Cities to Lake Superior ports for Boat movement beyond, 78 I. C. C. 575, 578.

(b) The statute does not cast a burden upon a protestant to prove unreasonableness of a proposed rate. Class Rates to and from Delaware Division Stations, 81 I. C. C. 758, 761.

§9. Evidence and Burden of proof.

IMPORTANT CASES SINCE 1908

(a) Contention that burden of justification of proposed reduced rates is not upon carrier, not sustained. Sublimed Lead to Trunk Line Points, 58 I. C. C., 343; Trunk Line and Ex-Lake Iron Ore Rates, 69 I. C. C., 589, Grain and Flax seed from Twin Cities, 78 I. C. C., 575, 578.

(b) Burden is on carrier to make affirmative showing, as condition precedent, that proposed reduced rates are reasonably compensatory. Commodity Rates from Jacksonville to Miami, 83 I. C. C. 207, 210.

REFRIGERATION

I. CONTROL AND REGULATION.
- §1. Jurisdiction of Commission.

II. DUTY TO FURNISH.
- §2. In general.
- §3. Incidental service and charges.
- §3½. Icing and re-icing.

III. REASONABLENESS OF CHARGES.
- §4. In general.
- §4½. Facilities used.
- §4½a. Private refrigerator cars.

IV. TARIFFS AND PUBLICATION.
- §4¾. In general.
- §5. Obligation to file.
- §6. Construction in general.
- §6½. Rules.

V. WEIGHTS.
- §7. Minimums.

VI. REPARATION.
- §8. In general.
- §9. Liability for damage.

CROSS REFERENCES

See Allowances §8 (3⅛); Cars and Car Supply §9⅝; Precooling; Protective Service; Ventilation.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission; Jurisdiction of Commission.

CASES 1887-1908

(a) Ice and the facilities for its transportation in connection with the transportation of perishable traffic requiring refrigeration in transit undertaken by a carrier are incidental to such transportation, and the charge therefor is within the Act to Regulate Commerce, §1, requiring reasonableness in all charges for any service in the transportation of passengers or property, or "in connection therewith." Truck Farmers' Asso. v. Northeastern R. Co., 6 I. C. C. 295.

(b) When carriers undertake the transportation of perishable traffic requiring refrigeration in transit, ice and the facilities for its transportation in connection with that traffic are incidental to the service of transportation, and the charge therefor is a charge in connection with such service within the meaning of section 1 of the act, in respect to the reasonableness of which the carrier is subject to that provision of the statute. Truck Farmers' Asso. v. Northeastern R. R. Co., 6 I. C. C. 295, 316.

(c) Whether or not the regulating statute applies to refrigeration charges in all cases, the defendants, by compelling shippers to pay icing charges on citrus fruits as established by the car lines, or do without necessary refrigeration for the traffic, have made these charges part of the cost of transportation, and subject to regulation under the law. Consolidated Forwarding Co. v. Southern P. Co., 10 I. C. C. 590.

(de) The carriers having reduced their rates for refrigeration charges, and the Commission being without authority to fix rates for the future, order will not be made at this time. Re Charges for Transportation and Refrigeration of Fruit Shipped from Points on the Pere Marquette and Michigan Central Railroads, 11 I. C. C. 129.

(f) It is not within the province of the Commission to prescribe the method or kind of refrigeration charges which shall be adopted by the carrier. Matter of Charges for Transportation of Fruit, 11 I. C. C. 129, 141.

(g) The charge for refrigeration stands like any other charge for transportation, and it is the duty of the carrier to publish and file the same withthe Commission. Re Charges for Transportation and Refrigeration of Fruit Shipped from Points on the Pere Marquette and Michigan Central Railroads, 11 I. C. C. 129.

(h) Refrigeration, being incumbent upon the carrier as part of the transportation, the charge for that service stands

like other charges for transportation. It is the duty of the carrier to publish, file with the Commission, and observe its refrigeration charges, and the Commission has the same jurisdiction to inquire into the justice and reasonableness of such charges as of any other charge for the transportation of passengers or property. Matter of charges for Transportation of Fruit, 11 I. C. C. 129, 141.

IMPORTANT CASES SINCE 1908

(i) Where there is no provision in a tariff for assessment of icing charge, and the shipper paid the sum demanded, the Commission has jurisdiction to inquire what was a reasonable charge and to order payment of whatever the carrier has collected over and above such reasonable charge. Memphis Freight Bureau v. K. C. S. Ry. Co., 17 I. C. C. 90, 92.

(j) The fact, that refrigeration services are furnished by a company independent of the carrier, but which while independent in theory is in fact the property of the railroad upon which it operates, does not prevent the Commission from determining the reasonableness of the refrigeration charge exacted by the railroad, but it should be determined exactly as though the service were rendered by the railroad company itself. Arlington Heights Fruit Exchange v. S. P. Co., 29 I. C. C. 106, 109.

(k) The Commission at one time held that excessive icing charges exacted because of misrouting are not within the jurisdiction of the Commission. It is doubtful however, if at this time the commission would adhere to such ruling. International Salt Co. v. P. R. R. Co., 20 I. C. C. 543, 545.

(l) Complainant attacked the rates for transportation and refrigeration of strawberries from producing points in Florida to various points in Eastern trunk line territory as unreasonable, and alleged that the facilities for such transportation were inadequate and defective. There were three methods of transporting strawberries from Florida; (1) by express, in crates," as to which no complaint was made; (2) by express in portable refrigerator boxes termed "pony refrigerators," the rate from Plant City, Fla., to New York, N. Y., being $2.49 for 100 lbs. or 7.75c per quart; and (3) by freight, in refrigerator cars, rate $1.83½ and refrigeration charge 72½c per crate, or 8c per quart, minimum 100 crates per car, or rate $1.30 and refrigeration charge 50c per crate or 5.62c per quart, minimum 175 crates. The time schedule from points of origin to New York was about 4½ days. Florida growers competed with Louisiana growers, whose shipments were also made either by freight or express, and reached market the same day as berries shipped from Florida, though the difference in distance was 500 miles in favor of Florida. The freight rate from Hammond, La., to New York was $1.302 per 100 lbs. and the refrigeration rate $72.50 per car, total 2.74c per quart; the express rate $1.89 per 100 lbs. and refrigeration charge 4.19 mills per quart, total 3.41c per quart. The carload minima from southern producing territories differed widely, as follows: From Florida, 100 crates, 5,000 lbs; from Florida, 175 crates, 8,750 lbs; North Carolina, 236 crates, 11,800 lbs; Maryland, 300 crates, 15,000 lbs; East Tennessee, 400 crates, 13,000 lbs; Louisiana, 340 crates, 17,000 lbs. The rates from Florida produced ton mile earnings which were relatively high, but because of the low carload minima the car mile earnings were relatively low. HELD (1) that the rates and refrigeration charges attacked had not been shown to be unreasonable; and (2), following United States v. Penn. R. R., 242 U. S. 208, that the Commission was without authority, in the absence of undue discrimination, to order carriers to acquire equipment of a special type or to require the transportation of refrigerator cars in passenger or special trains. Complaint dismissed. R. R. Commissioners of Florida v. Southern Express Co., 44 I. C. C. 645.

(m) Under Section 15 of the Interstate Commerce Act, as amended by the Hepburn Act authorizing the Commission to determine whether rates, or practices affecting rates, are unreasonable, to determine what practice in respect to transportation is just, and to require the carriers to conform, that body by power to cancel a tariff withdrawing a precooling privilege previously recognized by it and to require the carrier to conform to its order establishing a certain charge on pre-cooled shipments. A. T. & S. F. Ry. Co. v. United States, 34 Sup. Ct. 291, 296; 232 U. S. 199; 58 L. ed.—

ALL OTHER CITATIONS

A. T. & S. F. Ry. Co. v. U. S., 204 Fed. 647, 653; Mason Bros. v. S. P. Co., 25 I. C. C. 35, 36; Refrigeration Rates from New Orleans, 31 I. C. C. 637, 638; Campbell v. Southern Exp. Co., 55 I. C. C. 633, 635, 636.

II. DUTY TO FURNISH.

§2. In general.

CASES 1887-1908

(a) It is the duty of the respondent railroad companies engaged as common carriers in transporting fruits from points in Michigan, to furnish refrigerator cars for such service; but such duty arises out of their common-law liability, not under the Act to Regulate Commerce; and redress for failure to fulfill it must be sought in the courts. Re Transportation of Fruit, 10 I. C. C. 360.

(b) Railroad companies are required at common law to furnish suitable facilities for the conduct of the business in which they engage, and it follows that the respondent railroad companies, holding themselves out as carriers of perishable fruit, must provide the necessary refrigerator cars for the transportation of that traffic. Re Charges for Transportation and Refrigeration of Fruit Shipped from Points on the Pere Marquette and Michigan Central Railroads, 11 I. C. C. 129.

IMPORTANT CASES SINCE 1908

(c) A carrier's duty, under the circumstances, is to furnish refrigeration, and the carrier may insist upon furnishing that service exclusively. Arlington Heights Fruit Exchange v. S. P. Co., 20 I. C. C. 106, 116.

(d) Proposed $10 car-rental charge to be applied on certain privately owned refrigerator cars when used in so-called local service from Pittsburgh, Pa., to destinations in c. f. a. territory found not justified. Unjust discrimination would result as the charge would apply only on the lines of the Pennsylvania to points in c. f. a. territory, and not via other lines which also serve the same destination territory from Pittsburgh. Furthermore, the charge is not made or proposed to points on the Pennsylvania lines east of Pittsburgh to which shipments of the same character may be forwarded from Pittsburgh in cars of identical ownership. Car Rental Charges on Private Line Cars, 74 I. C. C. 107.

(e) Proposed withdrawal of Terminal R. R. Asso., of St. Louis and certain terminal lines from perishable protective tariff and from service of icing and reicing on team tracks, which would subject shippers to increased charges, found not justified. No evidence offered in support of suspended schedules and respondents declared that it was their purpose to cancel them. Elimination of Terminal Lines from Perishable Tariff, 78 I. C. C. 745.

ALL OTHER CITATIONS

Swift & Co. v. C. & A. R. R. Co., 16 I. C. C. 426, 430; Albree v. B. & M. R. R. 23 I. C. C. 303, 322; In re Advances on Potatoes, 25 I. C. C. 159, 163; Protection of Potato Shipments in Winter, 26 I. C. C. 681, 684; Refrigeration Charge on the K. C. S. Ry., 26 I. C. C. 617, 620; A. T. & S. F. Ry. Co. v. United States, 34 Sup. Ct. 291, 294, 232, U. S. 199; 58 L. ed.—; Lake-and-Rail Butter and Egg Rates, 29 I. C. C. 45, 51; Protection of Potato Shipments in Winter, 29 I. C. C. 504; Minimum Weight on Fresh Meats and Other Commodities, 30 I. C. C. 349, 350; R. R. Commission of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 21; Rental Charges for Insulated Cars, 31 I. C. C. 255, 256; Hume Co. v. S. P. Co., 33 I. C. C. 126, 127; Florida Citrus Exch. v. A. C. L. R. R., 39 I. C. C. 325, 329; Miss. R. R. Comm. v. N. O., M. & C. R. R. Co., 42 I. C. C. 574, 575, 576; R. R. Commissioners of Florida v. Southern Express Co., 44 I. C. C. 645, 649; Vegetable Oils Transportation 46 I. C. C. 674; Producers Sales Co. v. N. Y. N. H. & H. R. R., 48 I. C. C. 438; In re Private Cars, 50 I. C. C. 652, 679; Perishable Freight Investigation, 56 I. C. C. 449, 454, 455, 471, 472, 473, 474, 475, 477, 481, 521, 526, 548, 573, 574, 575, 576, 613, 616; Northern Potato Traffic Asso. v. G. N. Ry. Co. 58 I. C. C. 360, 362; Citrus League v. Director General, 58 I. C. C. 373, 396; Protective Service on Perishable Freight, 81 I. C. C. 155.

§3. Incidental Service and Charges.

See Additional Charges and Service; Special Rates and Service; Switch Tracks and Switching §5; Transportation.

IMPORTANT CASES SINCE 1908

(a) Refrigerator cars furnished in winter, must be lined and heated in order to protect potatoes in very cold weather. Best Co. v. G. N. Ry. Co., 33 I. C. C. 1, 2.

(b) An additional charge may be just and reasonable when refrigerator cars are used for transportation of the ice, but it should be added to the rate for transportation of the commodity and not imposed as a mileage charge for the movement of the empty car. City Ice Delivery Co. v. P. M. R. R. Co. v. P. M. R. R. Co., 39 I. C. C. 589, 591.

(c) The Commission could not with entire confidence find that precooling can take the place of standard refrigeration under all circumstances. Arlington Heights Fruit Exchange v. S. P. Co., 45 I. C. C. 248, 252.

(d) Carriers are entitled, in addition to the actual cost of the ice furnished, to compensation for haulage, cost of supervision, repairs to bunkers and extra switching, and to an allowance for depreciation of cars, damage claims, and profit. Loretz, Pegram & Co. v. S. P. Ry., 51 I. C. C. 158, 159, 160.

ALL OTHER CITATIONS

California Fruit Growers' Exchange v. Santa Fe Refrigerator Dispatch Co., 17 I. C. C. 404; Olympia Brewing Co. v. N. P. Ry. Co., 17 I. C. C. 178, 181; Davies v. I. C. R. R. Co., 19I. C. C. 3, 5; Arlington Heights Fruit Exchange v. S. P. Co., 20 I. C. C. 106, 118, 117, 120; In Re Advances on Meats and Packing-House Products, 23 I. C. C. 656, 671; In Re Precooling and Pre-icing, 23 I. C. C. 267, 269; Crutchfield and Woolfolk v. S. P. Co., 24 I. C. C. 651, 653; R. R. Com. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 19, 20, 21, 22, 25, 26; Montrose & Delta Counties Frt. Rate Asso. v. D. & R. G. R. R. 34 I. C. C. 400, 407; Westbound Transcontinental Refrigeration charges, 34 I. C. C. 140, 143; Unit Marketing System v. St. L. B. & M. Ry. Co., 48 I. C. C. 510, 514; Perishable Freight Investigation, 56 I. C. C. 449, 507, 569, 570, 573, 575, 576, 563, 568.

§3½. Icing and Re-icing.

CASES 1887-1908

(a) When carriers undertake the transportation of perishable traffic requiring refrigeration in transit, ice and the facilities for its transportation in connection with that traffic are incidental to the service of transportation, and the charge therefor is a charge "in connection with" such service within the meaning of section 1 of the Act to Regulate Commerce, in respect to the reasonableness of which the carrier is subject to that provision of the statute. Truck Farmers' Asso. v. Northeastern R. R. Co. et al., 6 I. C. C. 295.

(b) Carriers should, in the opinion of the Commission, be legally compellable to furnish ice for the refrigeration of refrigerator cars used upon their lines, but if it is not part of the obligation of a common carrier to provide such refrigeration, when it does furnish it and at the same time prohibits the shipper from obtaining it from any other source, the charge for refrigeration is part of the total charge for transportation furnished by the carrier, and must be reasonable. Re Transportation, Etc., of Fruit 10 I. C. C. 360, 374.

(c) Icing is not a mere incident to the transportation service, but is a part of the service itself; and a railroad company which holds itself out as a carrier of a commodity which can only move under refrigeration is in duty bound to furnish that refrigeration. Re Charges for the Transportation and Refrigeration of Fruit Shipped from Points on the Pere Marquette, Michigan Central Railroads 11 I. C. C. 129.

(d) Where a railroad company insists that ice shall be supplied only by the party whom it appoints, and where it collects from the shipper and passes over to such party the compensation for that service, it must stand responsible for the refrigeration as for any other part of the tranportation. Re Charges for the Transportation and Refrigeration of Fruit Shipped from Points on the Pere Marquette & Michigan Central Railroads 11 I. C. C. 129.

(e) Where a railroad company holds itself out as the carrier of a commodity which can only move under refrigeration, its duty extends ordinarily to furnishing that refrigeration, for the icing is not a mere incident to the transportation service, but is a part of the service itself, and properly speaking, it is not ice but refrigeration that the carrier furnishes to accompany the shipment during every movement on its journey. Where the railroad company insists that the ice shall be supplied only by the party whom it appoints, and where it collects from the shipper and passes over to this party the compensation for that service, the railroad company must stand responsible for the refrigeration as for any other part of the transportation. Matter of Charges for Transportation of Fruit, 11 I. C. C. 129, 140.

IMPORTANT CASES SINCE 1908

(f) Delay in prompt movement obviously increases the amount of ice necessary and consequently the charges. It is no sufficient reply to point to the fact that the tariffs provide that the shipper may specify the amount of ice actually to be used. Should there be delay from whatever cause it is apparent that he

would desire ample refrigeration for his shipment and hence would hesitate in exercising this option to specify only an amount of ice which would be sufficient for the scheduled time of movement but not sufficient in case of delay. The facts as to the necessities of refrigeration en route lie peculiarly within the knowledge of the carriers as do the ordinary occasions of delay, and it is no hardship to require the carriers to establish and carry in their tariffs a maximum sum for the service of refrigeration beyond which the carrier must pay for excess refrigeration costs, if any. To permit billing for extra ice, sometimes, in considerable sums and on bills rendered long after the shipment, tends, to say the least, to remove incentive to expedited service. Hill v. N. C. & St. L. Ry., 44 I. C. C. 582, 587.

(g) The statute contemplates that carriers may ice in transit as well as perform the entire refrigeration service. The language of the Act is that transportation shall include "all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration, or icing, storage and handling of property transported. Matter of Private Cars, 50 I. C. C. 652, 704.

(h) Charges for reicing should be upon a just basis considering the costs proper to be included such as salt, ice, labor, etc., together with a reasonable profit. In the Matter of Private Cars, 50 I. C. C. 652, 705.

(i) If it should be deemed, after taking the line haul rates into consideration, that the substitution of stated charges is justified, the Commission is not persuaded that it would be in the interest of conservation and economy, or just and reasonable, wholly to deprive shippers of the opportunity to specify the amount of ice which shall be used, or, whatever may be the legal power of the carriers, of the opportunity to supply the initial ice. Perishable Freight Investigation, 56 I. C. C. 449, 472.

(j) If after taking the line-haul rate into consideration the substitution of stated charges is found justified, the Commission would not still be persuaded that shippers should be wholly deprived of the opportunity to specify the amount of ice which shall be used or of the opportunity to supply the initial ice. Proposals to meet the objection made. Perishable Freight Investigation ,56 I. C. C. 449, 472.

(k) The quantity of ice supplied to shipments under refrigeration is a most important factor in determining the cost of service. Perishable Freight Investigation, 56 I. C. C., 449, 508.

(l) Respondents proposed to increase charges for the icing and reicing of perishable freight on the team tracks at St. Louis, Mo., and East St. Louis, Ill. Present icing charge $4 sought to be increased to $5.50. All reicing at East St. Louis except team track reicing, is performed for the respondents by the Terminal Car Icing Co., which has erected a plant alongside respondents tracks. No increased charges for reicing at the plant is sought. Respondents team track reicing at St. Louis and East St. Louis is done by the Polar Wave Iron & Fuel Co. It is apparent from the testimony that respondents have not made serious efforts to obtain ice for team track icing at less than $5.50. HELD, proposed schedules not justified. Increased Charges for Icing and Reicing Perishable Freight at St. Louis, Mo., and East St. Louis, Ill., 74 I. C. C., 513.

(m) Upon rehearing, findings in former report, 61 I. C. C., 438, modified so as to permit carriers to increase present refrigeration charges on citrus fruits and vegetables from Florida producing points to various interstate destinations, established pursuant to that decision, to extent that they shall not exceed charges based on 85 per cent of the cost-of-ice factor embraced in such charges in effect at the time of the original decision. Railroad Commrs, of Fla. v. Director General, 74 I. C. C. 157.

(n) Refrigeration rates on preserved fruits and berries shipped from Oregon and California points to various destinations throughout the United States found unreasonable to extent they exceeded the contemporaneous deciduous fruit refrigeration rates between the same points. Reparation awarded. National Preserves & Fruit Products Asso. v. A. & S. Ry. Co., 74 I. C. C. 179.

(o) Proposed withdrawal of Michigan R. R. Co., an electric line, as a participating carrier from perishable protective tariff, thereby increasing refrigeration charges on fresh fruits from Saugatuck, Mich., to Chicago, Ill., and other destinations, and which would result in undue prejudice to shippers of fresh fruit from Saugatuck and give undue preference and advantage to their competitors at Fennville, Mich., found not justified.

Elimination of Michigan R. R. Co. from Fruit Tariff, 74 I. C. C. 228.

(p) Proposed increased charges for icing and reicing cars containing perishable freight on team tracks of Terminal R. R. Asso. at St. Louis, Mo., and East St. Louis, Ill., to the basis of cost to carrier of ice at these points, found not justified. Carrier made no attempt to secure ice at lower cost, and destruction of the uniform charge for icing by zones would mean a return to the cost-of-ice basis, making the charges different at each point and resulting in congestion of traffic at points where the cost of ice is lowest. Charges for Icing and Reicing Perishable Freight, 74 I. C. C. 513.

(q) Shipment of pears moved without instructions as to icing. Subsequently complainant instructed "to ice car full capacity at St. Louis, if possible." Car had passed St. Louis and icing was performed at Kansas City, Kans. HELD: Though no instructions given to ice at Kansas City, no affirmative order was given that if refrigeration could not be commenced at St. Louis, it was not to be commenced at some farther distant point. Carrier reasonably complied with request of complainant, and refrigeration charges were not unreasonable or illegal Lutz v. C., R. I. & P. Ry. Co., 74 I. C. C. 524.

(r) Cars initially iced by shipper and moved with instructions on bills of lading "Do not re-ice. Keep vents closed." Tariffs named stated refrigeration charge and provided that "When shippers instruct that commodities loaded in cars, tanks or which contain ice, are not to be re-iced in transit, full refrigeration rates will apply." HELD: No good reason appears why complainant should have been compelled to pay stated refrigeration charges for service not received and specifically directed not to be furnished. Compulsory protective service and attendant cost under such circumstances found not justifiable and reparation awarded. Palmer Co. v. Director General, as Agent, 80 I. C. C. 371.

(s) Proposed increased charges for icing c. l. shipments of perishable freight on team tracks at Boston, Mass., to basis of cost to carrier, found not justified. Team track icing comprises a relatively small part of respondent's icing service, and record does not disclose that they may not be deriving ample revenue from that service taken as a whole. Protective Service on Perishable Freight, 81 I. C. C. 155, 156, 159.

(t) The New Haven and the Central of New England, proposed to cancel a rule providing that less carload rates include the service of icing, when necessary, on interstate shipments of milk, cream, buttermilk, skim milk, condensed and evaporated milk, and pot cheese, moving in milk or refrigerator cars. The proposed cancellation represented an attempt by respondents to discontinue a tariff provision established pursuant to order in 45 I. C. C. 412. The scale prescribed in this order had the effect of reducing rates on less carload milk for hauls under 270 miles and of increasing those for greater distances. Prior to 1912 when the icing charge was first established, respondents tariffs made no reference to the refrigeration of milk. Respondents did not then, and do not now, possess facilities for performing the service. At no time since respondents have held themselves out to ice less carload shipments have they been requested to do so by the shippers. The cancellation of the icing provision would have the effect of increasing the rates on less carloads of these commodities and would destroy the uniformity of rates and regulations which were prescribed in New York case supra by allowing respondents to publish and maintain a rule different from all other carriers serving the same general territory. The evidence is not convincing that the present rates are less than reasonable. HELD, suspended rates not justified. Icing of milk, cream, and other dairy products, 87 I. C. C. 634.

ALL OTHER CITATIONS

Crutchfield & Woolfolk v. S. P. Co., 24 I. C. C. 651, 655; C. G. Justice Co. v. Penn. R. R. Co., 26 I. C. C. 478, 479; Geraty v. A. C. L. R. R. Co., 211 Fed. 227, 230; Refrigeration Rates from New Orleans, 31 I. C. C. 637; Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 516; Providence Fruit & Produce Exchange v. N. Y. C. & H. R. R. R. Co., 33 I. C. C. 294, 296; Westbound Transcontinental Refrigeration Charges, 34 I. C. C. 140, 143; Cudahy Packing Co. v. A. T. & S. F. Ry. Co., 43 I. C. C. 262; Hill v. N. C. & St. L. Ry., 44 I. C. C. 582, 586; Harmon & Evans v. St. L. & S. F. R. R., 45 I. C. C. 581; Campbell v. St. L. B. & M. Ry., 44 I. C. C. 567, 569; Perishable Freight Investigation, 56 I. C. C. 449, 456, 470, 471, 481, 482, 493, 499, 503, 509, 513, 515, 516, 526, 528, 570, 571, 572, 573, 577, 592, 613; Cali-

fornia Citrus League v. Director General, 58 I. C. C. 373; Western Meat Co. v. Director General, as Agent 58 I. C. C. 743; Swift & Co. v. Director General, 61 I. C. C. 183; Elimination of Various St. Louis Terminal Railway Lines from the Perishable Protective Tariff, 78 I. C. C. 745; Protective Service on Perishable Freight, 81 I. C. C. 155, 160.

III. REASONABLENESS OF CHARGES

§4. In general.

See Reasonableness of Rates.

CASES 1887-1908

(a) HELD, under the evidence in this case, (1) that on shipments of strawberries from Charleston to Jersey City the charge of 2 cents per quart for refrigeration en route is excessive, that the charge therefor should not exceed 1½ cents, and that the total charge per quart for the service of transportation on such shipments and necessary services "in connection therewith," including refrigeration, should not be in excess of 6 cents per quart; (2) that 1.4 cents per package should be deducted from the rate on vegetables shipped in standard barrels or barrel crates from Charleston to Jersey City in cases where the delivery of such vegetables has been changed from New York to Jersey City without a change in rates; and (3) that the rate on cabbages shipped in standard barrels or barrel crates from Charleston to Jersey City or New York should not exceed ¾ of the rate on potatoes so shipped. Truck Farmers' Asso. v. Northeastern R. R. Co. et al., 6 I. C. C. 295.

(b) Upon all the facts and circumstances, including, on the one hand, the difficulties and liability to loss attending the production and shipment of peaches, and, on the other hand, the large percentage of cars loaded above the prescribed minimum weights for carloads, for which excess no charge is made by the carriers, the exceptional character of the service, which involves fast time and prompt delivery at destination, the carriage of a large amount of nonpaying freight, return of cars without loads, and many other conditions relating to the highly perishable nature of the traffic,—HELD, that neither the minimum carload weight nor the transportation charge established by the defendants engaged in the carriage of peaches in refrigerator cars from Georgia points to New York, based upon a rate of 81 cents from Atlanta to New York, is unreasonable or unjust. Georgia Peach Growers' Asso. v. Atlantic Coast Line R. Co. 10 I. C. C. 255.

(c) Carriers should, in the opinion of the Commission, be legally compellable to furnish ice for the refrigerator cars used upon their lines; but if it is not part of the obligation of the common carrier to provide such refrigeration, when it does furnish it, and at the same time prohibits the shipper from obtaining it from any other source, the charge for refrigeration is part of the total charge for transportation furnished by the carrier, and must be reasonable. Re Transportation of Fruit 10 I. C. C. 360.

(d) A reasonable refrigeration charge on Michigan fruit shipped to interstate destinations from points in Michigan, when based upon the ice actually used, would be $2.50 per ton. Re Charges for the Transportation and Refrigeration of Fruit Shipped from Points on the Pere Marquette & Michigan Central Railroads 11 I. C. C. 129.

(e) Refrigeration, being incumbent upon the carrier as part of the transportation, the charge for that service stands like any other charge for transportation. It is the duty of the carrier to publish, file with the Commission, and observe its refrigeration charges; and the Commission has the same jurisdiction to inquire into the justice and reasonableness of such charges as of any other charge for the transportation of passengers or property. Re Charges for Transportation and Refrigeration of Fruit Shipped from Points on the Pere Marquette & Michigan Central Railroads, 11 I. C. C. 129.

(f) A reasonable refrigeration charge on Michigan fruit shipped to interstate destinations from points in Michigan, when based upon the ice actually used, would be $2.50 per ton, and reasonable and just charges, if made by the ton, are also found and stated for the service from Michigan to the destinations involved. As a result of this investigation the Michigan Central R. Co. has established for the present season the reasonable charge of $2.50 per ton for ice actually used, and that company is dismissed from the proceeding. The Pere Marquette R. Co., while under contract to continue its use of Armour cars during the present season, has made reductions in its refrigeration charges amounting to from 15 to 30 per cent to apply during this season, and has filed a state-

ment with the Commission that it intends for the season of 1906 to purchase or lease its own equipment and also furnish refrigeration at $2.50 per ton for the ice used in transit. For reasons stated, including the consideration that the Commission is without authority to fix rates for the future, an order should not be issued at this time. Matter of Charges for Transportation of Fruit 11 I. C. C. 129.

(g) Complainant attacked rates charged for transporting peaches, carloads, from Macon and Atlanta, Ga., to Washington, D. C., Baltimore, Md., Philadelphia, Pa., and New York City as unreasonable. Rates charged to Washington and Baltimore 78c, to Philadelphia and New York 81c. Minimum weight is 20,000 and 22,500 pounds on 36 and 40 foot cars, while a minimum of about 23,000 pounds is in effect on cars for refrigeration; that in addition to the above rates a charge of 12½c per crate is exacted on the basis of the last named minimum carload, irrespective of the size of the car; that defendants refused to furnish suitable refrigeration on less carload shipments; that a penalty of $5 per day is made upon failure to load a car within 24 hours of the time car is placed. HELD, rates charged and refrigeration charge of 12½c unjust and that defendants practices in using one minimum carload requirement for transportation service other than refrigeration and a different minimum carload for refrigeration service is also unreasonable; rate should not exceed 76c to Philadelphia and New York and 73c to Baltimore and Washington, minimum to apply 20,000 for 36 foot cars and 22,500 pounds for 40 foot cars, and refrigeration should not exceed 11c per crate; $5 charge penalty not unreasonable. J. J. Waxelbaum & Co. v. A. C. L. R. R. 12 I. C. C. 178.

(h) Strawberries from Chattanooga and points between Chattanooga and Oakdale, Tenn., to Cincinnati, O., reduced from 17½ cents per crate for transportation, and 9½ cents per crate for refrigeration, with carload minimum of 450 crates, reduced to 12½ cents per crate for freight and 9½ cents for refrigeration, with same carload minimum. American Fruit Union of Cincinnati v. C. N. O. & T. P. Ry. Co., 12 I. C. C. 411.

IMPORTANT CASES SINCE 1908

(i) The mere assertion that an advance is necessary to meet the demands of a refrigeration car company for use of its equipment is not justification for advancing refrigeration charges. In re Advances on Fruits and Vegetables, 24 I. C. C. 164, 165.

(j) Cost of service is a factor in refrigeration that seems to vary with the location of the shipping points and the source and cost of ice. In re Advances on Fruit and Vegetables, 24 I. C. C. 164, 166.

(k) Where refrigeration service is an entirety, where that service is wholly under the control of the carrier which determines when ice should be supplied and in what quantities, so that the shipper can neither direct the use nor name the amount used; where that amount depends upon the manner in which the car is handled by the railroad company itself, the charge should be the gross sum for the entire service, and a tariff which requires the shipper to pay for the amount of ice consumed in the reicing is unjust and unreasonable and unduly discriminatory between different shippers. The carrier may protect itself against any undue delay on the part of the shipper in loading the car after it has been iced and placed for loading by a charge in the nature of a demurrage charge of so much per day or hour beyond a time fixed within which the car should be loaded, provided, always, that this, as well as the refrigeration charge itself is just and reasonable. Crutchfield & Woolfolk v. S. P. Co., 24 I. C. 651, 653.

(l) Voluntary reduction of refrigeration rates to meet carrier competition does not establish that previous rate was unreasonable. Wattam v. N. P. Ry. Co., 37 I. C. C. 101, 102.

(m) The carriers are entitled, in addition to the actual cost of the ice furnished, to compensation for the haulage of the ice, the cost of supervision, repairs to bunkers and extra switching, to an allowance for depreciation of cars, damage claims, and profit. Loretz, Pegram & Co. v. S. P. Co., 51 I. C. C. 159.

(n) All cost incidental to the extra and special service of refrigeration should be taken into account in fixing a reasonable refrigeration charge, subject to the qualification that where the freight rate already included full compensation for these extra and special services the shipper should not again be required to pay for them in the form of separate charges. Perishable Freight Investigation, 56 I. C. C. 449, 467.

(o) The cost-of-ice basis does not purport to cover entire cost of refrigeration service, as no allowance is made for haulage of the ice, "bunker damage," or supervision. It is intended to cover only cost of obtaining the ice and placing it in bunkers, including switching of cars. Where basis is in effect, no compensation is received for other factors of refrigeration cost, unless obtained through line-haul rates. Perishable Freight Investigation, 56 I. C. C., 449, 470.

(p) Refrigeration charges can not be based upon efficiency, for no such standard is recognizable; nor is there means of measuring cars in terms of the standard if one could be determined. Even if practicable, such a method of fixing charges would not be just and reasonable. While carriers have been slow to improve, information is not sufficient to warrant a finding that they should be penalized for neglect. Perishable Freight Investigation, 56 I. C. C., 449, 489.

(q) Extra switching made necessary by refrigeration service is a proper factor in estimating its cost, and rate of 35 cents per switch seems well within reason. There is doubt in regard to the actual number of switching movements entailing additional expense and it seems that on the whole, the estimates of this factor of cost are not unreasonable. Perishable Freight Investigation, 56 I. C. C. 449, 503.

(r) In practice a zone system is necessary for icing, for if the charges varied at every station the traffic would seek the routes where the cost was lowest and congestion would result. Increased Charges for Icing and Reicing Perishable Freight at St. Louis, Mo., and East St. Louis, Ill., 74 I. C. C., 513, 514.

(s) Tariff provided for furnishing of ice and salt for refrigeration throughout c. f. a. territory at carrier's expense. Subsequently rule was adopted for purpose of assessing such charges upon consignor or consignee, creating conflict with the preexisting rule on this point. HELD: Intention of tariff compilers is not controlling, it being well settled that where a tariff contains conflicting provisions the one according the lowest rates or charges governs, and particularly when the rule producing the lower rate or charge was first in effect and has not been legally cancelled. Charges assessed found illegal and reparation awarded. Swift & Co. v. Director General, as Agent, 77 I. C. C. 678.

(t) Cars initially iced by shipper and moved with instructions on bills of lading "Do not re-ice. Keep vents closed." Tariffs named stated refrigeration charge and provided that "When shippers instruct that commodities loaded in cars, tanks of which contain ice, are not to be re-iced in transit, full refrigeration rates will apply." HELD: No good reason appears why complainant should have been compelled to pay stated refrigeration charges for service not received and specifically directed not to be furnished. Compulsory protective service and attendant cost under such circumstances found not justifiable and reparation awarded. Palmer Co. v. Director General, as Agent, 80 I. C. C. 371.

(u) Finding in original report, 61 I. I. C. C. 183, that through charges, less allowance for ice and salt furnished by complainant, on certain interstate shipments of perishable freight were not unreasonable, affirmed on further hearing. Complainant's claim involves adequacy of tariff allowance for transportation service undertaken by it, and under section 15, paragraph (13), of the act, the Commission is not authorized to increase an allowance merely because it is inadequate to cover cost to shipper whom carrier has employed to perform the service. Cambria Steel Co., 64 I. C. C. 737, 740. Swift & Co. v. Director General, as Agent, 81 I. C. C. 677.

(v) Respondents proposed certain changes in National Perishable Protective Tariff I. C. C. 1 83 I. C. C. 275 covered the proposed changes with the exception of paragraph M of Rule 200 A. This rule reads as follows: When shipments are tendered for transportation in refrigerator cars and shipper has placed ice on top of load, the shipment will be considered as moving under refrigeration, and the rules and charges as provided in this section of the tariff will apply. No allowance will be made for the cost of icing placed on top of load. Whether shipper elects to bill cars "Do not re-ice" carriers will initially ice bunkers at first available icing station, and shipment will be handled under the provisions of rule 240 of tariff. Under this method the shippers save and the carriers lose the stated refrigeration charge of $90 per car. The weight of the ice in the crates amounts

to 6,400 pounds or more per car. It is said that crate icing is indispensable for the transportation of lettuce from the Imperial Valley to the east, whether it moves with or without standard refrigeration. It is conceded that the damage to the cars from moisture caused by top icing can not be separated from that due to crate icing. The ice in the crates does not melt quite as rapidly as that placed on top of the load, and some of the meltage from the crate ice is retained in the package, but crate icing does wet the floors and apparently affect the cars in a manner similar to that already described. The rates for the transportation of lettuce and other vegetables from California were established many years ago before the practice of top icing was started, and the only changes therein since that practice began have been the general increases and reductions which affect the general level of rates throughout the country. The Commission agrees with respondents that they did not take into consideration the damage to their cars from top icing in fixing the transportation rates. The Commission believes the respondents are entitled to compensation for the haulage of ice placed on top of the load and for the damage caused thereby to their equipment. The Commission sees no reason why rule 240 should not be amended so as to make the charges applicable when shipments move with ice in the crates and on top of the load, instead of in the bunkers. The weight of the ice hauled on top of the load is not as great as the weight of the ice that is used in bunkers, but the damage to the body of the car for ice placed therein is probably greater than the damage to the bunkers in the case of bunker icing. It is suggested that in case a charge is assessed for ice haulage and damage to equipment on shipments moving under top icing, a limit should be placed on the amount of icing that may be used on top of the load, and 5,000 pounds would be a reasonable maximum. HELD, proposed paragraph M of rule 200 A not justified. Rules for Protective Service on Perishable Freight, 89 I. C. C. 87.

(w) Complainant attacked $4 per ton for ice and 75c per 100 pounds for salt collected for refrigeration of butter, eggs, and dressed poultry, in straight or mixed carloads, from Nebraska, Wisconsin and other states to destinations in official classification territory between August 1 and Dec. 31, 1919, as not authorized. In 77 I. C. C. 678, the Commission found that similar charges during the same period were inapplicable. HELD, charges attacked illegal, reparation awarded. Fairmont Creamery Co. v. Director General, 89 I. C. C. 359.

ALL OTHER CITATIONS

Fain & Stamps v. A. C. L. R. R. Co., 13 I. C. C. 529, 530; Ozark Fruit Growers' Ass'n v. St. L. S. F. R. R. Co., 16 I. C. C. 106, 115, 153; Asparagus Growers' Ass'n v. A. C. L. R. R. Co., 17 I. C. C. 423, 427, 429; Arlington Heights Fruit Exchange v. S. P. Co., 19 I. C. C. 148, 154; Sweency Lynes Co. v. N. Y. P. & N. R. R. Co., 20 I. C. C. 600; Arlington Heights Fruit Exchange v. S. P. Co., 20 I. C. C. 106, 108, 109, 111; Albree v. B. & M. R. R. Co., 22 I. C. C. 303, 322; Arlington Heights Fruit Exchange v. S. P. Co., 22 I. C. C. 149, 153; Jackson & Perkins Co. v. S. P. Co., 24 I. C. C. 323; In re Advances in Demurrage Charges, 25 I. C. C. 314, 318; Mason Bros. v. S. P. Co., 25 I. C. C. 35; Refrigeration Charges on K. C. S. Ry., 26 I. C. C. 617, 620, 621; Western Fruit Jobbers Assn. v. C. R. I. & P. Ry. Co., 27 I. C. C. 417, 423; Refrigeration of Fruits and Vegetables Between Points in Colorado and Utah, 28 I. C. C. 326; Refrigeration Charges on Fruits and Vegetables, 29 I. C. C. 653; Pacific Fruit Exch. v. S. P. Ry. Co. 31 I. C. C. 159, 164; Rental Charges for Insulated Cars, 31 I. C. C. 255; Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 516; Kenner Truck Farmers' Ass'n. v. I. C. R. R. Co., 32 I. C. C. 1, 8, 10; R. R. Comm. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 19, 20; Pacific Fruit Exchange Co. v. S. P. Co., 32 I. C. C. 48, 49; California Fruit Growers Ass'n. v. A. G. S. R. R. Co., 32 I. C. C. 51; Rental Charges on Insulated Cars, 31 I. C. C. 255; Refrigeration Rates from New Orleans, 31 I. C. C. 637, 639; G. W. Hume Co. et al v. Southern Pacific Co. et al., 33 I. C. C. 126, 127; Westbound Transcontinental Refrigeration Charges, 34 I. C. C. 140; Hume Co. v. S. P. Co., 33 I. C. C. 126, 127; Rates on Tomatoes from Jacksonville to Kansas City, 33 I. C. C., 145, 148; Eastern Fruit Growers' Asso. v. B. & O. R. R. Co., 33 I. C. C. 343, 345; Lindsay & Co. v. Northern Exp. Co. 33 I. C. C. 394, 399; Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co., 34 I. C. C., 400, 407; Smith v. C. & O. Ry., 37 I. C. C. 604; Melon Refrigeration Charges, 38 I. C. C. 62, 63, 64;

City Ice Delivery Co. v. P. M. R. R., 39 I. C. C. 589; Arlington Heights Fruit Exchange v. S. P. Co., 39 I. C. C. 88, 93 North Pacific Fruit Distributors v. N. P. Ry. Co., 40 I. C. C. 191; New England Milk Case, 40 I. C. C. 699, 736; Williamson v. A. T. & S. F. Ry., 42 I. C. C. 11 Hale Halsell Grocery Co. v. M. K. & T. Ry. Co., 42 I. C. C. 491, 492; Mississippi R. R. Comm. v. N. O. M. & C. R. R., 42 I. C. C. 574; Fruit Refrigeration, 43 I. C. C. 102; Fruits and Vegetables 43 I. C. C. 291, 318, 299; Natl. Poultry, Butter & Egg Assn. v. B. & O. S. W. R. R., 43 I. C. C. 392, 397, 400, 403; Campbell v. St. L. B. & M. Ry., 44 I. C. C. 567, 569; Fruit Refrigeration 43 I. C. C. 102; Fruits and Vegetables, 43 I. C. C. 291, 318, 299; Natl. Poultry Butter & Egg Assn. v. B. & O. S. W. R. R. 43 I. C. C. 392, 397, 400, 403, 409; Fruits from Florida, 43 I. C. C. 595, 603; Rates on Dairy Products, 43 I. C. C. 700, 710; Northern Potato Traffic Asso. v. C. & A. R. R. 44 I. C. C. 426, 431, 433; Campbell v. St. L. B. & M. Ry., 44 I. C. C. 567, 569; Hill v. N. C. & St. L. Ry., 44 I. C. C. 582, 587; Vallance v. N. P. Ry., 45 I. C. C. 131; Morris & Co. v. I. G. N. Ry., 45 I. C. C. 223; Hale-Halsell Grocery Co. v. M. K. & T. Ry., 45 I. C. C. 523, 526; Vegetable Oils Transportation, 46 I. C. C. 674, 675; Export Freight Free Time, 47 I. C. C. 162, 170; Gamble Robinson Com. Co. v. A. & B. R. Ry., 50 I. C. C. 324, 325; Nat'l. Poultry, Butter & Eggs Asso. v. B. & O. S. W. R. R. 51 I. C. C. 652, 702, 703; Loretz, Pegram & Co. v. S. P. Co., 51 I. C. C. 158; Gamble Robison Co. v. A. & B. R. Ry., 50 I. C. C. 324; In re Private Cars, 50 I. C. C. 652, 702, 703, 705, 709; Perishable Freight Investigation, 56 I. C. C. 449, 457, 458, 471, 472, 473, 477, 481, 493, 502, 505, 506, 507, 508, 521, 522, 523, 526, 528, 535, 548, 557, 568, 569, 575, 576, 582, 586, 592, 607, 612, 613, 615, 616; National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R., 51 I. C. C. 34, 50; Nebraska-Iowa Fruit Jobbers Asso. v. Director General, 57 I. C. C. 426; Wisconsin & Michigan Fruit and Vegetable Jobbers Asso. v. A. & W. Ry. Co., 57 I. C. C. 249; Arlington Heights Fruit Exchange v. S. P. Co., 57 I. C. C. 580; California Citrus League v. Director General, 58 I. C. C. 373, 380, 394, 396; Northern Potato Traffic Asso. v. G. N. Ry. Co. 58 I. C. C. 360, 362; Express Classification, 1920, 59 I. C. C. 265, 270; National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co., 59 I. C. C. 413; Bridgeman-Russell Co. v. G. L. T. C. 61 I. C. C. 260; Railroad Commissioners of Florida v. Director General 61 I. C. C. 439, 438, 451; Swift & Co. v. Director General, as Agent, 61 I. C. C. 183; Northern Potato Traffic Asso. v. B. & O. R. R. Co., 61 I. C. C. 680, 688; National Preserves & Fruit Products Asso. v. A. & S. Ry., 74 I. C. C. 179; Elimination of Michigan Railroad Co. from Fairbanks Perishable Protective Tariff, 74 I. C. C. 228; Ignatius L. Lutz v. C. R. I. P. Ry., 74 I. C. C. 524; Railroad Commissioners State of Florida v. Director General, 74 I. C. C., 157; Railroad Commrs. of Fla. v. Director General, 74 I. C. C. 157; National Preserves & Fruit Products Asso. v. A. & S. Ry. Co., 74 I. C. C. 179; Elimination of Michigan R. R. Co., from Fruit Tariff, 74 I. C. C. 228; S. G. Palmer Company v. Director General, 80 I. C. C. 371; Protective Service on Perishable Freight, 81 I. C. C. 155; Wenatchee Valley Fruit Exchange v. N. P. R. Co., 83 I. C. C. 71; Hazard Jellico Coal Co. v. Director General, as Agent, 83 I. C. C. 383.

§4½. Facilities used.

CASES 1887-1908

(a) The respondent railroad companies may provide refrigerator cars by purchase or by lease, and if the latter plan is adopted they may make contracts with one company which exclude the use of cars owned by other companies. Re Transportation, Etc., of Fruit. 10 I. C. C. 360.

(b) Railroad companies are required at common law to furnish suitable facilities for the conduct of the business in which they engage, and it follows that the respondent railroad companies, holding themselves out as carriers of perishable fruit, must provide the necessary refrigerator cars for the transportation of that traffic. Matter of Charges for Transportation of Fruit. 11 I. C. C. 129.

IMPORTANT CASES SINCE 1908

(c) Tariffs should indicate clearly in what instances and under what conditions refrigeration will be furnished for less-than-carload freight; and where such service is rendered and charges are assessed therefor the tariff should so provide, stating the amount of the charges. Sulzberger & Sons Co. v. M. St. P. & S. S. M. Ry. Co., 40 I. C. C. 173, 175.

(d) Refrigeration charges on shipments of fresh fruits and vegetables are not paid to the carriers, but to refrigeration companies, and in no way adds to the revenues of the carriers. South-

western Dairy Products, 44 I. C. C. 379, 383.

(e) Provision in tariff that freight would be subject to rules and regulations of individual lines relating to car service, switching, reconsignments and storage may not be interpreted as authorizing charge for use of refrigerator cars. Vallance v. N. P. Ry. Co., 45 I. C. C. 131, 132.

(f) Bunker capacities of refrigerator cars now in use vary greatly and are related more or less closely to the age of the car. Larger cars are now constructed than formerly and the capacity of the bunkers in the newer cars is proportionately greater than in the old. Perishable Freight Investigation, 56 I. C. C., 499, 515.

(g) Many refrigerator cars in use are antiquated and so defective that they are very wasteful of ice. Perishable Freight Investigation, 56 I. C. C., 449, 457, 613.

ALL OTHER CITATIONS

In Re Suspension of Western Classification, No. 51, 25 I. C. C. 442, 498; Refrigeration Charges on Kansas City Southern Ry., 26 I. C. C. 617, 620; Perishable Freight Investigation, 56 I. C. C., 449, 457, 502, 503, 515, 528, 557, 613; Cudahy Packing Co. v. Grand Trunk Ry. Co., 215 Fed. 94, 93.

§4½a. Private Refrigerator Cars.

CASES 1887-1908

(a) A railroad company may provide refrigerator cars by purchase or by lease, and if the latter plan is adopted they may make contracts with one company which exclude the use of cars owned by other companies. Re Transportation of Fruit 10 I. C. C. 360.

IMPORTANT CASES SINCE 1908

(b) Proposed $10 car-rental charge to be applied on certain privately owned refrigerator cars when used in so-called local service from Pittsburgh, Pa., to destinations in c. f. a. territory, found not justified. Unjust discrimination would result as the charge would apply only on the lines of the Pennsylvania to points in c. f. a. territory, and not via other lines which also serve the same destination territory from Pittsburgh. Furthermore, the charge is not made or proposed to points on the Pennsylvania lines east of Pittsburgh to which shipments of the same character may be forwarded from Pittsburgh in cars of identical ownership. Car Rental Charges on Private Line Cars, 74 I. C. C. 107.

IV. TARIFFS AND PUBLICATION.

See Tariffs.

§4¾. In general.

CASES 1887-1908

(a) When charges for refrigeration are applied in the transportation of perishable freight, such charges should be published and adhered to exactly as all other charges for transportation are published and observed. The same considerations of justice and public policy which require this in case of the freight rate apply to the charge for refrigeration. In the matter of Charges for the Transportation and Refrigeration of Fruit Shipped from Points on the P. M. and M. C. 10 I. C. C. 360, 374.

(b) Whether or not the regulating statute applies to refrigeration charges in all cases, the defendants, by compelling shippers to pay icing charges on citrus fruits as established by the car lines or do without necessary refrigeration for the traffic, have made these charges part of the cost of transportation and subject to regulation under the law. Consolidated Forwarding Company v. Southern Pacific Co., 10 I. C. C. 590, 615.

§5. Obligation to File.

CASES 1887-1908

(a) When charges for refrigeration are applied in the transportation of perishable freight, such charges should be published and adhered to exactly as all other charges for transportation are published and observed. The same considerations of justice and public policy which require this in case of the freight rate apply to the charge for refrigeration. Re Transportation, Etc., of Fruit 10 I. C. C. 360.

(b) Refrigeration, being incumbent upon the carrier as part of the transportation, the charge for that service stands like any other charge for transportation. It is the duty of the carrier to publish, file with the Commission, and observe its refrigeration charges; and the Commission has the same jurisdiction to inquire into the justice and reasonableness of such charges as of any other charge for the transportation of passengers or property. Re Changes for the Transportation and Refrigeration of Fruit Shipped from Points on the Pere Marquette & Michigan Central Railroad 11 I. C. C. 129.

IMPORTANT CASES SINCE 1908

(c) The practice of a carrier in charging for re-icing fish in transit where there is no tariff provision therefor is unlawful. Bannon v. Southern Express Co., 13 I. C. C. 516, 520.

(d) Where a carrier's tariff makes no provision for refrigeration charges and the defendant collects an excessive charge, the Commission has no authority to authorize the return of the whole payment but only of the excess above a reasonable charge. (Cockrell, Comm'r, dissenting.) Memphis Freight Bureau v. K. C. S. Ry. Co., 17 I. C. C. 90, 92.

(e) Where refrigeration is furnished for less-than-carload freight and charges are assessed therefor, the tariff should so show. Sulzberger & Sons Co. v. M. St. P. & S. Ste. M. Ry., 40 I. C. C. 173, 175.

(f) A carrier cannot recover refrigeration charges on an interstate shipment under any expressed or implied contract without making publishing and filing fixed and definite rates therefor. Cudahy Packing Co. v. Grand Trunk Ry. Co., 215 Fed. 94, 93.

ALL OTHER CITATIONS

Western Classification Case, 25 I. C. C. 442, 498; Afterthought Copper Company v. Director General, 89 I. C. C. 346.

§6. Construction in general.

CASES 1887-1908

(a) When charges for refrigeration are applied in the transportation of perishable freight, such charges should be published and adhered to exactly as all other charges for transportation are published and observed. The same considerations of justice and public policy, which require this in case of the freight rate, apply to the charge for refrigeration. Re Transportation of Fruit, 10 I. C. C. 360.

IMPORTANT CASES SINCE 1908

(b) Complainant attacked charges collected for ice and salt furnished at points throughout central territory on shipments of dressed poultry, butter and eggs in straight and mixed carloads, from, and through central territory between August 1, 1919, and Feb. 4, 1920, as not authorized by tariffs and illegal. Prior to August 1, 1919, the carriers furnished without additional charge the ice and salt used in the refrigeration of shipments of butter, cheese, eggs, dressed poultry, fish, game, and other perishable freight throughout central territory, and provided in their tariffs that they would furnish, on special orders, refrigerator cars for the loading, at one point of origin, by one shipper, to one destination of these commodities subject to a minimum of 15,000 pounds for each car. During that time there were no carload rates on butter, eggs, dressed poultry and cheese, but an any quantity basis applied which was first class on dressed poultry, second class on butter and eggs and third class on cheese. Effective on that date under 53 I. C. C. 59, the carriers established third class rates on butter, butterine, oleomargarine, poultry and eggs, in straight or mixed carloads. On Jan. 1, 1920, all central territory lines provided by appropriate tariff publication that ice and salt would not be furnished without additional cost to shippers except on perishable commodities moving at less carload rates, and since that date the charges for salt and ice have been collected on all carload shipments. It may have been the intention of the tariff compilers to provide for the assessment of charges for ice and salt when the carload rating was established, but that intention was not effectuated until the rules were amended to limit the furnishing of ice and salt without additional cost to the shipper on traffic moving at less than carload rates. HELD, charges collected for ice and salt furnished on carload shipments illegal, reparation awarded. Swift & Co. v. Director General 77 I. C. C. 678.

(c) Complainant attacked defendants application of certain provisions in Fairbanks tariff 1 I. C. C. 6 as without authority and illegal. Under the carriers interpretation of the tariff, a charge is made for refrigeration service in connection with shipments from complainants plants of fresh meats and packing house products initially iced by consignor and delivered to the carrier with instructions not to reice in transit. The initial question is one of tariff interpretation. It is clear that the words, also perishable freight n. o. i. b. n., in the table in section 2 of the tariff is intended to cover, and does cover fresh meats and provided in rule 240 A of the tariff are packing house products. HELD, charges applicable on fresh meats and packing house products from complainants plants initially iced by consignor and delivered to the carrier with instructions not to reice in transit. The record shows as to the

unreasonableness of the charges that the cost of ice basis is uniformally applied throughout the country to carload shipments of fresh meats and packing house products, except from points in the six westernmost states; and that the charges provided for in special rule 240 A are not applied to shipments like those made by complainants, except from points in those states; that stated charges for refrigeration service were applied to fresh meats and packing house products from points in the six westernmost states prior to the establishment of perishable tariff No. 1, but only when the shipments were initially iced by the carrier. When they were initially iced by the shipper and forwarded with instructions not to reice in transit, no charges similar to those provided in rule 240 A nor any other refrigeration charges were assessed. Special rule 240 A introduced new charges which had never been applied to fresh meats and packing house products in any part of the country. HELD, defendants have clearly failed to sustain the burden of proof which was upon them to justify the increased charges resulting from the application of rule 240 A. HELD, rates charged under Rule 240 A unreasonable, reparation awarded. Frye & Company v. G. N. Ry. 88 I. C. C. 477.

ALL OTHER CITATIONS

Cudahy Packing Co. v. Grand Trunk Ry. Co., 215 Fed. 93; Sulzberger & Sons Co. v. M. St. P. & S. Ste. M. Ry., 40 I. C. C. 173; Markley & Co. v. C. N. O. & T. P. Ry., 45 I. C. C. 559; Vallance v. N. P. Ry. Co., 45 I. C. C. 131, 132; Starks Co. v. C. & N. W. Ry., 51 I. C. C. 335, 338; Perishable Freight Investigation, 56 I. C. C., 449, 571, 572.

§6½. Rules.

IMPORTANT CASES SINCE 1908

(a) Rules which require shippers to state at what point cars shall be reiced not found unreasonable. Providence Fruit & Produce Exchange v. N. Y. C. & H. R. R. R. Co., 33 I. C. C. 294, 296.

(b) Addition to rule providing that expense of icing and reicing shall be borne by shipper, a clause reading "carrier does not assume responsibility for such refrigeration" not justified. Rates and Rules on Shipments of Packing-House Products, 36 I. C. C. 62, 63.

(c) Defendants' rule that standard refrigeration charges will be assessed on carload shipments of precooled vegetables in iced refrigerator cars, initially iced by the shipper and tendered with instructions not to be reiced in transit, not found to be unreasonable. Unit Marketing System v. St. L., B. & M. Ry. Co., 48 I. C. C. 510, 514.

V. WEIGHTS.

See Weights and Weighing.

§7. Minimums.

See Minimums.

IMPORTANT CASES SINCE 1908

(a) The minimum weight should be the same for refrigeration and transportation charges. Ozark Fruit Growers' Ass'n v. St. L. & S. F. R. R. Co., 16 I. C. C. 106, 108.

(b) Considering an empty haul of return refrigerator cars, advances in minimum weight may be justified. Western Fruit Jobbers' Asso. v. C. R. I. & P. Ry. Co., 27 I. C. C. 417, 423.

(c) Carrier should not be required to furnish special refrigerator cars unless the carrier be allowed to protect its revenues by requiring a substantial loading sufficient adequately to utilize such equipment. Minimum Weight on Fresh Meats and other Commodities, 30 I. C. C. 349, 350.

(d) There is a higher loading under ventilation than under refrigeration. Pacific Fruit Exchange v. S. P. Co., 31 I. C. C. 159, 164.

ALL OTHER CITATIONS

Minimum Weight on Fresh Meats and other Commodities, 30 I. C. C. 349, 351; Kenner Truck Farmers' Ass'n. v. I. C. R. Co., 32 I. C. C. 1; R. R. Com. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 31; Weights on Berries in Pony Refrigerators, 64 I. C. C. 610.

VI. REPARATION.

See Reparation

§8. In general.

IMPORTANT CASES SINCE 1908

(a) Damages may be awarded for unduly preferential or unreasonable refrigeration charges. Mason Bros. v. S. P. Co., 25 I. C. C. 35, 37.

(b) Cars initially iced by shipper and moved with instructions on bills of lading "Do not re-ice. Keep vents closed." Tariffs named stated refrigeration charge and provided that "When shippers instruct that commodities loaded in cars, tanks of which contain ice, are not to be re-iced in transit, full refriger-

ation rates will apply." HELD: No good reason appears why complainant should have been compelled to pay stated refrigeration charges for service not received and specifically directed not to be furnished. Compulsory protective service and attendant cost under such circumstances found not justifiable and reparation awarded. Palmer Co. v. Director General, as Agent, 80 I. C. C. 371.

ALL OTHER CITATIONS

Lagomarcino-Grupe Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A352; Arlington Heights F. Exch. v. S. P. Co., 45 I. C. C. 248; Perishable Freight Investigation, 56 I. C. C., 449, 573, 574, 586, 592; Arlington Heights Fruit Exchange v. S. P. Co., 57 I. C. C. 580; Oden & Elliott v. S. A. L. Ry. 57 I. C. C. 698.

§9. Liability for Damage.

IMPORTANT CASES SINCE 1908

(a) Rule 200, clause (G), providing that when shippers elect to tender freight loaded in cars the bunkers, tanks, or body of which contain ice with instruction "Not under refrigeration, do not ice" (or when shipper neglects to give any refrigeration instructions), such instructions will be ignored and full stated refrigeration charges will be applied, and bunkers and tanks will be given the necessary icing or reicing, should be eliminated. Perishable Freight Investigation, 56 I. C. C., 449, 574.

(b) Rule 225, limiting half-tank refrigeration service to citrus fruits from Florida, should be revised to include apples from Virginia and fruits from Michigan, formerly afforded; and clause (B), providing that shipments will be transported solely at owner's risk of loss and damage resulting from insufficient refrigeration not caused by carrier's negligence, should be eliminated. Perishable Freight Investigation, 56 I. C. C. 449, 586.

(c) Rule 410, of special rules and regulations governing service of icing and reicing, relative to initial icing by shipper, in which carriers claim exemption from liability in the circumstances therein described, should be eliminated. Perishable Freight Investigation, 56 I. C. C., 449, 592.

REFRIGERATOR LINES

IMPORTANT CASES SINCE 1908

(a) In Transportation Act 1920, §209, subd. (a), defining carriers entitled to the guaranty prescribed by that act, the reference to systems of transportation under federal control at the time such control terminated cannot be considered apart from the words "carrier by railroad," which precede the former expression in the same sentence, and do not extend the guaranty to a refrigerator car company, which had been under federal control, but was not a carrier by railroad. United States v. Interstate Commerce Commission, 288 Fed. 649.

(b) While the failure of a refrigerator car company to file tariffs with the Interstate Commerce Commission is not proof that it is not a common carrier, it is evidence tending to show that it did not regard itself as such. United States v. Interstate Commerce Commission, 288 Fed. 649.

(c) A company which owned refrigerator cars, which it leased to railroad companies, and which at times solicited traffic and issued its own bills of lading, but which was not incorporated as a carrier, owned no railroad lines or motive power, and did not hold itself out to perform carriage by publishing rates applicable thereto, is not a "carrier by railroad," within Transportation Act 1920, §209, guaranteeing a minimum return to such carriers for a six months period, especially in view of the fact that Congress deemed it necessary expressly to include sleeping car companies within the act, thereby implying that such companies were not otherwise covered by its terms. United States v. Interstate Commerce Commission, 288 Fed. 649.

REGROUPING

See Blanket Rates VIII.

RELATIVE RATES

See Advanced Rates §5 (1) (2) (3) §11½, §15; Blanket Rates §8, §12½; Classification §20; Commodity Rates §2; Comparative Rates; Differentials §2, §6; Discrimination §7, §13; Equalization of Rates III §8; Evidence §13, §28, §31, §65, §66; Reasonableness of Rate §28; Reparation §12; Through Routes and Joint Rates §8, §13½.

RELEASED RATES

I. CONTROL AND REGULATION

§½. In general.

§1. Jurisdiction of Commission.

II. CONSTRUCTION AND APPLICATION.
§1½. In general.
§2. Duty to inform shipper.
§3. Intention to use.
§3½. Knowledge of shipper.
III. LEGALITY
§4. In general.
IV. REASONABLENESS
§5. In general.
V. LIMITATION OF LIABILITY.
§6. Effect in general.
VI. TARIFFS AND CONSTRUCTION.
§7. In general.

CROSS REFERENCES

See Bill of Lading IV; Cummins Amendment; Express Companies §16½; Loss and Damage §2, §2½, §9, §11.

I. CONTROL AND REGULATION.

See Control and Regulation.

§½. In general.

IMPORTANT CASES SINCE 1908

(a) Carriers made no specific reference in the tariff to the Commission's order authorizing the publication of rates based on value as required by section 20 of the act, and if they desire to continue such the tariff should be accordingly corrected. Meridian Traffic Bureau v. Director General, as Agent, 60 I. C. C. 549, 550.

(b) The purpose of the second Cummins amendment was to restore the law of full liability as it existed prior to the Carmack Amendment of 1916, so that when property is lost or damaged in the course of transportation under such circumstances as to make the carrier liable recovery is had for full value or on the basis of full value. Gold Hunter Mining Co. v. N. P. 63 I. C. C. 234, 242.

(c) Under the act, as now amended, the Commission can not fairly or effectively differentiate between released rates and rates based on actual value, for the reason that carriers can have no knowledge of the actual value except as declared by the shipper. North Packing & Provision Co. v. C. M. & St. P. Ry. 69 I. C. C. 235, 241.

(d) Tariffs provided for revision of freight charges on ore in accordance with value based upon smelter returns after assay at destination. HELD: Rates based upon values determined after arrival at destination, where there is no provision for declaration of value upon bill of lading, or for agreement with respect to limitation of liability, are not within purview of section 20 of the act. Arlington Silver Mining Co. v. Director General, as Agent, 80 I. C. C. 753, 755.

(e) Rates on ordinary live stock which attempt to limit liability, whether published in form of released rates or rates based on values declared by shippers, can not be authorized or sanctioned by the Commission for reasons stated in Express Rates, Practices, Accounts, and Revenues, 43 I. C. C. 510 and Live Stock Classification, 47 I. C. C. 335. North Packing & Provision Co. v. C. M. & St. P. Ry. Co., 80 I. C. C. 737, 738, 739.

ALL OTHER CITATIONS

United Lead Co. v. L. V. R. R. Co. (N. Y., 1913), 141 N. Y. S. 310, 311; Export Bill of Lading, 64 I. C. C. 347, 354.

§1. Jurisdiction of Commission.

See Jurisdiction of Commission.

IMPORTANT CASES SINCE 1908

(a) It is doubtful whether the Commission has power to require carriers to publish a rate on burnt cotton released to a valuation of 5c a lb., such rate to be lower than on other cotton. Lesser v. Ga. R. R., 18 I. C. C. 478, 480.

(b) If rates on ordinary live stock dependent upon declared value could lawfully be maintained without authorization by the Commission there might and probably would be instances in which conflict would arise as between the liability imposed by the Act upon the carrier and the prohibitions of section 10 of the Act affecting shippers. Released Rates, 43 I. C. C. 510, 513.

(c) Under the Act, as now amended, we can not fairly or effectively differentiate between released rates and rates based on actual value, for the reason that carriers can have no knowledge of the actual value, for the reason that carriers can have no knowledge of the actual value except as declared by the shipper. Williams Co. v. N. Y. Transfer Co., 48 I. C. C. 269, 274.

(d) The Cummins amendment requires rates on domestic traffic based on value to be expressly authorized by the Commission before they can be regarded lawful. Buckeye Cotton Oil Co. v. G. M. & N. Ry., 50 I. C. C. 32, 33.

(e) The second Cummins amendment placed rates and ratings dependent upon the value "declared in writing by the shipper" and those predicated on the value "agreed upon in writing as the re-

leased value of the property" in the same category; such rates and ratings are unlawful unless and until expressly authorized by the Commission. Express Rates, 43 I. C. C. 510; Live Stock Classification, 47 I. C. C. 335; Williams Co., 48 I. C. C. 269, reaffirmed and followed. Silk Asso. of American v. P. R. R., 50 I. C. C. 50, 53.

(f) The maintenance of rates on ordinary live stock in terms of value subsequent to the amendment of the Act by the Cummins amendment of August 9, 1916, was unlawful. Wilson & Co. v. C. M. & St. P. Ry., 50 I. C. C. 126, 129.

(g) If a carrier desires to carry rates on ore based upon declared or released values it should seek approval of rules that will clearly effect the purpose and be free from question as to conformity with the Cummins amendment. Climax Molybdenum Co. v. Director General, 61 I. C. C. 369, 371.

(h) Nothing in either the first or second Cummins amendments contemplates establishment by the Commission of rates graded to correspond with actual value, ascertained after shipment has been delivered and consequently after the carriers' liability has ended, and it was not necessary for carriers to secure the Commission's authorization to publish rates based on gross value, and therefore such rates were not unlawful under section 20 of the act. Gold Hunter Mining Co. v. N. P. Ry. Co., 63 I. C. C. 234, 243.

(i) Following U. S. Industrial Alcohol Co., 68 I. C. C. 389, and other cases, limitations attached to rates on newsprint paper, dependent upon value, and published without the commission's authorization, found unlawful and void, but such rates found lawful and applicable. Waco Chamber of Commerce v. Director General, as Agent, 73 I. C. C., 708, 709.

(j) Tariff provided for commodity rates on granite when of value not in excess of prescribed amounts and for application of class rates when of greater value, such restrictions having been published without authority from Commission. Shipments of greater value than prescribed moved at specified class rates. HELD, since no authority granted under second Cummins amendment to section 20 of the act for publication of rates on this traffic dependent upon value, limitations were void but commodity rates were lawful and applicable. Shipments found overcharged and reparation awarded. Bloom & Co. v. Director General, as Agent, 80 I .C. C. 283.

„(k) Request for leave to amend complaint, to seek reparation, to basis of declared values during period when there were no "declared value" or released rates in effect between points involved, denied. Question of what value might have been declared if such rates had been in effect with permission or authority of Commission under section 20 of the act, would be hypothetical. Arlington Silver Mining Co. v. Director General, as Agent, 80 I. C. C. 753, 755.

(l) It is not necessary for carriers to secure the commissions authorization under the second Cummins amendment in order to publish rates based upon smelter returns at destination when there is no tariff provision for declaration or agreement as to value. Gold Hunter Mining Co., 63 I. C. C., 234. Arlington Silver Mining Co. v. G. N. Ry. Co., 83 I. C. C. 255, 257.

ALL OTHER CITATIONS

National Confectioners' Asso. v. A. & R. R. R., 49 I. C. C. 566, 579; Buckeye Cotton Oil Co. v. G. M. & N. Ry., 50 I. C. C. 32, 33, 34; Express Rates, 43 I. C. C. 510; Live Stock Classification, 47 I. C. C. 335; Williams Co., 48 I. C. C. 269, reaffirmed and followed; Atlas Leather Mfg. Co. v. N. Y. N. H. & H. 57 I. C. C. 481.

II. CONSTRUCTION AND APPLICATION.

See Application of Rates.

§1½. In General.

IMPORTANT CASES SINCE 1908

(a) Carriers must establish and afford to all shippers rates that are reasonable and unconditional as to the amount of the carrier's liability in case of loss or damage. In some instances it is reasonable to make varying rates on the same commodity, dependent on the value thereof. This is true where there is a wide range of actual value in the different grades or qualities of the same article. In such cases, where the carrier has established different rates, depending upon difference in actual value, the valuation by the shipper becomes a part of the description of the article shipped, and if he misrepresents the value to procure a rate applicable to the grade or quantity of less value than that actually shipped, it

is in the nature of a false description of the property. Norcross Bros. Co. v. L. & N. R. R. Co., 29 I. C. C. 109, 112.

(b) The Cummins Amendment has abolished in interstate commerce the whole system of released rates based on agreed valuation as distinguished from actual value. Iowa Railroad Commissioners v. A. T. & S. F. Ry. Co., 36 I. C. C. 79, 81.

(c) Carrier's agent has sufficient knowledge as to true value of shipper's product to require notation "Value over $100 per net ton" to be placed on bills of lading to prevent misdescription. This was in no sense 'the value declared or agreed upon in writing as the released value of the property" within the purview of the second Cummins amendment. Billing so indorsed does not limit recovery of the full actual value whatever it might be. Climax Molybdenum Co. v. Director General, as Agent, 61 I. C. C. 369, 371.

(d) To require shippers to mark the value on packages, when shipments are subject to rates based on value, would seem to be in the interest of operating efficiency and not unreasonable, but if carriers desire to enforce such a regulation, it should be plainly stated in its schedules and uniformly observed. Viscose Co. v. American Ry. Express Co., 62 I. C. C. 32, 33, 34, 35.

(e) Commodity rates were prepaid on alcohol of an "actual value not exceeding $2.50 per gallon." Subsequently on the ground that actual value exceeded $2.50 per gallon charges were corrected to the basis of class rates applicable on alcohol without limitation as to value. HELD: Limitations attached to commodity rates were unlawful and void under the Cummins amendment but such commodity rates were lawful and applicable as to these shipments, as commodity rates take preference over class rates and specific commodity rates take preference over general commodity rates. Shipments found overcharged and refund directed. U. S. Industrial Alcohol Co. v. Director General, 68 I. C. C. 389.

(ea) Released rates and rates based on declared values limit the liability of carriers for loss, damage, or injury to property transported. If carriers could lawfully base rates upon declared values, the value declared would be a part of the description of the commodity and the shipper who, by undervaluing, secured a lower rate than he was entitled to would be guilty of violating section 10 of the act, and, by claiming full value in case of loss or damage, would subject himself to prosecution. North Packing & Prov. Co. v. C. M. & S. P. Ry. Co., 69 I. C. C. 241.

(eb) When there are two published rates, based upon differences in value, the legal rate automatically attaches itself to the declared or agreed value, and neither the intentional nor accidental misstatement of the applicable published rate will bind the carrier or shipper. Kansas City S. R. Co. v. Carl, 33 Sup. Ct. 391, 395; 227 U. S. 639.

(f) Released Rates can not be effectively differentiated from rates based on values declared by shippers, and without such differentiation it necessarily follows that rates based on declared values, as well as released rates, limit or attempt to limit liability of carriers for loss, damage, or injury to property transported. In case of released rates attempt is direct, whereas in case of rates based on declared values attempt is indirect, but quite as effective. North Packing & Provisions Company v. C. M. & St. P. Ry. 80 I. C. C. 737, 739.

(g) Rates based on values declared by shippers are not in form released rates. The purpose of both Cummins amendments to section 20 of the act, however, was to make not only limitations of liability attached to released rates unlawful and void unless such rates were authorized by the commission, but to make unlawful and void, unless so authorized, all attempted limitations of liability for loss, damage, or injury to property transported, whatever the form of the attempted limitation. North Packing & Provision Co. v. C., M. & St. P. Ry. Co., 80 I. C. C. 737, 738, 739.

(h) Rates based on declared values, as well as released rates limit or attempt to limit liability of carriers for loss, damage or injury to property transported. In the case of released rates the attempt is direct, whereas in the case of rates based on declared values the attempt is indirect, but quite as effective. North Packing & Provision Co. v. C. M. & St. P. R. Co., 80 I. C. C. 737, 739.

(i) Complainant attacked rates on ordinary livestock between August 9, 1916 and March 9, 1918. During this period carriers generally maintained rates on livestock dependent upon value.

When the value per head, as declared by the shipper, did not exceed a specified amount, which varied in the different classifications, the standard or basic rate applied. When a higher value was declared, a fixed percentage of increase, dependent upon the value so declared, was added to the standard or basic rate. The rates attacked were based on declarations of value made by the shippers and exceeded the standard or basic rates. HELD, the standard or basic rates were applicable, reparation awarded. North Packing and Provision Co. v. C. M. & St. P. R. Co., 80 I. C. C. 737.

(j) As released rates and rates based on values declared by shippers can not be effectively differentiated, it necessarily follows that rates based on declared values, as well as released rates, limit or attempt to limit the liability of carriers for loss, damage, or injury to property transported. North Packing & Provision Co. v. C. M. & St. P. Ry. 69 I. C. C. 235, 241.

(k) Tariff provided for commodity rates on granite, when of value not in excess of prescribed amounts and for application of class rates when of greater value, such restrictions having been published without authority from Commission. Shipments of greater value than prescribed moved at specified class rates. HELD, since no authority granted under second Cummins amendment to section 20 of the act for publication of rates on this traffic dependent upon value, limitations were void but commodity rates were lawful and applicable. Shipments found overcharged and reparation awarded. Bloom & Co. v. Director General, as Agent, 80 I. C. C. 283.

(l) Upon reargument, findings in former report, 69 I. C. C. 235 that rules and regulations requiring declarations of value by shippers of ordinary live stock and all limitations attached thereby to rates were unlawful and void but that rates, rules and regulations were not unreasonable, discriminatory, or unduly prejudicial, affirmed. North Packing & Provision Co. v. C. M. & St. P. Ry. Co., 80 I. C. C. 737.

(m) Contention that rates in issue were not released rates, but were based on actual differences in value, and that there is nothing in tariffs publishing the rates which limited liability of defendants for loss, damage, or injury, to live stock transported under such rates, not sustained. None of tariffs provided any means, other than declarations by shippers, by which values of animals shipped were to be determined. North Packing & Provision Co. v. C. M. & St. P. Ry. Co., 80 I. C. C. 737, 738.

(n) Released rates can not be effectively differentiated from rates based on values declared by shippers, and without such differentiation it necessarily follows that rates based on declared values, as well as released rates, limit or attempt to limit liability of carriers transported. In case of released rates attempt is direct, whereas in case of rates based on declared values attempt is indirect, but quite effective. North Packing & Provision Co. v. C. M. & St. P. Ry. Co., 80 I. C. C. 737, 739.

(o) Rates based on values declared by shippers are not in form released rates. The purpose of both Cummins amendments to section 20 of the act, however, was to make not only limitations of liability attached to released rates unlawful and void unless such rates were authorized by the Commission, but to make unlawful and void, unless so authorized, all attempted limitations of liability for loss, damage, or injury to property transported, whatever the form of attempted limitation. North Packing & Provision Co. v. C. M. & St. P. Ry. Co., 80 I. C. C. 737, 738, 739.

(p) An unlawful and void limitation of liability attached to a rate can gain no sanction by tariff publication. North Packing & Provision Co. v. C. M. & St. P. Ry. Co., 80 I. C. C. 737, 740.

(q) Tariffs provided for revision of freight charges on ore in accordance with value based upon smelter returns after assay at destination. HELD, rates based upon values determined after arrival at destination where there is no provision for declaration of value upon bill of lading, or for agreement with respect to imitation of liability, are not within purview of section 20 of the act. Arlington Silver Mining Co. v. Director General, as Agent, 80 I. C. C. 753, 755.

ALL OTHER CITATIONS

Foster Lumber Co. v. C. & N. W. Ry. Co., Unrep. Op. A-78; Prey Bros. & Cooper Livestock Commission Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-90; Norcross Bros. Co. v. L. & N. R. R. Co., 29 I. C. C. 109, 111; In re Express Rates, 28 I. C. C. 132, 138; Milne & Hector v. N. Y. & H. R. R. Co., Unrep. Op. A-331; Har-

mon & Co. v. N. P. Ry., 33 I. C. C., 370, 371; Adams Express Co. v. Cook (Ky. 1915), 172 S. W. 1096, 1098; The Cummins Amendment, 33 I. C. C., 682, 693, 695, 697; Strickland Green Furniture Co. v. G. H. & S. A. Ry. Co., Unrep. Op. 2219; Henderson v. M. L. & T. R. R. & S. S. Co., 39 I. C. C. 483, 484; Stubblefield v. St. Louis & S. F. R. Co., (Mo., 1916), 184 S. W. 149; De Rochemont v. Boston & M. R. Co., 157 N. Y. S. 177; St. Louis & S. F. R. Co. v. Tallaferro, (Okla. 1916) 156 Pac. 359; Wellington Mines Co. v. C. & S. Ry. Co., 39 I. C. C. 202, 207; Nat'l Society of Record Assos. v. A. & R. R. R. Co., 40 I. C. C. 347, 356; 113 Cleveland, C. C. & St. L. R. Co., v. Dettlebach, 36 Sup. Ct. 177, 180; Scudder v. M. L. & T. R. R. & S. S. Co., 42 I. C. C. 163, 164; Aradalou v. N. Y. & N. H. & H. Ry. Co., 114 N. E. 297; Betka v. Houston & T. C. R. Co., (Texas 1916) 189 S. W. 532; Allen v. L. V. R. R. Co., 53 I. C. C. 33; Meridian Traffic Bureau v. Director General, 60 I. C. C. 549, 550; North Packing & Provision Co. v. C. M. & St. P. Ry. 69 I. C. C. 235, 241; North Packing & Provisions Co. v. C. M. & St. P. Ry. Co., 80 I. C. C. 737, 738, 739.

§2. Duty to inform shipper.

IMPORTANT CASES SINCE 1908

(a) The quotation of a released rate should be accompanied with notice of its nature. Southern Cotton Oil Co. v. L. & N. R. R. Co., 18 I. C. C. 180.

(b) When it is the purpose of carriers to offer different rates applicable to the same commodity, dependent not upon difference in value, but upon release of the carrier's liability for loss and damage, to the extent that this may lawfully be done, the tariffs should provide for the exercise of choice of rates, by means of a statement in the bill of lading, signed by the shipper, that the shipment is released to a value stated in the tariffs. Norcross Bros. Co. v. L. & N. R. R. Co., 29 I. C. C. 109, 113.

(c) The words "just and reasonable" imply the application of good judgment and fairness, of common sense and a sense of justice, to the facts of record, and are not fixed unalterable mathematical terms. Moreover, as has been recognized by the Supreme Court, 206 U. S., 1, 26, there must exist range for "the flexible limit of judgment which belongs to the power to fix rates," and there could be no flexible limit of judgment if all rates were to be measured by their relation to cost or by a predetermined rule. Reparation as Relating to Increase of Rate, 68 I. C. C. 5, 6.

(d) Operating conditions prior to June 25, 1918, on which date rates were increased by the director general, including the retroactive application of the wage award of the Railroad Labor Board, were important factors, but they were not necessarily controlling in determining the reasonableness of rates after January 1 of that year. Reparation as Relating to Increase of Rates, 68 I. C. C. 5, 7.

(e) The commission would not be warranted in announcing any general rule for determining the reasonableness of rates exacted on shipments moving before or after June 25, 1918, on which date rates were increased by the director general, or any other date. In proceedings against the director general, as in all others, the commission must adhere to the sound and salutary principle that whether and to what extent a rate was or is unjust or unreasonable in a particular case is a question of fact, to be determined by the exercise of good judgment, informed by experience, in the light of all the pertinent facts of record. Reparation as Relating to Increase of Rates, 68 I. C. C. 5, 8.

ALL OTHER CITATIONS

Salomon Bros. Co. v. N. O. & N. E. R. R. Co., 15 I. C. C. 332, 333; Southern Cotton Oil Co. v. L. & N. R. R. Co., 18 I. C. C. 180, 181; Simons v. T. & P. Ry. Co., Unrep. Op. A-627; Shaaf-Regelman v. S. Ry. Co., Unrep. Op. A-740.

§3. Intention to use.

IMPORTANT CASES SINCE 1908

(a) Where a carrier's agent had sufficient knowledge as to the true value of shipper's product to require notation "Value over $100 per net ton" to be placed on bills of lading to prevent misdescription. Such notation was in no sense "the value declared or agreed upon in writing as the released value of the property" within the purview of the second Cummins amendment. And billing so indorsed did not limit recovery of the full actual value, whatever it might be. Climax Molybdenum Co. v. Director General, as Agent, 61 I. C. C. 369, 371.

(b) If the shipper desires the lower of two rates based on valuation, he should declare the valuation, for, in the absence of knowledge, the carrier has a

right to assume that the higher of the rates based upon value applies. Kansas City S. R. Co., v. Carl, 33 Sup. Ct. 391, 394; 227 U. S. 639.

ALL OTHER CITATIONS

Miller & Lux. v. S. P. Co., 20 I. C. C. 129; Robinson Clay Product Co. v. B. & O. R. R. Co., Unrep. Op. 250; Dueber Watch Case Mfg. Co., v. St. L. & S. F. R. R. Co., Unrep. Op. 396; Norcross Bros. Co. v. L. & N. R. R. Co., 29 I. C. C. 109, 113; Berliner v. C. G. W. R. R., 43 I. C. C. 137.

§3½. Knowledge of Shipper.

See Tariffs §3 (3).

IMPORTANT CASES SINCE 1908

(a) Where the published schedules and the shipping receipt show that the interstate rate is based upon an agreed value, the shipper is presumed to have knowledge of such fact. Adams Express Co. v. Croninger, 33 Sup. Ct. 148, 153; 226 U. S. 491.

ALL OTHER CITATIONS

Kansas City S. R. Co. v. Carl, 33 Sup. Ct. 391, 395, 396; 227 U. S. 639; M. K. & T. R. R. Co., v. Harriman Bros., 33 Sup. Ct. 397, 400; 227 U. S. 657; Christl v. M. P. Ry. Co. Kans., 1914) 141 Pac. 587; Tuller v. Chicago, R. I. & P. Ry., (Ia. 1918), 168 N. W. 301; Stratton v. Chicago, M. & St. P. Ry., (S. D. 1918), 168 N. W. 757; Allen v. L. V. Ry., 53 I. C. C. 33.

III. LEGALITY.

See Legality of Rates.

§4. In general.

CASES 1887-1908

(a) The rates charged on "household goods" will not be declared unlawful on the mere fact that as a condition of granting them the defendants require the shipper to release all claim for damages in case of loss to the amount of $5.00 per 100 lbs. or $1000.00 per carload of 20,000 lbs., there being no proof showing that such rates are unreasonable in view of said limitation. In cases of loss, the shipper's remedy is at law, and the question of the reasonableness or validity of a contract limiting the carrier's liability is to be determined in the courts on the facts in each case. Duncan v. Atchison T. & S. F. R. Co. 4 I. C. R. 385.

(b) The rates charged on "household goods" will not be declared unlawful on the mere fact that as a condition of granting them the defendants require the shipper to release all claim for damages in case of loss to the amount of $5.00 per 100 pounds, or $1,000.00 per carload of 20,000 pounds, there being no proof showing that such rates are unreasonable in view of said limitation. In cases of loss, the shipper's remedy is at law and the question of the reasonableness or validity of a contract limiting the carrier's liability is to be determined in the courts on the facts in each case. Blanton Duncan v. A. T. & S. F. R. R. Co., et al. 6 I. C. C. 85.

(c) That the rates under the common-law liability specified in a rate sheet filed with the Interstate Commerce Commission by two carriers engaged in interstate commerce are unreasonable and exorbitant does not render the rates themselves reasonable. The action was by an insurance company to hold the carrier liable for a loss which had occurred while the goods were in its possession, and for which the insurance company reimbursed the owner. The court said: "It is a matter of common knowledge that the great bulk of the freight of the country is now transported under bills of lading limiting the common-law liability of the carrier. It is the exception, and not the rule, for property to be carried under the full common-law liability. Hence, where the difference between the two rates is fixed upon a horizontal percentage basis, it would seem to be a very convenient method to state specifically and in detail only the rates under the uniform (or limited liability) bill of lading under which the great bulk of the business of the country is done, and then state generally the percentage of increase over these rates where goods are transported with the full common-law liability . . . . In this case . . . (the shipper) knew, or is chargeable with knowledge, of the contents of the official classification. . . . With this knowledge, he consented and agreed to ship his property under the uniform bill of lading, and thereby assented to and accepted all its terms and conditions. Mannheim Insurance Co. v. Erie & Western Transportation Co., 8 I. C. C. App. LXVII.

IMPORTANT CASES SINCE 1908

(d) The Cummins amendment requires rates on domestic traffic, based on value, to be expressly authorized by the Commission before they can be regarded lawfully. Buckeye Cotton Oil Co. v. G. M. & N. Ry., 50 I. C. C. 32, 33.

(e) The law prohibits all limitations upon the carrier's liability for the full loss, damage or injury caused by it to property transported by it, and also all attempts to so limit liability in any form or manner, except when rates dependent upon the value declared in writing by the shipper, or agreed to in writing by the shipper as the released value, are authorized by us. The Commission has held that a rate dependent upon the actual value of the shipment is unlawful, because the carrier cannot know that value except as it is declared by the shipper. The ratings determine the rates and therefore governed by the same law. There are commodities as to which rates and ratings dependent upon declared or released values are proper and desirable. The declaration or the release limits the liability of the carrier to the sum so declared or agreed to. The provisions of the schedules containing such rates or ratings must be clear and in lawful form. The rates and rating must have been authorized or ordered by the Commission. It must be stated as dependent upon the value declared in writing by the shipper, or upon the released value agreed to in writing by the shipper. There can be no such thing as a "declared released value." Consolidated Classification Case, 54 I. C. C. 1, 67.

(f) The first Cummins amendment did not invalidate rates based on actual differences in value. Neither did the second Cummins amendment. The plain and unmistakable purpose of both amendments was to make unlawful and void, except as otherwise provided therein, all attempted limitations of liability for loss, damage, or injury to property transported, without respect to the manner or form in which they are sought to be made. U. S. Industrial Alcohol Co. v. Director General 68 I. C. C. 389, 391.

(g) Complainant attacked rates on carload and less carload shipments of soap from Chicago, Ill., to various points in southern classification territory, made between Nov. 27, 1917 and Dec. 20, 1918 as unlawful under section 20 and unreasonable. The southern classification and commodity tariffs making reference thereto provided for application of sixth class rates, any quantity, or commodity rates less than sixth class, on soap of an actual value not exceeding 12c per pound, the shipper being required to declare in writing at the time of shipment that the actual value did not exceed 12c. When the actual value exceeded 12c per pound, or no value was declared, third class rates applied. In November 1917, general increase in the cost of ingredients entering into the manufacture of soap had made it impossible for complainant to truthfully declare an actual value not in excess of 12c per pound upon grades of soap which formerly had been shipped under such declarations. No authority was granted by the Commission under the second Cummins amendment for publication in terms of value of the rates here attacked. On March 15, 1918, the Cummins amendment authorized ratings based on value in southern classification but they were not made effective by the carriers until Dec. 20, 1918. HELD, sixth class or lower commodity rates, governed by southern classification, were applicable to the shipments, shipments overcharged, reparation awarded. Swift & Co. v. Director General, 68 I. C. C. 537.

(h) Rates dependent upon declarations of value made by shippers but not authorized by the Commission under the second Cummins amendment would limit carriers liability, and such limitation as to value is void, but the rates stripped of the void limitation, are valid and applicable. Swift & Co. v. Director General 68 I. C. C. 537, 538.

(ha) Neither the first nor the second Cummins amendment invalidated rates based on actual differences in value. The plain and unmistakable purpose of both amendments was to make unlawful and void, except as otherwise provided therein, all attempted limitations of liability for loss, damage, or injury to property transported, without respect to the manner or form in which they are sought to be made. U. S. Industrial Alcohol Co. v. Director General 68 I. C. C. 389, 391.

(hb) Rates on ordinary live stock based on declarations of value by shippers, and rules and regulations under which such rates were assessed, found not unreasonable, discriminatory, or unduly prejudicial; but rules and regulations requiring declarations of value by shippers of ordinary live stock, and all limitations attached thereby to the rates, found unlawful and void on and after date of approval of the second Cummins amendment. Standard or basic rates found to have been applicable. Repara-

tion awarded. North Packing & Provision Co. v. C., M. & St. P. Ry. Co., 69 I. C. C. 235.

(i) The plain and unmistakable purpose of both Cummins amendments was to make unlawful and void, except as otherwise provided therein, all attempted limitations of liability for loss, damage or injury to property transported. North Packing & Provision Co. v. C. M. & St. P. Ry. 69 I. C. C. 235, 241.

(j) Since there was no authorization for the publication prior to Oct. 1, 1919, of rates dependent upon value, the limitations attached to those rates were void, but the rates were lawful and applicable. Waco Chamber of Commerce v. Director General, 73 I. C. C. 708, 709.

(k) Following U. S. Industrial Alcohol Co., 68 I. C. C. 389, and other cases, limitations attached to rates on newsprint papers, dependent upon value, and published without the commission's authorization, found unlawful and void, but such rates found lawful and applicable. Waco Chamber of Commerce v. Director General, as Agent, 73 I. C. C. 708, 709.

(l) Tariff provided for commodity rates on granite when of value not in excess of prescribed amounts and for application of class rates when of greater value, such restrictions having been published without authority from commission. Shipments of greater value than prescribed moved at specified class rates. HELD, since no authority granted under second Cummins amendment to section 20 of the act for publication of rates on this traffic dependent upon value, limitations were void but commodity rates were lawful and applicable. Shipments found overcharged and reparation awarded. Bloom & Co. v. Director General, as Agent,, 80 I. C. C. 283.

(m) Rates on ordinary live stock which attempt to limit liability, whether published in form of released rates or rates based on value declared by shippers, can not be authorized or sanctioned by the commission for reasons stated in Express Rates, Practices, Accounts, and Revenues, 43 I. C. C. 510 and Live Stock Classification, 47 I. C. C. 335. North Packing & Provisions Company v. C. M. & St. P. Ry., 80 I. C. C. 739.

(n) The sole effect of the second Cummins amendment on rates to which were attached limitations of liability, and which were not or could not be authorized by the Commission, was to render unlawful and void the limitations of liability. The rates, stripped of such unlawful and void limitations were not rendered unlawful. What that amendment declares to be unlawful it also declares to be void and it does not declare any rate to be void. Expressed in another way, if there were two or more commodity rates on ordinary livestock at the same time over the same route between the same points, and if the difference in the rates was dependent on the value declared by the shipper, the limitations as to value attached to each of the rates would be unlawful and void and should be treated as not present in the tariff. The rates would remain and would not be unlawful. To determine which of the rates was applicable would be a matter of tariff interpretation. If established at the same time the lower of the rates would be applicable, irrespective of the value of the animals. North Provision & Packing Co. v. C. M. & St. P. R. Co., 80 I. C. C. 737, 739.

(o) Rates based on values declared by shippers are not in form released rates. Purpose of both Cummins amendments to section 20 of the act, however, was to make not only limitations of liability attached to released rates unlawful and void unless such rates were authorized by the Commission, but to make unlawful and void, unless so authorized, all attempted limitations of liability for loss, damage, or injury to property transported, whatever the form of the attempted limitation. North Packing & Provision Co. v. C. M. & St. P. Ry. Co., 80 I. C. C. 737, 738, 739.

(p) Released rates can not be effectively differentiated from rates based on values declared by shippers, and without such differentiation it necessarily follows that rates based on declared values, as well as released rates, limit or attempt to limit, liability of carriers for loss, damage, or injury to property transported. In case of released rates attempt is direct, whereas in case of rates based on declared value attempt is indirect, but quite as effective. North Packing & Provision Co. v. C. M. & St. P. Ry. Co., 80 I. C. C. 739.

(q) An unlawful and void limitation attached to a rate can gain no sanctity by tariff publication. North Packing & Provision Co. v. C. M. & St. P. R. Co., 80 I. C. C. 737, 740.

(r) Tariffs provided for revision of freight charges on ore in accordance with value based upon smelter returns after essay at destination. HELD, rates based upon values determined after arrival at destination, where there is no provision for declaration of value upon bill of lading, or for agreement with respect to limitation of liability, are not within purview of section 20 of the act. Arlington Silver Mining Co. v. Director General, as Agent, 80 I. C. C. 753, 755.

(s) Request for leave to amend complaint to seek reparation to basis of declared values during period when there were no "declared-value" or released rates in effect between points involved, denied. Question of what value might have been declared if such rates had been in effect with permission or authority of the Commission under section 20 of the act would be hypothetical. Arlington Silver Mining Co. v. Director General, as Agent, 80 I. C. C. 753, 755.

(t) Rates on ordinary live stock which attempt to limit liability, whether published in form of released rates or rates based on values declared by shippers, can not be authorized or sanctioned by the Commission for reasons stated in Express Rates, Practices, Accounts, and Revenues, 43 I. C. C. 510, and Live Stock Classification, 47 I. C. C. 335. North Packing & Provision Co. v. C. M. & St. P. Ry. Co., 80 I. C. C. 737, 739.

(u) When authorized or required by the commission, rates based upon declared or agreed values are sanctioned by the act. Arlington Silver Mining Co., v. G. N. Ry. Co., 83 I. C. C. 255, 257.

ALL OTHER CITATIONS

In Re Released Rates, 13 I. C. C. 550, 560, 561, 562, 564, 565; Adams Express Co. v. Croninger, 33 Sup. Ct. 148, 153; 226 U. S. 491; Kansas City S. R. Co. v. Carl, 33 Sup. Ct., 391, 395; 227 U. S. 639; Louisiana Sugar Planters' Association v. I. C. R. R. Co., 31 I. C. C. 311, 320, 321; Sims v. L. & N. R. R. Co., Unrep. Op. A-587; Christl v. M. P. Ry Co., (Kans., 1914), 141 Pac. 587; K. C. & M. Ry. Co. (Ark., 1914), 170 S. W. 565, 566; Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C. B. & Q. R. R., 47 I. C. C. 287, 319; Carr v. C. M. & St. P. Ry., 51 I. C. C. 205; Der Bogosian v. Atchison T. & S. F. Ry. (Mo., 1918), 202 S. W. 1078; Silk Asso. of America v. P. R. R., 50 I. C. C. 50, 53; Wilson & Co. v. C. M. & St. P. Ry., 50 I. C. C. 126, 129; Carr v. C. M. & St. P. Ry., 51 I. C. C. 205, 208; Kennedy v. Atchison, T. & S. F. Ry. (Kans., 1919), 179 Pac. 314; Northern Potato Traffic Asso. v. C. & N. W. Ry. Co., 53 I. C. C. 100, 101; Consolidated Classification Case, 54 I. C. C. 66; Orange Rice Mill Co. v. T. & N. O. R. R. Co., 55 I. C. C. 661, 663; Meridian Traffic Bureau v. Director General, as Agent, 60 I. C. C. 549, 550.

IV. REASONABLENESS.

See Reasonableness of Rates.

§5 In General.

CASES 1887-1908

(a) If fruit is damaged through negligence of the carrier while in transit there is no reason why the carrier cannot be required to respond in damages to the full amount of the injury sustained without regard to the valuation placed upon it, and defendants' regulation whereby the freight rate on peaches and other fruit from Georgia points is increased in proportion to the carload valuation fixed by the shipper is unreasonable and unjust. Georgia Peach Growers' Asso. v. A. C. L. R. Co., 10 I. C. C. 255.

IMPORTANT CASES SINCE 1908

(b) Tariffs should clearly distinguish between rates based on value and rates based on release of carrier's liability to a certain amount. Norcross Bros. Co. v. L. & N. R. R. Co., 29 I. C. C. 109, 112, 113.

(c) A rate based upon agreed value must bear a reasonable relation to the unconditional rate. Louisiana Sugar Planters' Assn. v. I. C. R. R. Co., 31 I C. C. 311, 320.

(d) In 226 U. S. 491, the Supreme Court construed the Carmack amendment and held that, under contracts for transportation which limited liability, the shipper could not recover in excess of the valuation specified in the contract. North Packing & Provision Co. v. C. M. & St. P. Ry., 69 I. C. C. 235, 237.

(e) Complainant attacked class and commodity rates between Meridian, Miss., and points in Alabama as unreasonable. Original report found in 60 I. C. C. 5. The following modification is ordered: HELD, ordinary livestock, as described below, subject to notes and rules as specified under "Ordinary Livestock" in consolidated classification, in cars of 36 ft. 6 inches or less in length.

Further, soap, soap powders, washing powders, or scouring compounds, or cleaning compounds, dry: When the value declared by shipper in writing in shipping order, or agreed upon in writing as the released value, does not exceed 20c per pound; in bulk in barrels or boxes or in inner containers, other than glass or earthenware, or in wrappers, in barrels or boxes, l. c. l. Meridian Traffic Bureau v. Southern Ry., 74 I. C. C. 372.

(f) Rates on ore from Okanogan to Tacoma, Wash., during Federal control, in accordance with value based upon smelter returns after assay at destination, found reasonable as compared with rates on ore from Republic, Wash., to Tacoma and for comparable movements in same general territory, and to extent they exceeded lower rates subsequently established. Okanogan is nearer to Tacoma than Republic, ore from the two points being practically identical and of approximately same value. Reparation awarded. Arlington Silver Mining Co. v. Director General, as Agent, 80 I. C. C. 753.

(g) It is not unreasonable, for the purpose of graduating freight according to value, to divide the particular subject of transportation into two classes; those above and those below a fixed maximum amount. M. K. & T. R. R. Co. v. Harriman Bros., 33 Sup. Ct. 397, 400; 227 U. S. 657.

(h) Tariff provided for rates on ore based upon released value declared by shipper, under authority of released-rates order of commission; and for subsequent revision of freight charges at destination based on assay values at smelter. HELD, either basis of determining applicable rate standing alone would be lawful. But defendants can not be permitted to limit their liability, even though under appropriate authority from the commission, and then assess on same shipment rate in excess of that provided for liability they assume. Rule found unreasonable, and rule prescribed providing for assessment of charges on basis of rate dependent upon value at melter or other points of destination, without providing for waybilling at rates based on released value. Arlington Silver Mining Co. v. G. N. Ry. Co., 83 I. C. C., 255.

ALL OTHER CITATIONS

Cohen & Co. v. S. Ry. Co., 16 I. C. C. 177, 178; Western Classification Case, 25 I. C. C. 442, 555; Protection of Potato Shipments in Winter, 29 I. C. C. 504, 507; Arizona Corp. Com'n. v. A. T. & S. F. Ry., 46 I. C. C. 297; Miller & Lux v. S. P. Co., 50 I. C. C. 425; Wise v. P. R. R., 50 I. C. C. 268, 269; Miller & Lux, Inc. v. S. P. Co., 50 I. C. C. 425; Allen v. L. V. Ry., 53 I. C. C. 33; Consolidated Classification Case, 54 I. C. C. 36; Atlas Leather Mfg. Co. v. N. Y., N. H. and H. R. R. Co., 57 I. C. C. 481; Climax Molybdenum Co. v. Director General, 61 I. C. C. 369; Proctor & Gamble Distributing Co. v. A. C. Ry., 61 I. C. C. 700, 708; Gold-Hunter Mining Co. v. N. P., 63 I. C. C. 234; U. S. Industrial Alcohol Co. v. Director General, 68 I. C. C. 389; T. J. Murray v. Director General, 78 I. C. C. 465; J. F. Bloom & Co. v. Director General, 80 I. C. C. 283; Arlington Silver Mining Co. v. Director General, as Agent, 80 I. C. C. 753, 755.

V. LIMITATION OF LIABILITY.

See Loss and Damage §9.

§6 Effect in General.

IMPORTANT CASES SINCE 1908

(a) Rates authorized for the transportation by express of property, except ordinary live stock, dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value. Released Rates, 43 I. C. C. 510.

(b) If rates on ordinary live stock dependent upon declared value could lawfully be maintained without authorization by the Commission, there might and probably would be instances in which conflict would arise as between the liability imposed by the Act upon the carrier and the prohibitions of section 10 of the Act affecting shippers. Released Rates, 43 I. C. C. 510, 513.

(c) Under the Cummins Amendment a carrier can only relieve itself from liability in those cases where it is ordered or authorized by the Interstate Commerce Commission to so limit its liability in consideration of a reduced rate. The Supreme Court of the United States has held that even under such conditions it cannot, in certain cases, relieve itself from liability for negligence. A provision in a uniform live stock agreement filed with the Interstate Commerce Commission and covering an interstate shipment which limited the shipper's damages for unusual delay resulting from negligence to the amount actually ex-

pended by the shipper in the purchase of food or water for the stock while detained is invalid as a contract exempting the carrier from liability for its own negligence, and cannot be sustained as a contract limiting recovery to an agreed valuation in consideration of a reduced rate. Boston & M. R. R. v. Piper, 38 Sup. Ct. 354, 246 U. S. 439, 62 L. Ed. 820.

(d) Tariff provided for rates on ore based upon released value declared by shipper; and for subsequent revision of freight charges at destination based on assay value at smelter. Contention that since tariff rules provided for rates based upon declared and agreed values complainant has right under Cummins amendment to ship at lower freight rates based upon such values, and that portion of rule regarding subsequent revision on basis of actual value is void, HELD: Complainant's position is at variance with plain wording of tariff. Purpose of latter portion of rule is to make value determined by smelter assay basis of freight rate, and there is no inhibition in the act against rates based on actual value. Arlington Silver Mining Co. v. G. N. Ry. Co., 83 I. C. C. 255, 256, 257.

ALL OTHER CITATIONS

Kansas City S. R. Co. v. Carl, 33 Sup. Ct. 391, 394; 227 U. S. 639; Adams Express Co. v .Croninger, 33 Sup. Ct. 148, 153; 227 U. S. 491; C. R. I. & P. Ry. Co. v. Cramer, 34 Sup. Ct. 383, 384; 232 U. S. 490; 58 L. Ed. —; A. T. & S. F. Ry. Co., v. Robinson, 34 Sup. Ct. 556, 558, 233 U. S. 173; 58 L. Ed.—; Robinson v. L. & N. R. Co., (Ky. 1914), 169 S. W. 831; St. L. & S. F. R. Co. v. Mounts (Okla., 1914), 144 Pac. 1036 Thompson v. Great Northern Ry. (Ida., 1918), 174 Pac. 607, 608; Hill Mfg. Co. v. New Orleans, N. & C. R. R. (Miss., 1918), 78 Southern 187; Buckeye Cotton Oil Co. v. G. M. & N. Ry., 50 I. C. C. 32; Silk Assn. of America v. Penn. R. R., 50 I. C. C. 50; Orange Rice Mill Co. v. T. & N. O. R. R. Co., 55 I. C. C. 661, 663

VI. TARIFFS AND CONSTRUCTION

§7 In General.

CASES 1887-1908

(a) Specific freight rates in a rate sheet filed with the Interstate Commerce Commission by two connecting carriers engaged in Interstate Commerce will be deemed to be based upon a bill of lading limiting the common-law liability of carriers, where the rate sheet states that the rates are subject to an official classification filed with the Commission which specifically states in detail the rates under a form of bill of lading called uniform bill of lading, limiting the common-law liability and stating that rates on property not shipped subject to the conditions of the uniform bill are a specified percentage higher than the reduced rates under the uniform bill, where the Commission has always treated such classification as a component and concomitant part of every schedule rate. Mannheim Insurance Co. v. Erie & Western Transportation Co., 8 I. C. C. App. LXVII.

ALL OTHER CITATIONS

White, Pevey & Dexter v. C. R. I. & P. Ry., 49 I. C. C. 717.

RELOAD CHARGES

ALL CITATIONS

Colorado Mfrs. Assn. v. A. T. & S. F. Ry. Co., 28 I. C. C. 82, 87.

REPARATION

1. JURISDICTION OF COMMISSION
- § ½. In general.
- § 1. Necessity of and primary action by Commission.
- § 2. Necessity of and effect of finding of reasonableness.
- § 3. Power to award tort damages.

II. RIGHT TO RECOVER
- § 3½. Extent of recovery.
- § 4. Necessity of protest.
- § 5. Necessity of first paying tariff rate.
- § 6. Parties entitled to recover.
- § 7. Statute of limitations.

III. CIRCUMSTANCES DETERMINING RIGHT
- § 7½. In general.
- § 8. Erroneous publication or quotation.
- § 8½. Previous action of Commission.
- § 9. Failure to post tariff.
- §10. Laches.
- §10½. Necessity of showing damage.
- §10½a. Paper rate.
- §11. Rate via competing line.
- §12. Readjustment of rates.
- §13. Res adjudicata.
- §14. Special rate.
- §15. Unpublished charges.
- §16. Voluntary or subsequent reduction.

§17. Willingness of carrier to pay.
IV. LIABILITY FOR REPARATION.
§17a. In general.
§17½. Interest and costs.
§18. Measure of reparation.
§19. Parties to make refund.
§20. Release of liability.
§20½. Undercharges or overcharges.
V. PROCEDURE.
§20¾. In general.
§21. Formal proceedings.
§22. Informal proceedings.
§23. Court pleadings and procedure.
§24. Intervening petitions.
§25. Statements for reparation.

CROSS REFERENCES

See Absorption of Charges V, VII; Action at Law; Advanced Rates VII; Allowances VI; Attorneys Fees; Bill of Lading VI; Blanket Rates §19½; Cars and Car Supply §6 VI, §33; Claims; Commodity Rates §6; Demurrage V; Differentials V; Discrimination §15, §17; Facilities and Privileges V; Interstate Commerce Commission VI; Long and Short Hauls §13; Minimums §11; Overcharges; Passenger Fares and Facilities IV; Precooling Reconsignment §10, V; Refrigeration VI; Routing and Misrouting §7¾, §9, §11; Special Contracts §4; Switch Track and Switching §9; Tap Lines §12; Telephone and Telegraph Companies IV, §4; Through Routes and Joint Rates §16; Water Carriers §5; Weights and Weighing V.

I. JURISDICTION OF COMMISSION.

See Interstate Commerce Commission; Jurisdiction of Commission.

§½. In general.

See Cars and Car Supply §6; War Taxes.

CASES 1887-1908

(a) The Commission will not make an award of damages in a case where the defendant is entitled to have the amount of damages assessed by a jury. Riddle, Dean & Co. v. N. Y., L. E. & W. R. R. Co., 1 I. C. R. 787.

(b) If an Act of Congress gives a penalty to a party aggrieved, without specifying a remedy therefor, it may be enforced in a state court; but if a right is conferred by statute, or a specific remedy is provided, or a new power and means of execution are granted, the right can be enforced only in the mode prescribed by the Act. Copp v. Louisville & Nashville R. Co., 3 I. C. R. 625.

(c) The provisions of the eighth, ninth, thirteenth, fourteenth, fifteenth and sixteenth section of the Act construed in the light of recent decisions in Federal courts. HELD, that a procedure for the enforcement of lawful orders of the Commission founded upon controversies requiring trial by jury having been provided by the amendment of March 2, 1889, of the sixteenth section of the act, it is the duty of the Commission to pass upon the question of reparation for past damages whenever a claim is made therefore. Macloon v. C. & N. W. R. Co., 3 I. C. C. 711, 716.

(d) The act clearly confers authority upon the Commission to award damages in cases brought before it, and as such award is simply a recommendation which can only be enforced by a suit at law affording full opportunity for a jury trial, the act in this respect is, in the opinion of the Commission, constitutional and valid. Cattle Raisers Asso. of Texas v. C. B. & Q. R. R., 10 I. C. C. 83, 88.

(e) A shipper seeking reparation predicated upon the unreasonableness of the established rate must, under the act, primarily invoke redress through the Commission, which body alone is vested with power originally to entertain proceedings for the alteration of an established schedule, because the rates fixed therein are unreasonable. Railroad Commission of Ohio v. H. V. Ry., 12 I. C. C. 398, 402.

IMPORTANT CASES SINCE 1908

(f) In giving the Commission jurisdiction over reparation, it was the manifest intention of Congress to provide shippers with a method of obtaining an award of damages accruing by virtue of the violation of the Act, without resort to the expensive and tedious process of the law. Michigan Hardwood M[illegible] Assn. v. Freight Bureau, 27 I. C. C. 32, 37.

(g) The Commission can not award reparation for damages such as counsel fees, loss of time, cost of prosecution of suits in courts, or the value of the shipments in controversy. Peller v. Penn. R. R. Co., 40 I. C. C. 84, 86.

(h) The Commission has power to award damages only when they are suf-

fered in consequence of a violation of the Act to Regulate Commerce. Pittwood v. N. P. Ry., 51 I. C. C. 535.

(i) Whatever may be the limitations upon the exercise of sound discretion or a reasonable flexibility of judgment in prescribing maximum rates for the future, the Commission holds, as has frequently been held, that "the Commission is not justified in awarding damages except on a basis as certain and definite in law and in fact as is essential to the support of a final judgment or decree requiring the payment of a definite sum of money by one party to another." Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 51 I. C. C. 635, 638, 639.

(j) While fixing the maximum rates for the future must be at a definite, precise figure, the reasonableness of the exact figure decided upon is not susceptible of absolute demonstration. It is the concrete expression of the Commission's best judgment, exercised upon the record. The definite standard of reasonableness of the past rate as a basis for reparation is not susceptible of ascertainment in any other way. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 51 I. C. C. 635, 639.

(k) Before the Commission authorized to award reparation for past transaction it is necessary to find and fix what would have been a reasonable rate at the time of the transactions which are the objects of the claim for reparation; and not only to find that the rate was unlawful, but, if it be the amount of the rate involved, that such rate was unreasonable and resulted in actual damage to the complainant; also to ascertain the amount of such damage. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 51 I. C. C. 635, 639.

(l) The Commission has not assumed to shorten the period of the statute of limitations by holding that it will never award reparation for any part of the statutory period prior to the date of filing the complaint, nor attempted to lay down any rule that, on account of alleged laches of a complaint in not protesting against the rates from time to time before the complaint was filed, reparation will not be awarded for ascertained damages merely because protest was not made. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 51 I. C. C. 635, 639, 640.

(m) An action for reparation, under section 8, applies alike to sections 2, 3, and 4. Iten Biscuit Co. v. C., B. & Q. R. R. Co., 53 I. C. C. 729, 732.

(n) Under section 206e of the transportation act, 1920, it is the duty of the Commission to entertain complaints praying for reparation on account of the collection by or through the President during federal control of charges in violation of the interstate commerce act. Mt. Hood R. R. Co. v. Director General, 60 I. C. C. 116, 117.

(o) Claims for reparation covering shipments which moved during Federal control can not be considered where such claims were not filed with the commission within one year after the termination of Federal control, as required by the statute. Phoenix Chamber of Commerce v. Director General, as Agent, 73 I. C. C. 284.

(p) The Commission is without jurisdiction to award reparation on intrastate shipments moving on and after March 1, 1920. Duluth Brewing & Malting Co. v. G. N. Ry. Co., 73 I. C. C. 637.

(q) The jurisdiction of the Commission over claims for reparation on intrastate shipments is limited to the period of federal control, which terminated Feb. 29, 1920. F. R. Phillips & Sons Co. v. B. & A. R. R., 74 I. C. C. 381, 382.

(r) Section 208 (a) of the Transportation Act, 1920, does not confer jurisdiction upon the Commission to award reparation or to enforce the provisions of the interstate commerce act on intrastate traffic during the guaranty period. Cannelton Sewer Pipe Co., 73 I. C. C. 27. Case Coal Co. v. C. B. & Q. R. R. Co., 74 I. C. C. 391.

(s) Section 206 c of the Transportation act, 1920, makes it the duty of the Commission to entertain complaints for reparation on account of the collection by or through the President during Federal control of charges in violation of the act. Terre Haute, Indianapolis & Eastern Co. v. Director General, 77 I. C. C. 658, 661.

(sa) Jurisdiction of commission to entertain complaints for reparation on account of exaction of unreasonable rates on shipments that moved during period of Federal control is derived solely from section 206(c) of transportation act. Pfitzenmayer Construction Co. v. Director General, as Agent, 78 I. C. C. 287, 288.

(sb) Contention that commission is

without jurisdiction to award reparation on shipments which move from port of entry in Canada through Canada to destinations in the United States on joint rates, not sustained. American Trading Co. v. Director General, as Agent, 78 I. C. C., 387.

(sc) Contention that section 208 (a) of the transportation act, 1920, directing that rates effective February 29, 1920, should continue in effect until September 1, 1920, implied that existing rates were not unlawful and that commission is therefore without authority to authorize award of reparation on shipments moving during guaranty period, not sustained. Section referred to imposes no limitation upon power of commission to authorize reparation on interstate shipments moving during that period after showing that a particular rate was unreasonable. Standard Oil Co. v. A. E. R. R. Co., 78 I. C. C. 705, 708.

(t) The Commission is without jurisdiction to award reparation on intrastate traffic during the guaranty period, March 1 to September 1, 1920. United Dredging Co. v. A. T. & S. F. Ry., 78 I. C. C. 365.

(u) Defendants question jurisdiction of the Commission under section 208a of the act 1920, to authorize an award of reparation on interstate shipments that moved during the guaranty period, Mar. 1 to Sept. 1, 1920. This section imposes no limitation upon this Commission to authorize reparation on particular shipments moving during that period after a showing that a particular rate was unreasonable. Standard Oil Co. v. A. E. R. R. Co., 78 I. C. C. 705, 708.

(v) Shipment from point in United States, destined to another point in United States, moved in part through Canada. Contention by Director General that Commission is without jurisdiction to award reparation in respect of such rate not sustained. Rate assailed was a joint rate, and all carriers parties thereto are jointly and severally liable for any damage resulting from its application. American lines over which shipment moved are subject to jurisdiction of the Commission. Director General was operating them and is thus liable for full amount of any damage sustained. International Nickle Co., 66 I. C. C. 627, 628. Staley Mfg. Co. v. C. P. Ry. Co., 80 I. C. C. 512.

(w) The Commission is without authority to award reparation on intrastate shipments moving subsequent to the termination of federal control. Crookston Gas Company v. G. N. R. Co., 81 I. C. C. 128, 130.

(x) Section 9 of the act provides that any person injured under the act may make complaint to the Commission or bring suit for recovery of damages in a federal court and the rule of damages in one hardly can be different from that proper for the other. Complainant could recover the amount paid in excess of the legal rate in a common law action for money had and received. The Commission can award reparation in like amount because the collection of it constituted a violation of the act. Proctor & Gamble Co. v. Director General, 81 I. C. C. 361, 363.

(xa) The act gives party injured thru carrier's violation of its provisions election to make complaint to commission or bring suit for recovery of damages in a Federal court; and, as said by Supreme Court in L. & N. R. R. Co., v. Ohio Valley Tie Co., 242 U. S., 288, 291, "the rule of damages in one hardly can be different from that proper for the other." Proctor & Gamble Co. v. Director General as Agent, 81 I. C. C., 361, 363.

(y) Reparation and rates may be dealt with in one order, though awarding reparation for the past and fixing rates for the future involve the determination of matters essentially different, one being in its nature essentially private and the other public. One is made by the Commission in its quasi-judicial and the other in its quasi-legislative capacity; but testimony showing the unreasonableness of a past rate may also furnish information on which to fix a reasonable future rate, and both subjects can be, and often are, disposed of by the same order. Baer Bros. Merc. Co. v. D. & R. G. R. R. Co., 34 Sup. Ct. 641, 644; 233 U. C. 479, 58 L. Ed. —.

(z) The provision making the findings and orders of the Interstate Commerce Commission on the question of reparations prima facie evidence of the facts therein stated is not unconstitutional, so that no reparations can be recovered upon the facts established before the Commission, where its order on rehearing, granted as authorized by Act June 29, 1906, §6, modifying a previous order as authorized by Act June 18, 1906, §13, did not allow reparation. Morgan Co. v. Great Northern Ry Co., 285 Fed. 876.

(aa) The Interstate Commerce Commission has power to award reparation on shipments which have moved after the filing of the complaint as well as shipments which move prior to the time the complaint was filed. G. B. Marle Co. v. Lehigh Valley R. Co., 271 Fed. 989, 994.

(bb) During the interval between a finding and order of the Interstate Commerce Commission, made on a petition of shippers, which prayed for reparation, which order was not intended nor regarded as a final disposition of the reparation claims, and the filing of a supplemental petition, the Commission did not lose jurisdiction, and a subsequent order awarding reparation on account of shipments from a time two years prior to the filing of the original petition to the time of the final order, was within its jurisdiction. Louisville & N. R. Co. v. Sloss-Sheffield Steel & Iron Co. 295 Fed. 53.

ALL OTHER CITATIONS

Wisconsin Lime & Cement Co. v. C. C. C. & St. L. Ry. Co., 25 I. C. C. 366, 367; Hampton Mfg. Co. v. Old Dominion S. S. Co., 27 I. C. C. 666, 668; Commercial Club of Omaha v. A. & S. R. Co., 27 I. C. C. 302, 323; Stone & Son v. S. Ry. Co., 29 I. C. C. 699, 701; D. & W. Co. v. R. C. B. H. & W. R. R. Co., Unrep. Op. A-646; Meeker v. Lehigh Valley R. Co., 35 Sup. Ct. Rep. 328, 335; Griffing v. C. & N. W. Ry. Co., 32 I. C. C. 283, 286; Board of Trade of Kansas City v. C. M. & St. P. Ry., 34 I. C. C. 208, 210; Best Co. v. G. N. Ry. Co., 33 I. C. C. 1, 3; Criswell v. W. F. & N. W. Ry. Co., 37 I. C. C. 97, 98; Coffeyville Vit. Brick & T. Co. v. A. T. & S. F. Ry., 44 I. C. C. 513, 514; Sunderland Bros. Co. v. C. B. & Q. R. R. Co., 45 I. C. C. 209, 210; Graustein v. B. & M. R. R., 45 I. C. C. 393, 406; City of Clarksdale, Miss., v. I. C. R. R., 45 I. C. C. 108, 110; Arlington Heights Fruit Exchange v. S. P. Co., 45 I. C. C. 248, 250, 252; Atchison, T. & S. F. Ry. v. Spiller, 246 Fed. 1; Nat'l Petroleum Assn. v. M. K. & T. Ry., 47 I. C. C. 355, 363; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 51 I. C. C. 635, 641, 643; Valley & Siletz Railroad Co. v. S. P. Ry., 53 I. C. C. 397, 400; Weissbaum Co. v. Director General,, 53 I. C. C. 681, 682; State of New York Commission of Highways v. Director General, 55 I. C. C. 619, 620; Solvay Process Co. v. D. L. & W. R. R. Co., 55 I. C. C. 280, 281; Swift & Co. v. Director General, 55 I. C. C. 324, 325, 326; Boldt Paper Mills v. Director General, 55 I. C. C. 331; National Fireproofing Co. v. Director General, 55 I. C. C. 485; San Antonio Freight Bureau v. Director General, 57 I. C. C. 45, 46; Peerless Coal Co., v. A. T. & S. F. Ry. Co., 57 I. C. C. 274, 275; E. B. Conover et al. v. M. & St. L. Ry., 58 I. C. C. 729, 730; H. Miller v. Director General, 60 I. C. C. 162, 163; Barrett Company v. Director General, 80 I. C. C. 55; National Petroleum Asso. v. Director General, as Agent, 78 I. C. C. 711, 712; Louisville & N. R. Co. v. Sloss-Sheffield Steel & Iron Co., 295 Fed. 53; Keith Co. v. Director General, as Agent, 83 I. C. C. 167; Aunt Jemima Mills Co. v. Director General, as Agent, 83 I. C. C. 549, 550; Arizona Egyptian Cotton Co. v. Director General, 88 I. C. C. 263, 264.

§1. Necessity of and primary action of Commission.

IMPORTANT CASES SINCE 1908

(a) An action cannot be maintained against a carrier in a state court under section 9 and 22 of the Act to recover reparation for unjust discrimination in charging a published rate of 50c higher per ton for coal loaded from wagons than the published rate when the coal is loaded from tipples, where no prior application has been made to the Commission for relief. Robinson v. B. & O. R. R. Co., 222 U. S. 506, 509; 32 Sup. Ct., 114; 56 L. ed. 114.

(b) The Interstate Commerce Commission has power to determine the reasonableness of rates and likewise is authorized to award reparation, and in both respects, where the reparation arises from a readjustment of rates, its conclusions, being administrative, are final and conclusive, unless the Commission has in some particular matter in the controversy exceeded its prescribed functions. Fidelity Lumber Co. v. G. N. Ry. Co., 193, Fed. 924, 928.

(c) A shipper cannot maintain an action at law in the courts for excessive and unreasonable freight charges exacted on interstate shipments, where the rates charged were those which had been duly fixed by the carrier according to the Act and had not been found to be unreasonable by the Interstate Commerce Commission. American Union Coal Co. v. Penn. R. R. Co., 159 Fed. 278, 280.

(d) The remedy for recovery of excessive charges collected by a railroad company provided by Interstate Commerce Act, section 8, 10 (Comp. St. sections 8572, 8574), by obtaining an order of reparation from the Interstate Commerce Commission and bringing suit for its enforcement, is exclusive, and a shipper cannot maintain a suit to charge the company as trustee ex maleficio of such excess. North American Co. v. St. Louis & S. F. R. Co., 288 Fed. 612.

ALL OTHER CITATIONS

La Salle Bureau County R. R. Co., 13 I. C. C. 610, 613; Baer Brothers Mercantile Co. v. M. P. Ry. Co., 13 I. C. C. 329, 340; Ocheltree Grain Co. v. C. R. I. & P. Ry. Co., 13 I. C. C. 238, 239; Flint & Walling Mfg. Co. v. L. S. & M. S. Ry. Co. 14 I. C. C. 336, 337; Nicola, Stone & Myers Co. v. L. & N. R. R. Co., 14 I. C. C. 199, 204; Farley & Loetscher Mfg. Co. v. C. M. & St. P. Ry. Co. 15 I. C. C. 602, 603; American Refactories Co. v. E. J. & E. R. R. Co., 15 I. C. C. 480, 481; Washer Grain Co. v. M. P. Ry. Co., 15 I. C. C. 147, 153; Laning-Harris Coal & Grain Co. v. St. L. & S. F. Ry. Co., 15 I. C. C. 37, 39; Swift & Co. v. C. & A. R. R. Co., 16 I. C. C. 426, 428; Allen & Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 293, 295; Arkansas Fuel Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 95, 98; Bowles & McCandless v. L. & N. R. R. Co., 19 I. C. C. 563, 564; Goodman Mfg. Co. v. C. B. & Q. R. R. Co., 21 I. C. C. 583, 584; Buffalo Hardwood Lumber Co. v. B. & O. S. W. R. R. Co., 21 I. C. C. 536, 538; Phillips Co. v. G. T. W. Ry. Co., 195 Fed. 12, 18; St. Louis Blast Furnace Co. v. V. Ry. Co., 24 I. C. C. 360, 370 In re Wool, Hides and Pelts, 25 I. C. C. 675, 676, 678; Wisconsin Lime & Cement Co. v. C. C. C. & St. L. Ry. Co., 25 I. C. C. 366, 367; Mfrs. & Merchants' Asso. v. A. & A. R. R. Co., 25 I. C. C. 116, 117; Wharton Steel Co. v. D. L. & W. R. R. Co., 25 I. C. C. 303; Dupont de Nemours Powder Co. v. C. R. R. Co. of N. J., 25 I. C. C. 19, 21; Galveston Commercial Asso. v. A. T. & S. F. Ry Co., 25 I. C. C. 216, 232, 193, 197; Appalachia Lumber Co. v. L. & N. R. R. Co., 25 I. C. C. 193, 197; Union Tanning Co. v. S. Ry. Co., 25 I. C. C. 112, 115; Lewis v. C. B. & Q. R. R. Co., 25 I. C. C. 97, 98, 99, 100; New Pittsburgh Coal Co. v. H. V. Ry. Co., 26 I. C. C. 121, 126; In re Rates on Commodity Beer Packages Returned, 26 I. C. C. 4, 6; Hampton Mfg. Co. v. O. D. S. S. Co., 27 I. C. C. 666, 668; Lehigh Valley R. R. Co., v. Clark 207 Fed. 717, 721; T. & P. Ry. Co. v. American Tie & T. Co., 34 Sup. Ct. 885, 888; 234 U. S.—; 58 L. ed.—D. & R. G. Ry. Co. v. Baer Bros. Mercantile Co., 209 Fed. 577, 580; L. V. R. R. Co. v. Meeker, 211 Fed. 785, 795; New Orleans Board of Trade v. I. C. R. R. Co., 29 I. C. C. 32, 33; Best Co. v. G. N. Ry. Co., 33 I. C. C. 1, 3; Atchison T. & S. F. Ry. v. Spiller, 246 Fed. 1.

§2. Necessity of and effect of finding of reasonableness.

CASES 1887-1908

(a) The Interstate Commerce Commission will not, upon requiring a reduction of freight rates, grant reparation to shippers who have been charged the old rates, unless it be found that such old rates were unreasonable at the time they were paid. Grain Shippers' Asso. v. Illinois C. R. Co., 8 I. C. C. 158.

(b) An order granting reparation to shippers for an unreasonable rate must be based upon evidence and a finding that the rate was unreasonable at the time it was paid. Grain Shippers' Asso. v. Illinois C. R. Co., 8 I. C. C. 158.

(c) A complainant is entitled to an order for reparation in an amount equal to that by which the rates exacted and paid exceed reasonable rates, but the burden of showing the unreasonableness and the amount is upon the complainant. Holmes & Co. v. Southern R. Co., 8 I. C. C. 561.

IMPORTANT CASES SINCE 1908

(d) Carriers are not entitled to resist an award of reparation for exactions made under a rate found to be unreasonable on the ground that the shippers were not themselves damaged, but simply added the excess to the selling price, thereby casting the damage upon the public. Wherever an unlawful and unreasonable rate is exacted the shipper is entitled to reparation without inquiring beyond the fact itself of the unreasonable exaction. Burgess v. Transcontinental Freight Bureau, 3 I. C. C. 668, 679, 680.

(e) And when the Commission reduces a rate, it does not necessarily follow that it will award reparation on the basis of the new rate. There is no conclusive presumption that a rate reasonable today was reasonable a year before or a day before, since reasonable rates vary from time to time, and

some point of division must be found. Where, therefore, rates have been established and maintained by the carriers in good faith, especially where they have been long in effect and acquiesced in by shippers without protest, the Commission will not award reparation even though the rate is reduced, unless it clearly appears that the rates paid in the past have been excessive. Penrod Walnut & Veneer Co. v. C. B. & Q. R. R. Co., 15 I. C. C. 326, 328.

(f) When the Commission reduces a rate and prescribes what will be the just and reasonable rate or rates to be thereafter observed in such a case as the maxima to be charged, it does not necessarily follow that for any length of time prior to the date of the opinion reparation will be awarded upon the basis of the rate prescribed to be observed thereafter. Morse Produce Co. v. C. M. & St. P. Ry. Co., 15 I. C. C. 334, 338.

(g) When a rate is advanced and the increased rate is condemned by the amount of the advance a much more satisfactory basis for an award of reparation is afforded than in the present case, where so far as changes have occurred they have been at least for the most part reduced in a territory where changes in conditions have taken place which contribute in greater or less degree to a present showing of unreasonableness in existing rates. Anadarko Cotton Oil Co. v. A. T. & S. F. R. R. Co., 20 I. C. C. 43, 50.

(hh) It would be a manifestly harsh rule that would assume a rate now condemned as unreasonable to have been so for a period of two years, or that of the statute of limitations in the past as a basis for the payment of money by the carriers on past shipments, especially when no complaint had been made against them in that period. The law establishes no such presumption nor is it a necessary sequence that the rate has been unreasonable for any period in the past. Neither does it seem that the bona fide action of the carriers in the necessary exercise of their judgment within reasonable limits should always be at their peril, of liability for reparation for the difference between rates initiated upon their judgment and later changed upon the judgment of the Commission. The awarding of reparation by no means necessarily follows the reduction of a rate whether by the voluntary action of the carriers or by order of the Commission. Whatever may be the nature of the facts, circumstances and conditions appearing in a particular case where reparation is involved, whether on account of excessive rates or unjust discrimination, there must be that degree of certainty and satisfactory conviction in the mind and judgment of the Commission as would be deemed necessary under the well established principles of law as a basis for a judgment in court. Anadarko Cotton Oil Co. v. A. T. & S. F. R. R. Co., 20 I. C. C. 43, 50, 51.

(i) In a case involving a question of reparation, the Commission must fix the time at which the rate becomes unreasonable, must determine when shippers were entitled to the rate found reasonable, and carriers ought to have established it; each case depends on its own facts, and the complainant has the burden of showing that the rates paid have been unreasonable. In re Wool, Hides, and Pelts, 25 I. C. C. 675, 678.

(j) The Commission is without authority to award reparation in any case unless it can conclude that the rate assailed was in violation of the Act at the time the shipments in question moved. New Pittsburgh Coal Co. v. H. V. Ry. Co., 26 I. C. C. 121, 126.

(k) A finding of unreasonableness would afford no basis for reparation to complainants, as it is disclosed that all the shipments in question were purchased f. o. b. destinations, the delivery prices having been compute dat the Chicago market price plus the respective freight rates from Chicago, regardless of the point of origin, the applicable freight charges in all cases having been prepaid by the vendor shippers. The requisite proof of damage resulting from the undue preference found to exist also is wanting. Reparation denied. Montgomery Chamber of Commerce v. Director General, 60 I. C. C. 203, 209.

ALL OTHER CITATIONS

Swift & Co. v. C. B. & Q. R. R. Co., Unrep. Op. 516; Kessler & Co. v. Sou. Ry. Co., Unrep. Op. 12; Dupont De Nemours Powder Co. v. D. & N. R. R. Co., 20 I. C. C. 83; Noble v. G. T. N. R. R. Co. 20 I. C. C. 70; Memphis Freight Bureau v. St. L. & S. F. R. R. Co., 21 I. C. C. 113, 118; Carter White Co. v. N. & W. Ry. Co., 21 I. C. C. 41, 44; Portsmouth Steel Co. v. B. & O. R. R. Co., 23 I. C. C. 510; Bynes v. A. C. L. R. R. Co., 23 I. C. C.

251; Liberty Mills v. L. & N. R. R. Co., 23 I. C. C. 182, 186; Darnell-Taenzer Lumber Co. v. S. P. Co., 190 Fed. 659, 664; Chicago, B. & Q. R. R. Co., v. Feintuch, 191 Fed. 482, 486; Thompson Lumber Co. v. I. C. C. 193 Fed. 682, 683; Russe & Burgess v. I. C. C. 193 Fed. 678, 680; Phillips Co. v. G. T. W. Ry. Co., 195 Fed. 12, 18; St. Louis Blast Furnace Co. v. Ry. Co., 24 I. C. C. 360, 370; Chaffin Coal Co. v. C., M. & St. P. Ry. Co., 42 I. C. C. 321, 322; Mfrs'. & Merchants' Asso. v. A. & A. R. R. Co., 24 I. C. C. 331, 339; Board of Trade of Morristown v. A. C. L. R. R. Co., 24 I. C. C. 372, 379; R. R. Com. of Oregon v. S. P. Co., 24 I. C. C. 273, 279; Hollow Blow Stave Co. v. A. C. L. R. R. Co., 24 I. C. C. 81, 88; New Roads Oil Mill & Mfg. Co. v. St. L. I. M. & S. Ry. Co., 24 I. C. C. 167, 169; See Kellogg Toasted Flake Co., v. M. C. R. R. Co. 24 I. C. C. 604, 606; National Wool Growers' Asso. v. O. S. L. R. R. Co., 25 I. C. C. 675, 678; In re Wool Hides, and Pelts, 25 I. C. C. 675, 677; St. Louis Blast Furnace Co. v. Virginian Ry. Co., 25 I. C. C. 183; Mfrs. & Merchants' Asso. v. A. & A. R. R. Co., 25 I. C. C. 116, 117; Coffeyville Vitrified Brick & Tile Co. v. St. L. & S. F. R. R. Co., 25 I. C. C. 101, 102; Ball Lumber Co. v. T. & P. Ry. Co., 25 I. C. C. 437, 438; Shoupe & Co. v. T. & B. V. Ry. Co., 26 I. C. C. 570, 571; Waukesha Lime & Stone Co., v. C. M. & St. P. R. R. Co., 26 I. C. C. 515, 518; Minneapolis Steel & Machinery Co. v. C. M. & St. P. Ry. Co., 26 I. C. C. 193, 194; New Pittsburgh Coal Co. v. H. V. Ry. Co., 26 I. C. C. 121, 125; Hampton Mfg. Co. v. O. D. S. S. Co., 27 I. C. C. 666, 668; Commercial Club of Omaha v. A. & S. R. Ry. Co., 27 I. C. C. 302, 307, 314, 315, 316; Cherokee Lumber Co. v. A. C. L. R. R. Co., 27 I. C. C. 438, 440; Topeka Traffic Asso. v. A. & V. Ry. Co., 27 I. C. C. 428, 437; Eastern Wheel Mfrs. Asso. v. A. & V. Co., 27 I. C. C. 370, 383; Eggerss-O'Flying Co. v. C. G. W. R. R. Co., 27 I. C. C. 280, 281; Chamber of Commerce of Macon v. C. N. O. & T. P. Ry. Co., 27 I. C. C. 263, 266; Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 27 I. C. C. 165, 168; Rock Spring Distilling Co. v. I. C. R. R. Co. 27 I. C. C. 54, 58; Middlesboro Board of Trade v. L. & N. R. R. Co., 27 I. C. C. 14, 23; Dixie Dairymen's Asso. v. Y. & M. V. R. R. Co., 27 I. C. C. 618, 621; Memphis Freight Bureau v. I. C. R. R. Co., 27 I. C. C. 507, 518; Lesser-Goldman Cotton Co. v. St. L. I. M. & S. Ry. Co., 27 I. C. C. 496, 498; Boldt Co. v. C. R. I. & P. Ry. Co., 27 I. C. C. 11, 13; Interior Iowa Cities Case, 28 I. C. C. 64, 76; Puget Sound Iron & Steel Works v. C. R. I. & P. Ry. Co., Unrep. Op. A249; Federal Glass Co. v. C. R. I. & P. Ry. Co., 38 I. C. C. 331, 332; Hires Condensed Milk Co. v. P. R. R. Co., 38 I. C. C. 441, 447, 448; Updike Elevator Co. v. C. R. I. & P. Ry. Co., 38 I. C. C. 687, 688; Sunderland Bros. v. A. N. Ry., 42 I. C. C. 641, 644; Wyoming Shovel Works v. D. & H. Co., 45 I. C. C. 197, 198; Zelnicker Supply Co. v. St. L. S. W. Ry., 45 I. C. C. 185; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 51 I. C. C. 635, 643; Schlicher v. Director General, 62 I. C. C. 181, 185.

§3. Power to award tort damages.

CASES 1887-1908

(a) If defendants rates on straw berries had been so excessive and unjust as to have rendered complainants crop valueless to pick and market, it would not entitle him to reparation for loss sustained, because such damages would be too speculative uncertain and remote. Perry v. F. C. & P. R. Co., 3 I. C. C. 741, 749.

IMPORTANT CASES SINCE 1908

(b) In Hillsdale Coal Co. v. P. R. R. Co., 19 I. C. C. 356; Jacoby & Co. v. P. R. R. Co., 19 I. C. C. 392, and Bulah Coal Co. v. P. R. R. Co., 20 I. C. C. 52, the Commission found that the defendant had discriminated against the complainants in the distribution of coal cars. Subsequently the United States Circuit Court for the Eastern District of Pennsylvania in Morrisdale Coal Co. v. Penn R. R. Co., 176 Fed. 748, 183 Fed. 929, HELD, that the Commission could alone entertain a complaint for damages based on such discrimination. In order to prevent a miscarriage of justice and afford an opportunity to secure a final ruling by the courts the Commerce awards reparation to each complainant based on the difference between the average selling price for the coal at the mine for interstate markets and the cost of production during the same period, upon the difference in the number of tons of coal it would have mined and shipped had its proper portions of cars been furnished, and the tonnage it actually did ship. Hillsdale Coal & Coke Co. v. P. R. R. Co., 23 I. C. C. 186.

(c) The Commission has no power to direct the payment of a damage claim,

since a failure to pay is not a violation of the act. Larkin Co. v. E. & W. T. Co., 24 I. C. C. 645, 646.

(d) Since it is empowered to award reparation only for violations of the Act. No violation can be predicated upon the fact that a carrier's agent negligently permitted the use of pens for infected cattle causing complainant to ship from another point. Criswell v. W. F. & N. W. Ry. Co., 37 I. C. C. 97, 98.

(e) In an action for damages due to refusal of carrier to construct a siding and switch connection at complainant's mine while granting the same to complainant's vendee, HELD: Damages may not properly be predicated upon the difference between the price at which the mine was sold and the price it would have bought if equipped with a siding, for the reason that the sale of the mine" was not the proximate result of the carrier's unlawful conduct. Schlicher v. Director General, 62 I. C. C. 181, 185, 186.

(f) In determining the amount of damages for loss of profits resulting from failure of carrier to construct a siding and switch connection, the Commission is restricted to shipments that would have moved in interstate commerce. Schlicher v. Director General, 62 I. C. C. 181, 186.

(g) Damages for speculative future losses are not recoverable, and redress for present losses can not be denied by speculating that such losses may be recouped at some future time. A loss is an established fact for the time being, while possible profit in the future is entirely conjectural. Avella Coal Co. v. P. & W. V. Ry. Co., 77 I. C. C. 731, 741.

ALL OTHER CITATIONS

L. & N. R. R. Co. v. Ohio Valley Tie Co. (Ky., 1914), 170 S. W. 633, 642; McBridge Coal & Coke Co. v. C. St. P. M. & R. Co., 13 I. C. C. 571, 572; General Electric Co. v. N. Y. C. & H. R. R. R. Co., 14 I. C. C. 237, 242; Folmer & Co. v. G. N. Ry. Co., 15 I. C. C. 33, 36; Carstens Packing Co. v. O. R. R. & Nav. Co., 17 I. C. C. 125, 126, 127; Acme Cement Plaster Co. v. Wabash R. R. Co., 18 I. C. C. 557, 558; American Creosote Works v. I. C. R. R. Co., 18 I. C. C. 212, 215, 216; Hanley Milling Co. v. Pennsylvania Co. 19 I. C. C. 475, 476; Sondheimer Co. v. I. C. R. R. Co., 20 I. C. C. 606, 609; Schulz Co. v. C. M. & St. P. R. R. 20 I. C. C. 403, 405; National Ass'n of Letter Carriers v. A. T. & S. F. Ry. Co., 20 I. C. C. 6, 9; Buffalo Hardwood Lumber Co. v. B. & O. R. R. Co., 21 I. C. C. 536, 538; Meeker & Co. v. Lehigh R. R. Co., 23 I. C. C. 480; Mattison v. Penn. R. R. Co., 23 I. C. C. 233, 235; Eichenberg v. Southern Pacific Co., 28 I. C. C. 584, 588; Atlas Portland Cement Co. v. L. V. R. R. Co., 32 I. C. C. 487, 488; Hygenic Ice Co. v. C. & N. W. Ry. Co., 37 I. C. C. 382, 388; Brooks Coal Co. v. Wabash R. R. Co., 39 I. C. C. 426, 432; Colorado Fuel Co. v. M. K. & T. Ry. Co. of Texas, 39 I. C. C. 491, 493; Poteau Coal & Mercantile Co. v. A. & S. Ry. Co., 40 I. C. C. 459, 460; Trexler Lumber Co. v. S. Ry. Co. 42 I. C. C. 719, 720.

II. RIGHT TO RECOVER .

§3½. Extent of recovery.

IMPORTANT CASES SINCE 1908

(a) A common carrier violating the commands of the act is liable to the person injured thereby; complainant may bring suit in court or bring a complaint before the Commission. All damages that properly can be attributed to an overcharge, whether it be the keeping of the plaintiff out of his money, or the damage to his business following as a remote result of the same cause, must be taken to have been considered in the award of the Commission and compensated with that award is paid. Danzer & Co. v. G. & S. I. R. R. Co. 69 I. C. C. 59, 61.

(b) Evidence that may condemn a rate for interstate shipment does not necessarily justify reparation for exaction of that rate in the past, so that an order of the Interstate Commerce Commission establishing a different rate, but not authorizing reparation, does not establish a shipper's right to reparation. Morgan Co. v. Great Northern Ry. Co., 285 Fed. 876.

(c) Where the Examiner for the Interstate Commerce Commission ordered proof on the issue of damages to a shipper reserved until after the decision as to the right to damages, and thereafter the Commission found there was no right to reparation, though it did find discrimination against the shipper, the ruling on the evidence was not erroneous, even though the conclusion as to reparation was not correct. Donner Steel Co. v. Interstate Commerce Commission, 285 Fed. 955.

(d) An award of reparation would not

necessarily follow from a finding that a classification was unreasonable. State Highway Department of Texas v. Director General, 73 I. C. C. 741, 742.

(e) Under Interstate Commerce Act, §8, providing that any carrier violating the act "shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation," a shipper who has been charged unreasonable and excessive rates is entitled to recover as reparation the difference between such excessive rates and the rates the Interstate Commerce Commission find would have been just and reasonable, and all carriers participating in such unlawful rates are jointly and severally liable therefor. Louisville & N. R. Co. v. Sloss-Sheffield Steel & Iron Co., 295 Fed. 53.

ALL OTHER CITATIONS

National Fibre & Insulating Co. v. N. & W. Ry. Co., 78 I. C. C. 361, 363, 364.

§4. Necessity of protest.

IMPORTANT CASES SINCE 1908

(a) In view of the necessary relations between the carrier and shipper, the dependence in modern business life of the latter upon the former, the right and duty of the carrier in the first instance to fix its charges, its obligation to adhere to the same until altered in the manner prescribed by law, and its right to enforce such charges by retaining possession of the freight transported, or to demand payment of the freight charges as a prerequisite to the transportation, places the parties upon an unequal footing so as to relieve the shipper from the necessity of protest against the payment of an unlawful rate. Southern Pine Lumber v. Southern Ry. Co., 14 I. C. C. 195, 197.

(b) To maintain a petition before the Commission for the recovery of excessive freight charges it is not necessary that the payment of freight should have been made under protest. National Refining Co. v. A. T. & S. F. Ry. Co., 18 I. C. C. 389, 390.

ALL OTHER CITATIONS

Baer Brothers Mercantile Co. v. M. P. Ry. Co., 13 I. C. C. 329, 338; Nicola, Stone & Myers Co. v. L. & N. R. R. Co., 14 I. C. C. 199, 205; Nollenberger v. M. P. Ry. Co., 15 I. C. C. 595, 596; Penn. R. R. Co. v. International Coal Mining Co. 173 Fed. 1, 7; Mitchell Coal & Coke Co. v. Penn R. R. Co., 181 Fed. 403, 410.

§5. Necessity of First Paying Tariff Rate.

IMPORTANT CASES SINCE 1908

(a) It is not the policy of the Commission to award reparation where lawful charges have not been paid. Peale, Peacock & Kerr v. Central R. R. Co. of N. J., 18 I. C. C. 25, 33.

(b) The right to recover reparation on account of unlawful charges accrues when the charges are paid. Young v. Director General, 59 I. C. C. 305, 306.

ALL OTHER CITATIONS

Wilson v. C. M. & St. P. Ry. Co. 14 I. C. C. 549, 550.

§6. Parties entitled to recover.

See Infra §19; Parties; Procedure Before Commission V.

CASES 1887-1908

(a) Shippers whose claims for reparation for damages for wrongful charges for transportation of oil are covered by an order of the Interstate Commerce Commission, but who have not been served in the reparation proceedings before the Commission, may, upon failure of the carriers to properly refund excessive charges, proceed on the basis of reparation prescribed on such order to enforce their claims in the courts as provided by law. Independent Ref. Asso. v. Western N. Y. & P. R. Co. 6 I. C. C. 378.

(b) It appearing that the wrongs found to exist in these cases resulted from unequal conditions of carriage and shipment imposed by the defendants antecedent to the time of shipment, that the movement of the property depended upon the shipper's acceptance of conditions thus notified to him in advance, that he had to regulate his price for oil accordingly, and that the cost of transportation was borne by the claiming shippers: HELD, that it is not material whether the claimants, who are all shippers, or whether the consignees, paid the transportation charges. HELD, further, that the violations of law found in these cases do not arise through any breach of contract, but from failure on the part of carriers to perform their public duties. Independent Refiners' Asso. v. Western N. Y. P. R. Co., 6 I. C. C. 378.

(c) Whatever may be said of the right or status of shippers generally as to reparation for damages resulting from a rate or charge declared by the Commission to be unlawful, the Cattle Raisers' Association of Texas is entitled in this case to show damages to its members,

and upon such showing the Commission will order reparation; but in view of the unsettled state of the law in this respect, and in order that all phases of the question may be presented to the court, the members of the association seeking damages should file claims in the nature of intervening petitions. Cattle Raisers' Asso. v. Chicago, B. & Q. R. Co. 10 I. C. C. 83.

(d) The complainants are not entitled to reparation, although they have apparently paid for the transportation of bananas from Lynchburg to Danville, which were in fact never transported, where the result to them was the same in money as, and more favorable in convenience than, though the entire carload had been shipped to Lynchburg and the half reshipped. Gardner & Clark v. Southern R. Co., 10 I. C. C. 342.

IMPORTANT CASES SINCE 1908

(e) The unreasonableness of the rates on the lines of the defendant carriers in the former proceedings referred to, from points of origin to points of destination embraced within the orders of the Commission therein, has already been established. Reparation should be awarded to the parties shown to be entitled thereto for the difference between the rates condemned by said orders and the higher rates paid since the date of their establishment. The right to recover reparation is not confined to shipments made by parties to the former proceedings, but extends to all shipments charged for on the basis indicated, by whomsoever made. No orders for reparation will be entered on account of the alleged exaction of excessive charges on shipments from points of origin to destination not involved in the former proceedings until the question of the reasonableness of the rates shall be determined. The Commission has no jurisdiction to make orders for reparation on account of any alleged excessive rate except when, upon complaint, notice to the defendants, and a full hearing, such rate has been challenged and found to be unreasonable. Nicola, Stone & Myers Co. v. L. & N. R. R. Co., 14 I. C. C. 199, 205.

(f) Interveners may be denied reparation where reparation was not put in issue in original complaint. R. R. Com. of Oregon v. S. P. Co., 24 I. C. C. 273, 279.

(g) Complainant must show that the freight charges on which it seeks reparation were actually paid by it. Upon receipt of proof as to the proper party in whose favor an order of reparation should be entered and also a statement of the shipments agreed to by the defendant, the order of reparation sought will be issued. Bascom Porter Co. v. A. T. & S. F. Ry. Co., 24 I. C. C. 297.

(h) A consignee who has paid charges based on an unreasonable rate is not entitled to reparation where such charges have been deducted from the shippers invoice. Deming Lumber Co. v. S. P. Co., 24 I. C. C. 598, 599.

(i) Section 8 of the Act makes a common carrier, subject to the Act, liable to the person injured for whatever damages may accrue by reason of the doing of any act prohibited or declared to be unlawful by the statute. In re Wool, Hides and Pelts, 25 I. C. C. 675, 676.

(j) The person entitled to an award of damages on the ground of the unreasonableness of a rate is the one who has actually paid the rate. National Wool Growers' Assn. v. O. S. L. R. R. Co. 25 I. C. C. 675, 677.

(k) A consignee is not necessarily entitled to reparation. Michigan Hardwood Mfrs. Asso. v. Transcontinental Freight Bureau, 27 I. C. C. 32, 40; Commercial Club of Omaha v. A. & S. R. Ry. Co., 27 I. C. C. 302.

(l) Where freight rate from a certain point has been reduced by the Commission and reparation is to be awarded, and it is shown that a certain allowance has been made under the higher rates by the shipper to the consignee, whether termed a freight allowance or a trade discount, if this same allowance is also made under the reduced rates, it is evident that the damage resulting from the higher rates has been borne by the consignee and any reparation awarded should be awarded to the consignee. Standard Mirror Co. v. P. R. R. Co., 32 I. C. C. 261, 264.

(m) The reparation is due to the person who has been required to pay excessive charge as the price to transportation. It follows that we must, in making orders of reparation in these cases, upon proper proof of the shipments, make such orders in favor of those who paid the charges as freight charges, or on whose account the same were paid, and who were the true owners of the property transported during the period of transportation. Oden & Elliott v. S. A. L. Ry., 37 I. C. C. 345, 347.

(n) While complainants were not named in bills of lading, or freight bills, consignor was, in fact, their agent; and while complainants were not in the ordinary sense either consignor and consignees they were in substance the true consignors and ultimately bore the freight charges and the case, therefore, does not come within the rule which prohibits an award of reparation to a stranger to the transportation record. Henderson v. M. L. & T. R. R. & S. S. Co., 39 I. C. C. 483, 484.

(e) Reparation is due to the person who has been required to pay the excessive charge as the price of transportation. Napanee Lumber & Mfg. Co. v. B. & O. S. R. R. Co., 43 I. C. C. 236, 240.

(p) The statute empowers the Commission to award reparation to the party injured by any violation of the Act committed by carriers. The fact that complainant may have assigned any part of the award is not a matter of which the Commission may take cognizance. Graustein v. B. & M. R. R., 45 I. C. C. 393, 405.

(q) The shipments were sold F. O. B. factory, freight equalized with Pittsburg. In other words, each consignor discounted his invoice to the extent that the freight charges for shipments of glass from his factory exceeded the charges for like shipments from the Pittsburg district. Defendants question complainants right for reparation. The record is clear that complainants paid the freight charges as such. To go into the matter of allowances between the parties would lead us away from the direct results of the acts of the carriers in the exaction of unreasonable rates, into the domain of indirect and remote consequences, and perhaps into the question of equity between vendors and vendees Reparation is due to the person who has been required to pay the excessive charge as the price of transportation Guilford Lumber Mfg. Co. v. S. Ry., 53 I. C. C. 669, 679.

(r) Consignor found entitled to reparation where shipment was sold at a price which included the cost of transportation, and freight charges were paid by consignee and deducted from invoice price in settlement with consignor. Federal Oil & Supply Co. v. Director General, 60 I. C. C. 185, 187.

(s) A carrier contested the right of complainant, an association, to maintain a claim for reparation on ground that it did not pay any of the charges complained of and is not empowered to bring suit in behalf of its members. Held: since prayer of complaint specifically named the members of complainant's organization who paid the charges and asked that they be awarded reparation, the members so named are co-complainants with the association, although not styled such in the caption of the complaint. Pittsburgh Grain & Hay Exchange v. Director General, as Agent, 62 I. C. C. 506, 507, 508.

(t) No reparation can be awarded for the exaction of an unreasonable rate where witness unable to give direct testimony as to who paid and bore the charges. American Wood Pipe Co. v. Director General, as Agent, 66 I. C. C., 155, 156.

(u) After complaint was filed, powers of attorney were executed by certain consignors, who were not named as parties in the complaint, in favor of a complainant who was so named. Held, introduction of such powers of attorney in evidence at the hearing over objection of defendants can not be treated as equivalent to amendment of the complaint and since such consignors, who bore the freight charges, have filed no complaint within the statutory period, reparation as to them must be denied Tanners' Council v. Director General, as Agent, 66 I. C. C., 415, 419.

(v) Complaint filed by a public traffic manager naming himself as complainant. HELD, since he is not the real party in interest reparation denied. Carney v. Director General, as Agent, 66 I. C. C., 560, 561.

(w) Complainant, a commission company, sought reparation as agent for individual shippers named in the complanit. Whereabouts of some complainants unknown, one is deceased and his claim is not listed as an asset of his estate and his administrator declines to take cognizance of it, and the remainder have filed requests for dismissal. HELD, Complainant's agency to make claim for reparation not sufficiently established. Hyre-Price Live Stock Commission Co. v. M., K. & T. Ry. Co., 66 I. C. C., 591.

(x) Reparation denied for the exaction of an unreasonable rate where complainant was not a party to the transportation records. In cases where complainants are parties it must appear that they suffered the damages claimed

before the Commission is justified in entering an order of reparation in their favor. International Nickel Co. v. Director General, as Agent, 66 I. C. C., 627 628, 652.

(y) A proceeding before the Commission to determine the reasonableness of an advance in rates is not in the nature of private litigation between the protestants and the carriers, but a matter of public concern in which the whole body of shippers is interested. The finding in such case is generally in its operation and insures to the benefit of every person who has been obliged to pay the unjust rate. Otherwise those who filed the complaint, or intervened during the hearing would have secured the advantage over the general body of the public, with the result that the order of the Commission would have created a preference in favor of the parties to the record, and would have destroyed the very uniformity which that body had been organized to secure. Therefore, every shipper similarly situated was entitled by appropriate proceedings before the Commission or the courts to obtain the benefit of that general finding and order. A. J. Phillips Co. v. Grand Trunk W. R. Co., 35 Sup. Ct. 444, 445.

(z) The fact that complainant included the freight charges in part of the selling price does not preclude it from recovering the damage it suffered by reason of having ultimately paid an unreasonable freight rate. Central Wisconsin Supply Co. v. Director General, 68 I. C. C. 409, 411.

(aa) In 59 I. C. C. 570, rates on nitrate of soda, carloads, from Baltimore, Md., to Barksdale, Wis., were found unreasonable to extent they exceeded 45c per 100 pounds, reparation awarded. Complainant now advises that under an arrangement with the Government, they were not entitled to reparation. HELD, freight charges paid on shipments described in the original report were not borne by complainant and reparation is denied. E. I. Du Pont de Nemours & Co. v. Director General 68 I. C. C. 579.

(bb) If complainants have paid and borne as transportation charges rates that were unreasonable they are entitled to reparation. Wilbur Lumber Co. v. Director General 73 I. C. C. 152, 159.

(cc) In 66 I. C. C. 529, the Commission found rates on coal in effect during the period from June 25, 1918 to Oct. 9, 1920, from western Kentucky mines served by the L. & N., to Clarksville, Tenn., as unreasonable, case being held open for proof of damage. HELD, complainants have shown they made shipments of coal, paid and bore the freight charges, reparation awarded. City of Clarksville, Tenn., v. Director General 73 I. C. C. 509.

(dd) If complainants have paid and borne as transportation charges unreasonable rates, they are entitled to an award of reparation. They have paid cash out of pocket that should not have been required of them. City of Clarksville, Tenn., v. Director General, 73 I. C. C. 509, 510.

ee) In 55 I. C. C. 42, the Commission found that the joint rates on grain from territory surrounding Peoria, Ill., to eastern trunk line territory was unreasonable to extent it exceeded the combination of locals on Peoria. Further rehearing was held on petition of complainant as to reparation. Complainants have not shown and apparently are unable to show, with a few possible exceptions, whether or not they bore the local charges as such on each inbound shipment to Peoria. HELD, reparation denied, complainant dismissed. Peoria Board of Trade v. A. T. & S. F. Ry., 73 I. C. C. 532.

(ff) It is well settled that reparation is due the person who pays the excessive charges as the price of transportation. L. Nicholas Oil Co. v. A. T. & S. F. Ry. 73 I. C. C. 725, 728.

(gg) Defendant questions the present corporate existence of complainant. HELD, reparation awarded to complainant where record shows that it was incorporated under the laws of Indiana; that it was actively engaged in business until it sold its entire physical assets at public sale, and has since been winding up its affairs, but has not yet surrendered its charter. Indiana Reduction Co. v. Director General, as Agent, 73 I. C. C., 134, 136.

(hh) Contention that shippers have not shown that they were damaged by reason of rates assessed during the period when the prices of coal were regulated by the Federal Government through the Fuel Administration. HELD, not sustained. If shippers paid and bore as transportation charges rates that were

unreasonable, they are entitled to reparation. Wilbur Lumber Co. v. Director General, as Agent, 73 I. C. C., 152, 159.

(ii) Contract between consignor and consignee provided that price of commodity be based on specific freight rate, the buyer to have benefit of any reductions and any advances to be added to the price of the commodity. Freight charges paid by consignee at destination. Consignor in billing consignee deducts amount of freight charges based on the contract rate, and consignee remits the difference. HELD, reparation denied consignee complainants as such contract amounts to no more than an agreement between the parties as to changes which might occur in the rate. Davenport Commercial Club v. Director General, as Agent, 73 I. C. C., 251, 257, 258.

(jj) Upon further hearing, reparation awarded, proof having been submitted that complainants paid and bore charges for the transportation of coal from Kentucky mines to Clarksville, Tenn., at rates found unreasonable in original report, 66 I. C. C., 529. City of Clarksville, Tenn., v. Director General, as Agent, 73 I. C. C., 509.

(kk) Director general endeavored to show that complainants were not damaged for reason that the prices of coal during period in question were subjected to the regulation of the Federal Government through the Fuel Administration, and that complainants sold their coal at prices which included the freight charges paid, and the margin of profit allowed. HELD, complainants paid and bore as transportation charges unreasonable rates and are entitled to reparation. They have "paid cash out of pocket that should not have been required of them." City of Clarksville, Tenn., v. Director General, as Agent, 73 I. C. C., 509, 510.

(ll) Where the commission's findings condemned joint rates, of which complainants bore only a portion, such complainants are entitled only to their proportionate share of any reparations awarded. Peoria Board of Trade v. A., T. & S. F. Ry. Co., 73 I. C. C., 532, 534.

(mm) Contention that reparation should be denied because complainant sold its products, f. o. b. point of destination at prices which included the prepaid freight charges. HELD, not sustained following Wheeler & Timlin, 60 I. C. C., 265. Lancaster Steel Products Corp. v. Director General, as Agent, 73 I. C. C., 567, 570.

(nn) Shipments were sold f. o. b. Pittsburgh, Pa. Complainant's customer paid the freight charges and, to extent that they were in excess of those which would have resulted at the rate from Pittsburgh, deducted them from invoice price in making settlement. HELD, complainant found party entitled to any reparation that may be awarded. Pittsourgh Steel Co. v. Director General, as Agent, 73 I. C. C., 715, 716.

(oo) Objection of carriers to an award of reparation on the ground that the commodity was sold at a price which included freight charges and profits. HELD, reparation is due the person who pays the excessive charge as the price of transportation. Nicholas Oil Co. v. A., T. & S. F. Ry. Co., 73 I. C. C. 725, 728.

(pp) Contention that members of an association in whose behalf complaint was filed are barred from reparation because complainant took position that it would await decision on merits before offering detailed evidence as to payment and bearing of freight charges by its members. HELD, while ordinarily complainants should present entire cases at time of original hearings, in a case involving numerous shipments by many shippers it is often to the best interest of the commission that parties defer taking testimony on details of damage until main issue has been decided. Nat'l Preservers & Fruit Products Asso. v. A. & S. Ry. Co., 74 I. C. C. 179, 183.

(qq) Complainant, consignee, sold its newspaper and physical assets. Contention that no reparation can be awarded to consignee because it assigned its claims to its successor, and that in any event neither consignee nor its successor would be entitled to reparation found due on shipments to the former whether the so-called assignment be held valid or invalid under section 3477 of United States Revised Statutes, not sustained. No formal assignment was made by consignee to its successor in business, nor can any assignment be inferred from the facts of record. Any reparation on shipments to the consignee is properly due to it. Democrat Printing Co. v. Director General, as Agent, 74 I. C. C. 595, 599.

(rr) Shipments were sold by consignor to consignee under contracts specifying price f. o. b. destination, based on the then existing price of commodity and the freight rate, with the condition that such price should be changed to correspond with any increase or decrease in

the factors on which it was based, subject to a certain maximum. HELD, Freight charges as such were paid and borne by consignor, who is entitled to reparation. Roxana Petroleum Corp. v. Director General, as Agent, 74 I. C. C. 605, 607.

(ss) Shipments were sold f. o. b. point of origin, contracts of sale being based on rate thought to be applicable. Freight charges were prepaid by consignor and added to invoice rendered purchaser. Consignor was billed for difference between charges collected and those which would have accrued at rates agreed upon in contracts of sale. HELD, consignor paid and bore charges in excess of those provided for in contracts of sale, and is entitled to reparation to that basis only. Marion Extract Co. v. Director General, as Agent, 74 I. C. C. 613, 614.

(tt) Due to error in the record, finding in original report, 73 I. C. C., 27, denied reparation to complainant on the ground that there was no evidence that it paid and bore transportation charges on its shipments. Error corrected and reparation awarded. Cannelton Sewer Pipe Co. v. Director General, as Agent, 74 I. C. C. 647.

(uu) Where a subsidiary company, which paid and bore freight charges as such out of funds furnished by the parent company, is not named as a party complainant before the commission, such parent company, as complainant, can not recover reparation on such transportation. Lackawanna Steel Co. v. Director General as Agent, 77 I. C. C. 465, 468.

(vv) Factory price of commodity shipped was fixed by the Government. Shipments were sold f. o. b. destination, delivered price being computed by complainant by adding to factory price an amount to cover transportation cost. Freight charges were paid by consignee and deducted from complainant's invoice. Contention that complainant did not pay and bear transportation charges, since it added freight cost to factory price as fixed by the Government and actually received net fixed price, not sustained. Wyoming Sugar Co. v. Director General, as Agent, 77 I. C. C. 470, 471, 472.

(ww) Section 206 (c) of the transportation act, 1920, making it the duty of the commission to entertain complaints for reparation on account of the collection by or through the President during Federal control of charges in violation of the interstate commerce act, was intended to cover charges collected for services performed at least in part, by the director general during Federal control. Complaints regarding charges collected by the director general as agent for the carriers, on account of services performed wholly prior to Federal control, should be filed against the carriers themselves. Terre Haute, Indianapolis & E. T. Co. v. Director General, as Agent, 77 I. C. C. 658, 659.

(xx) Complainant was not real party in interest, but overcharges were paid and borne by an allied corporation. Complainant asked leave to amend so as to include such corporation as party complainant. Objection by defendant that cause of action of real party in interest was barred by the statute of limitations, HELD, Not sustained, since amendment filed within statutory period as provided under amendment of February 24, 1922, to section 206 of the transportation act, 1920. Amendment permitted. Terre Haute, Indianapolis & E. T. Co. v. Director General, as Agent. 77 I. C. C. 662.

(yy) Complainant's shipments were commandeered by Government for war purposes, and percentage commission in addition to delivered price which included transportation charges , allowed him. Contention by carrier that complainant is not entitled to reparation in respect of unreasonable charges on such transportation, not sustained. While freight charges in general were likely given consideration in determining just measure of compensation to complainant for the material, it does not appear that charge specifically assessed on shipments was given separate and individual consideration. Reparation awarded to complainant as party who paid and bore freight charges. Thorp v. Director General, as Agent, 80 I. C. C. 1, 2, 3.

(yya) Freight charges originally paid by complainant but ultimately borne by another corporation, both being subsidiaries of a third corporation. Reparation denied, due to failure to submit assignment of claim or power of attorney from corporation which bore charges. Gulf Production Co. v. Di rector General, as Agent, 80 I. C. C. 39, 42.

(zz) Consignee filed complaint seeking reparation in own behalf. Freight charges as such were paid and borne by consignor, and after statute of limita-

tions had expired complainant filed motion to include consignor as party complainant and petition to permit that party to intervene. Contention that filing of complaint tolled statute and that amendment and petition related back, not sustained. Complainant acted in own behalf and not as agent of consignor and with no privity between them in respect of reparation sought. It was necessary for consignor to file its claim within period fixed by statute, and after expiration thereof commission had no jurisdiction to consider its right to reparation. Phillips case, 236 U. S., 662. Barrett Co. v. Director General, as Agent, 80 I. C. C. 55.

(3a) Reparation awarded to corporation as successor in interest to individuals who paid and bore unreasonable freight charges. Premier Coal Co. v. Director General, as Agent, 80 I. C. C. 85, 86, 87.

(3aa) Reparation awarded complainant corporation, organized to render general commercial and traffic services to its subscribers, without profit, in its representative capacity. Detroit Coal Exchange v. Director General, as Agent, 80 I. C. C. 258, 260.

(3ab) Shipments under rates found unreasonable were made by company to rights, liabilities, and assets of which complainant succeeded. HELD: This transfer of interests not affected by section 3477, Revised Statutes of United States. Fairmont Creamery Co. case, 68 I. C. C., 507. Reparation awarded. Roxana Petroleum Corp. v. Director General, as Agent, 80 I. C. C. 292, 294.

(3b) Shipments of steel moved under alleged unreasonable rates, for use in construction of ships for Emergency Fleet Corporation on cost-plus basis. Contention by defendant that Emergency Fleet Corporation was partly damaged and that complaint was not maintainable since no agency to file in its behalf was alleged or proven, not sustained. At time of movement title to shipments rested in complainant and it alone was in contractual relation with defendant; if charges were unreasonable, it suffered damage when it paid such charges. No further proof is necessary, for the law does not inquire into later events. Darnell-Taenzer Case, 245 U. S., 531. Reparation awarded. Cramp & Sons v. Director General, as Agent, 80 I. C. C. 341, 343.

(3c) Contention that complainant is not entitled to reparation, since it agreed with shipper to bear equally excess freight charges over anticipated lower rate, not sustained. Complainant paid freight charges and it is not shown that it has been repaid any part by anyone. Reparation awarded. Brown's Tract Lumber Co. v. Director General, as Agent, 80 I. C. C. 111, 112, 113.

(3d) Freight charges paid in first instance by consignee but charged to complainant and finally borne by him. HELD, Complainant party entitled to reparation. Roper v. Director General, as Agent, 80 I. C. C. 125.

(3da) Reparation awarded to complainant, an association of trustees acting under a declaration of trust. Sugarland Industries v. Galveston Wharf Co., 80 I. C. C. 655.

(3e) Reparation awarded to corporation appearing by its receivers. American Lumber & Mfg. Co. v. G. R. R., 80 I. C. C. 759.

(3f) In cases involving reparation the Commission ordinarily deals with the parties to the transportation record. When a stranger to such record asserts before it a claim in opposition to that of the person who paid and bore the charges and was thereby damaged it must be demonstrated to its satisfaction that the person damaged has divested himself of his legal rights in the premises in favor of that stranger. R. B. Miller v. N. & W. R. Co., 81 I. C. C. 590.

(3g) Where complainant is the party who was in relation with the railroad, and it is apparent it has paid cash out of pocket that should not have been required of it, reparation awarded. Cramp & Sons v. Director General, 83 I. C. C. 55, 58.

(3ga) Contention that complainant, consignor, and consignee of shipments charged unreasonable rates, is not entitled to reparation since it was employed partly on Government construction on cost-plus basis, not sustained. Title was never in Government, nor was money for purchase or transportation advanced by it, commodity having been used for private work as well. Complainant is party who was in relation with railroad, and has paid cash out of pocket that should not have been required of it. Darnell-Taenzer case, 245 U. S., 531. Reparation awarded to complainant. Cramp & Sons Co. v. Director General, as Agent, 83 I. C. C. 55, 57, 58.

(3gb) Complainant, commission agent

for undisclosed principal, consigned shipment to itself and paid freight charges; deducting such charges from proceeds of sale. Reparation sought by complainant in its own name. HELD: Contract to pay and charge lawful freight rates existed between complainant, in its own name, and defendants, to which undisclosed principal was a stranger. Undisclosed principal is a foreign corporation and is especially dependent upon its rights under laws of agency relating to agents for undisclosed principles, under which complainant is entitled to reparation in its representative capacity. See 21 Ruling Case Law, 902, 903; 57 I. C. C., 211. Keith Co. v. Director General, as Agent, 83 I. C. C. 167, 171, 172.

(3h) The right of an agent to sue on a contract which he has entered into in his own name without disclosing his agency, if the principal makes no objection, seems to have met with universal recognition. Accordingly, a person who, having in charge, as agent, the goods of another, makes with a common carrier a contract to ship such goods, in which the agency is not disclosed, may maintain an action in his own name for a breach of such contract. And, likewise, if an agent by mistake pays to a third party money in his possession belonging to his principal, he may maintain in his own name an action for money had and received and recover it back. If the contract is one not under seal, either principal or agent may sue for its enforcement. Keith Co. v. Director General, 83 I. C. C. 167, 172.

(3ha) Reparation awarded complainant corporation which took over all assets and liabilities of party by whom freight charges were paid and borne, in succeeding to business of latter. Assignments of this character are not prohibited by section 3477 of Revised Statutes. Fairmont Creamery Co., 68 I. C. C., 507, citing Seaboard Air Line Ry. v. United States, 256 U. S., 655. United Iron Works v. Director General, as Agent, 83 I. C. C. 282, 284.

(3hb) Complainant was given freight allowance by consignor, covering portion of freight charges, and deduction accordingly made from invoice price. Contention that as to such shipments complainant is not entitled to reparation, not sustained. Complainant paid freight charges as such. To go into matter of allowance between parties would lead away from direct results of act of carriers in exaction of unreasonable rate into domain of indirect and remote consequences and perhaps into questions of equity between vendor and vendee. Prusia Hardware Co., 40 I. C. C., 747. Reparation for excess of charges over those herein found reasonable awarded. Weldon, Williams & Lick v. A., T. & S. F. Ry. Co., 83 I. C. C. 371, 373, 374.

(3hc) The party entitled to recover is he who has either by himself or by another party paid and borne the freight charges for the transportation service, irrespective of the title to the property shipped. Missouri Portland Cement Co. v. Director General, 88 I. C. C. 492, 493.

(3i) Where the Interstate Commerce Commission found a rate charged on lumber excessive and ordered it reduced, and also ordered reparation to the extent of the excess, parties who made the overpayment were entitled to recover it, though they were able to pass on the damage sustained in the first instance by collecting the amount from purchasers, as the tendency of the law in regard to damages is not to go beyond the first step, and a defendant is liable if, proximately, plaintiff has suffered a loss, especially as there was no privity between the purchasers and the carriers, entitling them to recover the overpayments. Southern Pacific Co. v. Darnell Taenzer Lumber Co., 38 Sup. Ct. 186, 245 U. S. 531, 62 Lid. 451.

(3j) Where assignee of part of claim against railroad company on which reparation award was subsequently made was not a party to compromise of that and other claims between the assignor and the railroad, it acquired no rights thereunder. Westminster Nat. Bank v. Boston & M. R. R. (Mass. 1923) 139 N. E. 345.

(3k) Claims for reparation filed during statutory period, naming complainant as party who paid and bore freight charges. At hearing, complainant introduced powers of attorney from real parties in interest authorizing complainant to collect reparation to be awarded, principals not being parties to complaint. HELD: Absence of allegations in complaint of representative capacity on part of complainant can not defeat recovery on behalf of real parties in interest. Reparation awarded to complainant for use and benefit of principals. Tanners' Council v. Director General, as Agent, 78 I. C. C. 27, 28, 29.

(31) Reparation awarded to complainant as agent for real party in interest by virtue of power of attorney empowering complainant "to receive and acknowledge any and all sums of money that may be paid" under the complaint. Hercules Power Co. v. N. Y. C. R. R. Co., 78 I. C. C., 55, 56.

(3m) Complainant's shipments were commandeered by Government for war purposes, and percentage commission in addition to delivered price which included transportation charges, allowed him. Contention by carrier that complainant is not entitled to reparation in respect of unreasonable charges on such transportation, not sustained. While freight charges in general were likely given consideration in determining just measure of compensation to complainant for the material, it does not appear that charge specifically assessed on shipments was given separate and individual consideration. Reparation awarded to complainant as party who paid and bore freight charges. Thorp v. Director General, as Agent, 80 I. C. C. 1, 2, 3.

(3n) Reparation awarded to consignor who sold shipments f. o. b. destination and deducted freight charges in settlements with consignees. Forbes Timber Co. v. Director General, as Agent, 80 I. C. C. 36, 38.

(3o) The right of an agent to sue on a contract which he has entered into in his own name without disclosing his agency, if the principal makes no objection, seems to have met with universal recognition. Accordingly, a person who, having in charge, as agent, the goods of another, makes with a common carrier a contract to ship such goods, in which the agency is not disclosed, may maintain action in his own name for a branch of such contract. Missouri Portland Cement Co. v. Director General, 88 I. C. C. 492, 496.

ALL OTHER CITATIONS

Hayden & Wescott Lumber Co. v. G. & S. I. R. R. Co., 14 I. C. C. 537, 538; General Electric Co., v. N. Y. C. & H. R. R. Co., 14 I. C. C. 237, 244; Nicols, Stone & Myers Co. v. L. & N. R. R. Co., 14 I. C. C. 199, 208, 209; Nollenberger v. M. P. Ry. Co., 15 I. C. C. 595, 598; Cambria Steel Co. v. B. & O. R. R. C. 15 I. C. C. 484; Lindsay Bros. v. G. R. & I. Ry. Co., 15 I. C. C. 182, 183; Menefee Lumber Co. v. T. & P. Ry. Co. 15 I. C. C. 49, 51; Michael Cohen & Co. v. So. Ry. Co., 16 I. C. C. 177, 178; Jones v. K. C. S. Ry. Co. 17 I. C. C. 468, 470; Tyson & Jones Buggy Co. v. A. & A. Ry. Co., 17 I. C. C. 330, 332; Williar v. Can. Nor. Que. Ry. Co. 17 I. C. C. 304, 305; Males Co. v. L. & H. Ry. Co. 17 I. C. C. 280, 282; Kindelon v. S. P. Co., 17 I. C. C. 251, 255; Fathauer Co. v. St. L. I. M. & S. Ry. Co., 18 I. C. C. 517, 520; Southern Timber & Land Co. v. S. P. Co., 18 I. C. C. 232, 233; Gamble-Robinson Commission Co. v. St. L. & S. F. R. R. Co., 19 I. C. C. 114, 116; Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co., 19 I. C. C. 20, 21; Kaul Lumber Co. v. C. of G. Ry. Co., 20 I. C. C. 450, 454; Fullerton, Powell Harwood Lumber Co. v. V. & S. W. Ry. Co., 20 I. C. C. 86, 88; Gibson Fruit Co. v. C. & N. W. Ry. Co. 21 I. C. C. 644, 646; Baker Mfg. Co. v. C. & N. W. Ry. Co., 21 I. C. C. 605, 607; Mountain Ice Co. v. D. L. & W. R. R. Co., 21 I. C. C. 596, 597; Youngblood v. T. & P. Ry. Co., 21 I. C. C. 569, 570; Carolina Portland Cement Co. v. C. & O. Ry Co. 21 I. C. C. 533; Fond du Lac Church Furnishing Co. v. C. M. & St. P. Ry. Co. 21 I. C. C. 481; Beekman Lumber Co. v. L. Ry. & N. Co., 21 I. C. C. 280; Mountain Ice Co. v. D. L. & W. R. R. Co., 21 I. C. C. 45, 51; modified 596; In Re Transportation of Company Material, 22 I. C. C. 439, 440; Lam, McGregor & Co. v. C. &. N. W. Ry. Co., 22 I. C. C. 346, 348; Byrnes v. A. C. L. R. R. Co., 23 I. C. C. 251, 253; Liberty Mills v. L. & N. R. R. Co., 23 I. C. C. 182, 186; International Coal Mining Co. v. Penn. R. R. Co., 162 Fed. 996, 997; Minneapolis Threshing Machine Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 452; Oden & Elliott v. S. A. L. Ry. Unrep. Op. 253; Burgess v. Transcontinental Freight Bureau, Unrep. Op. 229; American Plow Co. v. P. M. R. R. Co., Unrep. Op. 219; Sunderland Bros. Co. v. C. & N. W. Ry. Co., Unrep. Op. 148; New Orleans Board of Trade v. C. R. I. & P. Ry. Co., Unrep. Op. A-1; Crutchfield & Woolfolk v. S. P. Co., 24 I. C. C. 651, 655, 679, 680; In re Wool, Hides and Pelts, 25 I. C. C. 675, 678, 679; Southern Furniture Mfrs. Assn. v. S. Ry. Co., 25 I. C. C. 379, 387; Evens & Howard Fire Brick Co., v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 141, 152; Dupont de Nemours Powder Co. v. C. R. R. Co., of N. J., 25 I. C. C. 19, 21; Central Commercial Club v. A. F. & S. F. Ry. Co., 26 I. C. C. 373, 376; Marion Coal Company v. D. L. & W. R. R. Co., 27 I. C. C. 441, 443; Jubitz v. S. P. Co., 27 I. C.

C. 44; Commercial Club of Omaha v. A. & S. R. Ry. Co., 27 I. C. C. 302, 322, 323, 324; Michigan Hardwood Mfrs. Ass'n. v. Freight Bureau, 27 I. C. C. 32, 35, 38, 39; Meeker v. Lehigh Valley R. R., 35 Sup. Ct. 337, 339; Curry & Whyte Co. v. D. & I. R. R. R. Co., 30 I. C. C. 1, 15; Sligo Iron Store Co. v. St. L. & S. F. R. R. Co., 28 I. C. C. 616; Shinn & Co. v. N. P. Ry. Co., Unrep. Op. A107; Kollyrite Trucking Co. v. P. R. R. Co., Unrep. Op. A146; Crane v. C. St. P. M. & O. Ry. Co., Unrep. Op. A225; Graham & Co. v. S. I. Ry. Co., Unrep. Op. A256; Hall Lumber & Tie Co. v. C. & O. Ry. Co., Unrep. Op. A279; Lindsay Bros. v. G. R. & I. Ry. Co., Unrep. Op. A326; New York Hay Exchange Asso. v. L. V. R. R. Co., 29 I. C. C. 90, 92, 93; International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391, 392; Stone & Son v. S. Ry. Co., 29 I. C. C. 699, 701; Wichita Business Association v. A. T. & S. F. Ry. Co., 30 I. C. C. 374, 376; Charles Warner Co. v. D. L. & W. R. R. R. Co. 32 I. C. C. 244, 246; Standard Mirror Co. v. P. R. R. Co., 32 I. C. C. 261, 262. 263; Railroad Comr's of Montana v. A. T. & S. F. Ry. Co., 32 I. C. C. 316, 318; Crowdus Bros. v. A. T. & S. F. Ry. Co., 32 I. C. C. 355, 359; Omaha Grain Exchange v. C. & A. R. R. 32 I. C. C. 597, 601; Philadelphia Team Owners' Protective Asso. v. P. & R. Ry. Co. 32 I. C. C. 387, 393; Boise Lumber Co. v. P. & I. N. Ry., 33 I. C. C. 109, 116; Guilford Foundry Co. v. S. Ry. Co., Unrep. Op. A-873; Acme White Lead & Color Works v. N. P. Ry. Co., Unrep. Op. A-884; Ballon & Wright v. N. Y. N. H. & H. R. R. R., 34 I. C. C. 120, 121; Bascom-French Co. v. A. T. & S. F. Ry.. 34 I. C. C. 388, 389; Este Co. v. A. C. L. R. R. 34 I. C. C. 469, 471; Murphy Bros. v. N. Y. C. & H. R. R. Co., 33 I. C. C. 355, 357; Ballou & Wright v. N. Y. N. H. & H. R. R. Co., 34 I. C. C. 120; Board of Trade of Kansas City v. C. M. & St. P. Ry. Co. 34 I. C. C. 208, 211; Kerrihard Co. v. S. Ry. Co., Unrep. Op. 1855; Mapes v. G. N. Ry. Co., Unrep. Op. 1977; Nivision-Weiskopf Co. v. Ft. W. C. & L. R. R. Co., Unrep. Op. 2030; Bascom Porter Co. v. A. T. & S. Ry. Co., Unrep. Op. 2091; Louisiana Central Lumber Co. v. C. B. & A. R. R. Co., 35 I. C. C. 38, 39; Ludiwici-Celadon Co. v. F. E. C. Ry. Co., 35 I. C. C. 81, 82: Coal Switching Reparation Cases at Chicago, 36 I. C. C. 226, 227; Oden & Elliot v. S. A. L. Ry., 37 I. C. C. 345. 348, 349; Traffic Bureau, Sioux City Com. Club v. A. & S. R. R. R., 37 I. C. C. 353, 356; Hygienic Ice Co. v. C. & N. W. Ry., 37 I. C. C. 384, 387, 388; Black & White River Transp. Co. v. M. P. Ry. Co., 37 I. C. C. 244, 249; Eagle Ice Co. v. C. M. & St. P. Ry. Co., 37 I. C. C. 250, 259; Advance Bedding Co. v. A. T. & S. F. Ry. Co., 38 I. C. C. 31, 32; Texarkana Freight Bureau v. I. C. R. R. Co., 38 I C. C. 55, 60; Lippard-Stewart Motor Car Co., v. M. C. R. R. Co., 112, 114; Phillips Coal Co. v. S. A. & A. P. Ry. Co., 38 I. C. C. 340; Robinson Co. v. Am. Exp. Co., 38 I. C. C. 733, 735; Stearns & Culver Lumber Co. v. C. M. & St. P. Ry. Co., 39 I. C. C. 470, 472; Henderson v. M. L. & T. R. R. & S. S. Co., 39 I. C. C. 483; Goodman Mfg. Co. v. C. M. & St. P. Ry. Co., 40 I. C. C 675, 676; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 40 I. C. C. 738, 740, 741; Prussia Hardware Co. v. C. H. & D. Ry. Co., 40 I. C. C. 747, 748; Sanford Day Iron Works v. I. & C. R. R. Co., 41 I. C. C. 10, 12; Commercial Club of Omaha v. A. & S. R. Ry., 41 I. C. C. 480, 481, 482; Stacy v. S. Ry. Co., 41 I. C C. 654, 656; Houston Gas Co. v. N. C. Ry. Co., 42 I. C. C. 123; Boldt Co. v. B. & O. R. R. Co., 42 I. C. C. 175, 176; Bradsher v. S. Ry. Co., 42 I. C. C. 327, 328; Lamb-Fish Lumber Co. v. Y. & M. V. R. R. Co., 42 I. C. C. 458, 459; Albin, Trustee, v. C. M. & St. P. Ry. Co., 42 I. C. C. 477, 479; Mebius & Drescher Co. v. C. C. T. Co., 42 I. C. C. 599, 602; Standard Roofing Co. v. M. K. & T. Ry., 44 I. C. C. 358; Nitro Powder Co. v. West Shore R. R. Co., 44 I. C. C. 596, 597; Harmunt v. L. & N. R. R., 45 I. C. C. 162; Arlington Heights Fruit Exch. v. S. P. Co., 45 I. C. C. 248, 252; Graustein v. B. & M. R. R., 45 I. C. C. 393, 406; Gamble-Robinson Fruit Co. v. S. P. Co. 45 I. C. 578, 579; Herrick Refrig. Co. v. C. G. W. R. R., 46 I. C. C. 421, 422; Hamilton v. P. R. R., 45 I. C. C. 191, 192; Heckle v. C. B. & Q. R. R., 46 I. C. C. 513, 514; Minds v. Pennsylvania R. R., 237 Fed. 267; Warren Fish Co. v. L. & N. R. R., 46 I. C. C. 375, 376; Kanotex Refining Co. v. A. T. & S F. Ry. 46 I. C. C. 495 500; N. Y. N. H. & H. Ry. v. Ballou & Wright, 242 Fed. 862: Atchison, T. & S. P. Ry. v. Spiller. 246 Fed. 1; Rapier Sugar Feed Co. v. L. & N. R. R., 47 I. C. C. 222; Spokane Lumber Co., v. G. N. Ry. Co. 48 I. C. C. 627. 631; Bright Emery Co. v. A. E. R. R., 49 I. C. C. 1; Rapier Sugar Feed Co. v. I. C. R. R., 49 I. C. C. 34: International Paper Co. v. B. & M. R. R., 49 I. C. C. 99. 100; Illinois Brick Co. v. C. & E. I. R. R., 49 I. C. C.

590, 594; Inman Poulsen Lumber Co. v. S. P. R. R., 49 I. C. C. 600; Newport News Shipbuilding & Dry Dock Co. v. P. R. R., 49 I. C. C. 622, 628; State of Maryland v. B. C. & A. Ry., 49 I. C. C. 681, 690; Orange Rice Mill Co. v. T. & N. O. R. R., 49 I. C. C. 3, 4; Memphis Freight Bu. v. St. L. & S. F. R. R., 50 I. C. C. 345, 348; Pierpont Mfg. Co. v. S. Ry., 50 I. C. C. 81, 84. Natl. Poultry, Butter & Egg Assn. v. B. & O. S. W. R. R., 51 I. C. C. 34, 49, 42; Sunderland Bros. Co. v. C. B. & Q. R. R., 51 I. C. C. 185, 186; Midland Coal Co. v. St. L. & S. F. R. R., 51 I. C. C. 313, 314, 315; Atchison, T. & S. F. Ry. Co. v. Spiller, 247 Fed. 677; Memphis Freight Bureau v. St. L. & S. F. R. R., 50 I. C. C. 345, 348, 349; Knopke Bros. v. C. & A. R. R., 50 I. C. C. 465, 466; Advance Bag Co. v. C. C. C. & St. L. Ry., 51 I. C. C. 467, 468; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 51 I. C. C. 635, 641; Heider Mfg. Co. v. C. G. W. R. R., 51 I. C. C. 713, 718; Seaboard By-Product Coke Co. v. E. R. R. Co., 53 I. C. C. 171, 172; Hinrichs (Inc.) v. Wells Fargo & Co., 53 I. C. C. 362, 364; Zelnicker Supply Co. v. Director General, 53 I. C. C. 367, 368; Iten Biscuit Co. v. C., B. & Q. R. R. Co., 53 I. C. C. 729, 732; Valley & Siletz Railroad Co., v. S. P. Ry., 53 I. C. C. 397, 399; South Texas Lumber Co. v. M. L. & T. Ry. 53 I. C. C. 737, 739; Piqua Milling Co. v. Erie R. R., 55 I. C. C. 239, 242; National Tube Co. v. Lake Terminal Ry., 55 I. C. C. 469, 481, 482; Mississippi River & Bonne Terre R. R. v. Director General, 55 I. C. C. 674, 678; Plymouth Coal Co. v. P. R. R., 56 I. C. C. 699, 707, 708; Memphis Freight Bureau v. St. L. & S. F. Ry., 57 I. C. C. 212, 213; Koenig Coal Co. v. G. T. Ry., 57 I. C. C. 241, 242; Sunderland Oil Co. v. Director General, 55 I. C. C. 753, 754; Spiller v. Atchison T. & S. F. Ry. Co. 40 Sup. Ct. 466, 467; Muskogee Wholesale Grocer Co. v. M. K. & T. Ry. Co., 57 I. C. C. 125, 127, 128; Memphis Freight Bureau v. St. L. & S. F. R. R. Co., 57 I. C. C. 212, 213; Koenig Coal Co. v. G. T. Ry. Co., 57 I. C. C. 241, 242; Bare Paper Co. v. Director General, as Agent, 57 I. C. C. 329, 331; Carolina Portland Cement Co. v. Director General, 57 I. C. C. 496. 498; Cotton Manufacturers Assn. of S. S. v. C. C. & O., 57 I. C. C. 584, 587; Oden & Elliott v. S. A. L., 57 I. C. C. 698, 699; Groton Iron Works v. N. Y. N. H. & H. R. R., 57 I. C. C. 704, 708; Hubinger Bros. Co. v. Director General, 58 I. C. C. 53, 57; Ayres Bridges & Co., v. Director General, 58 I. C. C. 748, 750; Hagenburg v. B. Ry. Co. of C. 58 I. C. C. 175; Northern Potato Traffic Assn. v. A., T. & S. F. Ry. Co., 58 I. C. C. 592, 594; Coakley v. Director General, 59 I. C. C. 141, 144, 145; Alden Coal Co. v. R. I. S., 59 I. C. S. 223, 225; Waxelbaum & Brother (Inc.) v. O. S. S. Co. of S., 59 I. C. C. 480, 482; Ozark Refining Co. v. Director General, as Agent, 59 I. C. C. 720, 722; Abbott v. Director General, 61 I. C. C. 296, 300; Keeler Lumber & Fuel Co. v. Director General, as Agent, 60 I. C. C. 199, 200; Wheeler & Timlin v. Director General, as Agent, 60 I. C. C. 265, 266; Abbott v. Director General, as Agent, 61 I. C. C. 296, 300; Ayres, Bridges & Co. v. Director General, as Agent, 61 I. C. C. 339; Selma Chamber of Commerce v. Director General, 63 I. C. C. 157, 158; Foster Lumber Co. v. Director General 63 I. C. C. 139, 140; Laclede Steel Co. v. Director General, as Agent, 63 I. C. C. 381, 383; Citizen Gas Co. v. Director General, as Agent, 64 I. C. C. 457, 460; Stewart-Warner Speedometer Corporation v. Director General, as Agent, 64 I. C. C. 541, 544; United Iron Works v. Director General, as Agent, 64 I. C. C. 601, 604; Pure Oil Co. v. Director General as agent 64 I. C. C. 688, 690; Clarke-Burkle & Co. v. Director General, 66 I. C. C. 265, 266; Iola Cement Mills Traffic Asso. v. Director General, as Agent, 66 I. C. C., 495, 500; American Agricultural Chemical Co. v. Director General, 66 I. C. C., 650, 651, 652; Simmons & Co. v. Director General, as Agent, 74 I. C. C. 187; Cooper Co. v. Director General, as Agent, 74 I. C. C. 539, 542; Mitsui & Company, Ltd. v. Director General, 81 I. C. C. 169; Boston Wool Trade Asso. v. B. & A. R. R. Co., 77 I. C. C. 431; Lake Charles Rice Milling Co. v. L. W. R. R. Co., 77 I. C. C. 631, 632; Mason v. N. K. & T. Ry. Co., 77 I. C. C. 633, 634, 635; Tanners' Council v. Director General, as Agent, 78 I. C. C. 27, 28, 29; Texas State Highway Dept., 69 I. C. C. 220, 222; Maricopa County Highway Commission v. A. E. R. R. Co., 78 I. C. C. 33, 35; Hammond v. M. C. R. R., 78 I. C. C. 87, 88; Globe Cotton Mills v. Director General, as Agent, 78 I. C. C. 101, 102; Somers v. N. Y., O. & W. Ry. Co., 78 I. C. C. 243, 246; Seneca Fibre Products Co. v. Director General, as Agent, 78 I. C. C. 311, 312; Gulf Refining Co. of La. v. Director General, as Agent, 78 I. C. C. 347, 348; American Trading Co. v. Director General, as Agent, 78 I. C. C. 387, 390; Murray v. Director General, as Agent, 78 I. C. C. 465, 468; Clay Grain

Co. v. A., T. & S. F. Ry. Co., 78 I. C. C. 539, 547; Pleasant Valley Farms Co. v. Director General, as Agent, 78 I. C. C. 671; 672; Little Fork Coal Co. v. E. K. Ry. Co., 78 I. C. C. 699, 700, 701; Arcadia Mills v. Carolina, C. & O. Ry., 293 Fed. 639; Louisville & N. R. Co. v. Sloss-Sheffield Steel & Iron Co., 295 Fed. 53; Forbes Timber Co. v. Director General, as Agent, 80 I. C. C. 36, 38; Gulf Production Co. v. Director General, as Agent, 80 I. C. C. 39, 42; Lake Charles Naval Stores Co. v. Director General, as Agent, 80 I. C. C. 51, 52; Nohr & Sons v. N. E. S. S. Co., 80 I. C. C. 205; Hercules Powder Co. v. Director, as Agent, 80 I. C. C. 219, 220; Detroit Coal Exchange v. Director General, as Agent, 80 I. C. C. 258, 260; Roxana Petroleum Corp. v. Director General, as Agent, 80 I. C. C. 292, 294; Kellogg Sons v. Director General, as Agent, 80 I. C. C. 485, 486; Standard Oil Co. v. Director General, as Agent, 80 I. C. C 643, 646; Sugarland Industries v. Galveston Wharf Co., 80 I. C. C. 655; Mitsui & Co. v. Director General, as Agent, 81 I. C. C. 169; International Coal Products Corp. v. Director General, as Agent, 81 I. C. C. 435, 438, 439; Miller v. N. & W. Ry. Co., 81 I. C. C. 588, 589, 590; Lissberger & Co. v. P. R. R. Co., 81 I. C. C. 645, 648; Darnell-Taenzer Case, 245 U. S., 81 I. C. C. 531, 533; Pittsburgh Crucible Steel Co. v. Director General as Agent, 81 I. C. C. 659, 662; Empire Refineries v. Director General as Agent, 83 I. C. C. 223, 224; Northwest Steel Co v. Director General, as Agent, 83 I. C. C. 298, 299, 300; Hazard Jellico Coal Co. v. Director General, as Agent, 83 I. C. C. 383, 384; Trojan Powder Co. v. P. & R. Ry., 83 I. C. C. 481, 482; Wagner & Steiner, 68 I. C. C. 138; Rosenberg Bros. & Co. v. Director General, as Agent, 83 I. C. C. 557, 558, 559; Standard Oil Co. v. Director General, as Agent, 83 I. C. C. 705, 706; Standard Oil Co. v. Director General, 89 I. C. C. 7, 10.

§7. Statute of Limitations.
See Claims I.

CASES 1887-1908

(a) Where a party elects to proceed before this Commission for the recovery of damages, his petition filed with the Commission should be considered the beginning of the action in all its subsequent stages; consequently the suit of the members of a cattle raisers' association for the recovery of damages should be treated as having been begun by the filing on their behalf of the original petition by the association itself, although they subsequently intervened. Cattle Raisers' Asso. v. Chicago, B. & Q. R. Co., 10 I. C. C. 83.

IMPORTANT CASES SINCE 1908

(b) Where a complaint seeking reparation for certain claims is filed before the expiration of the limitation period applicable to said claims and upon motion of complainant is dismissed without prejudice, the Commission may in its discretion reinstate said original petition by a nunc pro tunc order as of date of the filing of the complaint in the first place, but it cannot reinstate such a complaint when the same has been amended to include claims not included in the original complaint and which are at the time of the motion for reinstatement barred by the statute of limitations. The Commission cannot sanction a practice permitting the revival of claims barred by the statute by subsequently attaching them to other claims presented within the prescribed period, despite any promises on the part of defendant carriers that they will not take advantage of the statute of limitations. The Commission has not jurisdiction to deal with complaints for reparation in any way unless filed with or presented to it within the period specified by the statute. It is not vested with the powers of a court of equity to relieve from hardships resulting from improvident arrangements or agreements between the parties. Louis Werner Sawmill Co. v. I. C. R. R. Co., 17 I. C. C. 388, 389, 391.

(c) While the Commission holds that it is not necessary that a formal petition be filed in order to stop the running of the statute of limitations, an informal letter or other communication to accomplish this result must contain all the elements of the claim. Fiske & Sons v. B. M. R. R. 19 I. C. C. 299, 300.

(d) As section 206 (f) of the transportation act, 1920 provides that the period of federal control shall not be computed as part of the period of limitation in claims for reparation for causes of action arising prior to federal control, claims covering shipments moving more than two years prior to the filing of complaint are within the Commission's jurisdiction. Thomas Iron Co. v. Director General as agent, 57 I. C. C. 657.

(e) Section 206f of the transportation act, 1920, provides that the period of

federal control shall not be computed as a part of the period of limitation in claims for reparation for causes of action arising prior to federal control. Heggem & Davis v. Director General 69 I. C. C. 162, 164.

(f) Section 206 f of the transportation act, 1920, provides that the period of federal control shall not be computed as a part of the periods of limitation in claims of reparation for causes of action arising prior to federal control. F. S. Harmon & Co. v. P. C. C. & St. L. R. R. 69 I. C. C. 348.

(g) Claims for reparation, based on causes of action which, excluding the period of Federal control as provided in section 206 (f) of the transportation act, 1920, arose within two years from date of filing complaint, found not barred. Ball, Seligman & Co. v. N. Y., P. & N. R. R. Co., 73 I. C. C., 223.

(h) Claims for reparation covering shipments which moved during Federal control can not be considered where such claims were not filed with the commission within one year after the termination of Federal control, as required by the statute. Phoenix Chamber of Commerce v. Director General, as Agent, 73 I. C. C., 284.

(i) Section 206 f of the act provides that the period of federal control shall not be computed as a part of the periods of limitations in actions against carriers or in claims for reparation to the commission for causes of action arising prior to federal control. R. H. Foerderer, Inc., v. Pennsylvania R. R., 74 I. C. C., 527, 528.

(j) Following Thomas Iron Co., 57 I. C. C., 657, contention that section 206 (f) of the transportation act, 1920, which provides that the period of Federal control shall be disregarded in computing the period of limitation in claims for reparation for causes of action arising prior thereto, is inapplicable to claims that accrued more than two years prior to the passage of the transportation act, not sustained. Lakewood Engineering Co. v. N. Y. C. R. R. Co., 74 I. C. C. 465, 466.

(k) Where complaint is filed after the enactment of the transportation act, 1920, involving shipments moving prior thereto, the statute of limitations does not begin to run until two years from the date charges are paid, excluding the Federal control period, as provided in Section 206 (f) of such transportation act. Foerderer v. P. R. R. Co., 74 I. C. C. 527, 528.

(k) Contention that claim for reparation barred by the statute of limitations not sustained. Formal complaint was filed less than six months after notice to complainant that the claim had failed of adjustment informally, in compliance with Rule III (g) of Rules of Practice, and within the statutory period, excluding the period of Federal control as provided in section 206 (f) of the transportation act, 1920. Hamilton Furnace Co. v. B. & O. R. R. Co., 77 I. C. C. 377, 378.

(m) Motion to dismiss complaint on the ground that the statute of limitations had run against the shipments, HELD, Excluding the period of federal control as provided under section 206 (f) of the transportation act, 1920, not barred American Shipbuilding Co. v. Director General, as Agent, 77 I. C. C. 439, 440.

(n) Under section 206 f of the transportation act, 1920, the period of federal control is not computed as a part of the period of limitation in claims for reparation arising prior thereto. American Shipbuilding Co. v. Director General, 77 I. C. C. 439, 440.

(o) Complainant at the hearing asked leave to amend its complaint to include a prayer for reparation on additional shipments. HELD, Claim, at time amendment presented, found barred by the statute of limitations and can not be considered. Lackawanna Steel Co. v. Director General, as Agent, 77 I. C. C. 465, 468.

(p) Where the transportation service was rendered prior to Federal control but charges were collected by the director general claims for reparation should be filed against the carriers. Terre Haute, Indianapolis & E. T. Co. v. Director General as Agent, 77 I. C. C. 658, 659.

(q) Section 206 (c) of the transportation act, 1920, making it the duty of the commission to entertain complaints for reparation on account of the collection by or through the President during Federal control of charges in violation of the interstate commerce act, was intended to cover charges collected for services performed at least in part, by the director general during Federal control. Complaints regarding charges collected by the director general as agent

for the carriers, on account of services performed wholly prior to Federal control, should be filed against the carriers themselves. Terre Haute, Indianapolis & E. T. Co. v. Director General, as Agent, 77 I. C. 658, 659.

(qa) Contention by director general that claims for reparation on shipments delivered more than two years prior to February 28, 1920, are barred, not sustained. Section 206 (f) of transportation act, 1920, provides that period of Federal control shall not be computed as part of period of limitation in claims for reparation for causes of action arising prior to Federal control. Crown Willamette Paper Co. v. Dirctor General, as Agent, 78 I. C. C. 273, 277.

(r) The jurisdiction of the Commission to entertain complaints for reparation on account of the exaction of unreasonable rates on shipments that moved during the period of federal control is derived solely from the statutory provision which clearly indicates that it includes only complaints filed within a year after the termination of federal control, February 29, 1920. Pfitzenmayer Construction Co. v. Director General, 78 I. C. C. 287, 288.

(s) The time within which complaints for reparation on account of damage claimed to have been caused by reason of the collection or enforcement during federal control of rates which were unjust or unreasonable could be filed with the Commission was one year from date of expiration of federal control. Gulf Refining Co. v. Director General, 78 I. C. C. 347, 348.

(t) The Commission has no jurisdiction to award reparation against a carrier on interstate shipments delivered or tendered for delivery more than two years prior to the dates on which the complaints were filed with the Commission and no finding is made with respect to rates charged thereon. It is fundamental that the Commission acts only under the jurisdiction conferred upon it by Congress. The power to award damages for violations of the act created rights as well as remedies. Failure to assert the right within the statutory period not only bars the remedy but destroys the right. United States of America v. Director General, 80 I. C. C. 143, 150.

(ta) The power to award damages for violations of the act created rights as well as remedies. Failure to assert rights within statutory period not only bars remery but destroys the right. In this respect the statute differs from ordinary statute of limitations which, when invoked, bars only the remedy, United States v. Director General, as Agent, 80 I. C. C., 143, 150, 151.

(tb) Statutory requirement with respect to time within which complainant for recovery of damages must be filed with commission runs against United States Government, since Government was not specifically excepted from that provision while specifically excepted from other provisions of the act. United State v. Director General, as Agent, 80 I. C. C. 143, 151.

(tc) Complainant seasonably filed by two corporations, in which reparation was prayed in such sum as "complainants are entitled to as an award of damages." At hearing one of parties was withdrawn as complainant. Contention that complaint constitutes claim of withdrawal company only, and that claim of remaining complainant is barred by statute of limitations, not sustained. Complaint held sufficient to toll statute in behalf of either or both of joint complainants. Standard Oil Co. v. Director General, as Agent, 80 I. C. C. 643, 646.

(u) Contention that, period of limitation prescribed in interstate commerce act having expired prior to filing of claim and prior to enactment of transportation act, 1920, which extended this period, the commission is without jurisdiction to consider claim, not sustained. Same contention has been argued by carriers in other cases and rejected. Todd Dry Dock & Construction Corp., 74 I. C. C., 291. American Lumber & Mfg. Co. v. G. R. R., 80 I. C. C. 759.

(v) Complaint was seasonably filed by two corporations, in which reparation was prayed in such sum as "complainants are entitled to as an award of damages." At hearing one of parties was withdrawn as complainant. Contention that complaint constitutes claim on behalf of withdrawing company only, and that claim of remaining complainant is barred by statute of limitations, not sustained. Complaint held sufficient to toll statute in behalf of either or both of joint complainants. Standard Oil Co. v. Director General, as Agent, 80 I. C. C. 643, 646.

(va) Folowing informal complaint, complainant notified by commission of

carrier's refusal to adjust claim and attention directed to Rule III of Rules of Practice with respect to limitation of six months for filing of formal complaint. Subsequently further attempt made with assistance of commission's Bureau of Traffic to secure adjustment with carrier, and unsuccessful result communicated to complainant. Formal complaint filed in six month from such communication. HELD: Formal complaint not barred, having been filed within six months allowed by Rule III after final notice by commission. Acme Cement Plaster Co. v. Director General, as Agent, 81 I. C. C. 298, 299.

(vb) Section 206 (f) of transportation act, 1920, provides that period of Federal control shall not be computed as part of period of limitation in claims to commission for reparation for causes of action arising prior to Federal control. Davison & Namack Foundry Co. v. P. R. R. Co., 81 I. C. C. 345.

(vc) Claim for reparation account of damage caused by refusal of director general to accept certain shipments for transportation, not presented until more than one year after termination of Federal control, found barred by limitation. Dow Co. v. Director General, as Agent, 81 I. C. C. 351.

(vd) Contention that claim for reparation account of unreasonable rates assessed on shipments moving prior to Federal control is barred upon shipments delivered more than two years prior to filing of complaints, not sustained. Section 206 (i) of transportation act, 1920, provides that period of Federal control shall not be computed as part of period of limitation in claims for reparation for causes of action arising prior thereto. Inland Empire Paper Co. v. S. I. Ry. Co. 81 I. C. C. 603, 607.

(ve) Complaint for reparation account of shipment moved during Federal control filed informally with commission on January 19, 1921, and on March 22 of that year commission notified complainant that defendants were unwilling to make reparation to basis sought and that claim was not susceptible of informal adjustment. Formal complaint filed January 7, 1922. HELD: Since formal complaint not filed within period provided in Rule III (g) of commission's Rules of Practice, so much thereof as seeks reparation on any ground other than overcharge must be deemed to have been abandoned. Schuette Co. v. Director General, as Agent, 81 I. C. C. 619.

(w) Section 206 f of the transportation act, 1920, provides that the period of federal control shall not be computed as a part of the periods of limitation in claims for reparation for causes of action arising prior to federal control. Inland Empire Paper Co. v. Director General, 81 I. C. C. 603, 607, 608.

(x) Section 16 of the Act providing that all complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues and that the petition for the enforcement of an order for the payment of money shall be filed in the Circuit Court within one year from the date of the order does not apply to a suit instituted under section 9 of the Act. No limitation is prescribed by the Act for such a suit and whether the time is limited by the statute of limitations of the state in which the case arises, or by section 1047 of the Rev. St. U. S., quaere. Lyne v. D. L. W. R. R. Co., 170 Fed. 847, 849.

(y) The prohibitions of the Interstate Commerce Act against unjust discrimination relate not only to inequality of charges and inequality of facilities but also to the giving of preferences by means of consent judgments, or the waiver of defenses open to the carrier. The railroad company therefore is bound to claim the benefit of the statute that a claim for reparation is not filed in time and could do so by general demurrer. For when it appeared that the complaint had not been filed with the time required by the statute, it was evident, as matter of law, that the plaintiff had no cause of action. The carrier not being liable to the plaintiff for overcharges collected more than four years prior to the bringing of this suit, it was proper to dismiss the action. A. J. Phillips Co. v. G. T. W. R. Co., 35 Sup. Ct. 444, 446, 236 U. S. 662, 59 L. ed.

(z) Where assignee of claim against railroad on which award of reparation was made by Interstate Commerce Commission had no enforceable claim, because action was barred by limitation, under Interstate Commerce Act, § 16 as amended (U. S. Comp. St. § 8584), it was not entitled to amount still in railroad's hands under compromise between it and the assignor as money had and received. Westminster Nat. Bank v.

Boston & M. R. R. (Mass. 1923) 139 N. E. 345.

(aa) Under Commerce Act, §16, as amended (U. S. Comp. St. § 8584), where action by assignee of part of shipper's claim against railroad for reparation on account of damages, brought in assignee's own name, under R. L. c. 173, § 4, was not brought within one year, and was independent of prior action brought by assignor, it was barred. Westminster Nat. Bank v. Boston & M. R. R. (Mass. 1923) 139 N. E. 345.

(bb) Where, pending a suit for administration of the property of a railroad company for the benefit of creditors and stockholders, and before expiration of the time fixed by the court for filing claims, claims of shippers for overcharges were liquidated by an order of reparation made by the Interstate Commerce Commission, but no claims based thereon were filed in the suit, and thereafter the property was sold by the court, the purchaser being required as part of the purchase price to pay the claims allowed against it, holders of such overcharge claims HELD not entitled by intervention, more than four years after the sale, to assert liens on the property sold. North American Co. v. St. Louis & S. F. R. Co., 288 Fed. 612.

ALL OTHER CITATIONS

Royal Coal & Coke Co. v. Southern Ry. Co., 13 I. C. C. 440, 448; Missouri & Kansas Shippers' Ass'n. v. A. T. & S. F. Ry. Co., 13 I. C. C. 411, 413, 416; Goff-Kirby Coal Co. v. Bessemer & Lake R. R. Co., 13 I. C. C. 383, 386; Pleasant Hill Lumber Co. v. St. L. S. W. Ry. Co., 15 I. C. C. 532; Kile & Morgan Co. v. Deepwater Ry. Co., 15 I. C. C. 235, 237, 236; Pilant v. A. T. & S. F. Ry. Co., 15 I. C. C. 178, 181; Amos Rehberg & Co. v. Erie R. R. Co. 17 I. C. C. 508, 510; Werner Saw Mill Co. v. I. C. R. R. Co., 17 I. C. C. 388, 390; Blodgett Milling Co. v. C. I. & S. R. R. Co., 18 I. C. C. 439; Blinn Lumber Co. v. S. P. Co., 18 I. C. C. 430, 432, 435; National Refining Co. v. A. T. & S. F. Ry. Co., 18 I. C. C. 389, 390; Shoecraft & Son Co. v. I. C. R. R. Co., 19 I. C. C. 492; Switzer Lumber Co. v. A. & M. R. R. Co., 22 I. C. C. 471, 475; Fels & Co. v. P. R. R. Co., 23 I. C. C. 483; Meeker & Co. v. Lehigh Valley R. R. Co., 23 I. C. C. 480, 482; St. Louis Blast Furnace Co. v. L. & N. R. R. Co., 26 I. C. C. 355, 356; Michigan Hardwood Mfrs. Ass'n v. Freight Bureau, 27 I. C. C. 32, 37; Interstate Commerce 35 Sup. Ct. Rep., 328, 332; 236 U. S. 412, 434; 59 L. ed; Meeker v. Lehigh Valley R. Co., 35 Sup. Ct. Rep. 328, 333; 236 U. S. 412, 434; 59 L. ed; A. J. Phillips Co. v. G. T. W. R. Co., 35 Sup. Ct. 444, 445, 236 U. S. 662; 59 L. ed; International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391. Cherokee Lumber Co. v. A. C. L. R. R., 40 I. C. C. 86; Stimson v. S. Ry. Co., 40 I. C. C. 169, 170; Missouri Pacific Ry. Co. v. C. E. Ferguson Sawmill Co., 235 Fed. 474; Standard Roofing Co. v. M. K. & T. Ry., 47 I. C. C. 212, 213; Louisville Cement Co. v. L. & N. R. R., 50 I. C. C. 538; Atchison, T. & S. F. Ry. v. Spiller, 247 Fed. 677; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 51 I. C. C. 635, 639, 640, 643; Portland Cattle Loan Co. v. Director General, 55 I. C. C. 597, 598; Wood Curtis Co. v. S. P., 56 I. C. C. 344, 346; Naylor & Co., Inc., v. C. N. O. & T. P. Ry. Co., 56 I. C. C., 265; Oden & Elliott v. S. A. L. Ry., 57 I. C. 698, 699; Western States Portland Cement Co. v. Director General, 59 I. C. C. 195, 196; Chevrolet Motor Co. v. Director General, as Agent, 59 I. C. C. 685; Hirth Krause Co. v. Director General, 61 I. C. C. 350; Ryan Fruit Co. v. S. P. Co., 60 I. C. C. 733, 736; Grain and Hay Exchange of Pittsburgh, 62 I. C. C. 506, 508; San Diego & Arizona R. R. Co. v. A. T. & S. F. 62 I. C. C. 675; Le Prestre Miller Stock Farms (Inc.) v. E. R. R. Co., 64 I. C. C. 149, 150; Tanners Council of U. S. of America v. Director General, 66 I. C. C. 415, 420; British United Shoe Machinery Co. (Ltd.) v. P. R. R. Co., 66 I. C. C. 661; Lackawanna Steel Co. v. Director General, as Agent, 77 I. C. C. 465, 662; Terre Haute, Indianapolis & E. T. Co. v. Director General, as Agent, 77 I. C. C. 658, 662; Barrett Co. v. Director General, as Agent, 80 I. C. C. 55; United States v. Director General, as Agent, 80 I. C. C. 143, 151; Homestead Valve Mfg. Co. v. Director General, as Agent, 80 I. C. C. 248; Pacific Coast Shippers' Asso. v. Director General, as Agent, 78 I. C. C. 10, 11; Pfitzenmayer Construction Co. v. Director General, as Agent, 78 I. C. C. 287, 288; Little Fork Coal Co. v. E. K. Ry. Co., 78 I. C. C. 699, 700; National Petroleum Asso. v. Director General, as Agent, 78 I. C. C. 711, 712; Western Silo Co. v. I. C. R. R. Co., 81 I. C. C. 614,; Whalen Pulp & Paper Mills v. Director General, as Agent, 83 I. C. C. 516; Puilips Case 235 U. S. 662.

III. CIRCUMSTANCES DETERMINING RIGHT.

§7½. In general.

CASES 1887-1908

(a) The Commission will not make an award of damages in a case where the defendant is entitled to have the amount of damages assessed by a jury. Riddle Dean & Co. v. N. Y. L. E. & W. R. R. 1, I. C. C. 787.

(aa) The burden is upon defendant, in an action to recover back money paid for transportation over and above the amount provided for in the transportation contract, to allege and prove unjust discrimination. Bayles v. Kansas Pacific R. Co., 2 I. C. R. 643.

(b) Where claim for reparation is made in a complaint of unreasonable rates the burden of proof is on complainant to show the facts connected with the claim and when these facts have not been sufficiently brought out to enable the Commission to justly determine what reparation is due to the complainant in such cases it will decline to award reparation. Perry v. F. C. & P. R. Co., 3 I. C. C. 741, 749.

(ba) A case before the Interstate Commerce Commission will not be reopened in a supplementary proceeding brought simply to secure reparation, for the purpose of ruling on questions not decided in the original case, where the petition for reparation was not filed until long after the original decision had been rendered and the offending carrier had complied therewith. Rice v. Western N. Y. & P. R. Co., 6 I. C. C. 455.

(c) It is not, however, every case where the payment of an excessive rate carries with it reparation. Each case seems to depend upon its own equities. Cattle Raisers Asso. of Texas v. Ft. W. & D. C. R. Co., 7 I. C. C. 523, 555.

(d) An order granting reparation to shippers for an unreasonable rate must be based upon evidence and a finding that the rate was unreasonable at the time it was paid. Grain Shippers' Asso. of Northwest Iowa v. I. C. R. Co., 8 I. C. C. 158, 183.

(e) Rates on barrel material from the west to Hawkinsville, Ga., were higher than those to Macon, Ga., from Feb. 10, 1896 to January 22, 1897. At times prior to the date first mentioned, and uniformly since the date last mentioned, the rates to Hawkinsville and Macon have been the same. Rates on other commodities are, as a rule, higher to Hawkinsville than to Macon. The distance is greater to Hawkinsville, which is located on a branch line, and competition is less active there than at Macon. HELD, since complainant failed to show that the rate ought to have been the same to Hawkinsville from Feb. 10, 1896 to January 22, 1897 as to Macon, complaint dismissed. Holmes & Company v. Southern R. Co., 8 I. C. C. 561.

(f) A complainant is entitled to an order for reparation in an amount equal to that by which the rates exacted and paid exceed reasonable rates, but the burden of showing the unreasonableness and the amount is upon the complainant. Holmes & Company v. Southern Ry Co., 8 I. C. C. 561, 567.

(g) It is true that the remedy by way of damages for unlawful rates is utterly inadequate and inconsistent, but it is apparently the remedy prescribed by the Act to Regulate Commerce, and the only remedy which the shipper has against the exaction of an unreasonable interstate rate. McGrew v. Missouri Pac. Ry. Co., 8 I. C. C. 630.

(hi) The complainants are entitled to reparation to the extent of 13 cents per 100 lbs., amounting to $130 on their shipments, where the defendant's rate was 43 cents to Danville and 20 cents to Lynchburg. The 20 cent rate to Lynchburg violated the Act to Regulate Commerce in that it was 13 cents below the rate which was justified by competition from Baltimore or elsewhere. Gardner & Clark v. Southern R. Co., 10 I. C. C. 342.

(j) The complainants are entitled to reparation to the extent that the charges exacted from them on carload lots of snapped corn from Grove, I. T., to Marshall, Tex., exceeded 35½ cents per 100 lbs., which includes 21 cents per 100 lbs. as a reasonable rate from Grove, I. T., to Paris, Tex., and 14½ cents proportional rate for transportation from Paris to Marshall. H. P. Pitts & Son v. St. Louis & S. F. R. Co., 10 I. C. C. 684.

(k) The proportional rates per 100 lbs. charged by the Atchison, Topeka & Santa Fe Railway on shipments of hay over its road and the road of the Texas & Pacific Railroad Company from Robinson and La Junta, Colo., and Dodge City, Kan., to Marshall, Jefferson, and Kildare, Tex., were excessive and unreasonable to the extent that they exceeded 21 cents

for the transportation to Ft. Worth, Tex., and those of the Texas company were excessive and unreasonable to the extent that they exceeded 15 cents for the transportation from Ft. Worth to the destination named. H. B. Pitts & Son v. Atchison, T. & S. F. R. Co., 10 I. C. C. 691.

(l) Upon two carloads of hay shipped about May 8, 1902, from Pataskala, O., one to Wilmington, N. C., and the other to Greenville, N. C., it appears that the Wilmington shipment was overcharged 1 cent per 100 pounds, and that on the Greenville shipment the rate under published tariffs should have been 30 cents per 100 pounds instead of a higher rate claimed by the defense to have been 30½ cents and by the complainant to have been 36 cents, the proof not indicating definitely what was actually charged. HELD: That the findings show a basis for adjustment and refund which should be made, and that the case be held open for further proof and order if that course should become necessary. The circumstances and conditions governing hay traffic from Columbus and Pataskala, O., appear to have been substantially dissimilar at a time when a lower rate from Columbus than from Pataskala to Greenville and Wilmington was in force, and complainant's demand for reparation based upon the rate then in force from Columbus is not sustained. Dewey Bro. Co. v. Baltimore & O. R. Co. et al, 11 I. C. C. 475.

(la) A merely theoretical or paper rate, not used and unknown to the defendant until casually discovered, will not be accepted as affording a just basis for an order for reparation on shipments made to an intermediate point at a slightly higher rate. Missouri & Kansas Shippers' Ass'n. v. M. K. & T. Ry. Co., 12 I. C. C. 483.

(lb) Where substantial justice will be satisfied with the establishment of a reasonable rate, an order for reparation is not required. Kindel v. New York, N. H. & H. R. Co., 11 I. C. C. 514.

(m) Complainant awarded reparation for difference between rate applied to shipments of brick and rate put into effect pending controversy. Frederick Brick Works v. North Cent. R. Co., 12 I. C. C. 15.

(n) Reparation for difference between 62-cent rate from St. Paul, Minn., to Boston, Mass., via Duluth, and 45-cent rate via Lake Michigan ports, on complainant's shipment, to be paid by Chicago, St. P. M. & O. Ry. Co. v. Mutual Transit Co. as having received the whole of such difference. American Grass Twine Co. v. C. St. P. M. & O. Ry. Co., 12 I. C. C. 141.

(o) Admission as to extent to which rate unreasonable, taken as basis for reparation. Kalamazoo Tank & Silo Co. v. Michigan Central R. Co., 12 I. C. C. 154.

(p) Complainant shipped one carload of silos, knocked down, from Kalamazoo, Mich., to Elkhorn, Wis., via Chicago, over defendants' lines, upon which it was charged a joint through rate of 28 cents per 100 pounds, whereas at the same time defendants' combination rate on Chicago between said points on said commodity was only 17 cents; similar improper adjustment in rates between points not given were alleged. After the case was at issue defendants reduced their joint through rate from Kalamazoo to Elkhorn to 16 cents per 100 pounds, and at the hearing they conceded that the 28-cent rate was excessive to the extent of a difference between that rate and 17 cents, and agreed that improper adjustment in rates between said other points should be corrected: HELD, That complainant should be awarded reparation on the specific shipment on the basis of such difference in rates, and that as to other matters mentioned in the case the complaint be dismissed. Kalamazoo Tank & Silo Co. v. Mich. Central R. R. Co., 12 I. C. C. 155.

(pa) Not proper to bring forward claim for reparation, after complaint heard and taken under advisement, unless some reasonable ground therefor be shown, or the Commission has so ordered. Dalas Freight Bureau v. G. C. & S. F. Ry. Co. 12 I. C. C. 223.

(q) It does not follow, as a matter of course, where the Commission finds that the ends of justice require the reduction of a rate complained of that reparation must be ordered on shipments previously made. Complainant's claim for reparation on shipments made prior to filing of the complaint denied, but he will be allowed reparation on any shipments he may have made since the filing of complaint in so far as the charges thereon exceed the rate of 20 cents per 100 pounds, and this proceeding will be held open to allow complainant opportunity to present such claim and proofs. The Farmers' Warehouse Co. v. Louisville & N. R. R. Co., 12 I. C. C. 457.

(r) Reparation will not be ordered as a matter of course, where the Commission finds that the ends of justice require the reduction of a rate complained of. Farmers' Warehouse Co. v. L. & N. R. R. Co., 12 I. C. C. 457.

IMPORTANT CASES SINCE 1908

(s) Reparation may properly be awarded where a discriminatory freight rate has been exacted, but it does not necessarily follow that because a rate is found to be unduly prejudicial that the complaining parties are the ones who have been damaged through its exaction. Curry & Whyte Co. v. D. I. R. R. R. Co., 30 I. C. C. 1, 14.

(t) When a wide readjustment, involving both increases and reductions, results from an investigation of a general rate structure and it appears that substantial justice would not be advanced by an award of reparation, reparation will be denied. Applying that principle reparation denied. Complaint dismissed. D. L. & W. Coal Company v. D. L. & W. R. R. Co., 46 I. C. C. 506.

(u) An award of reparation is not infrequently withheld in cases where a wide readjustment of rates has been made as the result of the Commission's findings in a general investigation. In such instances the revision is intended to bring the entire future rate structure into closer approximation and harmony with the conditions surrounding the service. Thereafter some of the shippers must pay higher rates while others will enjoy lower rates. In connection with such a readjustment the law affords no remedy to the carrier with respect to shipments in the past under rates that may have been too low. There is no provision of law permitting the set-off of this sum against the amount of reparation sought by the complainant, and this fact, of course, is not determinative of the complainant's claim. Nevertheless, the figures are of interest as indicating the general nature and effect of the readjustment. When such a revision results from the Commission's findings, all the shippers under the schedule are affected either one way or another by the changes made, and as the readjustment is general, it has been thought, under the particular circumstances appearing in various cases, that substantial justice would not be advanced by awards of reparation to those making such demands. This course, in the light of the facts developed in those cases, seems to have been within the spirit and the meaning of those provisions of the Act that relate to reparation; and in the public interest an order requiring a revision of a general rate structure ought not to be embarrassed and complicated by awards of reparation, as a necessary consequence of such a revision, unless from all the circumstances and facts surrounding the service and the traffic as they are disclosed upon the record, the Commission feels that essential justice requires such awards. D. L. & W. Coal Co. v. D. L. & W. R. R. 46 I. C. C. 506, 508, 509.

(v) Ordinarily the Commission does not award reparation except to a basis which is or has been in effect or which it requires to be established, over the route of movement. Alagoma Lumber Co. v. S. P. Co., 51 I. C. C. 529, 530.

(w) An award of damages by the Commission must be as certain and definite in law and fact as is essential to the support of a final judgment or decree requiring the payment of a definite sum of money by one party to another. That basis would be wholly lacking if a controversy was determined upon an issue of law raised, not in the pleadings, but upon brief and argument; and if the fact was merely inferable from testimony received solely for another and a collateral purpose. Schlicher v. Director General, 62 I. C. C. 181, 185.

(x) Question, should the Commission apply a lower basis to shipments made prior to June 25, 1918 when rates were increased about 25 per cent than on shipments made on or after that date in finding unreasonable the rates charged by the Director General on traffic which moved during federal control and in awarding reparation therefor. The Commission is convinced that it would not be warranted in announcing any rule of general application as a basis for determining the reasonableness of rates exacted on shipments moving before or after June 25, 1918 or any other date. HELD, no occasion appears for reopening any of the cases which have been pressed on attention of the Commission and this proceeding will be discontinued. In the matter of awarding reparation on a lower basis prior to June 25, 1918 than on and after that date. Reparation as Relating to an Increase in Rates, 68 I. C. C. 5.

(y) Where class rates are charged on unusual movements, if the commodity is not improperly classified and the class

is not unreasonable, reparation will not be awarded. Rosin & Turpentine Export Co. v. A. C. L. R. R. Co., 73 I. C. C., 141, 142.

(z) When class rates are charged on isolated shipments, and it is not shown that the commodity is improperly classified or that the class rate is unreasonable, reparation will not be awarded. Multibestos Co. v. S. P. Co., 73 I. C. C., 491, 492.

(aa) An award of reparation would not necessarily follow from a finding that a classification rating was unreasonable. State Highway Department of Texas v. Director General, as Agent, 73 I. C. C., 741, 742.

(aaa) Complainants in support of allegation of unreasonableness merely stated that rates charged were found unreasonable and that reasonable rates were subsequently established as result of finding in previous case. HELD: Since reparation or rates, which were made the measure of reasonable rates for future from point here involved, were not in issue, finding in previous case insufficient upon which to base award of reparation against a carrier, who took no part in defense of that case, on shipments moving prior to establishment of rates there prescribed. Continental Gin Co. v. Director General, as Agent, 78 I. C. C. 369.

(bb) An isolated movement during a comparatively short period from a nonproducing point is not a proper basis for requiring the establishment of rates for the future or for an award of reparation, but the fact of the shipments having been isolated is not the sole determinative factor as shippers are entitled to reasonable rates. Meigs Pulpwood Co. v. Director General, 78 I. C. C. 473, 474.

(cc) Evidence was admitted at hearing as to various commodities not specifically mentioned in complaints, over objection of defendant that the commission's Rules of Practice require commodities to be specifically named in complaints seeking reparation. HELD: Fact that complaints named certain commodities and "various other commodities," stating that detailed information would be furnished by complainants; that reparation is sought on basis of a rate which applied irrespective of contents of cars; and that informal correspondence preceded one of complaints; defendant was sufficiently advised of the issues raised. New Orleans Board of Commissioners v. Director General, as Agent, 77 I. C. C. 664, 666.

(dd) Shipment from point in United States, destined to another point in United States, moved in part through Canada. Contention by director general that commission is without jurisdiction to award reparation in respect of such rate not sustained. Rate assailed was a joint rate, and all carriers parties thereto are jointly and severally liable for any damage resulting from its application. American lines over which shipment moved are subject to jurisdiction of the commission. Director general was operating them and is thus liable for full amount of any damage sustained. International Nickel Co., 66 I. C. C., 627 I. C. C., 627, 628. Staley Mfg. Co. v. C. P. Ry. Co. 80 I. C. C. 512.

(ee) Complainant seeking reparation in respect of intrastate shipments moving during so-called guaranty period, March 1 to September 1, 1920, dismissed due to lack of jurisdiction. The commission is without authority to award reparation on intrastate shipments moving subsequent to termination of Federal control. Crookston Gas Co. v. G. N. Ry. Co. 81 I. C. C. 128, 130.

(ff) Contention that section 6 of the act, in porviding penalty for failure to comply with regulations or orders made by commission under that section, precludes recovery of overcharge arising from illegal rate, not sustained. Section 8 of the act provides for liability to persons injured through carrier's violation of the act, and section 9 gives such persons election to make complaint to commission or prosecute action in Federal courts. Complainant could recover amount paid in excess of legal rate in common-law action for money had and received, and reparation in like amount can be awarded by commission because colection of illegal rate constitutes violation of the act. Proctor & Gamble Co. v. Director General, as Agent, 81 I. C. C. 361, 363.

(gg) The failure of defendants to complete a transportation service which they contracted to perform does not constitute a basis for an award of reparation under the interstate commerce act. Midland Linseed Products Co. v. Director General, 88 I. C. C. 247, 249.

ALL OTHER CITATIONS

Holland Blow Stave Co. v. A. C.

L. R. R. Co., 24 I. C. C. 81, 88; Wisconsin Lime & Cement Co. v. C. C. C. & St. L. Ry. Co., 25 I. C. C. 366, 367; Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co. 27 I. C. C. 165; Board of Trade of Carrollton v. C. of G. Ry. Co., 28 I. C. C. 154, 172; Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 215; Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co., 28 I. C. C. 274, 279; In re Advances on Live Stock, 28 I. C. C. 332, 335; Swedish Iron & Steel Corporation v. Bush Terminal Co., Unrep. Op. A323; New Orleans Board of Trade v. I. C. R. R. Co., 29 I. C. C. 32, 33, 34; Eastman, Gardiner & Co. v. I. C. R. R. Co., 29 I C. C. 94; Morris, Johnson, Brown Mfg. Co. v. I. C. R. R. Co., 30 I. C. C. 443, 445; Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 523; Sloss-Sheffield Steel & Iron Co., 30 I. C. C. 597, 604; Augusta Cotton Exchange and Board of Trade v. S. Ry. Co., 30 I. C. C. 704, 707; Rhynsburger v. C. R. I. & P. Ry. Co., Unrep. Op. A-815; Kay v. Dry Fork R. R. Co., Unrep. Op. A-770; Mixed Car Dealers Asso. v. D. L. & W. R. R. Co., 33 I. C. C. 133, 134; City of Charlotte, N. C. v. S. Ry. Co., 34 I. C. C.. 128, 134; Enns Milling Co. v. C. R. I. & P. Ry. Co., 34 I. C. C. 197, 201; Pacific Creamery Co. v. S. P. Co., 34 I. C. C., 586, 591; Eichols & Co. v. A. & W. V. Ry. Co., 34 I. C. C., 644, 646; Criswell v. W. F. & N. W. Ry., 37 I. C. C. 97, 98; Reeves Coal Co. v. C. M. & St. P. Ry., 37 I. C. C. 707, 708; Caddo River Lumber Co. v. C. & C. R. R., 38 I. C. C. 330; Atlantic Ice & Coal Corp. v. C. N. O. & T. P. Ry. Co., Unrep. Op. 2180; Hygenic Ice Co. v. C. & N. W. Ry. Co. 37 I. C. C. 384, 387, 388; Forbes Mfg. Co. v. L. V. R. R. Co., 39 I. C. C. 566 567; Young v. L. & N. R. R. Co. 40 I. C. C. 308, 310; Memphis Freight Bureau v St. L. S. W. Ry., 41 I. C. C. 470; Hudson Motor Car Co. v. M. C. R. R. Co., 42 I. C. C. 1; McAdams v. Wells Fargo & Co. Exp.. 71 So. R. (La. 1916) 945; Standard Roofing Co. v. M. K. & T. Ry., 44 I. C. C. 358. 359; Nitro Powder Co. v. West Shore R. R., 44 I. C. C. 596, 597; Atlantic Lumber Co. v. T. & O. C. R. R., 45 I. C. C. 368, 369; Standard Oil Co., (Ky.) v. Y. & M. V. R. R., 46 I. C. C. 418, 420: Eagle Pass Lumber Co., v. G. H. & S. A. Ry., 47 I. C. C. 219, 220; Emery & Co. v. B. & M. R. R., 47 I. C. C. 200. 203; Stephens v. L. & S. F. R. R. Co., 48 I. C. C. 649; Westport Stone Co. v. C., C., C. & St. L. Ry.. 48 I. C. C. 637, 640; Blackman & Griffin Co. v. A. C. & Y. Ry., 49 I. C. C. 649, 655; National Tube Co. v. B. & O. R. R., 50 I. C. C. 489, 492; Advance Lumber Co. v. S. A. L. Ry., 51 I. C. C. 149, 150; Oden-Elliott Lumber Co. v. A. C. Ry., 51 I. C. C. 403, 409, 411; Guyton & Harrington Mule Co. v. L. & N. R. R., 50 I. C. C. 546, 550; Joseph Iron Co. v. M. L. & T. R. R. & S. S., 50 I. C. C. 107; Wilson & Co. v. C. M. & St. P. Ry., 50 I. C. C. 126; Louisville Cement Co. v. L. & N. R. R., 50 I. C. C. 538; Lehigh Coal & Navigation Co. v. P. R. R., 50 I. C. C. 543; Anderson-Tully Co. v. A. & V. Ry., 50 I. C. C. 553; Oregon Fruit Co. v. S. P. Co., 50 I. C. C. 719, 722; Alagoma Lumber Co. v. S. P. Co., 51 I. C. C. 529, 530; Johnson & Son v. St. L. & S. F. Ry., 51 I. C. C. 518, 502; Anderson-Tully Co. v. Illinois Central R. R., 53 I. C. C. 5; Ash Grove Lime & Portland Cement Co. v A. T. & S. F. Ry., 53 I. C. C. 81, 84; Clark Davis Coal Co. v. Director General, 53 I. C. C. 357, 360; Iten Biscuit Co. v. C. B. & Q. Ry., 53 I. C. C. 729, 731; National Refining Co. v. M. P. R. R., 55 I. C. C. 35, 36; National Tube Co. v. Lake Terminal, 55 I. C. C. 469, 482, 484; Jos. Schiltz Brewing Co. v Director General 55 I. C. C. 610; Portland Cattle Loan Co. v. Director General, 55 I. C. C. 597, 600; Meeker & Co. v. C. R. R. Co., of N. J., 57 I. C. C., 414, 416; Arlington Heights Fruit Exchange v. S. P., 57 I. C. C. 580, 582; Northern Potato Traffic Asso. v. A. T. & S. F. Ry. Co., 58 I. C. C. 592; Wheeler Co. v. Director General, 59 I. C. C. 699, 701; McCloud River R. R. Co. v. O. S. L. R. R. Co., 59 I. C. C. 539, 540; Swift & Co., v. Director General, as Agent, 60 I. C. C. 201; Buckeye Cotton Oil Co. v. Director General, as Agent, 60 I. C. C. 281; United Paper Board Co. (Inc.) v. S. Ry., 62 I. C. C. 60, 61; Allegheny & South Side Ry. Co. v. Director General, as Agent, 62 I. C. 248, 252; Nagase & Co. v. Director General, as Agent, 62 I. C. C. 422, 425, 426; Laclede Steel Co. v. Director General, as Agent, 63 I. C. C. 381, 383; Indian Packing Corp. v. Director General, as Agent, 64 I. C. C. 205, 210; Thomas Junk Co. v. N. P. Ry., 64 I. C. C. 305; Stewart-Warner Speedometer Corp. v. Director General, as Agent, 64 I. C. C. 541, 544; United Iron Works v. Director General, as Agent, 64 I. C. C. 601, 604; Cotton Mfrs. Asso. of S. C. v. C., C. & O. Ry., 64 I. C. C. 633; Bloedel-Donovan Lumber Co. v. Director-General, 68 I. C. C. 95; The American Fork & Hoe Co. v. St. L. & S. F. R. R., 69 I. C. C. 173; Central Pennsylvania Lumber Co. v. Di-

rector General, 69 I. C. C. 398; West Coast Lumbermen's Asso. v. Director General, as Agent, 77 I. C. C. 669, 673. Diamond Alkali Co. v. F., P. & E. R. R. Co., 78 I. C. C. 1; Willard Coal Co. v. E. K. Ry. Co., 78 I. C. C. 455, 457, 458; Alabama Co. v. Director General, as Agent, 78 I. C. C., 561, 563; Montrose Oil Refining Co. v. St. L. & S. F. Ry. Co., 78 I. C. C. 572, 573; Little Fork Coal Co. v. E. K. Ry. Co., 78 I. C. C. 699, 700, 701.

§8. Erroneous publication or quotation.

See Erroneous Rates.

CASES 1887-1908

(a) Misrepresentation by a carrier as to the rate charged, but without injury, affords no ground of redress in a suit for damages. Arkansas & L. R. Co. v. Smith (Ark.) 4 I. C. R. 415.

(b) Reparation made where tariff rate was result of clerical error. Holcomb-Hayes Co. v. Illinois Central R. Co., 12 I. C. C. 128.

(c) Reparation for excess collected on shipments of cross-ties by reason of clerical error in tariffs. Holcomb-Hayes Co. v. Illinois C. R. R. Co., 12 I. C. C. 128.

(d) Defendant admitted that the insertion of a certain rate in its tariffs, which applied to complainant's particular shipments of cross-ties from Hopkinsville, Ky., to points in Illinois, was the result of clerical error. Subsequently this rate was voluntarily reduced by defendant. Upon complaint defendant expressed willingness to pay to complainant the excess collected by reason of such error, if protected by order of this Commission; and thereupon the Commission, having substantiated the facts, ordered such special reparation: HELD, upon the foregoing facts, that the formal complaint be dismissed. Holcomb Co. v. Illinois Central R. R. Co., 12 I. C. C. 129.

(e) Complainant attacked as unreasonable rates charged on cross ties from Hopkinsville, Ky., to Herrin, Ill. and Pawnee Junction, Ill. Rate charged 14c, the rate previous and subsequent to shipment being 12c. Defendant admitted the rate charged was published through clerical error and was willing to refund down to the basis of 12c. HELD, rate attacked unreasonable to extent it exceeded 12c, reparation awarded. Holcomb Hayes Company v. I. C. R. R., 12 I. C. C. 129.

(f) While shippers largely rely upon the rates quoted by freight agents and billing clerks, the law charges them with knowledge of the lawful rates. And they will not be heard, before this Commission to claim the benefit of a lower than the lawful rate on the ground that some railroad clerk has made a mistake in quoting a lower rate to a particular shipment. To permit shippers to impute negligence to carriers in quoting rates and on that ground to enjoy the rate quoted instead of paying the lawfully published rate would open a way for the payments of rebates and might, in practical results, work a repeal of the law. A. J. Poor Grain Co. v. C. B. & Q. Ry., 12 I. C. C. 418, 423.

IMPORTANT CASES SINCE 1908

(g) In several cases the Commission has awarded reparation on account of errors in tariff publications and have held solely responsible the carrier by which the error was made. To hold that a shipper must look beyond the tariffs of the carrier that is offering him a service in order to ascertain whether specific statements in those tariffs with respect to the charges of its connections are correct, would be to put the shipper under a harsh and onerous obligation which we have never held to rest upon him. On the contrary, it is the carrier's duty in publishing its tariffs to see that they are correct, and this is no less its obligation when it undertakes specifically to show the charges of its connections which it proposes to absorb under its own rates. Chelsea Refining Co. v. M. P. Ry., 38 I. C. C. 28, 29.

(h) The fact that a shipper may have been misled by the carrier's agent into believing that it was necessary for him to order a larger car than was required affords no ground for reparation. Wilcox Merc. Co. v. Wabash Ry., 44 I. C. C. 552, 553.

(i) The law is well settled that the misquotation by the agent or employe of the carrier of a rate, or tariff provision which affects the application of a rate or charge of itself is not a sufficient basis for an award of reparation. Sellen v. L. V. R. R., 55 I. C. C. 117, 118.

(j) It is well settled that the misquotation of a rate by the agent or employe of a carrier is not a sufficient basis for an award of reparation. Rosin & Turpentine Export Co., v. A. C. L. R. R. Co. 73 I. C. C. 141, 142.

(k) Misquotation of a rate by the agent or employee of a carrier is not a sufficient basis for an award of reparation. Rosin & Turpentine Export Co. v. A. C. L. R. R. Co., 73 I. C. C., 141, 142.

(l) The misquotation of a rate by the agent or employee of a carrier is not a sufficient basis for an award of reparation. Rosin & Turpentine Export Co. v. A. C. L. R. R. Co., 73 I. C. C., 141, 142.

(m) As complainants were charged with knowledge of the rate applicable to their shipment they can not rely, upon the misquotation of that rate in support of their claim for damages. Armacost & Company v. M. M. T. Co., 88 I. C. C. 185, 186.

ALL OTHER CITATIONS

Goddard Co. v. C. C. C. & St. L. Ry. Co., 16 I. C. C. 298, 299; Bowles & McCandless v. L. & N. R. R. Co., 19 I. C. C. 563; Esson Granite Co. v. S. Ry. Co. 26 I. C. C. 449, 450; Fairbault Furniture Co. v. C. G. W. R. R. Co., 25 I. C. C. 40, 41; Morton Salt Co. v. M. L. & T. R. R. & S. S. Co., 28 I. C. C. 422, 424; Alabama Lumber & Export Co. v. C. of Ga. Ry. Unrep. Op. 442; Garden City Grain & Produce Co. v. A. T. & S. F. Ry. Co. Unrep. Op. 394; Menefee Bros. v. R. & W. R. R. Co., Unrep. Op. 359; Evans Milling Co. v. C. C. C. & St. L. Ry. Co. Unrep. Op. 351; Miller & Co. v. T. & P. Ry. Co., Unrep. Op. 331; Franke Grain Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 296; Milwaukee Brewing Co. v. C. & N. W. Ry. Co., Unrep. Op. 294; Pabst Brewing Co. v. C. M. & St. P. Ry. Co. Unrep. Op. 259; Windsor Milling & Elevator Co. v. C. & S. Ry. Co. Unrep. Op. 284; American Milling Co. v. M. St. P. & S. Ste M. Ry. Co., Unrep. Op. 282; Menasha Woodenware Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 258; Copper Queen Consolidated Milling Co. v. B. & O. S. W. R. R. Co., Unrep. Op. 242; Clemona Produce Co. v. G. W. Ry Co., Unrep Op. 232; Shenkberg Co. v. O. S. L. R. R. Co., Unrep. Op. 216; Northern Wood Co. v. C. M. & St. Ry. Co., Unrep. Op. 193; Buck Bros. v. B. & O. R. R. Co., Unrep. Op. 190; Marquette Cement Mfg. Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 188; Copper Queen Consolidated Mining Co. v. Penn R. R. Co., Unrep. Op. 176; Utah-Idaho Sugar Co. v. O. S. L. R. R. Co., Unrep. Op. 154; McVaul-Webster Elevator Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 117; Magnew Bros. v. A. T. & S. F. Ry. Co., Unrep. Op. 103; Hawkinson v. C. R. I. & P. Ry. Co. Unrep. Op. 25; Acme Cement Plaster Co. v. C. R. I. & P. Ry. Co., Unrep. Op. 37, 38, 56; Ohio Iron & Metal Co. v. C. M. & St. P. Ry. Co. Unrep. Op. 15; Stewart Produce Co. v. C. M. & St. P. Ry. Co. Unrep. Op. 11; Northern Wood Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 7; Donahue-Stratton Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 449; Hill-Ingham Lumber Co. v. K. C. S. Ry. Co., Unrep. Op. 464; Continental Oil Co. v. B. & O. C. T. T. T. Co., Unrep. Op. 517; Renner-Millette Co. v. G. H. & S. A. Ry. Co., Unrep. Op. 525; Carpenter Cook Co. v. L. & N. R. R. Co. Unrep. Op. 543; Detroit Chemical Co. v. P. M. R. R. Co., Unrep. Op. 40; Moore Mercantile Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 49; Laning-Harris Coal & Grain Co. v. C. R. I. & P. Ry. Co. Unrep Op. 51; North Star Woolen Mill Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 94; Miller & Co. v. G. R. & I. Ry. Co., Unrep. Op. 518. Maldonado & Co. v. S. P. Co. et al., Unrep. Op. A-18; Stone & Meyers Co. v. T. St. L. & W. R. R. Co., Unrep. Op. A-52; Gallatin Lumber Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-185; Scattergood & Co., v. C. M. & St. P. Ry. Co., Unrep. Op. A412; Welisch & Co. v. St. L. S. W. Ry. Co., Unrep. Op. A423; Dierks v. S. P. Co., Unrep. Op. A460; Kulzer v. G. N. Ry. Co., Unrep. Op. A540; Beaver Co. v. N. Y. C. & H. R. R. R. Co., Unrep. Op. A545; Standard Steel Co. v. A. G. S. R. R. Co., Unrep. Op. A-549; Currie Co. v. C. & N. W. Ry. Co., Unrep. Op. A-563; Floran v. Wells Fargo & Co., Unrep. Op. A-572; Brittain v. N. C. & St. L. Ry., Unrep. Op. A-581; Humphreys-Godwin Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-598; Simmons v. T. & P. Ry. Co. Unrep. Op. A-627; Pfister & Vogel Leather Co. v. Depue & Northern R. R. Co., Unrep. Op. A-636; Buick Motor Co., v. S. K. Ry. Co. of Texas, Unrep, Op. A-647; Escout v. D. L. & W. R. R. Co. Unrep. Op. A-719; Aetna Powder Co. v Wabash R. R. Co., Unrep. Op. A-727; Armour Grain Co. v. I. C. R. R. Co., Unrep. Op. A-742; Capital City Oil Co. v. T. & P. Ry. Co., Unrep. Op. A-750; Jackson Oil & Refining Co. v. S. Ry. Co., Unrep. Op. A-763; Kay v. Dry Fork R. R. Co., Unrep. Op. A-770; Laclede-Christy Clay Products Co. v. M. P. Ry. Co., Unrep. Op. A-780; Swift & Co. v. C. G. W. R. R. Co., Unrep. Op. A-789; Norris v. A. T. & S. F. Ry. Co., Unrep. Op. A-820; McAlester Co. v. M. K. & T. Ry. Co., Unrep. Op. A-839; Markley & Co. A. C. L. R. R. Co., Unrep. Op. A-845; American Woolen Co. v. N. Y. N. H. & H. R. R. Co.

Unrep. Op. A-846; Northwestern Feed Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-847; Purcell v. C. B. & Q. R. R. Co., Unrep. Op. A. 860; Caudle v. U. P. R. R. Co., Unrep. Op. A870; Frost Mfg. Co. v. A. R. & S. F. Ry. Co., Unrep. Op. A-881; Independent Cooperage Co. v. M. C. R. R. Co., Unrep. Op. A-891; Lee-Coit-Andreesen Hardware Co. v. Crosby Transportation Co., Unrep. Op. A-944; Holland Blow Stave Co. v. I. C. R. R. Co., Unrep. Op. 1938; Sizer & Co. v. A. C. L. R. R. Co., Unrep. Op. 1975; Cumberland Telephone & Telegraph Co. v. I. C. R. R. Co., Unrep. Op. 1878; Zelnicker Supply Co. v. C. R. I. & P. Ry. Co., Unrep. Op. 1903; Producers Lumber Co. v. N. S. R. R. Co., Unrep. Op. 2017; Richmond Roller Mills Co. v. M. St. P. & S. Ste. M. Ry. Co., Unrep. Op. 2032; Edwards v. G. C. & S. F. Ry. Co., Unrep. Op. 2135; Detmer Woolen Co. v. L. V. R. R. Co., Unrep. Op. 2154; Brecht Co. v. S. Ry. Co., Unrep. Op. 2156; Herman Reel Co. v. Erie R. R. Co., Unrep. Op. 2186; McCracken & Son v. B. & O. R. R. Co., Unrep. Op. 2199; Ban Co. v. D. & R. G. R. R. Co., Unrep. Op. 2201; Alamo Iron Works v. N. Y. O. & W. Ry. Co., Unrep. Op. 2237; Hartley v. C. & N. W. Ry. Co., Unrep. Op. 2246; Charles Warner Co. v. D. L. & W. R. R. Co., 32 I. C. C. 244; Wolverton Crown-Columbia Paper Company v. O. W. R. R. & N. Co., 38 I. C. C. 231, 232; Alcus & Co. v I. C. R. R., 38 I. C. C. 493; Chapin & Co. v. C. I. & L. Ry. Co., 38 I. C. C. 611, 612, 613; Chapin & Co. v. C. I. & L. Ry. Co., 38 I. C. C. 611, 612, 613; Puyallup & Sumner Fruit Growers Assn. v. N. P. Ry., 38 I. C. C. 701, 702; Edwards v. G. C. & U. P. R. R. Co., 31 I. C. C. 23, 24; Escout 38 I. C. C. 701, 702; Gisholt Machine Co. v. C. & N. W. Ry. Co., 39 I. C. C. 147, 148; Joseph & Bros. Co. v. D. & H. Co., 39 I. C. C. 217; Kath Co. v. C. R. I. & P. Co., 39 I. C. C. 613; Du Pont De Nemours Powder Co. v. M. C. R. R., 40 I. C. C. 71; Utah Wholesale Grocery Co. v. N. & W. Ry. Co., 39 I. C. C. 345, 346; Robinson Clay Product Co. v. A. C. & Y. Ry. Co., 40 I. C. C. 177; Wedron White Sand Co. v. C. B. & Q. R. R. Co., 40 I. C. C. 483; Northwestern Consolidated Milling Co. v. C. R. I. & P. Ry. Co., 41 I. C. C. 429; Obear-Nester Glass Co. v. M. P. Ry., 41 I. C. C. 446; Stimson v. B. & O. S. W. R. R. Co., 41 I. C. C. 640; Northwestern Consolidated Milling Co. v. C. M. St. P. Ry. Co., 41 I. C. C. 683; Howell v. C. B. & Q. R. R. Co., 41 I. C. C. 740; Washburn-Crosby Co. v. C. R. I. & P. Ry. Co., 42 I. C. C. 177, 179; Wattles-Fisher Coal Co. v. A. A. R. R. Co., 42 I. C. C. 186; Glendale Cotton Gin Co. v. G. C. & S. F. R. R. Co., 42 I. C. C. 360, 361; Merriam, Hall & Co. v. B. & M. R. R., 42 I. C. C. 435, 436; Orange Rice Mill Co. v. O. & N. W. R. R. Co., 42 I. C. C. 475, 476; Atlantic Refining Co. v. P. R. R. Co., 42 I. C. C. 483, 485; Olalde Y. Co. v. S. P. Co., 45 I. C. C. 155, 156; Creamery Package Mfg. Co. v. St. L. & S. F. R. R., 46 I. C. C., 303, 304; Aberdeen Wholesale Grocery Co. v. C. M. & St. P. Ry., 45 I. C. C. 23; Scudders Gale Grocer Co. v. S. Ry., 45 I. C. C. 181, 182; International Paper Co. v. M. C. R. R., 45 I. C. C. 453, 454; Southwestern Millers League v. A. T. & S. F. Ry., 46 I. C. C. 299, 300; Ayer & Lord Tie Co. v. I. C. R. R., 46 I. C. C. 305, 306; Syracuse Chamber of Commerce v. M. C. R. R., 47 I. C. C. 14; Dewey v. C. M. & St. P. Ry. Co., 47 I. C. C. 32, 33; Proctor & Gamble Co. v. C. C. C. & St. L. Ry., 47 I. C. C. 231; Goodnow Coal Co. v. N. P. Ry., (Minn. 1917), 162 N. W. 519; El Paso Iron & Metal Co. v. G., G. & S. A. Ry. Co., 48 I. C. C. 427; Wiser & Co. v. M. K. & T. Ry. of Texas, 49 I. C. C. 70; Hollingshead & Blei Co. v. K. C. S. Ry., 49 I. C. C. 109, 110; Fechheimer Steel & Iron Co. v. Penn. R. R., 51 I. C. C. 183; United Shoe Machinery Co. v. B. & M. R. R., 51 I. C. C. 28, 30; Ford's Porcelain Works v. L. V. R. R., 51 I. C. C. 485, 486; Wisconsin Granite Co. v. C. & N. W. Ry. Co., et al., 52 I. C. C. 330, 331; Red River Lumber Co. v. S. P. Ry. Co., 53 I. C. C. 321 323; Gulf & Cotton Oil Co. v. T. & P. Ry., 53 I. C. C. 561, 563; Sellen v. L. V. R. R., 55 I. C. C. 117, 119; Helena Traffic Bureau v. Director General, 55 I. C. C. 708, 709; Cuban Molasses Co. v. Director General, 57 I. C. C. 359; United Shoe Machinery Co. v. B. & M. R. R., 55 I. C. C., 206, 208; Dodson & Co., (Inc.) v. C. R. R. of N. J. 57 I. C. C. 381; Cleveland Cooperage Co. v. Director General 57 I. C. C. 423, 425; Birmingham Packing Co. v. Director General, as Agent, 59 I. C. C. 27; Young v. Director General 59 I. C. C. 305; Chatterton & Co. v. Director General, as Agent, 59 I. C. C. 484; J. B. Taylor v. Director General 61 I. C. C. 109, 110; South Chester Tube Co. v. M. K. & T. R. Y. 64 I. C. C. 60, 78; Rosin & Turpentine Export Co. v. A. C. L. R. R. Co., 73 I. C. C. 141, 142.

§8½. Previous Action of Commission.

See Previous Decisions of Commission; Prior Adjudication; Reasonableness of Rates §26½.

CASES 1887-1908

(a) In determining the question of reparation, in a suit to declare a terminal charge excessive and unlawful, where the question of reparation was held open pending determination of another branch of the case, during which time a reduction in the through rate was made from certain territory, which reduction amounted to more than the terminal charge the following procedure was directed by the Commission: Damages to be allowed on shipments from all territory down to the date of the reduction in the through rates, and from territory to which that reduction did not apply, down to the date of the hearing; but it was directed that those damages accruing before and those accruing after the original order of the Commission holding the terminal charge unlawful and unjust be shown separately, with leave to defendants to show any change in the conditions since the date of the order of the Commission, which would render the entire through rate, including the terminal charge, a reasonable one. Cattle Raisers' Asso. v. Chicago, B. & Q. R. Co. 10 I. C. C. 83.

(b) The decision of the Supreme Court sustaining the view of the Commission as to the unlawfulness and excessiveness of a terminal charge, but dismissing the proceeding on account of a subsequent reduction in the through rate, which amounted to more than the terminal charge, constitutes no bar to submission of proof before the Commission upon the queston of reparaton, covering the period elapsing prior to the reduction in the through rate referred to, which question had been properly held open by the Commission pending determination of the other branch of the case. Cattle Raiser's Asso. v. Chicago, B. & Q. R. Co., 10 I. C. C. 83.

(c) While the Commission found as a fact that the charges of defendant were in some instances unreasonable, it made no attempt to formulate an order, as it had no power to prescribe the rate that should be put into effect; but it held that complainant might apply to it for reparation in case it should thereafter be compelled to pay rates in excess of those indicated. Barrow v. Yazoo & M. V. R. Co., 10 I. C. C. 333.

(d) Decision in Blackwell Milling and Elevator Co. v. M., K. and T. Rwy. Co., 12 I. C. C. Rep. 23, cited and applied. Complainant awarded reparation. Ponca City Milling Co. v. M. K., & T. R. Co., 12. I. C. C. 26.

(e) Reparation in accordance with previous order, on shipments made subsequent to the filing of complaint, upon presentation of claim and proof thereof as therein provided. Farmers' Warehouse Co. v. L. & N. R. R. Co., 12 I. C. C. 520.

IMPORTANT CASES SINCE 1908

(f) Where the Commission has prescribed reasonable rates and the carriers fail to substitute them for the old rates until the lapse of a considerable period, the shippers are entitled to reparation from the date of the decision irrespective of whether the carriers exercise proper diligence, since the Act entitles shippers to a just and reasonable transportation; and if the carriers impose upon them rates in excess of this they damage the shippers, and reparation should be allowed. In re Rates on Live Stock, Packing House Products and Fresh Meats from Southwestern Points, 28 I. C. C. 332, 335.

(g) The compulsory reduction of rates does not necessarily entitle shippers under the preexisting rates to reparation. Reparation has been denied on shipments moving prior to the effective date of orders reducing rates, where the rates reduced have long been in effect and when the orders requiring reductions involved readjustments of rates throughout an extensive territory. Southwestern Millers League v. A. T. & S. F. Ry., 46 I. C. C. 299, 300.

(h) In original report, 61 I. C. C. 671, rates on range cattle from Rock Springs, Wyo., to Storey, Calif., found unreasonable to extent they exceed the aggregate of intermediate rates to and beyond Ogden, Utah. Upon further hearing, necessary evidence having been supplied, reparation awarded. Russell Bros. v. Director General, as Agent, 73 I. C. C., 125.

(i) Upon further hearing reparation awarded, proof having been submitted that complainants paid and bore charges for the transportation of coal from Kentucky mines to Clarksville, Tenn., at rates found unreasonable in original re-

port, 66 I. C. C., 529. City of Clarksville, Tenn., v. Director General, as Agent, 73 I. C. C., 509.

(j) Upon further hearing, reparation denied on shipments moving under unreasonable rates found in former report, 55 I. C. C., 42. Shippers do not have expense bills for part of the transportation and do not know and are unable to prove final destinations of the shipments in issue. Peoria Board of Trade v. A., T. & S. F. Ry. Co., 73 I. C. C., 532.

(k) Upon further hearing, reparation awarded on shipments of transit grain from Buffalo, N. Y., made subsequent to original hearing, under rates found prejudicial in original report, 55 I. C. C., 587. Globe Elevator Co. v. Director General, 74 I. C. C. 591.

(l) Due to error in the record, finding in original report 73 I. C. C., 27, denied reparation to complainant on the ground that there was no evidence that it paid and bore transportation charges on its shipments. Error corrected, and reparation awarded. Cannelton Sewer Pipe Co. v. Director General, as Agent, 74 I. C. C. 647.

(m) A shipper of lumber who was not a party to proceedings before the Interstate Commerce Commission in which the lumber rate paid by him was declared unreasonable, was entitled as all other shippers similarly situated, by appropriate proceedings before the Commission or the courts to obtain the benefit of that general finding and order. A. J. Phillips Co. v. Grand Trunk W. R. Co., 35 Sup. Ct. 444, 445; 236 U. S. 662; 59 L. ed.

(n) Complainants in support of allegation of unreasonableness merely stated that rates charged were found unreasonable and that reasonable rates were subsequently established as a result of finding in previous case. HELD: Since reparation of rates, which were made the measure of reasonable rates for the future from point here involved, were not in issue, finding in previous case insufficient upon which to base award of reparation against a carrier, who took no part in defense of that case, on shipments moving prior to establishment of rates there prescribed. Continental Gin Co. v. Director General, as Agent, 78 I. C. C. 369.

(o) Interstate rates on printing and wrapping paper from manufacturing points in Wisconsin to destinations in Wisconsin, Illinois, and Iowa found unreasoable to extent they exceeded rates prescribed in Minnesota & Ontario Paper Co., 66 I. C. C., 571. Reparation awarded. Wisconsin Traffic Asso. v. A. C. & H. B. Ry. Co., 81 I. C. C. 217.

ALL OTHER CITATIONS

Metropolitan Paving Brick Co. v. P. C. C. & St. L. Ry. Co., 17 I. C. C. 197; Henri & Molthoff Mfg. Co. v. U. P. R. R. Co., Unrep. Op. A 20; Canton Bridge Co. v. A. T. & S. F. Ry. Co., Unrep Op. A115; Moore Hardware & Iron Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A134; Colorado-Moline Plow Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A.135; Davis & Shaw Furniture Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A167; Tuttle Paint & Glass Co. v. S. P. Ry. Co., Unrep. Op. A169; Chanute Refining Co. v. M. K. & T. Ry. Co., Unrep. Op. A180; Gay Oil Co. v. M. P. Ry. Co., Unrep. Op. A187; Mack Mfg. Co. v. P. C. C. & St. L. Ry. Co., Unrep. Op. A242; Dinneen v. U. P. R. R. Co., Unrep. Op. A243; Koch Butchers' Supply Co. v. C. & A. R. R. Co., Unrep. Op. A281; Lamar Mill & Elevator Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A290; Kemmerer Hardware & Furniture Co. v. U. P. R. R. Co., Unrep. Op. A293; Brackney v. C. & N. W. Ry. Co., Unrep. Op. A343; Salt Lake Glass & Paint Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-357; Continental Paper Bag Co. v. C. & O. Ry. Co., Unrep. Op. A-390; Bigham & Rose v. T. & P. Ry. Co., Unrep. Op. A470; Byrnes, Trustee for H. Wood Co., Bankrupt, v. A. C. L. R. R. Co., Unrep. Op. A492; United States Portland Cement Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-552; Broadman & Co. v. S. P. Co., 37 I. C. C. 81, 86; Federal Glass Co. v. C. R. I. & P. Ry., 38 I. C. C. 331; California Corrugated Culvert Co. v. A. G. S. R. R., 38 I. C. C. 568; Smith Hide Co. v. S. A. & A. P. Ry. Co., Unrep. Op. 2121; Orgill Bros. & Co., v. I. C. R. R. Co., Unrep. Op. 2161; Bland & Fisher Lumber Co. v. G. C. & S. F. Ry. Co., Unrep. Op. 2222; Smith Hide Co. v. Ft. W. & R. G. Ry. Co., Unrep. Op. 2244; Arlington Heights Fruit Exchange v. S. P. Co., 39 I. C. C. 88, 93; Wellington Mines Co. v. C. & S. Ry. Co., 39 I. C. C. 202, 207; Zelnicker Supply Co. v. C. R. I. & P. Ry. Co., 39 I. C. C. 475; Inland Seed Co. v. O. W. R. R. & N. Co., 40 I. C. C. 517, 521; Omaha Grain Exch. v. C. & A. R. R. Co., 40 I. C. C. 523; Graham & Gila County Traffic Asso. v. A. E. R. R. Co., 40 I. C. C. 573, 588; Sloss-Shef-

field Steel & Iron Co. v. L. & N. R. R. Co., 40 I. C. C. 738; Alleged Unreasonable Rates on Live Stock, 41 I. C. C. 514, 517; Cudahy Packing Co. v. A. T. & S. F. Ry., 42 I. C. C. 579; U. S. Cast Iron P. & F. Co. v. S. Ry., 44 I. C. C. 757; Carey v. N. P. Ry., 46 I. C. C. 372; Brittain Bros. v. St. L. & S. F. R. R., 45 I. C. C. 87, 90; Arlington Heights Fruit Exchange v. S. P. Co. 45 I. C. C. 248, 253; International Paper Co. v. M. C. R. R., 45 I. C. C. 453, 454; Andersch Bros. v. C. & N. W. Ry., 46 I. C. C. 403, 404; Hulme & Hart v. A. T. & S. F. Ry., 46 I. C. C. 665; Bascom-Porter Co. v. A. T. & S. F. Ry., 48 I. C. C. 65; White, Pevery & Dexter v. C. R. I. & P. Ry, 49 I. C. C. 717; Anderson-Tully Co. v. A. & V. Ry., 50 I. C. C. 553; Swift & Co. v. T. & P. Ry., 50 I. C. C. 597; Culmers Co. v. A. T. & S. F. Ry., 50 I. C. C. 90; Fort Smith Commission Co. v. K. C. S. Ry., 50 I. C. C. 109; Terre Haute Paper Co. v. St. L. & St. F. Ry., 50 I. C. C. 141; Macey Co. v. P. M. R .R., 50 I. C. C. 555; Western Carolina L. & T. Assn. v. Southern Railway, 52 I. C. C. 28; Lamb Fish Lumber Co. v. Y. & M. V. R. R., 51 I. C. C. 6; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 51 I. C. C. 635, 644; Adams Leather Co. v. C. P. Ry., 51 I. C. C. 659; City of Spokane v. G. N. Ry., 51 I. C. C. 667; A. H. Kerr & Co. v. Sand Springs Ry., 52 I. C. C. 287, 290; Lamb-Fish Co. v. T. F. B., 53 I. C. C. 221; E. I. Dupont De Nemours Powder Co. v. H. & B. V. Ry., 52 I. C. C. 538; Sloss-Sheffield Steel & Iron Co. v. L. N. N. R. R., 52 I. C. C. 576; William Cameron & Co. Inc. v. A. T. & S. F. Ry., 53 I. C. C. 147; Iten Biscuit Co. v. C. B. & Q. Ry., 53 I. C. C. 729; Cotton Mfrs. Assn. of So. Car. v. C. C. & O. Ry., 53 I. C. C. 741; DuPont de Nemours & Co. v. Hines, 55 I. C. C. 246; Diamond Alkali Co. v. Director General, 55 I. C. C. 711; Plymouth Coal Co. v. P. R. R., 56 I. C. C. 699; Memphis Freight Bureau v. St. L. & S. F. Ry. v. Director General, 57 I. C. C. 212; Gamble, Robinson Lewiston Co. v. Director General, 57 I. C. C. 327; G. B. Markle Co. v. Lehigh Valley Ry., 57 I. C. C. 375; Western Dodson & Co. v. C. R. R. of N. J., 57 I. C. C. 381; Du Pont de Nemours Powder Co. v. Director General, 58 I. C. C. 146; Frank Hagenburg v. Belt Railway Co., 58 I. C. C. 175; Cape Girardeau Portland Cement Co. v. St. L. & S. F. R. R. Co., 55 I. C. C. 315, 316; National Tube Co. v. L. T. R. R., 55 I. C. C., 469, 482, 484; Plymouth Coal Co. v. P. R. R. Co., 56 I. C. C., 699, 706, 707; D. C. Armstrong v. N. Y. P. & N. R. R. Co., 57 I. C. C. 35; Muskogee Wholesale Grocer Co., v. M., K. & T. Ry. Co., 57 I. C. C. 125; Memphis Freight Bureau v. St. L. & S. F. R. R. Co., 57 I. C. C. 212; Markle Co. v. L. V. R. R. Co., 57 I. C. C. 375; Dodson & Co. (Inc.) v. C. R. R. Co. of N. J., 57 I. C. C. 381; Meeker & Co. v. C. R. R. Co., of N. J. 57 I. C. C. 414, 416; Red Ash Coal Co. v. C. R. R. Co., of N. J., 57 I. C. C. 432; Meeker v. E. R. R. Co., 57 I. C. C. 434; Atlas Leather Mfg. Co. v. N. Y., N. H., & H. R. R. Co., 57 I. C. C. 481; Cotton Maunfacturer's Assn. v. C. C. & O. 57 I. C. C. 584, 587, 589; Oden & Elliott v. S. A. L. Ry., 57 I. C. C. 698; Du Pont de Nemours Powder Co. v. Director General, 58 I. C. C. 146; Hagenburg v. B. Ry. Co. of C., 58 I. C. C. 175; National Petroleum Asso. v. M., K. & T. Ry. Co., 58 I. C. C. 415, 418; Northern Potato Traffic Asso. v. A., T. & S. F., Ry. Co., 58 I. C. C. 592, 594; Mercantile Lumber Co. v. I. C. R. R. 59 I. C. C. 128; West Virginia Rail Co., v. P. C. C. & St. L. 59 I. C. C 241; Globe Oil Mills v. Director General, 59 I. C. C. 318; National Poultry Butter & Egg Asso. v. B. O. S. W., 59 I. C. C. 413; Western Lime & Cement Co. v. Director General, 58 I. C. C. 508; El Paso Chamber of Commerce v. Director General, as Agent, 59 I. C. C. 226; Swift & Co. v. S. A. & A. P. Ry. Co. 59 I. C. C. 440; Parkersburg Rig & Reel Co. v. Director General, as Agent, 59 I. C. C. 563, 564; American Fork & Hoe Co., v. St. L. & S. F. 60 I. C. C. 85, 90; Plymouth Coal Co. v. D. L. & W., 60 I. C. C. 133; Virginia-Carolina Chemical Co. v. Director General, 60 I. C. C. 321; Sloss-Sheffield Steel & Iron Co. v. L. & N. 60 I. C. C. 595; Solray Process Co. v. D. L. & W., 61 I. C. C. 86; Louisiana Central Lumber Co. v. C. B. & Q. 62 I. C. C. 417; Du Pont de Nemours & Co. v. Director General, as Agent, 60 I. C. C. 221; Southport Mill (Ltd.) v. Director General, as Agent, 60 I. C. C. 357; Lake Park Refining Co. v. Director General, as Agent, 60 I. C. C. 381; Swift & Co. v. Director General, 61 I. C. C. 567; Sloss K. Sheffield Steel & Iron Co. v. L. & N. 62 I. C. C. 646; Canton Chamber of Commerce v. Pennsylvania 62 I. C. C. 726; Quinton Spelter Co. v. Ft. S. & W. R. R. Co., 61 I. C. C. 43; Solvay Process Co. v. D., L. & W. R. R. Co., 61 I. C. C. 86; Inman-Poulsen Lumber Co. v. S. P. Co., 61 I. C. C. 185; Du Pont de Nemours & Co. v. Director General, 62

I. C. C. 109; Pusey & Jones Co. v. Director General, as Agent, 62 I. C. C. 291; Cotton Manufacturers Asso. of South Carolina v. C. C. & O. 64 I. C. C. 633; Iola Cement Mills Traffic Asso. v. Director General, as Agent, 66 I. C. C. 495; Southoprt Mill, Limited v. Director General, 68 I. C. C. 352; Proctor & Gamble Co. v. C. N. O. & T. P. Ry., 68 I. C. C. 373; Iola Cement Mills Traffic Asso. v. Director General, 77 I. C. C. 745; Willard Coal Co. v. Eastern Kentucky Railway Company, 78 I. C. C. 455, 457, 458; Liberty Oil Co. v. Director General, 80 I. C. C. 209; Midland Coal Company v. Midland Valley R. R. Co., 80 I. C. C. 267; Swift & Co. v. Director General, as Agent, 77 I. C. C. 189; Lake Charles Rice Milling Co. v. L. W. R. R. Co. 77 I. C. C. 631; Holmes & Hallowell Co. v. G. N. Ry. Co., 77 I. C. C. 683; Avella Coal Co. v. P. & W. V. Ry. Co., 77 I. C. C. 731; Mohr & Sons v. N. E. S. S. Co., 80 I. C. C. 205; Wisconsin Traffic Asso. v. A. C. & H. B. Ry. Co., 80 I. C. C. 217; Midland Coal v. M. V. R. R. Co., 80 I. C. C. 267; Sioux City Gas & Electric Co. v. A., T. & S. F. R. Co., 81 I. C. C. 397; Speedometer Corp. v. Director General as Agent, 83 I. C. C. 435; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. 88 I. C. C. 640.

§9. Failure to Post Tariff.

IMPORTANT CASES SINCE 1908

(a) Failure to post supplement to tariff which contained no change as to rates affords no basis for an award of reparation. Faribault Furniture Co. v. C. G. W. R. R. Co., 25 I. C. C. 40.

(b) Damages can not be recovered on account of failure of defendant to have proper tariff posted at its stations. Franke Grain Co. v. I. C. R. R. Co., 27 I. C. C. 625.

(c) Reparation awarded for damages sustained by reason of failure of carriers to post tariff advancing a rate. Wolf Milling Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 439.

ALL OTHER CITATIONS

Canadian Valley Grain Co. v. C. R. I. & P. Ry. Co., 19 I. C. C. 108; Kiel Wooden Ware Co. v. C. M. & St. P. Ry. Co., 18 I. C. C. 242, 244; Sunny Brook Distillery, Inc., v. Pa. Terminal Ry. Co., Unrep. Op. A-717; Sunderland Bros. Co. v. C. & A. R. R. Co., Unrep. Op. A-875.

§10. Laches.

CASES \1887-1908

(a) Complainant attacked rates on oil in barrels from Titusville, Pa., to Buffalo, N. Y., as compared with the rates on oil in tank cars as unreasonable and unjustly discriminatory. In the original decision dated April 15, 1889, complaint dismissed. Complainants having filed a petition for reparation long after decision by the Commission and compliance therewith by the defendant; HELD, the case will not be reopened in a supplementary proceeding, which is only brought to secure reparation, for the purpose of ruling upon questions not decided in the original case. That as to the reparation demanded for injuries which resulted from practices found unlawful in said decision, it would be unwise and unjust to amend a final order entered several years ago and promptly obeyed by the defendant, so as to subject such carrier to further requirements in favor of complainants in respect of violations corrected under said order. Rice Robinson & Witherop v. W. N. Y. & P. R. Co., 68 I. C. C. 455.

IMPORTANT CASES SINCE 1908

(b) Where complaints seeking reparation are filed within the period of limitation they cannot be defeated on the ground of laches because not filed at an earlier date. Kindelon v. S. P. Co., 17 I. C. C. 251, 253.

§10½. Necessity of Showing Damage.

See Allowances VI; Discrimination §15, §17; Long and Short Hauls §13.

IMPORTANT CASES SINCE 1908

(a) The Commission holds there is no merit in the contention that reparation should not be granted because a rate held unreasonable has been in force a sufficient length of time to cause trade conditions to become adjusted thereto, and for that reason complainant could not have been damaged. Capital Electric Co. v. B. & O. C. T. R. R. Co., 26 I. C. C. 472, 474.

(b) Reparation may properly be awarded where a discriminatory freight rate has been exacted, but it does not necessarily follow that because a rate is found to be unjustly discriminatory and unduly prejudicial that the complaining parties are the ones who have been damaged through its exaction. Curry & Whyte Co. v. D. & I. R. R. Co., 30 I. C. C. 1, 14.

(c) The mere fact that the seller may have added to the price the amount of the prospective freight charges based

on the existing rate does not show that the buyer was damaged to the extent the rate was unreasonable, as the seller was under no obligation to refund any part of the price paid if the rate should be reduced before the commodity moved, and the buyer could not be required to pay more if the freight should be increased. Phoenix Printing Co. v. M. K. & T. Ry. Co., 31 I. C. C. 289, 293.

(d) Before award of reparation can be made on account of undue discrimination or preference on the part of carriers subject to the Act, the complainant must prove that he was actually damaged by reason of such discrimination and, furthermore, must prove the amount of damages. Mere proof of particular shipments made and of freight paid does not make out a prima facie case. Complainant must establish the fact and amount of damage. Spiegle v. S. Ry. Co., 32 I. C. C. 687, 689.

(e) It has been held there is nothing in the Act justifying a presumption of damage. In S. P. Co. v. Darnell-Taenzer, 245 U. S. 531, the reparation was awarded for the payment of an unreasonable rate and question before the court was whether the fact that the plaintiffs were able to pass on the damage they sustained in the first instances by paying the unreasonable charge, and to collect that amount from the purchasers, prevents their recovering the overpayment from the carriers. The court said that cases like Pennsylvania Railroad Co. v. International Coal Mining Co., 230 U. S. 184, where a party that has paid only the reasonable rate sues upon a discrimination because some other has paid less, are not like the present. There the damage depends upon remoter considerations. Obviously it would be inconsistent and contrary to the intent and spirit of the Act, to hold that to recover under section 2 and 3 there must be proof of damage and under section 4 the departure therefrom is of itself proof of damage. Iten Biscuit Co. v. C. B. & Q. Ry., 53 I. C. C. 729, 732.

(f) The claim for reparation is not based upon any loss of business, but rather upon the alleged fact that because of the difference in the freight rate complainant was forced to shrink his profits by the amount thereof. Complainants positive testimony is that during the reparation period he did not charge any higher price than his competitors, and that he could not have charged a higher price without serious loss of prestige and future business, and there is no evidence to the contrary. While there was no competition for present business, there was competition for future trade. This future business and good will of his customers was a thing of value to complainant and must be recognized as a justification for meeting the prices of his competitors. Cornell v. L. V. R. R., 57 I. C. C. 157, 163.

(g) Complainants have not shown that they were damaged as a result of the departures from the long and short haul provision of the fourth section of the act, and are entitled to no reparation in that behalf. Birmingham Packing Co. v. Director General, 69 I. C. C. 44, 48.

(h) The fact that complainant might have obtained greater profits if lower rates had applied does not prove damage when the rate paid is not shown to have been unreasonable. Vickers Petroleum Co. v. Director General, 73 I. C. C. 578, 580.

(i) Contention that shippers have not shown that they were damaged by reason of rates assessed during the period when the prices of coal were regulated by the Federal Government through the Fuel Administration. HELD, not sustained. If shippers paid and bore as transportation charges rates that were unreasonable they are entitled to reparation. Wilbur Lumber Co. v. Director General, as Agent, 73 I. C. C., 152, 159.

(j) Director General endeavored to show that complainants were not damaged for reason that the price of coal during period in question were subjected to the regulation of the Federal Government through the Fuel Administration, and that complainants sold their coal at prices which included the freight charges paid, and the margin of profit allowed. HELD, complainants paid and bore as transportation charges unreasonable rates and are entitled to reparation. They have "paid cash out of pocket that should not have been required of them." City of Clarksville, Tenn. v. Director General as Agent, 73 I. C. C., 509, 510.

(k) Contention that reparation should be denied because complainant sold its products f. o. b. point of destination at prices which included the prepaid freight charges. HELD, not sustained following Wheeler & Timlin, 60 I. C. C., 265. Lan-

caster Steel Products Corp. v. Director General, as Agent, 73 I. C. C., 567, 570.

(l) Fact that shipper might have obtained greater profits if the lower rates to other points had applied does not prove damage when the rate paid is not shown to have been unreasonable. Vickers Petroleum Co. v. Director General, as Agent, 73 I. C. C., 578, 580.

(m) Where class rates are charged on unusual movements, if it is not shown that the commodity is improperly classified or that the class rate is unreasonable, reparation will not be awarded. Bilrowe-Alloys Co. v. N. P. Ry. Co., 73 I. C. C., 625, 626.

(n) Carriers resist an award of reparation on the ground that even though rates should be found unreasonable, complainants have not proved damage as the price of coal has been increased with the increase in rates. HELD, following Darnell-Taenzer Case, 245 U. S., 531, contention is without merit. Gross v. Director General, as Agent, 73 I. C. C., 649, 653.

(o) Objection of carriers to an award of reparation on the ground that the commodity was sold at a price which included freight charges and profits, HELD, reparation is due the person who pays the excessive charge as the price of transportation. Nicholas Oil Co. v. A., T. & S. F. Ry. Co., 73 I. C. C., 725, 728.

(p) Damages for speculative future losses are not recoverable, and redress for present losses can not be denied by speculating that such losses may be recouped at some future time. A loss is an established fact for the time being, while possible profit in the future is entirely conjectural. Avella Coal Co. v. P. & N. U. Ry. Co., 77 I. C. C. 741.

(q) If the charges are unreasonable, complainant suffered damage when it paid such charges. No further proof is necessary, for the law does not inquire into later events. Cramp & Sons v. Director General, 80 I. C. C. 341, 343.

(r) That complainant would receive an additional profit in the amount of the difference between the rate charged and the rate enjoyed by its competitors is not sufficient to support an award of reparation even if defendant were guilty of unduly preferring complainants competitors. J. Henry Koenig Co. v. B. & O. R. R., 81 I. C. C. 683, 684.

(s) The Supreme Court has decided in Southern Pacific Company, et al. v. Darnell-Taenzer Lumber Company, et al, 245 U. S. 531, 38 Sup. Ct. 186, 62 L. Ed. (Jan. 21, 1918), that, where a shipper has paid a rate afterwards declared to be excessive by the Interstate Commerce Commission, he may recover as damages the difference between the excessive rate and the rate declared to be just and reasonable by the Commission, without proof of actual injury. Atchison, T. & S. F. Ry. Co. v. Spiller, 249 Fed. 677.

(t) When the Commission has found that there was damage to a specified extent, prima facie the damage is shown. Mills v. Lehigh Valley R. Co., 35 Sup. Ct. 888, 892; 238 U. S. 473, 59 L. ed.

(u) The payment of freight charges, subsequently found by the Interstate Commerce Commission to be unreasonable and excessive, is presumptive evidence of damage to the shipper to the extent of the difference between the rate charged and a reasonable rate, and such presumption can be overcome only by definite proof, not resting upon uncertainty or conjecture, negativing the fact or the amount of damage; and hence the prima facie effect of the Commission's findings that shippers of lumber from Memphis to California were damaged by an excessive rate to the extent of the excess above a reasonable rate was not overcome by its further findings that the price of the lumber was little influenced by Coast prices, that the shippers charged substantially the same price whether sales were in the East, for export, or for shipment to California, and that thus the advance in the freight rate had been added to the price paid by the consumer. Darnell-Taenzer Lumber Co. v. Southern Pac. Co., 221 Fed., 890.

(v) A rule requiring the shipper to mathematically demonstrate that it was actually pecuniary damaged to the amount of the unreasonable excess in rates so paid would effectually emasculate the reparation provision of the Interstate Commerce Act. The Commission's statement that the excessive freight rate had been added to the price paid by the consumer did not, as a matter of law, and in view of the other considerations referred to by the Commission, overcome the prima facie effect of the findings that plaintiffs were damaged to the extent of such excessive

freight rate actually paid by them. Darnell-Taenzer Lumber Co. v. Southern Pac. Co., 221 Fed. 890, 894.

(w) Contention that complainant is not entitled to reparation because proof of damage rests upon testimony of chief clerk in complainant's traffic department that complainant paid and bore charges, not sustained. Witness' testimony is in no way discredited, and no further proof of damage is necessary. Proctor & Gamble Co. v. Director General, as Agent, 81 I. C. C., 363.

(x) In testifying as to payment of freight charges complainants' witness acknowledged that commodity had been resold at prices including a profit, presumably as high as it would have been if freight charges had been lower. Defendants urged that complainants were therefore not damaged. HELD: Substantially same contention advanced by director general in numerous other cases and overruled. Darnell-Taenzer case, 245 U. S., 531. Southern Arizona Traffic Asso. v. Director General, as Agent, 81 I. C. C. 609, 612.

(y) Failure on part of shipper to request, prior to shipment, a rate to which he is entitled under rule 77 of Tariff Circular 18-A, through ignorance of the rule or otherwise, is not a reason for saying that he is not entitled to reparation, or that burden is on him to show that higher rate paid was unreasonable per se, or that he has suffered damage from undue prejudice. In such cases, shipper has "paid cash out of pocket that should not have been required of him and there is no question as to amount of proximate loss." Darnell-Taenzer case, 245 U. S., 531, 533. Pittsburgh Crucible Steel Co. v. Director General, as Agent, 81 I. C. C. 659, 662.

(z) Evidence established with reasonable certainty that prices which complainant was able to obtain were fixed by its competitors, and that it was compelled to forego certain profits solely because freight rates from prejudiced point exceeded freight rates from preferred points by more than a specified differential. It follows, therefore, that undue prejudice found to exist was proximate cause of injury sustained, and that compainant's damage is measured by such excess in freight rate. Lester & Toner v. L. I. R. R. Co., 83 I. C. C. 251, 253.

(aa) Complainant did not pay freight freight bills not submitted in evidence. Complainant's billing clerk testified that freight charges were paid by consignor and charged back to complainant, but his knowledge based on affidavit of former official of complainant company, itself inadmissible as evidence, and from general knowledge of how complainant's business was usually conducted. HELD: Evidence of damage not sufficiently certain and definite to justify issuance of order of reparation in complainant's favor. Hazard Jellico Coal Co. v. Director General, as Agent, 83 I. C. C. 383, 384.

(bb) Where there is lack of proof as to payment and bearing of freight charges reparation will be denied. Standard Oil Co. v. Director General, as Agent, 83 I. C. C. 705, 706.

ALL OTHER CITATIONS

Lehigh Valley R. R. Co. v. Clark, 207 Fed. 717, 724, 725, 727; New England Electric Co. v. C. R. I. & P. Ry. Co., 28 I. C. C. 418, 421; Minneapolis Steel & Mach. Co. v. C. M. & St. P. R. R., 26 I. C. C. 193; Fullerton Lumber Co. v. C. B. & Q. R. R. Co., Unrep., Op. A95; New Orleans Board of Trade v. I. C. R. R. Co., 29 I. C. C. 32; Stewart-Greer Lumber Co. v. St. L. I. M. & S. Ry. Co., 29 I. C. C. 120, 122; Eichenberg v. Southern Pacific Co., 28 I. C. C. 584, 588; Charles Becker v. P. M. R. R. Co., 28 I. C. C. 645, 660; L. V. R. R. Co. v. Meeker, 211 Fed. 785, 797; Wichita Business Assn. v. A. T. & S. F. Ry. Co., 30 I. C. C. 374, 376; New Orleans Board of Trade v. I. C. R. R. Co., 29 I. C. C. 32, 33, 34; Nix & Co. v. S. Ry. Co., 31 I. C. C. 145, 150; Hormel & Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 98, 102; Mcaa Coal Co. v. C. & Ry. Co., 30 I. C. C. 531, 537; Central W. Va. Glass Mfrs. Assn. v. B. & O. R. R. Co., 32 I. C. C. 218, 221; Griffing v. C. & N. W. Ry. Co., 32 I. C. C. 283, 286; Godwin v. Y. & M. V. R. R. Co., 31 I. C. C. 25, 27; Pine Belt Lum. Co. v. G. & S. I. R. R. 33 I. C. C. 117, 118; Gate City Malt Co. v. C. St. P. M. O. Ry. Co., Unrep. Op. A-890; Harmon & Co. v. N. P. Ry. Co., Unrep. Op. A-918; Hooker-Hendrix Hdwe. Co. v. M. K. & T. Ry. Co., 34 I. C. C. 3, 9; Gray & Smith v. P. Co. 34 I. C. C. 25, 27; Meech & Stoddaed v. G. T. Ry. of Can., 34 I. C. C. 39, 40; Ballou & Wright v. N. Y. N. H. & H. R. R. Co., 34 I. C. C. 120, 121; Board of Trade of Kansas City v. C. M. & St. P. Ry. Co., 34 I. C. C. 208, 211; National Assn. of Tanners v. L. V. R. R. 35 I. C. C. 175, 178; Centennial School Supply Co. v. C. & E. I. R. R.

Co., Unrep. Op. 2027; Coal Switching Reparation Cases in Chicago, 36 I. C. C. 226, 232, 233, 237; Oden & Elliott v. S. A. L. Ry., 37 I. C. C. 345; Mfrs. & Merchants' Assn. v. A. & A. R. R., 37 I. C. C. 350, 351; Advance Bedding Co. v. A. T. & S. F. Ry., 38 I. C. C. 31; Federal Glass Co. v. C. R. I. & P. Ry., 38 I. C. C. 331, 332; Lehigh Valley R. Co. v. American Hay Co., 219 Fed. 539, 541; Montgomery v. Chicago, B. & Q. R. Co., 228 Fed. 616, 620; Birdsboro Stone Co. v. P. R. R. Co., 37 I. C. C. 577, 578; Wells Lumber Co. v. C. M. & St. P. Ry. Co., 38 I. C. C. 464, 466; California Corrugated Culvert Co. v. A. G. S. R. R. Co., 38 I. C. C. 568; Brooks Coal Co. v. Wabash R. R., 39 I. C. C. 426; Wilkes & Co. v. A. G. S. R. R., 39 I. C. C. 447; Ennis, Brown Co. v. A. T. & S. F. Ry., 39 I. C. C. 209, 210; Wilkes & Co. v. A. G. S. R. R. Co., 39 I. C. C. 447; Friedlaender & Co. v. C. of G. Ry., 40 I. C. C. 506; Mutual Wheel Co. v. N. C. & St. L. Ry., 40 I. C. C. 612, 614; Goodman Mfg. Co. v. C. M. & St. P. Ry. Co., 40 I. C. C. 675, 676; Division of Joint Rates for Transportation of Stone, 41 I. C. C. 321, 329; Taunton Dye Works & Bleachery Co. v. N. Y. N. H. & H. R. R. Co., 42 I. C. C. 367, 368; La Crosse Shippers' Asso. v. C., I. & L. Ry. Co., 43 I. C. C. 520, 524; Second Duluth Case, 46 I. C. C. 585, 590; Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 107; Package Mfg. Co. v. K. C. S. Ry. Co., 47 I. C. C. 84; Ohio Cut Stone Co. v. N. Y. C. R. R. Co., 48 I. C. C. 69, 74; Inman-Poulsen Lum. Co. v. S. P. Co., 49 I. C. C. 600; Brunswich-Balke Collender Co. v. P. M. R. R., 49 I. C. C. 530, 533; Oregon Fruit Co. v. S. P. Co., 50 I. C. C. 719, 722; Atchison, T. & S. F. Ry. Co. v. Spiller, 249 Fed. 677; Guyton & Harrington Mule Co. v. L. & N. R. R., 50 I. C. C. 546, 551; A. H. Kerr & Co. v. S. S. Ry., 52 I. C. C. 287, 290; Michigan Cent. R. R. v. Elliott, 256 Fed. 18; Seaboard By Product Coke Co. v. E. R. R. Co., 53 I. C. C. 171, 172; Sligo Iron Store Co. v. W. M. Ry. Co., 53 I. C. C. 520; Guilford Lumber Mfg. Co. v. S. Ry., 53 I. C. C. 669, 679; Iten Biscuit Co. v. C. B. & Q. R. R. Co., 53 I. C. C., 729, 731, 733; Booth Fisheries Co. v. American Express Co., 53 I. C. C., 735, 736, 737; Continental Coal Corporation v. L. N., 53 I. C. C. 378, 382; Roberts & Schaefer Co. v. Director General, 55 I. C. C. 277, 278; Inman-Poulsen Lumber Co. v. So. Pac. Ry., 55 I. C. C. 357, 362; Park v. L. & N. Ry., 55 I. C. C. 703, 705, 706, 707; Geo. A. Hormel & Co. v. C. G. W., 56 I. C. C. 419, 425; Spiller v. Atchison, T. & S. F. Ry. Co., 40 Sup. Ct. 466, 472; Home Packing & Ice Co. v. Director General, 57 I. C. C. 691, 695, 697; Montana Oil Co. v. A. T. & S. F. Ry., 58 I. C. C. 85, 91; Conover v. M. & St. L. R. R. Co., 58 I. C. C. 729, 730; Cannon Mfg. Co. v. Southern Ry., 59 I. C. C. 594, 596; Badger Lumber Co. v. A. T. & S. F. Ry. Co., 58 I. C. C. 97, 103; Wharton Steel Co. v. Director General, as Agent, 57 I. C. C. 11, 24; Coakley v. Director General, as Agent, 59 I. C. C. 141, 144, 145; Empress Coal Co. v. O. W. R. R. & N. Co., 59 I. C. C. 736, 744; Wheeler & Timlin Lumber Co. v. Director General, 60 I. C. C. 265, 266; Cape Girardeau Portland Cement Co. v. Director General, 60 I. C. C. 269, 271; Producers Refining Co. v. Director General, 62 I. C. C. 14, 17; Schlicher v. Director General 62 I. C. C. 181, 185; United Iron Works Inc. v. A. T. & S. F., 63 I. C. C. 184, 192; Foster Lumber Co. v. Director General, as Agent, 63 I. C. C. 139, 140; Selma Chamber of Commerce v. Director General, as Agent, 63 I. C. C. 157, 158; Macon Chamber of Commerce v. N. Y., N. H. & H. R. R. Co., 63 I. C. C. 327, 334; Le Prestre Miller Stock Farms (Inc.) v. E. R. R. Co., 64 I. C. C. 149; Tacoma Junk Coompany, v. N. P. Ry. Co., 64 I. C. C. 305; Standard Oil Co. v. Director General, as Agent, 66 I. C. C. 37, 41, 42; Florida Citrus Exchange v. Director General, as Agent, 66 I. C. C. 307; Tanners Council v. Director General, as Agent, 66 I. C. C. 415, 419; Albers Bros. Milling Co. v. Director General, as Agent, 66 I. C. C. 593; C. L. S. & S. B. Ry. Co. v. I. C. R. R. Co., 74 I. C. C. 609, 610; Carnation Milk Products Co. v. Director General, 78 I. C. C., 44, 45; Montrose Oil Refining Co. v. St. L. S. F. Ry., 78 I. C. C. 572, 573; Lubrite Refining Co. v. D. G. C. Ry., 80 I. C. C. 515, 518.

§10½a. Paper Rate.

CASES 1887-1908

(a) Paper Rates not just basis for reparation. Missouri & Kansas Shippers Asso. v. M. K. & T. Ry. Co. 12 I. C. C. 483.

§11. Rate via Competing Line.

See Evidence §47; Routing and Misrouting §5.

CASES 1887-1908

(a) There are two routes over which

coal may be shipped from the Thacker District, in West Virginia, to Alexandria, Ind.; one by the N. & W. and C. C. C. & St. L., the shorter line, and one by the N. & W., H. V., and L. E. & W. Complainants in 1903 had shipped to them at Alexandria, Ind., eight carloads of coal from the Thacker District, W. Va., over the latter route, and by that line the published rate was $1.90 per ton, while over the other route the rate was $1.65 per ton. November 26, 1903, the rate by the route used was reduced to $1.65, and later the other line lowered its rate to $1.55. Complainants, acting on behalf of the consignor, demanded reparation. The evidence relates solely to the rate itself, and the fact that a lower rate was in force over a competing short line. HELD, that the rate charged is not shown to have been unreasonable, and that, in view of their published tariff, the carriers in the through line over which the coal was carried could not lawfully apply the lower rate in effect over the competing line. J. J. Marley & Son v. Norfolk & W. R. Co., 11 I. C. C. 616.

IMPORTANT CASES SINCE 1908

(b) In a claim for reparation it is not sufficient to prove the unreasonableness of a rate merely to show that at the time of shipment a lower rate was in effect via another competing route. Delray Salt Co. v. M. C. R. R. Co., 18 I. C. C. 247.

(c) The Commission declines to award reparation on the basis of an out-of-line rate. Chaffin Coal Co. v. C. M. & St. P. Ry. Co., 24 I. C. C. 321, 322.

(d) The existence of lower rates over routes other than a particular route of movement, and a subsequent reduction of the rate over the particular route, are not alone sufficient to establish the unreasonableness of the previous rate. Fullerton Powell Hardwood Lumber Co. v. G. C. & S. F. Ry. Co., 41 I. C. C. 625, 626.

(e) Had a shipper left routing open or observed tariff restriction so that several routes over which a lower rate applied could have been used he would be entitled to reparation if his shipment moved over a higher rated route, but when he routed shipments via a higher rated route through an error of his agent, the fact of itself does not entitle him to reparation. Every shipper is charged with notice of the terms of interstate tariffs governing his shipments; and the mere showing of the existence of lower rates over other routes and comparisons based upon distance alone, are insufficient to establish the unreasonableness of the rate charged. South Chester Tube Co. v. M., K. & T. Ry. Co., 64 I. C. C. 78.

(f) Whether the shipments were routed by shipper voluntarily or on instructions of the carriers agent is immaterial if the rates charged were unreasonable. Kansas Rock Salt Co. v. A. T. & S. F. Ry. 69 I. C. C. 745, 751.

ALL OTHER CITATIONS

Lindsay & Co., Ltd., v. C. M. & St. P. Ry. Co., Unrep. Op. A219; Homer Lumber Co. v. S. A. L. Ry. Co., Unrep. Op. A351; Miller & Co. v. Wabash R. R. Co., Unrep. Op. A-722; Swift & Co. v. S. A. L. Ry. Unrep. Op. A.787; Athens Pottery Co. v. T. & N. O. R. R. Co., Unrep. Op. A-796; Lewis Mfg. Co. v. C. R. I. P. Ry. Co., Unrep. Op. A-819; Plymouth Clay Products Co. v. Ft. D. D. M. & S. R. R. Co., Unrep. Op. A-833; Fullerton Lumber Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-834; Trostel & Sons Co. v. L. V. R. R. Co., Unrep. Op. A-932; Ladd & Co. v. Gould S. E. Ry. Co., 36 I. C. C. 179, 183; American Column & Lumber Co. v. C. & O. Ry. Co., Unrep. Op. 2224; Hartley v. C. & N. W. Ry. Co., Unrep. Op. 2246; Abel & Roberts v. M. P. Ry. Co. 37 I. C. C. 712, 713; Lamb-Fish Lumber Co. v. I. & M. V. R. R. Co., 38 I. C. C. 278, 280; Utah Wholesale Grocery Co. v. N. & W. Ry., 39 I. C. C. 345; Lukens Lum. Co. v. A. C. L. R. R., 400 I. C. C. 295; Harrison Bros. & Co. v. L. & N. R. R., 46 I. C. C. 515, 516; Wilke v. C. A. R. R., 50 I. C. C. 73; American Lumber & Export Co. v. L. & N. R. R., 50 I. C. C. 259; Proctor & Gamble Co. v. B. & A. R. R., 50 I. C. C. 131; National Supply Co. v. Union Pacific Railroad Company, 52 I. C. C. 379; Consolidated Oil Refining Co. v. K. C. S. Ry. Co., 53 I. C. C. 96, 99; Jamieson v. P. R. R., Co., 53 I. C. C. 143; Johns-Manville Co. v. C. M. & St. P. Ry. Co., 53 I. C. C. 169; Gross v. Director General, 53 I. C. C. 429; Zelnicker Supply Co. v. Director General, 53 I. C. C. 643; Fort Smith Spelter Co. v. A. B. C. R. R. Co., 53 I. C. C. 694, 696; Woolson Spice Co. v. Director General, 53 I. C. C. 698; Aetna Explosives Co. v. Director General, 53 I. C. C. 140, 142; Meeker & Co. v. C. R. R. of N. J., 57 I. C. C. 414, 416; Meron v. Director General, 60 I. C. C. 725; Nason Coal Co. v. Director General,

as Agent, 60 I. C. C. 214; Hawkins v. O. S. L. R. R. Co., 61 I. C. C. 475.

§12. Readjustment of Rates.

See Evidence §66; Relative Rates.

IMPORTANT CASES SINCE 1908

(a) When carriers have reduced rates of their own volition or in compliance with orders it does not necessarily follow that reparation should be awarded on shipments which moved under preexisting rates; and Commission has frequently declined to award reparation when rates reduced have been in effect for long periods and reduction applied throughout a large territory and affected shippers not parties to the proceedings Boardman Co. v. S. P. Co., 37 I. C. C. 81, 86, 87.

(b) It would obviously be unfair, when a general rate adjustment is made, to hold that the uniform basis finally chosen for the purpose of eliminating existing inequalities and inconsistencies should also be used by shippers as a basis for obtaining refunds of charges paid before the readjustment took place. Official Classification Rates on Paper, 38 I. C. C. 120, 149.

(c) In a wide readjustment of rates involving both increases and reductions, reparation in many cases has been denied. Giving due consideration to the relationship between the complainant and the defendant, reparation is denied on anthracite coal from the anthracite region in Pennsylvania to tidewater and other points. Delaware Lackawanna & Western Coal Co. v. D. L. & W. R. R., 46 I. C. C. 506, 508, 510.

(d) In a comprehensive and systematic readjustment of rates prescribed by the Commission in a large section of territory, claims for reparation will not ordinarily be allowed, and to award reparation in the instant case would be a departure from this principle. Dewey Portland Cement Co. v. A. T. & S. F. Ry., 56 I. C. C. 444, 448.

(e) The Commission has repeatedly held that the awarding of reparation does not necessarily follow the reduction of a rate, whether the reduction is by voluntary action of the carrier or by order of the Commission. In the absence of proof of damage to the shipper, the fact that carriers have charged rates which contravene the long and short haul rule of the fourth section of the act is not of itself a sufficient basis for an award of reparation. Indian Refining Co. v. Director General, 59 I. C. C. 246, 247.

(f) Where readjustments have been initiated by carriers the Commission has found that exercise of their judgment in good faith and within reasonable limits should not be at peril of liability for reparation, that the awarding of reparation by no means necessarily follows the reduction of a rate by their voluntary action. Sapulpa Refining Co. v. Director General, 62 I. C. C. 493, 494.

(g) A large number of complaints were filed involving a large number of points scattered throughout an extensive territory, and in order that the commission's findings might result in uniformity, it was deemed desirable to consider them as a whole. Complainants contended that had each complaint been decided on its own merits, with conclusions similar to those reached, reparation would have followed as a matter of course. HELD: Proceeding more in the nature of a general investigation than the determination of individual or consolidated complaints. Holmes & Hallowell Co. v. G. N. Ry. Co., 69 I. C. C. 11, 17.

(h) Carriers should not be at peril of liability for reparation merely because reduction in rates was authorized in course of readjustment. Atlantic Refining Co., 58 I. C. C., 46; Pine Plume Lumber Co., 59 I. C. C., 371. Dixie Portland Cement Co. v. Director General, 83 I. C. C. 417, 419.

(i) The Commission has consistently denied reparation in cases where general readjustments have been made in extensive territories, involving increases and reductions. Iola Cement Mill Traffic Asso. v. A. W. Ry., 87 I. C. C. 451, 468.

ALL OTHER CITATIONS

Fidelity Lumber Co. v. G. N. Ry. Co. 193 Fed. 924, 928; 929; Pacific Coast Lumber Mfrs. Ass'n. v. N. P. Ry. Co. 16 I. C. C. 465, 467; Eddy v. A. T. & S. F. Ry. Co. Unrep. Op. 367; Mack Mfg. Co. v. P. C. C. & St. L. Ry. Co., Unrep. Op. 521; Jackel Bros. v. D. L. & W. R. R. Co., Unrep. Op. 146; Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 27 I. C. C. 165, 168; Commercial Club of Omaha v. A. & S. R. Ry. Co., 27 I. C. C. 302, 317; Topeka Traffic Asso. v. A. & V. Ry. Co., 27 I. C. C. 428, 437; Memphis Freight Bureau v. I. C. R. R. Co., 27 I. C. C. 507, 518; Texas Refining Co. v. A. & V. Ry. Co., 32 I. C. C. 192,

194; Midcontinent Oil Rates, 36 I. C. C. 109, 129; Rates on Bituminous Coal, 36 I. C. C. 401, 428; Arlington Heights Fruit Exchange v. S. P. Co., 39 I. C. C. 88, 92; Chattanooga Implement & Mfg. Co. v. L. & N. R. R. Co., 40 I. C. C. 146, 149; The Missouri River-Nebraska Cases, 40 I. C. C. 201, 260; National Commercial Fixture Mfrs. Asso. v. A. A. R. R. Co., 40 I. C. C. 484, 496; Inland Seed Co. v. O. W. R. R. & N. Co., 40 I. C. C. 517, 521; S. W. Millers League v. A. T. & S. F. Ry., 46 I. C. C. 299, 300; D. L. & W. Coal Co. v. D. L. & W. R. R., 46 I. C. C. 506, 509; Lackawanna & Western Coal Co. v. D. L. & W. R. R., 46 I. C. C. 506, 508, 510; Brown & Co. v. S. Ry., 46 I. C. C. 536, 540; Sunderland Bros. Co. v. S. T. & S. F. Ry., 48 I. C. C. 377, 378; Beaver Valley Milling Co. v. C. M. & St. P. Ry., 49 I. C. C. 160; Blackman & Griffin Co. v. A. C. & Y. Ry., 49 I. C. C. 649, 690; Kansas Car-Lot Egg Shippers' Asso. v. B. & O. R. R. Co., 53 I. C. C. 59, 65; E. Clemens Horst Co. v. S. P. Ry., 52 I. C. C. 356; Henry King & Co. v. N. C. & St. L. Ry., 52 I. C. C. 481, 483; National Tube Co. v. L. T. R. R., 55 I. C. C. 469, 482; Armour Grain Co. v. Director General, 58 I. C. C. 306, 307; Atlantic Refining Co. v. Director General, as Agent, 58 I. C. C. 46, 47; Indian Refining Co. v. Director General, 59 I. C. C. 240; Pine Plume Lumber Co. v. Director General, 59 I. C. C. 371, 372; National Petroleum Asso. v. M. K. & T. 58 I. C. C. 415, 416; Northern Potato Traffic Asso. v. A. T. & S. F., 58 I. C. C. 592, 595.

§13. Res Adjudicata.

See Evidence V.

IMPORTANT CASES SINCE 1908

(a) In cases before this Commission involving rates neither the plea of res adjudicata nor stare decisis as used at common law has any standing as affecting shipments moving subsequent to the decision of the Commission relied on. Waco Freight Bureau v. H. & T. C. R. R. Co., 19 I. C. C. 22, 24.

(b) Rates reasonable at the present time may within the period of two years become very unreasonable by reason of changes in circumstances and conditions, economic transportation, or the like. It should be just as apparent that a rate which was unreasonable two years or more ago may become reasonable by reason of such changes in conditions. A plea of estopped by reason of former adjudication is not good in so far as an investigation of present rates is concerned, although in a former proceeding a decree of a court was a general finding for the defendants on all the issues of fact. National Hay Ass'n. v. M. C. R. R. Co., 19 I. C. C. 34, 37.

ALL OTHER CITATIONS

Nicola, Stone & Myers Co. v. L. & N. R. R. Co., 14 I. C. C. 199, 206.

§14. Special Rate.

See Special Rates.

IMPORTANT CASES SINCE 1908

(a) The Commission cannot permit a refund on a particular shipment for the purpose of enabling carriers to make good a rate not in effect when the shipment moved, but which they had agreed to protect, it being necessary to show that the rate charged was unreasonable and to award reparation on the basis of a reasonable rate. Crowell & Spencer Lumber Co. v. T. & P. Ry. Co., 17 I. C. C. 333, 334.

ALL OTHER CITATIONS

Holcomb-Hayes Co. v. I. C. R. R. Co., 13 I. C. C. 16, 19.

§15. Unpublished Charges.

See Evidence §60; Unpublished Rates.

IMPORTANT CASES SINCE 1908

(a) The rule of an unpublished interstate rate is illegal, and so it has been held. Refund must be made of unpublished charges and those in excess of published charges. Northern Lumber Mfrs. Co. v. T. & P. Ry. Co., 19 I. C. C. 54, 55.

(b) Complainant routed shipment via the line of a water carrier not filing tariffs with the Commission. Routing instructions disregarded and shipment forwarded all rail. HELD, following Conference Rulings 93 and 354, reparation denied, as there is no official measure of the accuracy of the overcharge alleged. American Cement Plaster Co. v. Ft. W. & D. C. Ry. Co., 58 I. C. C. 435.

ALL OTHER CITATIONS

National Lumber Co. v. S. P. L. A. & S. L. R. R. Co., 15 I. C. C. 434.

§16. Voluntary or Subsequent Reductions.

See Evidence §64; Voluntary Rates; Reasonableness of Rates §32½.

CASES 1887-1908

(a) Complainant shipped thirteen carloads of beer between January 20, 1901, and March 4, 1902, as through shipments

over defendant's lines, from Milwaukee, Wis., to Woodward, Okla., upon eight carloads of which he was charged a rate of 73 cents per one hundred pounds, and upon five carloads 75 cents; whereas during the time of such shipments defendants' rates on beer from Milwaukee to Oklahoma City, Okla., more distant than Woodward, were only 53 cents per one hundred pounds. It appears that the rate to Woodward was 53 cents in 1892 and up to March 1, 1899, while the rate to Oklahoma City was 76 cents in 1892, which was reduced in 1893 to 53 cents, and so continued to 1899; and it also appears that on April 9, 1902, defendants reduced such rates to Woodward to 53 cents, where they have ever since remained. HELD, That the rate charged upon complainant's shipments were unjust and unreasonable to the extent of $715.05, and that complainant is entitled to reparation in that amount. Cutter v. Atchison, T. & S. F. R. Co., 11 I. C. C. 689.

(aa) Complainant attacked as unreasonable class rate charged on cottonseed, carloads, from Marietta, Okla., to Cleburne, Tex., and from Berwyn, Okla., to Cleburne, Tex. Rate charged class rate of 27c and 29c respectively, the defendant subsequently publishing a commodity rate of 16c and 18c respectively, satisfactory to complainant, and expressed a willingness to award reparation. HELD, rate attacked unreasonable to extent it exceeded rates subsequently established, reparation awarded. E. W. Pressley v. G. C. & S. F. Ry., 12 I. C. C. 518.

IMPORTANT CASES SINCE 1908

(b) It is to the interest of the shipping public in nowise to embarrass carriers in decreasing rates when the latter thinks such decrease equitable and therefore the Commission will not adopt a policy by which, upon the voluntary reduction of a rate, a shipper who has previously paid the higher rate may recover as damages whatever difference there may be between the old and the new, where application has not been made either to the railroad or to the Commission for a reduction of the rate prior to the time at which the railroad itself makes such reduction and where it does not clearly appear that the rate complained of was unreasonable. Foster Lumber Co. v. A. T. & S. F. Ry. Co., 15 I. C. C. 56, 57.

(c) Where rates have been established by carriers in good faith and acquiesced in by shippers without protest, this Commission will not award reparation, even though the rate is reduced, unless it clearly appears that the rates paid in the past have been excessive. Penrod Walnut & Veneer Co. v. C. B. & Q. R. R. Co., 15 I. C. C. 326, 328.

(d) The voluntary reduction of a rate by a carrier is not of itself such a proof of the unreasonableness of the former rate as to form a proper basis for an award of reparation. Sunderland Bros Co. v. C. B. & Q. R. R. Co., 18 I. C. C. 512, 513.

(e) The voluntary reduction of a rate by a carrier does not, in itself, without proof that the former rate was unreasonable, furnish a sufficient basis for reparation. Pierce v. P. L. E. R. R. Co., 23 I. C. C. 89, 91.

(f) A mere showing that rates were subsequently reduced is insufficient to warrant a finding of unreasonableness. Walsh Fire Clay Products Co. v. Director General, as Agent, 73 I. C. C. 410, 412.

(g) The subsequent reduction of a rate over the route of movement, or the contemporaneous maintenance of lower rates over other routes, does not warrant an award of reparation. Chicago Lake Shore & South Bend Ry. v. I. C. R. R., 74 I. C. C., 609, 610.

(h) The Commission has consistently refused to award reparation merely because reductions in rates followed in the course of readjustments of the increases originally made under authority of G. O. 28. Carnation Milk Products Co. v. Director General, 78 I. C. C. 44, 45.

(i) The Commission has with few exceptions awarded reparation to the basis of the lower rate in effect from the more distant point when such rate was published subject to rule 77, though no oral or written request has been made upon the carrier for such rate prior to the movement of the shipments from the intermediate point. Montrose Oil Refining Co. v. St. L. S. F. Ry., 78 I. C. C. 572, 573.

(j) The Commission has condemned the awarding of reparation whenever a rate is voluntarily reduced by carriers. Lubrite Refining Co. v. D. G. C. Ry., 80 I. C. C. 515, 518.

(k) The commission has consistently

refused to award reparation merely because reductions in rates followed in the course of readjustments of increases originally made under authority of General Order No. 28 of director general. Carnation Milk Products Co. v. Director General, as Agent, 78 I. C. C. 44, 45.

ALL OTHER CITATIONS

Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co., 16 I. C. C. 558; Menefee Lumber Co. v. T. & P. Ry. Co. 15 I. C. C. 49, 51; Harlow Lumber Co. v. A. C. L. R. R. Co. 15 I. C. C. 501, 503; Mose Smith & Co. v. Mo. & N. Ark. R. R. Co., 15 I. C. C. 449; Pilant v. A. T. & S. F. Ry. Co., 15 I. C. C. 178, 181; Thompson, Thayer & McCowen v. I. C. R. R. C., Unrep. Op. 482; Tuthill Spring Co. v. C. & N. W. Ry. Co. Unrep. Op. 495; Moore & Co. v. S. A. L. Ry. Co., Unrep. Op. 498; Browne Grain Co. v. M. L. & T. R. R. & S. S. Co., Unrep. Op. 499; Gamble-Robinson Commission Co. v. St. L. & S. F. R. R. Co., Unrep. Op. 506; Sunderland Bros. Co. v. M. K. & T. Ry. Co. Unrep. Op. 508; Fort Smith Wholesale Grocery Co. v. Ft. S. & W. R. R. Co., Unrep. Op. 509; Michigan Ammonia Works v. M. & St. L. R. R. Co., Unrep. Op. 511; Standard Oil Co. v. K. C. S. Ry. Co., Unrep. Op. 512; Standard Oil Co. v. C. C. C. & St. L. Ry. Co., Unrep. Op. 513; Kellogg Switchboard & Supply Co. v. C. & N. W. Ry. Co., Unrep. Op. 514; Boyd v. O. W. R. R. & Nav. Co., Unrep. Op. 519; Harey & Co., v. C. & N. W. Ry. Co., Unrep. Op. 522; Wells-Higman Co. v. T. & P. Ry. Co., Unrep. Op. 527; Chanute Refining Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 528; Union Tanning Co. v. L. & N. R. R. Co. Unrep. Op. 542; Hardy v. L. & N. R. R. Co., Unrep. Op. 548; American Hardwood Co. v. St. L. I. M. & S. Ry. Co. Unrep. Op. 550; Schoenhofen Brewing Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 566; International Creosoting & Construction Co. v. N. O. T. & M. R. R. Co., Unrep. Op. 568; Comstock & Co. v. N. & M. Ry. Co., Unrep. Op. 575; Central Commercial Co. v. T. & M. Ry. Co., Unrep. Op. 579; Byrnes v. Wells Fargo & Co. Unrep. Op. 589; Lamb Co. v. C. G. W. Ry. Co., Unrep. Op. 5; American Sand & Gravel C. M. & St. P. Ry. Co., Unrep. Op. 13; Armour & Co. v. C. M. & St. P. Ry. Co. Unrep. Op. 18; National Paper Mills & Foller Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 19; Winona Malting Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 21; Blake Moffet & Towne v. C. M. & St. P. Ry. Co., Unrep. Op. 29; Hamilton Grange No. 57 v. Penn. R. R. Co. Unrep. Op. 39; Acme Cement Plaster Co. v. U. P. R. R. Co., Unrep. Op. 41; Polson Implement Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 42; Simonds-Shields Grain Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 44; Union Sand & Material Co. v. C. M. & St. P. Ry. Co. Unrep. Op. 52; Clinton Bridge & Iron v. C. M. & St. P. Ry. Co., Unrep. Op. 55; Red Wing Linseed Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 59; Acme Cement Plaster Co. v. G. R. & I. Ry. Co., Unrep. Op. 62; Dreyfus Bros. v. L. & N. R. R. Co., Unrep. Op. 63; Independent Brewing & Malt Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 65; Jorden & Sons Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 66; Gamble-Robinson Commission Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 70; Rowell Mfg. Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 71; Austin Mfg. Co. v. I. C. R. R. Co., Unrep. Op. 72; Canton Fertilizer & Chemical Co. v. W. & L. E. R. R. Co., Unrep. Op. 87; Updike Grain Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 91; Swift & Co. v. D. N. W. & P. Ry. Co., Unrep. Op. 92; Gulf Lumber Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 95; Schulitz Brewing Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 96, 104, 105; Pabst Brewing Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 97, 98, 100, 254, 259; Southern Bitulithic Co v. So. Ry. Co., Unrep. Op. 106; Pabst Brewing Co. v. G. V. G. N. Ry. Co., Unrep. Op. 111; Ross v. C. M. & St. P. Ry. Co., Unrep. Op. 112; Hammond Packing Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 120; Winkel & Co. v. Spokane International Ry. Co., Unrep. Op. 122; Swift & Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 130; Northwestern Traffic & Credit Bureau v. C. M. & St. P. Ry. Co., Unrep. Op. 131; Quartz Glass & Mfg. Co. v. P. C. C. & St. L. Ry. Co., Unrep. Op. 140; Riverside Fibre & Paper Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 141; Port Huron Engine & Thresher Co. v. C. R. I. & P. Ry. Co., Unrep. Op. 147; General Chemical Co. v. Me. S. S. Co., Unrep. Op. 151; American Tobacco Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 167; Ingersoll-Rand Co. v. C. R. R. Co. of N. J., Unrep. Op. 210; Dekota Cereal Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 178; International Harvester Co. of America v. C. M. & St. P. Ry. Co., Unrep. Op. 179; Carr Mfg. Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 180; Moline

Plow Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 186; Alexander & Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 187; Southern Cotton Oil Co. v. A. C. L. R. R. Co., Unrep. Op. 119; Morris & Co. v. L. S. & M. S. Ry. Co., Unrep. Op. 182; Val Blatz Brewing Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 184; Pabst Brewing Co. v. C. B. & Q. R. R. Co., Unrep. Op 195; Emerson Mfg. Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 212; Murphy v. C. M. & St. P. Ry. Co., Unrep. Op. 192; Oldbury Electro-Chemical Co. v. C. H. & D. Ry. Co., Unrep. Op. 204; Midland Linseed Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 205; Thomas Produce Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 209; Strange Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 207; Spartenburg Ry. Gas & Electric Co. v. P. R. R. Co., Unrep. Op. 214; Steinhardt & Co. v. T. & P. Ry. Co., Unrep. Op. 215; Carlisle Commission Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 217; Holmes & Co. v. O. S. L. R. R. Co., Unrep. Op. 218; Wisconsin Pulp & Paper Mfrs. v. D. & I. R. R. R. Co., Unrep. Op. 225; Racine-Sattley Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 234; Browne v. American Express Co., Unrep. Op. 237; Herf & Frerichs Chemical Co. v. S. Ry. Co., Unrep. Op. 244; Jackson Grocery Co. v. S. P. Co., Unrep. Op. 245; Terhune Lumber Co. v. G. & F. Ry. Co., Unrep. Op. 247; Pabst Brewing Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 255; Menasha Woodenware Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 258; Rudgear-Merle Co. v. Goodrich Transit Co., Unrep. Op. 264; Milwaukee Corrugating Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 273; Robinson Clay Product Co. v. Erie R. R. Co., Unrep. Op. 275; Gamble-Robinson Commission Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 286; Wisconsin Iron & Metal Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 300; Davis Sewing Machine Co. v. P. C. C. & St. L. Ry. Co., Unrep. Op. 301; Hall & Co. v. S. P. Co., Unrep. Op. 306; Cochrane Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 307; Western Gas Construction Co. v. W. R. R. Co., Unrep. Op. 230; Isabell-Brown Co. v. L. S. & M. S. Ry. Co., Unrep. Op. 231; Minnequa Coal Co. v. D. & R. G. R. R. Co., Unrep. Op. 268; Arnold v. M. P. Ry. Co., Unrep. Op. 293; Christian & Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 340; Abeles & Co. v. St. L. S. W. Ry. Co., Unrep. Op. 326; Germain Co. v. A. B. & A. R. R. Co., Unrep. Op. 277; Advance Thresher Co. v. M. C. R. R. Co., Unrep. Op. 283; Hammond v. B. & M. R. R. Co., Unrep. Op. 313; Hope Cotton Oil Co v. T. & P. Ry. Co., Unrep. Op. 336; Acme Cement Plaster Co. v. P. M. R. R. Co., Unrep. Op. 345; Miller v. T. & B. V. Ry. Co., Unrep. Op. 349; Port Huron Engine & Thresher Co. v. G. C. & S. F. Ry. Co., Unrep Op. 352; Ralston Purina Co. v. M. & O. R. R. Co., Unrep. Op. 354; Swanson v. C. B. & Q. R. R. Co., Unrep. Op. 356; Portner Brewing Co. v. S. Ry. Co., Unrep. Op. 361; Western States Portland Cement Co. v. M. P. Ry. Co., Unrep. Op. 363; Moon v. C. R. I. & P. Ry. Co., Unrep. Op. 364; Murphy Distilling Co. v. E. & T. H. R. R. Co., Unrep. Op. 366; Empson Packing Co. v. C. & M. Ry. Co., Unrep. Op. 431; Oshkosh Fuel Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 432; Sims v. A. C. L. R. R. Co., Unrep. Op. 434; Oakland Warehouse Co. v. C. G. W. R. R. Co., Unrep. Op. 443; Sunderland Bros. Co. v. C. & N. W. Ry. Co., Unrep. Op. 445; Eddy v. A. T. & S. F. Ry. Co., Unrep. Op. 367; Swift & Co. v. G. C. & S. F. Ry. Co., Unrep. Op. 372; Haas & Sons v. M. K. & T. Ry. Co., Unrep. Op. 373; Willson Bros. Lumber Co. v. P. S. N. R. R. Co., Unrep. Op. 375; Tremont Lumber Co. v. T. & G. Ry. Co., Unrep. Op. 383; Bearman Fruit Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 395; Schlitz Brewing Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 405; Shuttle & Bobbin Co. v. T. F. Ry. Co., Unrep. Op. 407; Chamber of Commerce of Houston v. H. E. & W. T. Ry. Co., Unrep. Op. 408; Cook Co. v. P. Co., Unrep. Op. 421; Blackwell Milling & Elevator Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 483; Paonia Packing Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 487; Anheuser-Busch Brewing Co. v. M. P. Ry. Co., Unrep. Op. 497; Elsinore Cattle Co. v. P. Exp. Co., Unrep. Op. 500; Godfrey & Sons Co. v. N. Y. C. & H. R. R. R. Co., Unrep. Op. 503; Electric Malting Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 504; Michigan Ammonia Works v. M. & St. L. R. R. Co., Unrep. Op. 511; Swift & Co. v. C. B. & Q. R. R. Co., Unrep. Op. 516; Buffalo Fertilizer Co. v. L. & N. R. R. C., Unrep. Op. 573; Reynolds-Davis & Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. 551; Great Western Portland Cement Co. v. M. K. & T. Ry. Co., Unrep. Op. 559; Elkhart Bristol Board & Paper Co. v. C. C. C. & St. L. Ry. Co., Unrep. Op. 561; Buffalo Fertilizer Co. v. L. &

N. R. R. Co., Unrep. Op. 573; Moore v. S. Ry. Co., Unrep. Op. 574; Wisconsin Bridge & Iron Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 585; Chaffin Coal Co. v. B. & O. R. R. Co., Unrep. Op. 585; Peerless Woolen Mills v. C. N. O. & T. P. Ry. Co., Unrep. Op. 594; Howard & Co. v. N. C. & St. L. Ry. Co., Unrep. Op. 50; Radinsky v. Colo. & So. Ry. Co., Unrep. Op. 88; Checotah Cotton Oil Co. v. M. K. & T. Ry. Co., Unrep. Op. 143; Sheboygan Mineral Water Co. v. M. C. R. R. Co., Unrep. Op. 197; Michigan Hardwood Mfrs. Ass'n. v. Freight Bureau, 27 I. C. C. 32, 34; Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 27 I. C. C. 165, 166; Minneapolis Steel & Machinery Co. v. C. M. & St. P. Ry. Co., 26 I. C. C. 193, 194; Esson Granite Co. v. S. Ry. Co., 26 I. C. C. 448, 450; Ball Lumber Co. v. T. & P. Ry. Co., 25 I. C. C. 437, 438; Kendrie & Bolthoff Mfg. Co. v. U. P. R. R. Co., Unrep. Op. A. 20; American Dynalite Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A. 13; Pease Grain & Seed Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-28; Johnson v. D. & R. G. R. R. Co., Unrep. Op. A-58; Dunlevie Lumber Co. v. A. C. L. R. R. Co., Unrep. Op. A-39; Fullerton Lumber Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-42; American Hardwood Lumber Co. v. M. P. Ry. Co., Unrep. Op. A-65; Lewis-Vidger Co. v. S. P. Co., Unrep. Op. A-50; Kansas Chemical Mfg. Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-55; Kuh Bros. v. A. T. & S. F. Ry. Co., Unrep. Op. A-67; Olive & Meyers Mfg. Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-94; Fullerton Lumber Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-95; Warren v. N. O. & N. E. R. R. Co., Unrep. Op. A-27; American Sumatra Tobacco Co. v. L. &. N. R. R. Co., Unrep. Op. A-43; Swanson v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-69; Johnson v. D. & R. G. R. R. Co., Unrep. Op. A-58; Milwaukee-Western Fuel Co. v. C. & N. W. Ry. Co., Unrep. Op. A-92; Florida Citrus Exchange v. S. A. Ry. Co., Unrep. Op. A-264; Mills v. B. & S. Ry. Co., A-268; Kunz Grain Co. v. M. & St. L. R. R. Co., A-280; Barnes Grocer Co. v. St. L. I. M. & S. Ry. Co., A-283; Dodds Lumber Co. v. C. B. & Q. R. R. Co., A-294; Bradford-Kennedy Lumber Co., v. T. & N. O. R. R. Co., A-307; Holland v. Uintah Ry. Co., A-329; Clapp & Co. v. Am. Exp. Co., A-335; Steinhardt & Co. v. T. & P. Ry. Co., A-338; Stewart v. C. & S. Ry. Co., A341; Sterling Pickling Works v. W. R. R. Co., A-348; Burson Knitting Co. v. C. M. & St. P. Ry. Co., A-375; Gisholt Machine Co. v. C. & N. W. Ry. Co., A391; Buffalo Cold Storage Co. v. S. A. & A. P. Ry. Co., A393; Colorado Mfg. Asso. v. A. T. & S. F. Ry. Co., 28 I. C. C. 82, 91; Bryant Co. v. Ft. W. & D. C. Ry. Co., 28 I. C. C. 594, 597; Mercantile Lumber & Supply Co. v. St. L. S. W. Ry. Co., 28 I. C. C. 701, 702; American Warehouse Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A103; Laclede-Christy Clay Products Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A105; Clyde Kraut Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A112; Daze v. A. T. & S. F. Ry. Co., Unrep. Op. A113; Strauss & Co. v. S. P. Ry. Co., Unrep. Op. A114; Goldfield Consolidated Mines Co. v. N. Y. N. H. & H. R. R. Co., Unrep. Op. A126; Portland Gold Mining Co. v. P. M. R. R. Co., Unrep. Op. A188; Florien Lumber Co. v. U. P. R. R. Co., Unrep. Op. A-194; Webber-Ayers Hardware Co. v. K. C. S. Ry. Co., Unrep. Op. A-217; Lindsay & Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-219; Pfister & Vogel Leather Co. v. B. & M. R. R. Unrep. Op. A-238; Dewey Bros. Co. v. C. C. C. & St. L. Ry. Co., Unrep. Op. A-110; Beekman Lumber Co. v. S. L. B. & S. Ry. Co., A-119; Henning v. St. L. & S. F. R. R. Co., A-189; Mason v. A. C. L. R. R. Co., A-247; Briggs & Turivas v. I. H. B. R. R. Co., Unrep. Op. A-39; Northwest Auto Supply Co. v. S. I. Ry. Co., A-158; Lee Co. v. I. C. R. R. Co., A-161; Standard Oil Co. (Ky.) v. A. C. L. R. R. Co., A-163; Bristol Door & Lumber Co. v. C. C. & O. Ry. Co., A-197; Stanton Co. v. N. P. Ry. Co., A-226; Coosa Lumber Co. v. S. Ry. Co., A-232; Dunbar-Hansen Co. v. S. P. Co., A-234; Daugherty, McKey & Co. v. F. E. C. Ry. Co., A-253; Florida Citrus Exchange v. S. A. L. Ry., Unrep. Op. A-264; Goldfield Consolidated Mines Co. v. S. P. Co., Unrep. Op. A-266; White Oak Coal Co. v. C. & O. Ry. Co., Unrep. Op. A-271; Atlas Brewing Co. v. P. Co., Unrep. Op. A-289; Kemmerer Hardware & Furniture Co. v. U. P. R. mission Co. v. W. P. Ry. Co., Unrep. R. Co., Unrep. Op. A-293; Boyle Com- Op. A-327; Louisville Cement Co. v. L. & N. R. R. Co., Unrep. Op. A-333; Colorado Portland Cement Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-337; McCaull-Dinsmore Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. A-342; Sterling Picklnig Works v. W. R. R. Co., Unrep. Op. A348;

Cavers Elevator Co., v. M. P. Ry. Co., Unrep. Op. A349; Templeton & Sons v. C. I. & S. R. R. Co., Unrep. Op. A362; Lowe Mfg. Co. v. N. Y. C. & St. L. R. R. Co., Unrep. Op. A378; Smith Lumber Co. v. S. P. Ry. Co., Unrep. Op. A389; Erickson Co. v. C. & N. W. Ry. Co., Unrep. Op. A272; Manhiessenn & Hegeler Zinc Co. v. C. & N. W. Ry. Co., A273; R. R. Com. of La. v. T. & P. Ry. Co., A311; Hinton Fruit Boyle Commission Co. v. W. P. Ry. Co., A327; Maine Spinning Co. v. B. & M. R. R. Co., A350; Heger v. Am. Exp. Co. A397; Hanley Brothers Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A402; Yellow Pine Co. of Philadelphia v. A. C. L. R. R. Co., Unrep. Op. A-404; Memphis Freight Bureau v. U. S. E. Co., Unrep. Op. A424; Cox v. A. T. & S. F. Ry. Co., Unrep. Op. A427; Kansas City Egg Case Filler Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A429; Brenner Lumber Co. v. V. & S. W. Ry. Co., Unrep. Op. A431; Boyle Commission Co. v. O. S. L. R. R. Co., Unrep. Op. A432; Robinson Clay Product Co. v. B. & O. R. R. Co., Unrep. Op. A441; Bigham & Rose V. T. & P. Ry. Co., Unrep. Op. A470; Washburn-Crosby Milling Co. v. B. & O. S. W. R. R. Co., Unrep. Op. A480; Sawyer & Austin Lumber Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A481; Columbus Board of Trade v. S. Ry. Co., Unrep. Op. A493; Trussed Concrete Steel Co. v. E. R. R. Co., Unrep. Op. A512; Moore Stave Co. v. S. Ry. Co., 30 I. C. C. 105, 107; Lorillard Co. v. P. R. R. Co., Unrep. Op. A-556; Curry & Whyte Co. v. G. N. Ry. Co., Unrep. Op. A-568; Clark-Danforth Handle Co. v. I. C. C. C. Co., Unrep. Op. A-570; Muskogee Wholesale Grocer Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-577; Shipp & Son v. L. & N. R. R. Co., Unrep. Op. A-557; Shea Bros. v. T. Ry. Co., Unrep. Op. A-558; Grand Lake Co. v. M. C. R. R. Co., Unrep. Op. A-573; Boice Lumber Co., Inc. v. C. C. & O. Ry. Unrep. Op. A578; Brittain v. N. C. & St. L. Ry., Unrep. Op. A-581; Chestnut-Gibbons Grocer Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-586; Corning Glass Works v. B. & A. R. R. Co., Unrep. Op. A-596; Chattanooga Sewer Pipe & Fire Brick Co. v. A. G. S. R. R. Co., Unrep. Op. A-605; Kalamazoo Tank & Silo Co. v. M. C. R. R. Co., Unrep. Op. A607; Lower Coast Growers' & Shippers' Asso. v. American Express Co., Unrep. Op. A-621; Menasha Woodenware Co. v. M. St. P. & S. S. M. Ry. Co., Unrep. Op. A-651; Carpenter-Olwell Lumber Co. v. N. P. Ry. Co., Unrep. Op. A-658; Fullerton-Mosses Tie Co. v. M. P. Ry. Co., Unrep. Op. A-661; Lathan Co. v. S. Ry. Co., Unrep. Op. A-669; Dixie Cotton Oil Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-672; King Paper Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A-673; American Hair Felt Co. v. C. M. & St. P. Ry .Co., Unrep. ;Op. A-674 Chattanooga Sewer Pipe & Fire Brick Co. v. S. Ry. Co., Unrep. Op. A-676; State of South Dakota v. A. & V. V. Ry. Co., Unrep. Op. A-679; Pacific Fruit Exchange v. S. P. Co., 32 I. C. C. 48; Royster Guano Co. v. A. C. L. R. R. Co., 31 I. C. C. 458, 462; Edgar Moerke v. C. & N. W. Ry. Co., Unrep. Op. A-703; Aetna Powder Co. v. Wabash R. R. Co., Unrep. Op. A-727; Yarbough & Bellinger Co. v. S. Ry. Co., Unrep. Op. A-733; Adelta v. M. K. & T. Ry. Co., Unrep. Op. A-734; Korrick v. A. T. & S. F. Ry. Co., Unrep. Op. A-745; Gregg & Co. v. N. Y. C. & H. R. R. Co., Unrep. Op. A-768; Barnes Grocer Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-769; Tilford-Hunt Lumber Co. v. H. & S. R. R. Co., Unrep. Op. A-772; Lee Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-775; Laclede-Christy Clay Products Co. v. M. P. Ry. Co., Unrep. Op. A-780; Kansas City Bridge Co. v. D. Q. & E. R. R. Co., Unrep. Op. A-782; Swift & Co. v. S. A. L. Ry., Unrep. Op. A-787; Standard Mirror Co v. S. Ry. Co., Unrep. Op. A-788; Krakauer, Zork & Moye's Sucs. Inc. v. P. & N. T. Ry. Co., Unrep. Op. A-793, 794; Athens Pattery Co. v. T. & N. O. R. R. Co., Unrep. Op. A-796; Krakauer, Zork & Moye's Sucs. Inc. v. A. T. & S. F. Ry. Co., Unrep. Op. A-805; Bayway Chemical Co. v. C. R. R. Co., of N. J., Unrep. Op. A-810; Fullerton Lumber Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-834; Northwestern Feed Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-847; Pacific National Lumber Co. v. T. E. R. R. Co., Unrep. Op. A-861; Stacey Fruit Co. v. Northern Express Co., Unrep. Op. A-868; Arizona Brewing Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-885; Bartlett Co. v. M. St. P. & S. Ste M. Ry. Co., Unrep. Op. A-887; Woolworth Co. v. Old Dominion S. S. Co., Unrep. Op. A-901; Ellis & Meyers Lumber Co. v. V. Ry. Co., Unrep. Op. A904; Goodner-Malone Co. v. M. V. R. R. Co., Unrep. Op. A-907; Ryan & Newton Co. v. O. W. R. R. & N. Co., Unrep. Op. A-914; Astor v. St. L. & S. F. R. R. Co., Unrep.

Op. A-915; Becker v. O. W. R. R. & N. Co., Unrep. Op. A-917; Harmon & Co. v. N. P. Ry. Co., Unrep. Op. A-918; Arizona Lumber & Timber Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-920; New England Fish Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-924; Marshall Car Wheel & Foundry Co. v. T. & P. Ry. Co., Unrep. Op. A-929; Chestnutt Lumber Co. v. M. & O. R. R. Co., Unrep. Op. A-933; Miller & Co. v. W. R. R. Co., Unrep. Op. A-942; Millers Grain Co. v. A. R. & S. F. Ry. Co., Unrep. Op. A-958; Des Moines Commodity Rates, 34 I. C. C. 281, 287; Hull Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 1887; Standard Milling Co. v. I. & G. N. Ry. Co., Unrep. Op. 1928; Mascari Bros. v. St. L. & S. F. R. R. Co., Unrep. Op. 1972; Lone Star Brewing Co. v. M. K. & T. Ry. Co., Unrep. Op. 1987; Dewey Bros. Co. v. B. & O. S. W. R. R. Co., Unrep. Op. 2015; Producers Lumber Co. v. N. S. R. R. Co., Unrep. Op. 2017; Sunderland Bros. Co. v. C. & N. W. Ry., 38 I. C. C. 581; Salem Iron Works v. S. P. Co., 38 I. C. C. 600; MacGills & Gibbs Co. v. N. P. Ry., 38 I. C. C. 633; Arizona Brewing Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 2111; Standard Lumber Co. v. A. B. & A. R. R. Co., Unrep. Op. 2115; Walker Co. v. C. B. & Q. R. R. Co., Unrep. Op. 2127; Fullerton Moses Tie Co. v. M. P. Ry. Co., Unrep. Op. 2143; Peden Iron & Steel Co. v. S. P. Co., Unrep. Op. 2146; Detmer Woolen Co. v. L. V. R. R. Co., Unrep. Op. 2154; Lindsay-Walker Co. v. N. P. Ry. Co., Unrep. Op. 2160; Parry & Co. v. S. Ry. Co., Unrep. Op. 2164; Muskogee Wholesale Grocery Co. v. St. L. & S. F. R. R. Co., Unrep. Op. 2176; Atlantic Ice & Coal Corp. v. C. N. O. & T. P. Ry. Co., Unrep. Op. 2180; Ban Co. v. D. & R. G. R. R. Co., Unrep. Op. 2201; Lander County Livestock Co. v S. P. Co., Unrep. Op. 2203; Norris v. I. H. B. R. R. Co., Unrep. Op. 2211; Walbert Grocery Co. v. I. & G. N. Ry. Co., Unrep. Op. 2212; American Land, Timber & Stave Co. v. St. L. & S. F. R. R. Co., Unrep. Op. 2213; Houston Gas Co. v. N. C. Ry. Co., Unrep. Op. 2215; Anderson-Tully Co. v. C. R. I. & P. Ry. Co., Unrep. Op. 2218; Heyman & Co. v. Rutland Transit Co., Unrep. Op. 2232; Goodwin Car Co. v. M. K. & T. Ry. Co., Unrep. Op. 2239; Boardman v. S. P. Co., 37 I. C. C. 81, 86, 87; Omaha Grain Exchange v. M. & O. R. R. Co., 37 I. C. C. 363, 364; Omaha Packing Co. v. C. M. & St. P. Ry. Co., 37 I. C. C. 378, 379, 381; Birdsboro Stone Co. v. P. R. R. Co., 37 I. C. C. 577, 578; Puyallup & Sumner Fruit Growers' Asso. v. N. P. Ry. Co., 38 I. C. C. 701, 702; Garden City Sand Co. v. N. Y. C. & St. L. R. R. Co., 38 I. C. C. 723, 724; Pacific Bridge Co. v. S. P. & S. Ry. Co., 38 I. C. C. 732; Forest Lumber Co. v. M. & K. R. R. 39 I. C. C. 661,663; Chattanooga Sewer Pipe & Fire Brick Co. v. C. of G. Ry. Co., 39 I. C. C. 615; Inland Seed Co. v. O. W. R. R. & N. Co., 40 I. C. C. 517; Atlantic Ice & Coal Corp. v. C. N. O. & T. P. Ry. Co., 41 I. C. C. 409; Northwestern Consol. Milling Co. v. C. R. I. & P. Ry. 41 I. C. C. 429; Obear-Nester Glass Co. v. M. P. Ry. Co., 41 I. C. C. 446, 447; Newport Mining Co. v. C. & N. W. Ry. Co., 41 I. C. C. 465; Kosse Shoe & Scheyler Co. v. C., C., C. & St. L. Ry. Co., 41 I. C. C. 602, 603; Balfour Quarry Co. v. S. Ry. Co., 41 I. C. C. 610, 611; Beall & Co. v. O. W. R. R. & N. Co., 41 I. C. C. 627, 628; Hartje Paper Mfg. Co. v. P. R. R. Co., 41 I. C. C. 661, 662; Hollister French Lumber Co. v. M. C. R. R. Co., 41 I. C. C. 715; Lilly Co. v. N. P. Ry. Co., 41 I. C. C. 737, 739; Reid, Murdock & Co. v. C. & E. I. R. R. Co., 41 I. C. C. 747; Hartzell v. C. I. & L. Ry. Co., 41 I. C. C. 756; Benton Harbor Malleable Foundry Co. v. C. C. C. & St. L. Ry. Co., 42 I. C. C. 21; Condon Bros. v. C. & N. W. Ry. Co., 42 I. C. C. 31; Wisconsin Granite Co. v. C. & N. W. Ry. Co., 42 I. C. C. 45; Swift & Co. v. L. V. R. R. Co., 42 I. C. C. 47; Newport Sand Bank Co. v. C. & O. Ry. Co., 42 I. C. C. 51; Denver Live Stock Comm. Co. v. St. L. R. M. & P. Ry. Co., 42 I. C. C. 127; Beall & Co. v. S. P. & S. Ry. Co., 42 I. C. C. 148, 149; Allen Mfg. Co., v. L. & N. R. R. Co., 42 I. C. C. 254; Champion Fibre Co. v. S. Ry. Co., 42 I. C. C. 311; Hill Grain Co. v. I. C. R. R. Co., 42 I. C. C. 321, 322; Newport Lumber Co. v. A. & W. R. R. Co., 42 I. C. C. 345; Glendale Cotton Gin Co. v. G. C. & S. F. Ry. Co., 42 I. C. C. 360, 361; Continental Paper Bag Co. v. L. & N. R. R. Co., 42 I. C. C. 489; Torrey Cedar Co. v. C. & N. W. Ry., 43 I. C. C. 135; Knoxville Iron Co. v. A. B. & A. R. R. Co., 43 I. C. C. 747; Gulf Refining v. St. L., S. F. & T. Ry. Co., 43 I. C. C. 757, 759; Prairie Oil & Gas Co. v. A. T. & S. F. Ry., 44 I. C. C. 493, 494; Squire & Co. v. A. S. R. R., 44 I. C. C. 509, 511; Himmelberger-Harrison Lumber Co. v. St. L. I. M. & S. Ry., 44 I. C. C. 548, 551; Stocking v. M. St. P. & S. S. M. Ry., 44 I. C. C. 565; Texas, Okla-

homa & Eastern R. R. v. St. L. & S. F. R. R., 44 I. C. C. 653, 656; Ferguson & Sons Groc. Co. v. A. B. & A. Ry., 45 I. C. C. 81, 82; Fern Glen Distilling Co. v. St. L. & S. F. R. R., 45 I. C. C. 101, 102; Empire Cotton Oil Co. v. S. A. L. Ry, 45 I. C. C. 186, 187; Mengel & Bro. Co. v. L. & N. R. R., 45 I. C. C. 545, 546; Hudson River Lumber Co. v. L. & P. Ry., 45 I. C. C. 571, 572; Swift & Co. v. N. Y. C. R. R., 46 I. C. C. 356, 358; Kanotex Refining Co. v. A. T. & S. F. Ry, 46 I. C. C. 495, 499; Blatchford Calf Meal Factory v. E. J. & E. Ry., 47 I. C. C. 10; Rapier Sugar Feed Co. v. L. & N. R. R., 47 I. C. C. 222; Advance Lumber Co. v. S. Ry., 47 I. C. C. 237; Lafayette Chamber of Commerce v. A. & V. Ry., 47 I. C. C. 246, 247; Harmon & Co. v. N. Y. C. R. R., 47 I. C. C. 277 ,278; California Pine Box & Lumber Co. v. S. P. Co., 47 I. C. C. 372, 379; McFarland Lumber Co. v. B. C. R. R., 47 I. C. C. 471; Standard Roofing Co. v. M. K. & T. Ry., 47 I. C. C. 212; Jurden & Mc. C. v. M. & O. R. R., 48 I. C. C. 496; Knight Woolen Mills v. D. & R. G. R. R. Co., 48 I. C. C. 501, 604; Algonite Stone Mfg. Co. v. A. T. & S. F. Ry., 48 I. C. C. 689, 690; Boorman-Power Lumber & Implement Co. v. C., R. I. & P. Ry. Co., 48 I. C. C. 695, 696; Crown Willamette Paper Co. v. W. Nav. Co., 49 I. C. C. 13; Wyllie China Co. v. C. & N. W. Ry., 49 I. C. C. 29; Du Pont de Nemours Powder Co. v. I. & G. N. Ry., 50 I. C. C. 35; Mount Pleasant Fertilizer Co. v. L. & N. R. R., 50 I. C. C. 253, 254; Standard Oil Co. v. N. P. Ry., 50 I. C. C. 350, 352; Elton Lumber Co., Ltd. v. N. O. T. & M. R. R., 50 I. C. C. 85; Southern Engineering & Construction Co. v. St. L. & S. F. Ry., 50 I. C. C. 95; Carolina Portland Cement Co. v. L. & N. R. R., 50 I. C. C. 98; Swift & Co. v. C. C. & St. L. Ry., 50 I. C. C. 211; Wright & Co., Ltd. v. A. T. & S. F. Ry., 50 I. C. C. 225; Electric Controller & Mfg. Co. v. Express Co., 50 I. C. C. 243; Mount Pleasant Fertilizer Co. v. L. & N. R. R., 50 I. C. C. 253, 254; Gulfport Fertilizer Co. v. L. & N. R. R., 50 I. C. C. 432; Montgomery Ward & Co. v. P. C. C. & St. L. Ry., 50 I. C. C. 526; Chapin-Sacks Mfg. Co. v. P. M. R. R., 51 I. C. C. 443, 446; Aetna Explosives Co. v. Ala. Great Sou. R. R., 52 I. C. C. 423, 425; Zelnicker Supply Co. v. T. & F. S. Ry. Co., 53 I. C. C. 129; Jamieson v. P. R. R. Co., 53 I. C. C. 143; Grasselli Chemical Co. v. M. L. & T. R. R. & S. S. Co., 53 I. C. C. 145; Johns-Manville Co. v. C. M. & St. P. Ry. Co., 53 I. C. C. 169; Seaboard By-Product Coke Co. v. R. R. Co., 53 I. C. C. 171; Aetna Explosives Co. v. Director General, 53 I. C. C. 175; Lindas Lumber Co. v. A. & N. Ry. Co., 53 I. C. C. 179; Gross v. N. Y. & P. Ry. Co., 53 I. C. C. 320; Gulf Lumber Co. v. K. & S. R. R. Co., 53 I. C. C. 369; Aetna Explosives Co. v. N. O. & N. E. R. R. Co., 53 I. C. C. 511; Quinton Spelter Co. v. F. S. & W. R. R. Co., 53 I. C. C. 529; Inland Steel Co. v. I. H. B. R. R. Co., 53 I. C. C. 531; National Steel Rail Co. v. Director General, 53 I. C. C. 340; Procter & Gamble Co. v. Director General, 53 I. C. C. 365; Ash Grove Lime & Portland Cement Co. v. A. T. & S. F. Ry., 53 I. C. C. 81; Galion Iron Works v. C. C. C. & St. L. Ry., 53 I. C. C. 173; Fort Smith Spelter Co. v. A. C., 53 I. C. C. 696; Sturgis & Burn Mfg. Co. v. Director General, 55 I. C. C. 345, 346; Portland Cattle Loan Co. v. Director General 55 I. C. C. 597; Steel Cities Chemical Co. v. Director General, 56 I. C. C. 723, 725, 726; Illinois Glass Co. v. St. L. & S. F. Ry., 55 I. C. C. 8; Dietz Lumber Co. v. Director General, 55 I. C. C. 21; Refinite Co. v. Director General, 55 I. C. C. 31; Reynolds Tobacco Co. v. P. R. R., 55 I. C. C. 33; DuPont de Nemours & Co. v. Director General, 55 I. C. C. 246; Wittenburg-King Co. v. Director General, 55 I. C. C. 260; Rockford Paper Box Board Co. v. C. M. & St. P. Ry., 55 I. C. C. 262; National Refining Co. v. Director General, 55 I. C. C. 341; Swift & Co. v. Director General, 55 I. C. C. 345, 346; Keet & Roundtree Dry Goods Co. v. Director General, 55 I. C. C. 400; Rio Grande Valley Creamery Co. v. Wells Fargo & Co., 55 I. C. C. 425; Portland Cattle Loan Co. v. Director General, 55 I. C. C. 587, 599; Diamond Match Co. v. Director General, 55 I. C. C. 597, 599; New York Commission of Highways v. Director General, 55 I. C. C. 619, 620, 621, 623; Diamond Alkali Co. v. Director General, 55 I. C. C. 711; Frame & Co. v. Director General, 55 I. C. C. 721; Bennett Grain Co. v. Director General, 55 I. C. C. 744; Haley & Lang Co. v. American Exp. Co., 55 I. C. C. 747; Lowry Lumber Co. v. Director General, 55 I. C. C. 751; Sunland Oil Co. v. Director General, 55 I. C. C. 753; Model Mill Co. v. Director General, 56 I. C. C. 227; Du Pont De Nemours & Co. v .P. & R. Ry., 56 I. C. C. 231; American Flourspar Mining, Leasing & Transportation Co. v.

Director General, 56 I. C. C. 267; Kansas Oil Refining Co. v. Director General, 56 I. C. C. 269, 271; Rath Packing Co. v. I. C. R. R., 56 I. C. C. 303; DuPont de Nemours & Co. v. H. & B. V. Ry., 56 I. C. C. 334; Dewey Portland Cement Co. v. A. T. & S. F. Ry., 56 I. C. C. 444, 445, 448; Atwood Refining Co. v. Director General, 57 I. C. C. 22; Three States Tie Co. v. C. & E. I. R. R. Co., 57 I. C. C. 24; Paducah Board of Trade v. I. C. R. R., Co., 57 I. C. C. 37, 38; Procter & Gamble Co., v. Director General, 57 I. C. C. 42; Akin Gasoline Co. v. Director General, 57 I. C. C. 133, 134; Cohen-Schwartz Rail & Steel Co. v. St. L. S. F. Ry. Co., 57 I. C. C. 141; New Jersey Power & Light Co. v. Director General, 57 I. C. C. 147; Chevrolet Motor Co. v. Director General, 57 I. C. C. 149; Koenig Coal Co. v. G. T. Ry. Co., 57 I. C. C. 241; Boldt Co. v. Director General, 57 I. C. C. 259, 260; Haarmann Vinegar & Pickle Co. v. Director General, 57 I. C. C. 294, 295; Gamble Robinson Lewiston Co. v. Director General, 57 I. C. C. 327; Cuban Molasses Co. v. Director General, 57 I. C. C. 359; Pine Plume Lumber Co. v. Director General, as Agent, 57 I. C. C. 501; Thos. Iron Co. v. Director General, 57 I. C. C. 505; Taylor & Smith v. Director General, 57 I. C. C. 520; Arlington Heights Fruit Exchange v. S. P. Co., 57 I. C. C. 580; Cotton Manufacturers' Asso. of S. C. v. C. C. & O. Ry., 57 I. C. C. 584, 587, 589; Northern Grain & Warehouse Co. v. Director General, 57 I. C. C. 629; Gulf Refining Co. v. D. L. & W. R. R. Co., 58 I. C. C. 7; Atlantic Refining Co. v. Director General, as Agent, 58 I. C. C. 46, 47; Transcontinental Freight Co. v. Director General, as Agent, 58 I. C. C. 187; Northern Potato Traffic Asso. v. C. B. & Q. R. R. Co., 58 I. C. C. 211; Haarmann Vinegar & Pickle Co. v. Director General, as Agent, 58 I. C. C. 266; Omaha Cities Gas Co. v. Director General, as Agent, 58 I. C. C. 437; Northern Potato Traffic Asso. v. T. & S. F. Ry. Co., 58 I. C. C. 592, 595; By-Products Coke Co. v. Director General, 59 I. C. C. 35, 453, 454; Western States Portland Cement Co. v. Director General, 59 I. C. C. 195; Magnolia Provision Co. v. H. & T. C. R. R. Co., 59 I. C. C. 228; Hord Alkali Products Co. v. Director General, as Agent, 59 I. C. C. 574, 575; Producers Refining Co. v. Director General, 62 I. C. C. 14, 17; Shaffer Oil & Refining Co. v. Director General, as Agent, 60 I. C. C. 110; Riverton Lime Co. (Inc.) v. Director General, as Agent, 60 I. C. C. 123; Chapin-Sacks Mfg. v. Director General, as Agent, 60 I. C. C. 145; Best-Clymer Mfg. Co. v. Director General as Agent, 60 I. C. C. 153; Oil & Supply Co. v. Director General, 60 I. C. C. 185; Keeler Lumber & Fuel Co. v. Director General, as Agent, 60 I. C. C. 199; Memphis Freight Bureau, for Blumenfeld Co. (Inc.) v. Director General, as Agent, 60 I. C. C. 431; Indian Refining Co. v. Director General, as Agent, 60 I. C. C. 438; Ludlow Mfg. Associates v. Director General, as Agent, 60 I. C. C. 441; Central Steel Co. v. C. & O. Ry. Co., 60 I. C. C. 443; Procter & Gamble Mfg. Co. v. Director General, as Agent, 60 I. C. C. 447, 613; Standard Oil Co. (Ky.) v. Director General, as Agent, 60 I. C. C. 449; Empire Cotton Oil Co. v. Director General, as Agent 60 I. C. C. 505, 661; Atlantic Refining Co. v. Director General, as Agent, 60 I. C. C. 506; Atlantic Paper & Pulp Corp. v. Director General, as Agent, 60 I. C. C. 671; Century Glass Sand Co. v. Director General, as Agent, 60 I. C. C. 759; Crump Co. v. Director General, as Agent, 60 I. C. C. 761; Peoria Cordage Co. v. Director General, as Agent, 62 I. C. C. 137; Mexican Gulf Oil Co. v. Director General, as Agent, 62 I. C. C. 141; Lawton Refining Co. v. Director General, as Agent, 62 I. C. C. 480; De Jean v. Director General, as Agent, 62 I. C. C. 495; Sheffield Farms Co. v. Director eGneral, as Agent, 62 I. C. C. 503; Swift & Co. v. Director General, as Agent, 62 I. C. C. 618; Lissberg & Co. v. P. R. R. Co. 78 I. C. C. 469, 471.

§17. Willingness of carrier to pay.

See Evidence §3.

IMPORTANT CASES SINCE 1908

(a) Where, beyond the agreement between the parties, no showing is made that charges exacted were unreasonable, since a carrier may voluntarily make lower rates than it could be compelled to make, the Commission will not award reparation on the basis of a rate lower than that which it would prescribe as reasonable. Pacific Elevator Co. v. C. M. & St. P. Ry. Co., 17 I. C C. 373, 374.

(b) To sanction as a just basis for reparation a private understanding prior to making shipment, the rate remaining unchanged until the shipments were made, would be to establish a precedent for the grossest discrimination and favoritism. Armour Car Lines v. S. P. Co., 17 I. C. C. 461, 462.

(c) Reparation cannot be awarded

merely on the admission of the defendant that the complainant is the party entitled to such reparation. It must be affirmatively shown that the complainant is the proper party entitled to reparation. Baker Mfg. Co. v. C. & N. W. Ry. Co., 21 I. C. C. 605, 607.

ALL OTHER CITATIONS

Grand Rapids Plaster Co. v. Pere Marquette R. R. Co., 14 I. C. C. 571, 572; Venus v. St. L. I. M. & S. Ry. Co., 15 I. C. C. 136, 137; Bluff City Oil Co. v. St. L. I. M. & S. Ry Co., 16 I. C. C. 296, 297; Stone-Ordean-Wells Co. v. C. B. & Q. R. R. Co., 16 I. C. C. 30, 31; Werner Saw Mill Co. v. I. C. R. R. Co., 17 I. C. C. 388, 390; Pabst Brewing Co. v. C. M. & St. P. Ry Co., 17 I. C. C. 359, 360; Cady Lumber Co. v. M. P. Ry. Co., 19 I. C. C. 12, 14; Esson Granite Co., 26 I. C. C. 449, 450; Chaffin Coal Co. v. C. M. & St. P. Ry. Co., 24 I. C. C. 321, 322; International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391; Erickson Co. v. C. & N. W. Ry. Co., Unrep. Op. A272; Omaha Cooperage Co. v. I. C. R. R. Co., Unrep. Op. A-629; Cobb County Chemical Mining Co. v. N. C. & St. L. Ry., Unrep. Op. 1841; Bagdad Land & Lumber Co. v. L. & N. R. R. Co., Unrep. Op. 2055; Cairo Milling Co. v. M. & O. R. R. Co., Unrep. Op. 2119; Elden v. S. P. Co., 38 I. C. C. 530; Chapin & Co. v. C. I. & L. Ry. Co., 38 I. C. C. 611, 612; Joseph Bros. & Co. v. M. C. R. R. Co., 38 I. C. C. 719, 720; Pacific Bridge Co. v. S. P. & S. Co., 38 I. C. C. 732; Cavers Sturtevant Co. v. C. & N. W. Ry. Co., 41 I. C. C. 378, 379; Parlin & Orendorff Co. v. S. P. Co., 42 I. C. C. 29, 30; Felders v. S. Ry., 51 I. C. C. 124, 125; Standard Oil Co., (California) v. N. P. Ry. 50 I. C. C. 350, 352; M. W. Jamieson v. Pennsylvania Railroad Co., 53 I. C. C. 143; Grasselli Chemical Co. v. Morgans L. & T. R. R. & S. S. Co., 53 I. C. C. 145; Sheffield Farms Co. (Inc.) v. Director General, 62 I. C. C. 503.

IV. LIABILITY FOR REPARATION.

See Express Companies XII.

§17a. In general.

CASES 1887-1908

(a) Where a carrier corrects the inequality of rates complained of and thus makes all the reparation asked in the complaint, or that the Commission could afford, no order is required, and none will be issued. N. Orleans Cotton Exchange v. Louisville N. O. & T. R. Co. 3 I. C. R. 523.

(b) Whether the shipper or the consignee paid wrongful transportation charges is immaterial in a proceeding by the shippers to recover the same, where the wrong resulted from unequal conditions of carriage and shipment imposed by the carriers, and the movement of the property depended on the shippers' acceptance of such conditions, of which they were notified in advance, and the cost of transportation was borne by them. Independent Ref. Assn. v. Western N. Y. & P. R. Co. 6 4. C. C. 378.

(c) Complainants having filed a petition for reparation long after decision by the Commission and compliance therewith by the defendant carrier: HELD, 1, That the case will not be reopened in a supplementary proceeding, which is only brought to secure reparation, for the purpose of ruling upon questions not decided in the original case. 2, That as to the reparation demanded for injuries which resulted from practices found unlawful in said decision, it would be unwise and unjust to amend a final order entered several years ago and promptly obeyed by the defendant carrier, so as to subject such carrier to further requirements in favor of complainants in respect of violations corrected under said order. Rice, Robinson & Witherop v. Western N. Y. & P. R. Co. 6 I. C. C. 455.

(d) It is true that the remedy by way of damages for unlawful rates is utterly inadequate and inconsistent, but it is apparently the remedy prescribed by the Act, and the only remedy which the shipper has against the exaction of an unreasonable interstate rate. McGrew v. M. P. R. Co., 8 I. C. C. 630, 642.

(e) Reparation may be denied because of insufficient proof. Farrar v. Southern R. Co. et al. 11 I. C. C. 640.

(f) It does not follow as a matter of course that where the Commission finds that the ends of justice require the reduction of a rate complained of that reparation must be ordered on shipments previously made. Farmers Warehouse Co. v. L. & N. R. R., 12 I. C. C. 457, 459.

(g) Reparation awarded for error in weight of coal. Leonard v. M. K. & T. Ry. Co., 12 I. C. C. 538.

§17½. Interest and costs.

See Interest.

IMPORTANT CASES SINCE 1908

(a) The Commission has uniformly allowed interest on claims for reparation, although in determining the period for which interest should be reckoned it has not always inquired with minuteness as to the date when the shipment was delivered and the freight money became payable. There is no apparent reason why, if defendants have actually collected money of the complainant to which they are not entitled, they should not pay interest for the use as well as refund the principal itself. International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C., 391, 395.

(b) Neither costs nor interest paid by complainant, incidental to unsuccessful litigation in the courts, can be included in an award of reparation; but where the allowance of interest by a court was the equivalent of payment of additional charges when due and payable and fixes the date from which interest on excess charges is allowable before the Commission. McCloud River R. R. Co. v. O. S. L. R. R. Co., 59 I. C. C. 539, 540.

(c) Where the record does not show the date upon which the charges were paid the award of reparation will be without interest. Morris & Company v. Director General, as Agent, 74 I. C. C. 242, 244.

(d) Awards of reparation will be without interest where the record fails to show date upon which freight charges are paid. Morris & Co. v. Director General, as Agent, 74 I. C. C. 242, 244.

(e) Reparation awarded without interest because record failed to show date upon which charges were paid. Morris & Co. v. Director General, as Agent, 74 I. C. C. 242, 244.

(f) Stipulation entered of record whereby director general, as agent, admitted that rates charged were unreasonable, and complainants waived claim for interest. HELD: In view of stipulation award of reparation made without interest. Empire Refineries (Inc.) v. Director General, as Agent, 83 I. C. C. 223, 224.

(g) In an order of the Interstate Commerce Commission awarding reparation, and in a judgment, enforcing the award, it is permissible for the Commission and the court, in their discretion, the suit being one to recover damages for a tort to allow interest on the excess charges paid from the date of their payment, as damages, and at a rate fixed by the Commission and the court. Louisville & N. R. Co. v. Sloss-Sheffield Steel & Iron Co. 295 Fed. 53.

ALL OTHER CITATIONS

D. & R. G. Co. v. Baer Bros. Mercantile Co., 209 Fed. 577, 579; Scattergood & Co. v. L. S. & M. S. Ry. Co., Unrep. Op. 2040; Kath Co. v. C. R. I. & P. Ry. Co., 39 I. C. C. 613, 614; Missouri Pac. Ry. Co. v. C. E. Ferguson Sawmill Co., 235 Fed. 474; Meeker v. Lehigh Valley Ry. Co., 236 U. S. 412, 433, 434, 439, 35 Sup. Ct. 328, 337, 59 L. ed. 644, 659; Baer Bros. Mer. Co. v. D. & R. G. Ry. Co., 233 U. S. 479, 491, 34 Sup. Ct. 641, 58 L. ed. 1055; Southern Ry. Co. v. St. Louis Hay & Grain Co., 153, Fed. 729, 82 C. C. A. 614; Missouri Pac. Ry. C. C. E. Ferguson Sawmill Co., 235 Fed. 474, 482; Chicago, M. & St. P. Ry. v. George A. Hormel & Co., 240 Fed. 381; Denver & R. G. R. Co. v. Baer Bros. Mercantile Company, 209 Fed. 577, 126 C. C. A. 399; Missouri Pac. Ry. Co. v. C. E. Ferguson Sawmill Co., 235 Fed. 474, —C. C. A.—. See, also, De La Rama v. De La Rama, 241 U. S. 154, 36 Sup. Ct. 518 L. ed. 932. Chicago, M. & St. P. Ry. v. George A. Hormel & Co., 240 Fed. 381; Portland Cattle Loan Co. v. Director General, 55 I. C. C. 597, 600; National Tube Co. v. L. T. R. R. Co., 55 I. C. C. 469, 482, 600.

§18. Measure of Reparation.

See Routing and Misrouting §9.

CASES 1887-1908

(a) The act expressly requires that transportation charges shall be reasonable and empowers the Commission to enforce its provisions. Wherever the power of enforcing reasonable rates exists there must also exist the power to ascertain what is reasonable. The Commission is not restricted to finding that an existing rate is unreasonable and forbidding its continuance, but has the further authority to ascertain, order and enforce a rate that is reasonable. The power to determine and declare what is a maximum reasonable rate also results from those provisions of the act which require the Commission to determine what reparation, if any, should be made by carriers to parties injured by their violations of law, and in cases of unreasonable rates the measure of reparation due to such a party is the difference be-

tween the rate actually charged and the reasonable rate which should have been charged. Perry v. F. C. & P. R. Co., 3 I. C. C. 740, 745.

IMPORTANT CASES SINCE 1908

(b) The measure of damages is the difference between a discriminatory rate charged and a rate found reasonable. Sondheimer Co. v. I. C. R. R. Co., 20 I. C. C. 606, 611.

(c) The proper measure of damages suffered by one on account of the exaction of unreasonable freight charges is the difference between the unreasonable charges and reasonable charges. N. Y. N. H. & H. Ry. v. Ballou & Wright, 242 Fed. 862, 863.

(d) Where the Commission finds rates to be illegal because unreasonably high or discriminatory the full amount of the damages sustained whatever their nature, is recoverable. Keogh v. Chicago N. W. Ry. Co., 43 Sup., Ct. 47, 49.

(e) The act provides that in case a carrier violates a provision of the act it shall be liable to the person injured thereby for the full amount of the damages sustained in consequence of such violation. Campaigne Auxiliare v. D. L. & W. R. Co., 87 I. C. C. 443, 449.

ALL OTHER CITATIONS

Ottumwa Bridge Co. v. C. M. & St. P. Ry. Co., 14 I. C. C. 121, 126; Meeker & Co. v. Lehigh Valley R. R. Co., 21 I. C. C. 129, 137; Carter White Lead Co. v. N. & W. Ry. Co., 21 I. C. C. 41, 44; Penn. R. R. Co. v. International Coal Mining Co., 173 Fed. 1, 6; Pennsylvania R. R. Co., v. International Coal Mining Co., 33 Sup. Ct. 893, 899; 230 U. S. 184; National Wool Growers' Assn. v. O. S. L. R. R. Co., 25 I. C. C. 675, 677; In re Wool, Hides and Pelts, 25 I. C. C. 675, 677; Atchison, T. & S. F. Ry. v. Spiller, 246 Fed. 1.

§19. Parties to Make Refund.

See Routing and Misrouting §19.

CASES 1887-1908

(a) Railway companies which enter into an association to control traffic to a common market, and maintain rates higher than are reasonable, unjustly prejudicial, and preferential, if not jointly liable, are at least severally liable. Freight Bureau v. Cincinnati, N. O. & T. P. R. Co., 6 I. C. C. 195.

(b) The specific provision in the law for individual liability of carriers for the full amount of damages sustained through enforced payment of excessive transportation charges or other practices condemned in the statute, makes it unnecessary that all the carriers over any particular route shall be before the Commission to enable it to direct reparation for wrongs which have been inflicted upon shippers under any such charge or practice. Independent Refiners' Asso. v. Western N. Y. & P. R. Co., 6 I. C. C. 378.

(c) Not all the carriers over any particular route need be before the Interstate Commerce Commission to enable it to direct reparation for wrongs inflicted on shippers by an enforced payment of excessive transportation charges, under the Act to Regulate Commerce, §8, making carriers individually liable for the full amount of damages sustained thereby. Independent Ref. Asso. v. Western N. Y. & P. R. Co., 6 I. C. C. 378.

(d) Complainant awarded reparation for the difference between the 62-cent and the 45-cent rates on its shipment, to be paid by Chicago, St. Paul, Minneapolis & Omaha Railway Company and Mutual Transit Company, as having received the whole of such difference. As to other defendants, complaint dismissed. Amer. Grass Twine Co. v. C. St. P. M. & O. R. Co. 12 I. C. C. 141.

IMPORTANT CASES SINCE 1908

(e) Carriers who received no part of the charges and who did not participate in the movement of the commodity are not liable to refund the whole or any part of the rate for the movement of a shipment in which they did not participate. The liability is restricted to those carriers who participated in the transportation of the lumber via their respective routes over which the several shipments moved and who shared in the transportation charges therefor, and such carriers are jointly and severally liable to the persons found to be entitled to the refund. Nicola, Stone & Myers Co. v. L. & N. R. R. Co., 14 I. C. C. 199, 209.

(f) Roads participating in collection of unreasonable rates should refund on basis of agreed divisions of lower reasonable rates. National Mfg. Co. v. C. G. W. Ry. Co., 18 I. C. C. 370, 371.

(g) Where part of a joint through rate is found unreasonable and the carriers for the part of transportation for which the rate is found unreasonable are parties defendant, reparation may

be awarded against such carriers, although the delivering carrier whose local rate formed part of the through joint rate, which local rate is not attaacked, is not a party defendant. Willamette Pulp & Paper Co. v. B. & A. R. R. Co., 21 I. C. C. 178, 180.

(h) Where a carrier published a joint tariff offering delivery on the track of one of its connections, who, as a matter of fact, has not concurred, and which refused to deliver without the payment of switching charges, which forced the consignee to dray the shipment, such drayage charges constituted the measure of damages for which reparation should be awarded against the carrier publishing the unauthorized tariff. Edison Portland Gement Co. v. D. L. & W. R. R. Co., 22 I. C. C. 382.

(i) An award of reparation is due only from a carrier to a shipper, and not to one carrier, as a carrier, from another. Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C., 93, 108.

(j) It is well settled that where an unreasonable rate has been collected the liability of the parties is joint and several and the Commission may award reparation against one of the roads which participated in the traffic, even though other roads which performed a part of the service were not made parties defendant. Sloss Sheffield Steel and Iron Co. v. L. & N. 60 I. C. C. 595, 598.

(k) The charging of an unreasonable rate is a tort and parties to such a rate are jointly and severally liable for any resulting damage. Bloedel-Donovan Lumber Co. v. Director General, 68 I. C. C. 95, 96.

(l) All carriers party to a joint rate are jointly and severally liable for any damages resulting from its application. Rub-No-More Co v. Director General, 69 I. C. C. 23, 25.

(m) The rate attacked being a joint rate all carriers parties to such a rate are jointly and severally liable for any damages resulting from its application. Arnhold Bros. v. Director General, 69 I. C. C. 685, 687.

(n) Where an unreasonable rate is collected the liability of the participating carriers is joint and several, and reparation may be awarded against one of them, even though other lines which performed a part of the transportation service are not made parties defendant. Marcus & Co. v. Director General, as Agent, 77 I. C. C. 244, 248.

(o) Section 206 (c) of the transportation act, 1920, making it the duty of the commission to entertain complaints for reparation on account of the collection by or through the President during Federal control of charges in violation of the interstate commerce act, was intended to cover charges collected for services performed, at least in part, by the director general during Federal control. Complaints regarding charges collected by the director general, as agent for the carriers, on acount of services performed wholly prior to Federal control, should be filed against the carriers themselves. Terre Haute, Indianapolis & E. T. Co. v. Director General, as Agent, 77 I. C. C. 658, 659.

(p) Where the transportation service was rendered prior to Federal control but charges were collected by the director general, claims for reparation should be filed against the carriers. Terre Haute Indianapolis & E. T. Co. v. Director General, as Agent, 77 I. C. C. 658, 659.

(q) It is well settled that where an unreasonable joint rate has been collected the liability of the parties to such action is joint and several, and the Commission may award reparation against one of the roads which participated in the traffic, even though other roads which performed a part of the service are not made parties defendant. Western Hardwood Lumber Co. v. M. St. P. & S. Ste. M. Ry. Co., Unrep. Op. 463.

(r) Objection by director general to consideration of claims for reparation in respect of shipments moved during Federal control, on ground that originating carrier is not named as party defendant, not sustained. In these cases agent designated by President is only necessary party defendant. Appendix 1, paragraph (6), to Rules of Practice. Kellogg & Sons v. Director General, as Agent, 80 I. C. C. 485, 486.

(s) Shipment from point in United States, destined to another point in United States, moved in part through Canada. Contention by director general that commission is without jurisdiction to award reparation in respect of such rate, not sustained. Rate assailed was a joint rate, and all carriers parties thereto are jointly and severally liable for any damage resulting from its applica-

tion. American lines over which shipment moved are subject to jurisdiction of the commission. Director general was operating them and is thus liable for full amount of any damage sustained. International Nickel Co., 66 I. C. C., 627, 628. Staley Mfg. Co. v. C. P. Ry. Co., 80 I. C. C. 512.

(t) Opposition to complaint seeking reparation on shipments moved during Federal control, on ground that proper carriers had not been named as parties defendant, not sustained. Agent designated by President is only necessary party defendant in a case which seeks only reparation. Taylor Co. v. Director General, as Agent, 81 I. C. C. 663, 665.

(u) Awards of reparation are not dependent upon the solvency or insolvency of the carriers concerned. If a through rate, joint or combination, is found unreasonable and reparation is awarded the order entered runs against the carriers colectively, that participated in the transportation. Pinson Brokerage Co. v. C. & G. Ry., 89 I. C. C. 125, 126.

ALL OTHER CITATIONS

Janesville Barb Wire Co. v. C. & N. W. Ry. Co., Unrep. Op. 537; Carpenter v. St. L. I. M. & S. Ry. Co., Unrep. Op. 529; Calvi v. C. M. & St. P. Ry. Co., Unrep. Op. 461; Moline Plow Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 419; Brunswick-Balke-Collender Co. v. G. T. W. Ry. Co., Unrep. Op. 334; American Grocer Co. v. P. C. C. & St. L. Ry. Co., 13 I. C. C. 293, 294; Hayden & Westcott Lumber Co. v. G. & S. I. R. R. Co., 14 I. C. C. 537, 538; Woodward & Dickerson v. L. & N. R. R. Co., 15 I. C. C. 170, 173; Sunderland Bros. Co. v. C. & N. W. Ry. Co., 16 I. C. C. 212, 213; Noble v. St. L. & S. F. R. R. Co., 16 I. C. C. 186, 187; Davenport Pearl Button Co. v. C. B. & Q. R. R. Co., 17 I. C. C. 193, 194; Wyman, Partridge & Co. v. B. & M. R. R., 19 I. C. C. 551, 553; Youngblood v. T. & P. Ry. Co., 21 I. C. C. 569, 562; Colorado Tent & Awning Co. v. B. & M. R. R. Co., 21 I. C. C. 565, 566; Wheeler Lumber, Bridge & Supply Co. v. St. L. I. M. & S. Ry. Co., 23 I. C. C. 514, 515; Fells & Co. v. P. R. R. Co., 23 I C. C. 483, 486; Newman Lumber Co. v. Miss. C. R. R., 26 I. C. C. 97, 100; Commercial Club of Omaha v. A. & S. R. Ry. Co., 27 I. C. C. 302, 315, 317; International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391, 392; Marshall Oil Co. v. C. G. W. R. R. Co., 28 I. C. C. 707, 709; Warner Co. v. D. L. & W. R. R. Co., 32 I. C. C. 244, 246; Du Pont De Nemours Powder Co. v. W. R. R. Co., 33 I. C. C., 507, 508; Keen Kleener Mfg Co. v. C. R. I. & P. Ry. Co., Unrep. Op. 2243; West Lumber Co. v. St. L. & S. F. R. R. Co., 38 I. C. C. 401, 404; Orgill Bros. & Co. v. N. C. & St. L. Ry., 39 I. C. C. 513, 514; Stearns & Culver Lumber Co. v. C. M. & St. P. Ry. Co., 39 I. C. C. 470, 472; Minnesota & Ontario Powder Co. v. C. St. P. M. & O. Ry., 39 I. C. C. 481, 482; Heinz Co. v. P. M. R. R. Co., 39 I. C. C. 622, 624; Green & Son v. S. Ry. Co., 40 I. C. C. 157, 159; Riverside Mills v. Augusta & Savannah Steamboat Co. 40 I. C. C. 501; 502; Knudson & Mercer Lumber Co. v. L. & N. R. R. Co., 41 I. C. C. 436, 437; Walsh & Weidner Boiler Co. v. C. H. & D. Ry. Co., 41 I. C. C. 457, 458; Thompson Bros Lumber Co. v. M. K. & T. Ry. Co., 42 I. C. C. 270, 272; Van Voorhies & Co. v. A. T. & S. F. Ry. Co., 42 I. C. C. 732; Kentucky-Indiana Hardwood Co. v. S. Ry. Co. in Miss., 43 I. C. C. 154, 156; Squire & Co. v. A. S. R. R. Co., 44 I. C. C. 509, 511; Beaumont Timber Co. v. I. & G. N. Ry., 46 I. C. C. 410, 411; Heckle v. C. B. & Q. R. R., 46 I. C. C. 513, 514; Swift & Co. v. U. P. Ry., 49 I. C. C. 336; National Wholesale Lumber Dealers v. Director General, 53 I. C. C. 727, 728; Paducah Board of Trade v. Illinois Central, 57 I. C. C. 37, 38; The Northern Potato Asso. v. A. T. & S. F. Ry. Co., 58 I. C. C. 592, 596; United Paperboard Co. v. S. Ry., 62 I. C. C. 60, 61; Berry Bros. (Inc.) v. C. & N. W. Ry. Co., 61 I. C. C. 405; Louisiana Central Lumber Co. v. C., B. & Q. R. R. Co., 62 I. C. C. 417, 419; Macon Chamber of Commerce v. N. Y. N. H. 63 I. C. C. 327, 334; Nickel Co. v. Director General, as Agent, 66 I. C. C. 627, 628; Capital Warehouse Co. v. Director General, as Agent, 66 I. C. C. 683, 685, 686; Gulf Refining Co. of La. v. St. L. S. F. Ry. Co., 74 I. C. C. 639; Midland Coal Co. v. M. V. R. R. Co., 80 I. C. C. 267; Kellogg & Sons v. Director General, as Agent, 80 I. C. C. 485, 486.

§20. Release of Liability.

IMPORTANT CASES SINCE 1908

(a) Defendants are authorized to carry out an agreement made with complainants for the satisfaction of claims on shipments of lumber based on the decisions in Tift v. Southern Ry. Co., 10 I. C. C. 548 and 707; Central Yellow Pine Ass'n. v. I. C. R. R. Co., 10 I. C. C. 505,

the cause of said complaints being the same as in Joice & Co. v. I. C. R. R. Co., 15 I. C. C. 239. Jeks Lumber Co. v. S. Ry. Co., 17 I. C. C. 58.

(b) Complainant, by an agreement ratified on May 14, 1909, released the defendants from any liability on all claims of whatsoever kind and nature for reparation on the advances in rates of freight on yellow pine lumber growing out of the 2c advance south of the river, litigated in the Tift Yellow Pine case. On July 10, 1919, it filed complaint asking reparation on the shipments here in question, which claim had not at the time of executing the release been filed with the Commission or in a court of justice. HELD, complainant is not entitled to any reparation. Deeves Lumber Co. v. C. & N. W. Ry. Co., 19 I. C. C. 482, 486.

§20½. Undercharges or Overcharges.
See Overcharges; Undercharges.

CASES 1887-1908

(a) The defendant can claim no benefit from its own wrong, and hence it is not entitled to reparation where it permits a shipper to do acts in disregard of its regulations, which result in charges below those applicable under defendant's published tariff. Gardner & Clark v. Southern R. Co. 10 I. C. C. 342.

IMPORTANT CASES SINCE 1908

(b) Shippers frequently demand reparation on past shipments made under rates which were too high, but the law contains no provisions permitting the set-off of charges on shipments moving under rates that may have been too low. D. L. & W. Coal Co. v. D. L. & W. R. R. 46 I. C. C. 506, 508, 509.

(c) Undercharges and overcharges taken into account in awarding reparation. Jackson Oil & Refining Co. v. S. Ry. Co., Unrep. Op. A-763.

ALL OTHER CITATIONS

Mutual Oil Co. v. A. T. & S. F. Ry. Co., 38 I. C. C. 591, 592.

V. PROCEDURE.

See Procedure Before Commission.

§20¾. In general.

IMPORTANT CASES SINCE 1908

(a) The granting of a further hearing on question of damages found not justified where complainant failed to avail itself of opportunities to lay before the Commission all pertinent data on the subject, especially where necessity therefor was called to complainant's attention at separate hearings already had. Lake Charles Rice Milling Co. v. A. & N. Ry. Co., 63 I. C. C. 18, 40.

(b) Reparation denied for want of proof where testimony that complainant paid and fore the freight charges was based on hearsay. Kruth Malting Co. v. Director General, 63 I. C. C. 446, 447.

(c) Reparation can not be awarded where no one having knowledge of the terms of sale covering shipments appeared at the hearing. However, if complainants obtained the assent of defendants to their supplementing the record by proof in the form of affidavit that charges were ultimately paid and borne by them, they should comply with Rule V of the Rules of Practice. Stetson, Cutler & Co. v. Director General, as Agent, 73 I. C. C., 24, 26.

(d) In complying with Rule V of the commission's Rules of Practice, complainant authorized to submit proof in the form of an affidavit that shipments were made and freight charges were paid and borne by it, with understanding that if defendants object to proof in the form of an affidavit they may request further hearing with respect to reparation. Following cases in 73 I. C. C.: Cannelton Sewer Pipe Co. v. Director General, as Agent, 27, 32; Armour & Co. v. B., S. L. & W. Ry. Co., 415, 418; St. Louis Independent Packing Co. v. C. & A. R. R. Co., 459, 465; Phoenix Chamber of Commerce v. Director General, as Agent, 514, 516; Waco Chamber of Commerce v. Director General, as Agent, 708, 712.

(e) In awarding reparation it is important to know the ultimate destinations of shipments and whether carriers collected charges at rates condemned. Peoria Board of Trade v. A., T. & S. F. Ry. Co., 73 I. C. C., 532, 534.

(f) Complainant indicated that if a showing of the ultimate destinations of shipments was essential before reparation could be awarded, they would ask the commission to require carriers to furnish that information. HELD, such information would be insufficient without further data as to rates ultimately applied and amount of charges collected, and the commission does not regard it as reasonable or appropriate that carriers should be called upon to furnish information necessary to the establishment of claims for reparation. Peoria Board of Trade v. A., T. & S. F. Ry. Co., 73 I. C. C., 532, 535.

(g) Amendment to complaint, introducing new basis to which reparation is sought, allowed, over objection by defendant that claim for greater amount of money than was claimed by original complaint enlarges issues raised by original complaint. In 15 I. C. C., 595, at 598, it was said, "The commission is an administrative body created to effect substantial justice in matters under its control and is not bound or limited by strict rules of pleading," and "in our view actual damage sustained is matter for determination by commission from facts before it." Taylor Co. v. Director General, as Agent, 81 I. C. C. 663, 665.

ALL OTHER CITATIONS

Laclede Steel Co. v. Director General, as Agent, 63 I. C. C. 381, 383; Cotton Mfrs. Asso. of S. C. v. C., C. & O. Ry., 64 I. C. C. 633; Phonix Chamber of Commerce v. Director General, as Agent, 73 I. C. C. 708, 712; Boston Wool Trade Asso. v. B. & A. R. R. Co., 78 I. C. C. 178, 186; Hercules Powder Co. v. Director General, as Agent, 80 I. C. C. 219, 220.

§21. Formal Proceedings.

See Cars and Car Supply VI; Claims.

CASES 1887-1908

(a) Where reparation is asked to the extent of alleged excessive charges, the allegation being sustained, reasonable time will be allowed for making proof of amounts paid, when the evidence produced shows excessive payments without disclosing the amount of excess. Michigan Box Co. v. Flint & P. M. R. Co., et al. 6 I. C. C. 335.

(b) Complainant's claim for reparation having been settled by defendants, the case is, in view of the limited testimony presented and other considerations stated, dismissed without prejudice to the institution of a new proceeding. Sayles v. The New York, N. H. & H. Ry. Co. et al. 9 I. C. C. 492.

(c) Although the allegations concerning reparation, contained in the original petition asking the Commission to order the defendants to desist from imposing an unreasonable and unjust terminal charge, are plainly sufficient to constitute the basis for an award of damages, the defendants are entitled, before the hearing, to a specification showing in detail the amount for which recovery is sought. Cattle Raisers' Asso. v. Chicago, B. & Q. R. Co., 10 I. C. C. 83.

(d) The procedure in this case with respect to reparation is defined as follows: Upon proof thereof damages will be allowed in favor of members of the Cattle Raisers' Association of Texas on shipments from all territory down to the reduction in through rates of 1896, and from territory to which that reduction did not apply down to the date of hearing to be had in relation thereto, but those damages accruing before and those since the original order of the Commission herein should be shown separately, and as conditions may have changed since the date of such order, defendants will be allowed to show such subsequent facts as may now render the entire through rate, including the terminal charge, a reasonable one. Cattle Raisers' Asso. v. C. B. & Q. R. Co. 10 I. C. C. 83.

(e) The allegations concerning reparation in the original petition to the Commission are plainly sufficient to constitute the basis for an award of damages by the Commission, but before hearing the defendants are entitled to a specification showing in detail the amount for which recovery is sought. Cattle Raisers' Asso. v. C. B. & Q. R. Co. 10 I. C. C. 83.

(f) While the Commission found as a fact that the charges of defendant were in some instances unreasonable, it made no attempt to formulate an order, as it had no power to prescribe the rate that should be put into effect; but it held that complainant might apply to it for reparation in case it should thereafter be compelled to pay rates in excess of those indicated. Barrow v. Yazoo & M. V. R. Co., 10 I. C. C. 333.

(g) Where the record was not sufficiently definite to enable the Commission to make an order for reparation, it held the case open to enable the complainant to present further testimony upon that branch of the case. Denison Light & Power Co. v. Missouri, K. & T. R. Co., 10 I. C. C. 337.

(ga) The Commission is not disposed to try complaints by piecemeal nor is it proper, unless some reasonable ground for it be shown or the Commission has so ordered, to bring forward a claim for reparation after a complaint has been heard and taken under advisement. Dallas Freight Bureau v. G. C. & S. F. Ry. 12 I. C. C. 223, 228.

(gb) No claim for reparation was made in the complaint in this case and

no testimony was taken to such issue, but after the case had been heard and taken under advisement reparation was asked informally: HELD, That under such facts the Commission declines to entertain the claim for reparation in connection with the rates complained of. The Commission is not disposed to try complaints by piecemeal; nor is it proper, unless some reasonable ground for it be shown or the Commission has so ordered, to bring forward a claim for reparation after a complaint has been heard and taken under advisement. Dallas Freight Bureau v. Gulf Col. & S. F. Ry. Co. 12 I. C. C. 223.

IMPORTANT CASES SINCE 1908

(h) Proceedings for reparation before the Commission for indemnitory damages are purely statutory and correspond to actions at law sounding in tort. If an injury is sustained on account of a violation of law the proceeding is in its nature ex delicto, and therefore, carries with it none of the features or incidents of an action ex contractu. No protest is necessary where an injury is inflicted by the commission of a tort. The violation of the law produces the injury and completes the offense, and the person injured does not have to perform any conditions to entitle him to recover for the damage sustained. Southern Pine Lumber Co. v. S. Ry. Co., 14 I. C. C. 195.

(i) While a long course of dealing between the shipper and the carrier involving daily or frequent shipments of automobiles from a definite station might so familiarize the carrier's agents at that point with the requirements of the shipper in the way of equipment as to justify a holding that an order for a car for three automobiles was sufficient to charge the carrier with notice that a 36-ft. car was wanted, such a relationship between shipper and carrier must be clearly made out before reparation can be awarded on that basis for the exaction by the carrier of the minimum for a larger car than the one alleged to be ordered. Pope Mfg. Co. v. B. & O. R. R. Co., 17 I. C. C. 400, 403.

(j) Reparation will not ordinarily be awarded in formal cases unless intent to demand reparation is specifically disclosed before submission of the case. Ullman v. American Express Co., 19 I. C. C. 354, 355.

(k) Damages denied where reparation was not one of the issues raised; and objection of defendants to enlargement of the issue for the benefit of interveners who sought reparation, sustained. R. R. Comm. of Oregon v. S. P. Co., 24 I. C. C. 273, 279.

(l) While the fundamental question of the reasonableness of a rate is being determined, parties ought not to be put to the trouble and expense of filing detailed exhibits for reparation, nor ought the Commission to be burdened with the task of receiving and caring for such exhibits unless some substantial purpose is thereby subserved. The complainant should file such statement as informs both the Commission and the defendants of his intention to claim reparation, and the defendants should be sufficiently advised so that the evidence which they will finally desire to use upon the trial of the details may not be dissipated. Michigan Hardwood Mfrs. Ass'n v. Freight Bureau, 27 I. C. C. 32, 36.

(m) A complaint contained no explicit statement that the complainants had ever made any shipments under the rate attacked. It set forth the business of the complainants, and alleged they were shippers of hardwood lumber between the points in question; that under the former rate an extensive business had been built up, which had been injured by the imposition of the rate complained of. The prayer asked the carriers be compelled to refund to complainants all overcharges on shipments of lumber, etc., between the points in question. HELD, the complaint sufficiently alleged that complainants had made shipments under the rate attacked in order to entitle them to reparation, since the defendants were sufficiently advised to enable them to gain through application to the Commission a more detailed statement of the claims for reparation. Michigan Hardwood Mfrs. Ass'n v. Freight Bureau, 27 I. C. C. 32, 37.

(n) It was not necessary to file detailed statements of specific shipments on which reparation was claimed in view of the fact that the original complaint stated the names of complainants asking reparation, the defendants against which the claims were made, the date subsequent to which shipments moved, and a general description of the territory of origin and destination points. Commercial Club of Omaha v. A. & S. R. Ry. Co., 41 I. C. C. 480, 482.

(o) Reparation will be denied, when not asked in the complaint or by amendment thereto; and an increase in the rates pending disposition of the complaint and over complainant's protest, is not sufficient to raise an issue as to reparation. Thropp v. B. & L. E. R. R., 49 I. C. C. 43, 53.

(p) Where many shipments are involved it is the practice of the Commission to determine the reasonableness of the rates and the parties entitled to reparation and thereafter to determine the amount of the reparation under rule V of the Rules of Practice. Numerous shipments are involved here and complainants are not debarred from a recovery of reparation because they did not submit with the complaint or put in evidence upon hearing a list of their shipments. National Petroleum Asso. v. M. K. & T. 58 I. C. C. 415, 418.

(q) Complainants have no right to expect an award of damages upon an issue which they have not attempted to raise in the manner prescribed by the Commission's liberal rules of procedure; and as to which defendant has not been apprized in the usual course. Schlicher v. Director General, 62 I. C. C. 181, 185.

ALL OTHER CITATIONS

Carl Eichenberg v. S. P. Co., 14 I. C. C. 250, 271; Long & Co. v. International Ry. Co., 14 I. C. C. 116, 117; Bluff City Oil Co. v. St. L. I. M. & S. Ry. Co., 16 I. C. C. 296, 297; Minneapolis Thres. Mach. Co. v. C. St. P. M. & O. Ry. Co., 16 I. C. C. 193, 194; Murphy Bros. v. N. Y. C. & H. R. R. R. Co., 17 I. C. C. 457, 459; International Harvester Co. v. C. M. & St. P. Ry. Co., 18 I. C. C. 222, 223; Clinton Sugar Refining Co. v. C. & N. W. Ry. Co., 28 I. C. C. 364, 367; Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co., Unrep. Op. A-939; West Carolina Lumber & Timber Asso. v. S. Ry. Co., 41 I. C. C. 753, 756; Hearon v. I. C. R. R. Co., 43 I. C. C. 577, 578; Cadillac Lumber Exchange v. A. A. R. R., 44 I. C. C. 750, 751; Arlington Heights Fruit Exch. v. S. P. Co., 45 I. C. C. 248, 253; Atlantic Lumber Co. v. T. & O. C. R. R., 46 I. C. C. 368, 369; Magnolia Cotton Oil Co. v. A. T. & S. F. Ry., 49 I. C. C. 739, 743; Coffeyville Mercantile Co., v. A. T. & S. F. Ry. 52 I. C. C. 497; National Wholesale Lumber Dealers Asso. v. Director General, 53 I. C. C. 727, 728; Cape Girardeau Portland Cement Co. v. St. L. & S. F. Ry., 55 I. C. C. 315, 316; Northern Potato Traffic Asso. v. A. T. & S. F. Ry. Co., 58 I. C. C. 592, 596; Arlington Silver Mining Co. v. Director General, as Agent, 80 I. C. C. 753, 755; Taylor Co. v. Director General, 81 I. C. C. 663, 665.

§22. Informal Proceedings.

See Claims II.

IMPORTANT CASES SINCE 1908

(a) No reparation will be awarded on informal proceedings which would not be awarded under the same set of facts in a contested case, and in face of the defendant's opposition, instead of its admission. The Commission cannot accept as conclusive any stipulation of parties as to the reasonableness of a rate or a transportation regulation. The Commission's conclusions on such matters must be reached with a due consideration for the conclusions which it has already announced on the same subject, and for the knowledge which it has gathered with relation thereto in other cases and investigations. The willingness of a shipper to receive and of a carrier to pay reparation upon certain traffic, or under certain rates, can be approved by the Commission only under a clear and decisive showing of facts which would lead the Commission to award that reparation, in opposition to that carrier's wishes, and under which it would also award reparation to all others who might have shipped during the same period under the same rate and under substantially similar circumstances and conditions. Swift & Co. v. C. & A. R. R. Co., 16 I. C. C. 426, 428.

(b) Neither the statute nor the rules of the Commission prescribe what act or acts shall constitute filing of claim for reparation with the Commission. Marion Coal Co. v. D. L. & W. R. R. Co., 27 I. C. C. 441, 442.

(c) Where carriers are willing to make reparation on shipments of pig iron involved to points not in central freight association territory, applications for permission to do so should be submitted on the special docket. In certain other cases applications for permission to make reparation will be considered on the special docket. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 40 I. C. C. 738, 739, 741.

(d) Proof for reparation should consist of a verified statement by complainant, showing date and weight of the shipments, date of payment and the

reparation claimed. Robertson Bros. v. M. P. Ry. Co., Unrep. Op. 126.

ALL OTHER CITATIONS

Esson Granite Co. v. S. Ry. Co., 26 I. C. C. 449, 450.

§23. Court Pleadings and Procedure.

See Action at Law; Allowance §14½; Courts.

CASES 1887-1908

(a) The amendment of March 2, 1889, expressly provides that it shall have no application to pending proceedings, and as this proceeding was pending at that time, no reparation can be awarded, and the remedy of the petitioner is in the courts. Rawson v. Newport News & Mississippi Valley Co., 2 I. C. R. 627.

(b) A party who seeks damages, alleged to have been sustained in consequence of the violation by a common carrier of the Interstate Commerce Law, as the Act provides for redress by procedure either before the commission, or by suit before the federal court, cannot bring suit before the state court, which is without jurisdiction to enforce the right, but is relegated exclusively to the commission or the federal court; otherwise the party would have a third alternative or mode of redress, not contemplated by the Act by which he is restricted to one of two remedies. Copp v. Louisville & Nashville R. Co. 3 I. C. R. 625.

(c) A suit to recover damages for acts which constitute a violation of the Interstate Commerce Act, the construction of which is in dispute between the parties, presents a Federal question for which it may be removed to a Federal court. Lowry v. Chicago, B. & Q. R. Co., 4 I. C. R. 435.

(d) Reparation orders made by the Interstate Commerce Commission in favor of shippers of petroleum unjustly discriminated against involve matters requiring trial by jury and are not enforceable in equity upon petition of the Commission. Interstate Commerce Commission v. Western N. Y. & Philadelphia R. R. Co., 7 I. C. C. App. LXII.

IMPORTANT CASES SINCE 1908

(e) Complainant asks that, in the event of an adverse ruling upon the claim for reparation, it be permitted to withdraw without prejudice to its right to pursue its appropriate remedy in court. Under the provisions of the act complainant had the right to elect whether it would prosecute its claim for the recovery of damages before the Commission or in the courts. Having elected to pursue the former course, its right to prosecute the claim anew in the courts is controlled by the statute, the provisions of which in this respect the Commission is not empowered to modify. Geo. A. Hormel & Co. v. C. G. W., 56 I. C. C. 419, 425.

(f) Under the Act complainant had the right to elect whether it would prosecute its claim for damages before the Commission or in the courts, and having elected to pursue the former course, its right to prosecute the claim anew in the courts is controlled by the statute, the provisions of which the Commission is not empowered to modify. Hormel & Co. v. C. G. W. R. R., 56 I. C. C. 419, 425.

(g) A suit for reparation under section 16 after the Commission has made an award, may be brought in either a state or a federal court. Pennsylvania R. Co. v. Clark Bros. Coal Min. Co., 35 Sup. Ct. 896, 901. 238 U. S. 456, 59 L. ed.

(h) That claimants were prosecuting their claims before the Interstate Commerce Commission, and later before the courts, to obtain judgments against a railroad company for reparations, pending a suit to administer the property of the company for creditors, does not excuse their failure to file their claims in such suit, as required by an order of the court, which had jurisdiction, at least after an order of reparation by the Commission had liquidated the claims, to consider and allow the same against the property in its hands. North American Co. v. St. Louis & S. F. R. Co., 288 Fed. 612.

ALL OTHER CITATIONS

Robinson v. B. & O. R. R. Co., 222 U. S. 506, 512, 32 Sup. Ct. 114, 56 L. ed. 288; Phillips Co. v. G. T. W. Ry. Co., 195 Fed. 12, 16; Darnell-Taenzer Lumber Co. v. S. P. Co., 190 Fed. 659, 663; American Union Coal Co. v. Penn. R. R. Co., 159 Fed. 278, 279; Lehigh Valley R. R. Co. v. Clark, 207 Fed. 717, 721, 724, 728; 732; L. V. R. R. Co. v. Meeker, 211 Fed. 785, 795; St. L. S. W. Ry. Co. v. S. Samuels & Co., 211 Fed. 588, 593; Vulcan Coal & Mining Co. v. I. C. R. R. Co., 33 I. C. C. 52, 67; Este Co. v. A. C. L. R. R. Co., 34 I. C. C., 469, 471; New York Cent. & H. R. R. Co., v. Murphy, 224 Fed. 407; L. & N. R. R. Co. v. Ohio

Valley Tie Co. 37 Sup. Ct. 120, 242 U. S. 288, 61 L. Ed. 305; Minds v. Pennsylvania R. R., 237 Fed. 267; Chicago, M. & St. P. Ry. Co. v. George A. Hormel & Co., 240 Fed. 21; Atchison, T. & S. F. Ry. v. Spiller, 246 Fed. I; Michigan Cent. R. R. v. Elliot, 256 Fed. 18; Petition of Southern Lumber & Mfg. Co., 210 S. W. 639; Spiller v. Atchison, T. & S. F. Ry. Co., 40 Sup. Ct. 466, 467; Vicksburg, S. & P. Ry. Co. et al v. Anderson-Tully Co., 41 Sup. Ct. 524; G. B. Markle Co. v. Lehigh Valley R. Co., 271 Fed. 989, 991.

§24. Intervening Petitions.

See Interveners.

IMPORTANT CASES SINCE 1908

(a) Where the Commission has found rates unreasonable, and has issued an order permitting all persons interested in the question of reparation to file briefs on the subject, and party claiming reparation, may do so by the bringing of an independent and formal complaint, but the better practice is to file such claims in the original proceeding, which, when filed, will be treated as supplemental intervening petitions and will be proceeded with in such manner as to do justice between the parties. In re Rates on Live Stock, Packing House Products and Fresh Meats from Southwestern Points, 28 I. C. C. 332, 335.

(b) But while every person who had paid the rate could take advantage of the finding that the advance was unreasonable, he is obliged to assert his claim within the time fixed by law. When the overcharge was collected a cause of action at once arose, and the shipper at once had the right to file a complaint, or to intervene in proceedings instituted by others. If he failed to take either of those steps, and there was a finding of unreasonableness in the proceedings begun by others, he could, if in time, present his claim, and await the result of the litigation over the validity of any order made at the instance of those parties. If it was ultimately sustained by the court as valid, he would then be in position to obtain reparation from the Commission—or a judgment from a court of competent jurisdiction, on a claim that had been seasonably presented. But neither proceedings begun by other shippers, nor findings of unreasonableness and orders issued thereon by the Commission, would save the rights of those who disregarded the requirements of the Hepburn Amendment, that "all complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court within one year from the date of the order, and not after, provided that claims accrued prior to the passage of this act may be presented within one year." 34 Stat. at L. 590, chap. 3591, Comp. Stat. 1913, §8584. In the present case the overcharges were made and paid prior to August, 1904. The present suit was brought May 9, 1909, less than two years after the validity of the Commission's order was sustained by the Supreme Court, but more than one year after the passage of the Hepburn Amendment, and more than four years after the plaintiff's cause of action arose, therefore, the plaintiff's claim not having been filed within two years, he cannot recover. A. J. Phillips Co. v. Grand Trunk W. R. Co., 35 Sup. Ct. 444, 445; 236 U. S. 662; 58 I. ed.

ALL OTHER CITATIONS

Kanim & Co. v. Pennsylvania Co., 25 I. C. C. 198, 202; Cotton Mfrs. Asso. of S. C. v. C. C. & O. Ry. 57 I. C. C. 584, 589.

§25. Statements for Reparation.

See Evidence.

IMPORTANT CASES SINCE 1908

(a) In order to secure reparation under an order of the commission, the complainant will be expected to prepare a statement showing as to each shipment upon which reparation is claimed, the date of movement, point of origin, point of destination, route, weight, car number and initials, rate applied, and the amount of reparation claimed. Disher Hoop & Lumber Co. v. St. L. & S. F. R. R. Co., 26 I. C. C. 488, 491.

(b) The mere submission of expense bills by counsel, at and after the hearing, is not sufficient proof of shipments to warrant the awarding of reparation. Commercial Club of Omaha v. A. & S. R. Ry. Co., 27 I. C. C. 302, 310.

(c) But generally affidavits can not be accepted as evidence for the purpose of identifying parties by whom freight charges were actually borne if objected to. Griffing v. C. & N. W. Ry. Co., 32 I. C. C. 283, 286.

(d) To obtain reparation the consignors named in the complaint will be expected to prepare statements showing,

as to each shipment upon which reparation is claimed, the date of the movement, point of origin, point of destination, route, weight, car number and initials, rate charged, and amount of reparation claimed upon the basis of our findings herein. They should also show by whom the freight was paid, and, if not paid in the first instance by the consignor, should be accompanied by stipulation or other appropriate evidence of such facts as will enable the Commission to determine whether the consignor is entitled to reparation. These statements should be submitted with the freight bills to the defendant for verification. Upon receipt of such additional data the matter of reparation will have further consideration. Omaha Grain Exchange v. C. & A. R. R., 32 I. C. C. 597, 601.

(e) Shipments made subsequent to hearing authorized to be included in reparation statement under Rule V of Commission's rules of practice if accompanied by proof in the form of an affidavit that shipments were made and charges were paid and borne by complainants, with understanding that if defendants object, they may request a further hearing with respect thereto. American Fork & Hoe Co. v. St. L. & S. F. R. R. Co., 60 I. C. C. 85, 90.

(f) Rule V, Rules of Practice, is intended to provide a convenient method by which the parties may agree upon the exact amount of reparation, without the necessity of further hearings, after the Commission has determined that reparation is due and the basis therefor. If the parties fail to agree, or any other contingency arises by virtue of which further proceedings are required to insure substantial justice, the Power of the Commission is not impaired by the rule; and when the spirit and purpose of the rule have been defeated neither party may insist upon a literal compliance therewith. Sloss-Sheffield Steel & Iron Co. v. L. & N. 60 I. C. C. 595, 596.

(g) In complying with Rule V of the commission's Rules of Practice, complainants authorized to submit proof in the form of an affidavit that shipments were made and freight charges were paid and borne by them, with understanding that if defendants object to proof in the form of an affidavit they may request further hearing with respect to reparation. Following cases in 73 I. C. C.; Cannelton Sewer Pipe Co. v. Director General, as Agent, 27, 32; Armour & Co. v. B., S. L. & W. Ry. Co., 415, 418; St. Louis Independent Packing Co. v. C. & A. R. R. Co., 459, 465; Phoenix Chamber of Commerce v. Director General, as Agent, 514, 516; Waco Chamber of Commerce v. Director General, as Agent, 73 I. C. C. 708, 712.

(h) Shipments made subsequent to hearing authorized to be included in reparation statement under Rule V of the commission's Rule of Practice if accompanied by proof in the form of an affidavit that shipments were made and charges were paid and borne by complainants, with understanding that if carriers objected to proof in affidavit form complainants may request further hearing with respect to reparation. Following cases in 74 I. C. C. Kissel Motor Car Co. v. G. T. Ry. Co., 45, 47; Phoenix Chamber of Commerce v. Director General, as Agent, 31, 33; Purity Extract & Tonic Co. v. Director General, as Agent, 263, 270.

(i) In complying with Rule V of the commission's Rules of Practice, complainant authorized to submit proof in the form of affidavits that they paid and bore the freight charges, subject to the conditions that if carriers object to proof in affidavit form, complainants may request a further hearing on the question of reparation. Boston Wool Trade Asso. v. B. & A. R. R. Co., 77 I. C. C. 431; Lake Charles Rice Milling Co. v. L. W. R. R. Co., 77 I. C. C. 631, 632; Mason v. M., K. & T. Ry. Co., 77 I. C. C. 633, 634, 635.

(j) In complying with Rule V of commission's Rules of Practice, complainants authorized to submit proof in form of affidavits that freight charges were paid and borne by them, with understanding that if defendants object to proof in affidavit form complainants may request further hearing on question of reparation. Pacific Coast Shippers' Asso. v. Director General, as Agent, 78 I. C. C. 10, 11.

(k) Authority granted to include in reparation statement to be filed in accordance with Rule V of Rules of Practice details of shipments made subsequent to hearing, accompanied by appropriate proof in form of affidavits that such shipments were made and freight charges thereon paid and borne by complainant; complainant to have right to request further hearing if defendants object to proof in such form. Boren-Stewart Co. v. B. & O. R. R. Co., 83 I. C. C. 215

216, 217; Anguish v. A. & V. Ry. Co., 83 I. C. C. 353, 355.

ALL OTHER CITATIONS

Shoal Creek Coal Co. v. T. St. L. & W. R. R. Co., 27 I. C. C. 107, 110; Blue Grass Lumber Co. v. L. & N. R. R., 26 I. C. C. 438, 445; Partridge & Sons Co. v. Penn. R. R. Co., 26 I. C. C. 484, 487; J. E. Bryant Co. v. F. W. & D. C. Ry. Co, 28 I. C. C. 594, 598; Commercial Club of Omaha v. A. & S. R. Ry., 41 I. C. C. 480, 482; Nat'l. Petroleum Asso. v. M. K. & T. Ry. Co., 58 I. C. C. 415, 418; Illinois Zinc. Co. v. Director General, as Agent, 61 I. C. C. 92, 102; Phoenix Chamber of Comerce v. Director General, as Agent, 62 I. C. C. 412, 416; Phoenix Chamber of Commerce v. S. P. Co., 62 I. C. C. 500, 502; Farley & Loetscher Mfg. Co. v. Director General, as Agent, 62 I. C. C. 721, 725; Macon Chamber of Commerce v. N. Y., N. H. & H. R. R. Co., 63 I. C. C. 327, 334; Indian Packing Co. v. Director General, as Agent, 64 I. C. C. 205, 210; Boston Chamber of Commerce v. Director General, as Agent, 66 I. C. C., 142, 144; Mohr & Sons v. N. E. S. S. Co., 80 I. C. C. 205; Liberty Oil Co. (Ltd.) v. Director General, as Agent, 80 I. C. C. 209; Wisconsin Traffic Asso. v. A. C. & H. B. Ry. Co., 80 I. C. C. 217, 218; Bradford Rig & Reel Co v. Director General, as Agent, 80 I. C. C. 335, 338; Alkali Co. v. F., P. & E. R. R. Co., 78 I. C. C. 1; Melczer Co. v. A. E. R. R. Co., 78 I. C. C. 319, 326, 327; West Coast Lumbermen's Asso. v. A. & S. Ry. Co., 78 I. C. C. 746, 757; Interstate Cotton Oil Refining Co. v. St. L. S. W. Ry. Co., 81 I. C. C. 67, 70; Channel Chemical Co. v. A. T. & S. F. Ry. Co., 81 I. C. C. 407, 412; Lissberger & Co. v. P. R R. Co., 81 I. C. C. 645, 648.

REPORTS

IMPORTANT CASES SINCE 1908

(a) In passing section 20 of the Act giving the Commission authority to prescribe an accounting system and to require reports of carriers covering both interstate and intrastate business, Congress did not exceed its power under the commerce clause of the Constitution. I. C. C. v. Goodrich Co., 224 U. S. 194, 214; 32 Sup. Ct. 436, 56 L. ed. 729.

(b) An order of the Commission under the Act as amended requiring the secretary or similar officer of carriers engaged in interstate commerce to make monthly reports of violations of the restrictions as to hours of service of employes is not in violation of the 4th and 5th amendments of the Constitution relating to unreasonable search and seizure and self-crimination. B. & O. R. R. v. I. C. C., 221 U. S. 612, 622, 31 Sup. Ct. 621, 55 L. ed. 878.

(c) Section 20 of the Act merely authorizes the Commission to require reports from common carriers and owners engaged in interstate commerce and in the absence of such an order by the Commission, mandamus will not lie to compel carriers to make such reports. U. S. v. Union S. & T. Co., 192 Fed. 330, 343.

(d) Under section 20 of the Act authorizing the Commission to require reports from owners of railroads, a lessor of a railroad is an owner within the meaning of the provision. U. S. v. Union S. & T. Co., 192 Fed. 330, 340.

(e) Under section 20 of the Act as amended by the Act of June 18, 1910, the Commission has power to require the carriers engaged in interstate commerce to make monthly reports of instances of service in excess of the time allowed, provided a separate form of oath is accepted in lieu of such reports in cases where no employe has been employed in excess of the time named in the Act. B. & O. R. R. v. I. C. C., 221 U. S. 612, 620, 31 Sup. Ct. 621, 55 L. ed. 878.

REPRODUCTION VALUE

See Evidence §49.

RES ADJUDICATA

See Evidence V.

RESHIPPING RATES

See Basing Points and Lines; Concentrating Rates and Privileges; Facilities and Privileges §11½, §15, §18; Penalty Rates; Proportional Rates; Through Routes and Joint Rates §18, §19, §20; Transfer.

RESTRICTED RATES

See Discrimination §6; Facilities and Privileges §11.

IMPORTANT CASES SINCE 1908

(a) Rates on coal which are applicable only to shipments of certain consignors or consignees, condemned. In Re Restricted Rates, 20 I. C. C. 426.

(b) A tariff providing for reduced rates on coal used for steam purposes or that the carrier will refund parts of the regular tariff charges on presentation of

evidence that the coal was so used is improper and unlawful, because the carrier has no right to attempt to dictate the uses to which commodities transported by it shall be put in order to enjoy a transportation rate. In Re Restricted Rates, 20 I. C. C. 426, 427.

(c) Where the stock in one railway company is owned by another railway company, but both maintain separate organizations and report separately to Commission, they may not carry freight free for each other. In Re Restricted Rates, 20 I. C. C. 426, 427.

(d) A lease by a carrier of trackage rights over a connecting line to a quarry for hauling ballast for use on its own line cannot be sanctioned, as such a course would result in discrimination. In Re Restricted Rates, 20 I. C. C. 426, 428.

(ef) A carrier may not lawfully transport free or at reduced rates materials for building, or repairs on a refrigeration plant, built under contract with the carrier, but which also engages in commercial ice business. In Re Restricted Rates, 20 I. C. C. 426, 428.

(g) The Commission would not sanction any arrangement for a lease by a carrier of trackage right over a connecting line to quarry for the purpose of hauling from that quarry with its own crew and equipment ballast for use on its line, such arrangement being regarded as device to evade lawful rates. In Re Restricted Rates, 20 I. C. C. 426, 428.

(h) Persons and commodities transported for use in serving others than passengers and employes may not lawfully be carried except under regular tariff rates. In Re Restricted Rates, 20 I. C. C. 426, 428.

(i) It is unjustly discriminatory against dealers on its line for an interstate carrier to operate a commissary car. In Re Restricted Rates, 20 I. C. C. 426, 428.

(j) Discrimination would necessarily result from a lease by an interstate carrier of the trackage rights over connecting line to a quarry for the purpose of hauling with its own crew ballast for use on its line. In Re Restricted Rates, 20 I. C. C. 426, 428.

(k) A carrier has the unquestioned right to haul its own property on its own rails. In Re Restricted Rates, 20 I. C. C. 426, 431.

(l) The local rate to a junction point should be the same for all shippers to that point, and the through charge on shipments going beyond that junction should be alike for all shippers to the same destination. In Re Restricted Rates, 20 I. C. C. 426, 434.

(m) Restricting rates to a certain consignee or when commodity is put to a particular use constitutes unjust discrimination. In Re Restricted Rates, 20 I. C. C. 426, 437.

(n) Tariffs which contain rates applicable only to the shipment of certain consignees, or when a commodity is put to a particular use and the rates which are so restricted to the use of certain shippers and not open to all shippers alike are in violation of section 2 of the Act, and unjust discrimination in violation of section 3 of the Act, and therefore unlawful. In Re Restricted Rates, 20 I. C. C. 426, 437.

RETURNED RATES

See Express Companies §34; Reduced Rates §5.

RETURNED SHIPMENTS

See Classification §12⅞; Reduced Rates §5.

REVENUES

See Evidence §36; 51.

REWEIGHING

See Weights and Weighing §6.

RISK

See Classification §9; Evidence §52; Reasonableness of Rates §30½.

RIVER CROSSINGS

See Bridges and Tolls; Evidence §52½.

CASES 1887-1908

(a) The location of Cincinnati upon the north bank of the Ohio River, and the fact that railroads leading south must cross that river by expensive bridges for which an arbitrary or toll is charged, or allowed in the division of rates, justify some higher differential from Cincinnati over rates from Louisville, on the south bank of the river, to destination points in so-called "Montgomery and Southwestern Territory." Freight Bureau of Cincinnati v. Cincinnati N. O. & T. P. R. Co., 7 I. C. C., 180.

(b) Omaha and Council Bluffs, on opposite sides of the Missouri River, are connected by an expensive bridge owned and operated by the U. P. Ry., and also used under lease by other carriers. Rates at Omaha and Council Bluffs are substantially the same to and from all points, except points in Iowa west of the west bank of the Mississippi River, and rates to and from those points are usually the bridge toll higher from Omaha than from Council Bluffs. Rates from the south are made the same to both cities by the competition of railways operated on both sides of the Missouri River. Rates from the west are the same to these cities and other common points as far east as Chicago, and are part of an extensive system of charges applied by the transcontinental lines. Rates from the east are as low to Omaha as to Council Bluffs; and this equality was brought about some fifteen years since by increasing rates to Council Bluffs to the amount of the bridge toll as then fixed. For reasons stated in the report this parity of rates from eastern points is a considerable advantage to Omaha. In view of the conditions affecting transportation to and from points in Iowa, and of the whole rate situation of the two places,—HELD, That the charge of unjust discrimination against Omaha is not sustained, and that the complaint should be dismissed without prejudice. Commercial Club of Omaha v. Chicago & N. B. Co. 1 I. C. C. 386.

IMPORTANT CASES SINCE 1908

(c) If defendants intended to restrict to any particular route the application of the rates from the river crossings, they should have done so by clear and unequivocal language. Baker Reid Lumber Co. v. B. & O. R. R., 74 I. C. C., 489, 490.

(d) River-combination method of making rates to Southeast is general and of long standing. Hannah Distributing Co., 49 I. C. C., 720; Hudson Mule Co., 63 I. C. C., 6, 9; Douglas & Co., 31 I. C. C., 587, 604; Crossett Lumber Co., 43 I. C. C. 500. Texas Grain Dealers Asso. v. A. & S. Ry. Co., 81 I. C. C. 96, 99.

ALL OTHER CITATIONS

Rates on Lumber from Southern Points, 34 I. C. C. 652, 677; Henderson Commercial Club. v. I. C. R. R. Co., 36 I. C. C. 20, 26; Rates on Lumber from Southern Points, 34 I. C. C. 652, 707; Paducah Board of Trade v. I. C. R. R. Co., 43 I. C. C. 537, 540; Iowa State Board R. R. Comrs. v. A. E. R. R., 46 I. C. C. 488; Terhune Lumber Co. v. G. & S. I. R. R., 48 I. C. C. 433; Memphis-Southwestern Investigation, 55 I. C. C. 515, 540, 544, 553, 574, 575; North Iowa Traffic Asso. v. Director General, 58 I. C. C. 491, 496; St. Louis to Cincinnati and Louisville, 61 I. C. C. 256, 258; Fresh Meats and Dressed Poultry from Ohio River, 61 I. C. C. 610; Natchez Chamber of Commerce v. L. & A. Ry. Co., 63 I. C. C. 288, 299, 300; Construction mileage for Bridge over Hudson River at Poughkeepsie, N. Y., 66 I. C. C. 230; Owensboro Chamber of Commerce v. L. H. & St. L. R. Co., 81 I. C. C. 145.

ROUND TRIP TICKETS

See Passenger Fares and Facilities §7½.

ROUTING AND MISROUTING

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
II. CARRIER'S DUTY TO TRANSPORT.
§1½. In general.
§2. Accustomed or natural route.
§3. Conflict in billing between rate and route.
§3½. Conflict between billing and shipping ticket.
§4. Direct and cheapest available route.
§4¼. Existence of embargo.
§4½. Interstate or intrastate route.
§5. Lower rate via competing line or route.
§5½. Particular junction or terminal.
§5¾. Reconsigned shipments.
§6. Right of carrier to route or restrict routes.
§6½. Rail-and-water route.
§7. Shipper's instructions.
§7½. Washouts.
III. LIABILITY FOR MISROUTING.
§7¾. In general.
§8. Burden of proof.
§8½. Missing transit privilege.
§9. Measure of damages.
§10. Parties to make refund.
§10½. Procedure.
§11. Reparation in general.

§12. Unpublished rate.
§13. State courts.
§14. Procedure.

CROSS REFERENCES

See Bills of Lading §9; §9½; §10; Branch Lines II; §5; Crimes; §23; Drayage; Embargoes; Express Companies V; Evidence §17; Prepay Station; Reconsignment; Reparation §11; Tariffs §18; Through Routes and Joint Rates §6.

I. CONTROL AND REGULATION .
See Control and Regulation.

§1. Jurisdiction of Commission.
See Jurisdiction of Commission.

IMPORTANT CASES SINCE 1908

(a) The Act confers upon the Commission jurisdiction over a complaint for the recovery of the damage resulting from misrouting a shipment, where such damage arises from a rate or charge in excess of the lawful rate or charge that would have applied via the route over which the shipment probably should have moved, or movement over which was specifically directed by the shipper. Reparation awarded on a carload of staves which moved from Monette, Ark., to Jackson, Mich., via Thebes, Ill., and Altamont, Ill., instead of St. Louis, as directed by complainant. Noble v. J. L. C. & E. R. R. Co., 20 I. C. C. 520, 522.

(b) Generally speaking, routing as indicated by the guidebook should be followed. Newman Lumber Co. v. M. C. R. R. Co., 26 I. C. C. 97, 100.

(c) Upon complaint praying that defendant be ordered to turn over its company coal to complainant for intermediate transportation, alleging defendant's line between such points to be unreasonably circuitous, contention that commission has authority to grant prayer by exercise of jurisdiction conferred upon it in paragraph (3), section 15 of the act, HELD: Conceding for moment that commission could under this provision establish a through route between points in question, there is nothing in this section under which the commission could require defendant to move its company traffic via such route even if so established. New Mexico Central Ry. Co. v. A., T. & S. F. Ry. Co., 81 I. C. C. 718, 720.

(d) Contention that paragraph (2), (5), and (6) of section 15a of the act, taken together, empower commission to require a railroad to turn over its company material to another road, for transportation via shorter route between points on line of former, when it is shown that by so doing it will result in an actual saving to former company, not sustained. While commission has power and duty, as occasion may require, to investigate and determine whether or not a carrier is operated efficiently and economically, to be taken into consideration in fixing level of rates, the commission is unable to find any provision of the act which authorizes it by order to require a carrier to conduct its affairs along lines which may seem more efficient and economical than those now followed. New Mexico Central Ry. Co. v. A., T. & S. F. Ry. Co. 81 I. C. C. 718, 722.

(e) Contention that a carrier is not a "shipper" as that term is used in paragraph (10) of section 15 of the act, and that company material therefore must be considered unrouted traffic, not sustained. On contrary, the commission has repeatedly referred to carriers as shippers when engaged in transporting material belonging to them. In re Transportation of Company Material, 22 I. C. C. 439, 440. As a shipper, therefore, it necessarily follows that such carrier has right to route its traffic as it sees fit so far as this provision of the act is concerned. New Mexico Central Ry. Co. v. A., T. & S. F. Ry. Co., 81 I. C. C., 718.

(f) Complaint attacking failure of Pacific Ocean carriers to comply with routing instructions shown in through prepaid bills of lading in connection with shipments from Australia and New Zealand to Boston, Mass., in that shipments were forwarded all-water instead of water-and-rail as routed, dismissed for want of jurisdiction. Complainant's members must seek recourse against Pacific Ocean steamship companies under their contracts of carriage elsewhere than before this commission. Boston Wool Trade Asso. v. A., T. & S. F. Ry. Co., 83 I. C. C. 445.

(g) The commission has no jurisdiction of misrouting of shipment to point in United States from points in adjacent or nonadjacent foreign country prior to its receipt by American rail carrier at border point. Boston Wool Trade Asso. v. A., T. & S. F. Ry. Co., 83 I. C. C. 445, 449.

(h) The authority of the Interstate Commerce Commission to make a pre-

liminary determination of administrative questions is not limited to those cases where the question involved is whether a particular rate is reasonable, or a particular practice is discriminatory, but applies to any practice of a carrier which gives rise to the application of a rate, such as the practice of routing intrastate shipments over the carrier's interstate line. Northern Pac. Ry. v. Solum, 38 Sup. Ct. 550.

(i) The misrouting was a violation of the act, and complainant having elected to prosecute its claim before the Commission, the latter body may award reparation for whatever damages resulted as a consequence of such unlawful act. Danzer & Co. v. G. & S. I. R. R. 69 I. C. C. 59, 61.

ALL OTHER CITATIONS

Larrowe Milling Co. v. C. & N. W. Ry. Co., 17 I. C. C. 443, 445; Woodward & Dickerson v. L. & N. R. R. Co., 15 I. C. C. 170, 172; sustained 187 Fed. 605; Mitchell v. G. S. & A. Ry. Co. (S. C., 1914), 83 S. E. 261; Goodhart-Hartman Co. v. S. P. Co., Unrep. Op. A-781; Independent Cooperage Co. v. M. C. R. R. Co., Unrep. Op. A-891; Glencoe Lime & C. Co. v. P. M. S. S. Co., 42 I. C. C. 425; Solum v. Northern Pac. Ry. Co. (Minn., 1916) 157 N. W. 996, 998; Woodbury Lumber Co. v. Director General, 57 I. C. C. 324, 325.

II. CARRIER'S DUTY TO TRANSPORT.

§1½. In general.

CASES 1887-1908

(a) Where a shipper of freight gives directions to the agent of the initial carrier at the point of shipment as to the particular route by which the freight shall be shipped to destination, it is the duty of the agent to make such notations on the waybill as will reasonably and properly carry the freight by such particular route to destination. Pankey v. R. & D. R. Co., 3 I. C. C. 33, 36.

IMPORTANT CASES SINCE 1908

(b) The "like circumstances and conditions" referred to in section 2 of the Act are those which arise within the field of haulage, and do not include competition. The shippers who desire to avail themselves of a water-and-rail route must be given equal treatment with those who ship all rail. Any discrimination which exists must not exceed that which is warranted by the differences in the circumstances and conditions of the haul over the rail lines. Chattanooga Packet Co. v. I. C. R. R., 33 I. C. C. 384, 392.

(c) Carriers are bound by their published tariffs, which must be construed in accordance with the rules contained therein, and they can not lawfully deny to a shipper the right to have shipments moved at the established rate over an open and available route named in the tariff. Wistar, Underhill & Nixon v. C. & O. Ry. Co., 43 I. C. C. 254, 256.

(d) A tariff provision which makes the application of rates over particular routes dependent upon divisions, without stating the routes with respect to which divisional arrangements are in effect, is indefinite and unlawful, and imposes uncertain and unreasonable conditions upon the shipper. McGowin Lumber & Export Co. v. Director General, 59 I. C. C. 238, 240.

(e) Where a rate is unrestricted in its application it applies on shipments which move through a point via which it was not intended to apply even though such route is unusual and unduly circuitous. St. Tammany Ice & Mfg. Co. (Ltd.) v. Director General, as Agent, 64 I. C. C. 491, 492.

(f) The contention that since all carriers were under federal control the same rates should have applied over all routes between the same points not sustained where circumstances and conditions via the different routes are dissimilar; and fact that lower rates applied between the same points over other available routes does not, standing by itself, prove the unreasonableness of the higher rates via route of movement. Midland Linseed Products Co. v. Director General, as Agent 64 I. C. C. 753.

(g) Rates between specified points, when unrestricted in the carrier's tariffs to any particular route of movement, apply over all routes of carrier. Pioneer Lumber Co. v. Director General as agent, 74 I. C. C. 289.

(h) Where tariff of participating carrier provided lower rates between specified points over route other than route of movement, and unrestricted in their application to any particular route, such lower rates are applicable over all routes of carrier. Shipments found overcharged and reparation awarded. Baker-Reid Lumber Co. v. B. & O. R. R. Co., 74 I. C. C. 489.

(i) On shipments moving during Federal control, some of the bills of lading contained instructions as to both rate and route, and others as to rate only. Rate named was not applicable over any route of the originating carrier, but applied in connection with a competing line to which shipper might have tendered shipments. HELD: Following Mulkey Salt Co., 66 I. C. C., 441, shipments misrouted where both of the carriers at point of origin were federally controlled, since they were "being operated under a unified and coordinated national control and not in competition." Reparation awarded. American Hominy Co. v. Director General, as Agent, 74 I. C. C. 604.

(j) Explanation by originating carrier's agent to shipper of circuity of shipper's routing may restrain shipper thereafter from complaining, but it does not excuse carrier for indulging in uneconomic transportation. Southeastern Express Co. v. Amer. Ry. Exp. Co., 78 I. C. C. 126, 141.

(k) Complainant tendered prepayment of charges for transportation of shipments, at published tariff rates subject to route provided in tariff. Carrier refused to accept prepayment, contending that route did not apply in connection with such rate. Shipments forwarded and charges paid at higher combination rate, under protest. HELD: Since rate sought was subject to no limitation or exception as to routes other than those shown in tariff, it was applicable via such routes. Refusal to accept shipments at lower rate found unlawful, and shipments found misrouted. Reparation awarded. Elk Tanning Co. v. E. R. R. Co., 78 I. C. C. 452.

(l) The Commission has held that the carriers are empowered to restrict the routing and that shippers are required to look only to the tariff for rates applicable. Buckeye Lumber Co. v. N. P. Ry. Co., Unrep. Op. 2230.

ALL OTHER CITATIONS

Collins v. T. & G. Ry. Co., Unrep. Op. 1941; Campbell Co. v. G. T. W. Ry. Co., Unrep. Op. 1970; Schloss & Kahn v. L. & N. R. R. Co., Unrep. Op. 1994; Chapin & Co. v. C. I. & L. Ry. 38 I. C. C. 611, 613; Bradley Lumber Co. v. N. O. G. N. R. R. Co., 38 I. C. C. 579; Thorne, Neale & Co. v. Wabash R. R. 40 I. C. C. 88; Broderlick & Bascom Rope Co. v. L. & N. R. R. Co., 39 I. C. C. 213, 214; North State Lumber Co. v. S. Ry. Co., 39 I. C. C. 409, 410; Clark Lumber Co. v. S. A. L. Ry. Co., 39 I. C. C. 487, 488; Robison Clay Products Co. v. A. C. & I. Ry. Co., 40 I. C. C. 177, 179; Nat'l. Wholesale Lum. D. Assn. v. S. Ry., 50 I. C. C. 405; Willard Storage Battery Co. v. N. Y. C. R. R., 49 I. C. C. 141, 142; Lumber from the Southeast, 50 I. C. C. 191, 193; Neosho Grocery Co. v. Director General, 53 I. C. C. 481; Meeds Lumber Co. v. A. T. & N., 53 I. C. C. 477; Guinn Bros. & Co. v. C. & O., 56 I. C. C. 298, 300; Marfield Grain Co., v. Director General, 55 I. C. C. 39; Cannon Mfg. Co. v. S. Ry., 56 I. C. C. 128; Rates on Grain and Grain Products, 56 I. C. C. 133, 141; Meeker & Co. v. C. R. R. Co. of N. J., 57 I. C. C. 414, 416; Johnson v. G. N. Ry. Co. 58 I. C. C. 3; Du Pont de Nemours & Co. v. Director General, as Agent 58 I. C. C. 9; Lindsay Sheridan Co. v. S. P. Co., 58 I. C. C. 121, 122; Great Western Portland Cement Co. v. Director General, as Agent, 58 I. C. C. 205, 206; McGowin Lumber & Export So. v. Director General, 59 I. C. C. 238, 243; Meeds Lumber Co. v. Director General, 59 I. C. C. 243; Indian Refining Co. v. Director General, as Agent, 59 I. C. C. 709; Lowry Lumber Co. v. Director General, as Agent, 59 I. C. C. 709, 718; Weissbaum & Co. v. Director General, as Agent, 59 I. C. C. 711; Du Pont de Nemours & Co. v. Director General, as Agent, 60 I. C. C. 621; Barrett Co. v. Director General, as Agent, 61 I. C. C. 401; Boldt Paper Mills v. Director General, as Agent, 62 I. C. C. 471; West Kentucky Coal Co. v. Director General as Agent, 64 I. C. C. 151, 152; Pfeister & Vogel Leather Co. v. Director General, as Agent, 64 I. C. C. 437; McGowin Lumber & Export Co. v. Director General, 64 I. C. C. 694; Phoenix Refining Co. v. A. T. & S. F. Ry. Co., 66 I. C. C. 303; El Paso Chamber of Commerce v. Director General, 68 I. C. C. 135; Rausch Co. v. Director General, as Agent, 77 I. C. C. 193; Arthur v. Director General, as Agent, 80 I. C. C. 707; Routing via Midland Continental R. R., 78 I. C. C. 328; Elk Tanning Co. v. E. R. R. Co., 78 I. C. C. 452; Galveston, H. & S. A. Ry. Co. v. Lykes Bros., 295 Fed. 968; Southeastern Express Co. v. Amer. Ry. Exp. Co., 81 I. C. C. 247; National Tube Co. v. Director General, 81 I. C. C. 369; Whalen Pulp & Paper Mills v. Director General, as Agent, 83 I. C. C. 516.

§2. Accustomed or Natural Route.

IMPORTANT CASES SINCE 1908

(a) If a foreign car is available, which

under rules as to car service must be sent via particular line or route, over which a higher rate obtains, the agent must explain that fact to the shipper and allow him to elect whether he will use that car at the higher rate or wait for another car. If the shipper elects to use the car at the higher rate, the agent should so note on the bill of lading. When this rule is not complied with the carrier is liable for misrouting. Lord & Bushnell Co. v. M. C. R. R. Co., 22 I. C. C. 463.

(b) It cannot be denied that the cost of transportation is a potent factor in determining the route which traffic will take. If confronted by increased rates via routes over which it has been accustomed to move, it will naturally seek other outlets. Baltimore Chamber of Commerce v. B. & O. R. R. Co., 22 I. C. C. 596, 598.

(c) Whatever weight may attach to what carriers may in their own best interest regard as "natural routes" cannot overbalance the right of shippers to ship at reasonable and just rates over the lines of such carriers. Refuge Cotton Oil Co. v. St. L. I. M. & S. Ry. Co., 27 I. C. C. 117, 119.

(d) A carrier has no right to bottle up line for benefit of millers located thereon. Rates on Corn Milled at Oneonta, 27 I. C. C. 367, 369.

(e) Traffic should not be forced into roundabout and unnatural routes. Rates on Cottonseed and its Products, 28 I. C. C. 219, 221.

(f) There could be no reason for moving traffic over the longer instead of the shorter route if transportation conditions aside from distance were the same over both routes. Tennessee Copper Co. v. S. Ry. Co., 41 I. C. C. 336, 339.

(g) Shipper routed over lines of certain carriers but no junction point or rate specified. Shipments could have moved through Buffalo, N. Y., but were forwarded over designated lines through Todelo, Ohio. Allegation that shipments misrouted in that initial carrier should have forwarded via Buffalo, to and from which point local rates were in effect which aggregated less than through rate via Toledo, not sustained. Applicable joint rate via Buffalo was in excess of joint rate via Toledo, and shipments moved, therefore, over lowest-rated route consistent with routing instructions. Lycoming Motors Corp. v. E. J. & S. R. R. Co., 80 I. C. C. 757.

(h) In the absence of routing instructions carrier cannot be required to route for convenience of unloading. Middleburg Stone Co. v. B. & O. R. R. Co., Unrep. Op. A-491.

ALL OTHER CITATIONS

Wheeler Lumber, Bridge & Supply Co. v. C. M. & St. P. R. R. Co., 16 I. C. C. 525, 527; Gamble-Robinson Commission Co. v. C. B. & Q. R. R. Co., 18 I. C. C. 357, 359; Platten Produce Co. v. K. L. S. & C. Ry. Co., 18 I. C. C. 249, 250; Isbell & Co. v. L. S. & M. S. Ry. Co., 19 I. C. C. 448, 450; Willson Bros. Lumber Co. v. N. S. R. R. Co., 19 I. C. C. 293; Prentiss & Co. v. Pa. R. R. Co., 19 I. C. C. 68, 69; Kuh Bros v. A. T. & S. F. Ry. Co., Unrep. Op. A-67; R. R. Comm'rs. of Fla. v. S. Exp. Co., 28 I. C. C. 634, 636; Ohio Iron & Metal Co. v. S. F. Ry. Co., 28 I. C. C. 703, 705; Lumber Rates from Thebes, Ill., 31 I. C. C. 15, 17; California-Colorado Lumber Rates, 30 I. C. C. 461, 463; Rates on Grain and Grain Products, 30 I. C. C. 16, 17; Milwaukee Produce & Fruit Exchange v. Crosby Transportation Co., 30 I. C. C. 653, 656; American Lumber & Mfg. Co. v. Miss. Central R. R. Co., Unrep. Op. A726; Southwestern Missouri Miller's Club v. St. L. & S. F. R. R. Co., Unrep. Op. A-728; Yarbrough & Bellinger Co. v. L. & S. F. R. R. Co., Unrep. Op. A-733; Bower & Co. v. L. H. & St. L. Ry. Co., Unrep. Op. A-744; Mitchell v. G. S. & A. Ry. Co. (S. C., 1914), 83 S. E. 261; Holmes & Hallowell Co. v. G. N. Ry. Co., 37 I. C. C. 627, 649; Metrop. Paving Brick Co. v. W. & L. E. R. R. Co., 38 I. C. C. 345; Grain to California Points, 38 I. C. C. 367; Bradley Lum. Co. v. N. O. G. N. R. R., 38 I. C. C. 579; Hammer v. A. C. L. R. R., 38 I. C. C. 621; Gamble-Robinson Co. v. C. & E. I. R. R., 38 I. C. C. 740; Homer Lumber Co. v. S. Ry. 39 I. C. C. 760; Beaver Valley Milling Co. v. A. T. & S. F. Ry., 41 I. C. C. 533, 535; Paducah Board of Trade v. I. C. R. R. Co., 43 I. C. C. 537, 541; Page & Hill Co. v. G. N. Ry., 45 I. C. C. 547; Globe Soap Co. v. A. & S. Ry., 45 I. C. C. 25, 26; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 46 I. C. C. 558, 564; Lukens Steel Co. v. Director General, 57 I. C. C. 621; Lindsay Sheridan Co. v. S. P. Co., 58 I. C. C. 121, 122; Gross v. Director General, 58 I. C. C. 604, 607, 609; E. I. Du Pont de Nemours & Co. v. Director General, 60 I. C. C. 243.

§3. Conflict in Billing Between Rate and Route.

See Bills of Lading §9; §9 (3); Export Rates and Facilities II; Through Routes and Joint Rates III.

IMPORTANT CASES SINCE 1908

(a) Where the shipper's bill of lading contains instructions both as to route and rate, and the rate is not applicable over any route of the receiving carrier, but is applicable over the route of a rival carrier to which the shipment might have been delivered, the receiving carrier may forward the shipment over its own line at the lowest rate lawfully applicable, it not being obliged to turn the traffic over to its competitor. McLean Lumber Co. v. L. & N. R. R. Co., 22 I. C. C. 349.

(b) Where the provisions of a bill of lading are impossible of execution it is the duty of the carrier's agent to call upon the consignor for further instructions before forwarding the shipment. Peerless Wire Fence Co. v. Wabash R. R., 38 I. C. C. 721, 724.

(c) Routing instructions are not complete where there is no connection between the initial carrier and the lines of the first carrier via which the shipment is specifically routed in the bill of lading, and the stipulated rate does not apply over any route. Reynolds Bros. Lumber Co. v. T. F. Ry., 42 I. C. C. 421.

(d) Where the shipper's routing is incomplete it is the duty of the initial carrier to seek further instructions, and if they could not be secured to route the shipment over the cheapest reasonable available route consistent with the routing instructions specified by the shipper. Reynolds Bros. Lumber Co. v. T. F. R. R. Co., 42 I. C. C. 421, 422.

(e) Where routing instructions name a specific rate that does not apply via the route designated, it is the duty of the carrier to secure further instructions. Conference Ruling 286 (f). Earle Fruit Co. v. O. S. L. R. R., 46 I. C. C. 510, 511.

(f) The Commission's Conference Ruling No. 474-C reads, in part: The obligation lawfully rests upon the carrier's agent to refrain from executing a bill of lading which contains provisions that can not lawfully be complied with or provisions which are contradictory, and therefore impossible of execution. When, therefore, the rate and the route are both given by the shipper in the shipping instructions and the rate given does not apply via the route designated, it is the duty of the carrier's agent to ascertain from the shipper whether the rate or the route given in the shipping instructions shall be followed. The carrier will be held responsible for any damages which may result from the failure of its agents to follow this course. F. H. Doyle v. L. & N. W. R. R., 52 I. C. C. 327.

(g) On shipments moving during Federal control, some of the bills of lading contained instructions as to both rate and route, and others as to rate only. Rate named was not applicable over any route of the originating carrier, but applied in connection with a competing line to which shipper might have tendered shipments. HELD: Following Mulkey Salt Co., 66 I. C. C., 441, shipments misrouted where both of the carriers at point of origin were federally controlled, since they were "being operated under unified and coordinated national control and not in competition." Reparation awarded. American Hominy Co. v. Director General, as Agent, 74 I. C. C. 204.

(h) When both rate and route are inserted by the shipper in the bill of lading and they do not coincide it is the duty of the initial carrier's agent to ascertain from the shipper before forwarding the shipment whether he desires that the instructions as to the rate or the route shall govern, and the carrier is responsible for any damages which may result from the failure of its agent to follow this course. Conference Ruling 474 (c). American Hominy Co. v. Director General, as Agent, 74 I. C. C. 205.

(i) Shipper specified rate and route in bills of lading, and shipments moved via such route. Rate designated did not apply via route of movement, but was applicable over other routes. HELD, When both rate and route are inserted by shipper in bill of lading and they do not coincide, it is the duty of initial carier's agent, before forwarding shipments, to inquire of shipper which he desires to govern. Moreover, it is the duty of the agent to refrain from executing bills of lading containing contradictory provisions. Conf. Ruling 474 (c). Shipments found misrouted and reparation awarded. Republic of France v. M. K. & T. Ry. Co., of Texas 77 I. C, C. 383.

(j) Complainant specified routing and rate in bills of lading covering shipments prior to federal control. Designated rate

did not apply in connection with originating carrier, and shipments moved over specified route and were assessed rate applicable thereto. Contention that originating carrier should have turned over shipments to another carrier at point of origin, to enable complainant to obtain lower rate, and that they were therefore misrouted, not sustained. Under circumstances, originating carrier was under no obligation to deliver to competitor at point of origin. McLean Lumber Co., 22 I. C. C., 349. Citizens Gas Co. v. C., C. & St. L. Ry. Co., 83 I. C. C. 323.

ALL OTHER CITATIONS

Wilkoff Bros. Co. v. P. & L. E. R. R. Co., Unrep. Op. 467; Iola Portland Cement Co. v. M. K. & T. Ry. Co., Unrep. Op. 444; Lair Furniture & Undertaking Co. v. N. Y. C. & H. R. R. R. Co., Unrep. Op. 404; Isbell-Brown Co. v. G. T. W. Ry. Co., Unrep. Op. 226; Alpha Portland Cement Co. v. D. L. & W. R. R. Co., 19 I. C. C. 297, 298; Southern Cotton Oil Co. v. Sou. Ry. Co., 19 I. C. C. 79; Gibson Fruit Co. v. C. & N. W. Ry. Co., 21 I. C. C. 664, 645; Ludowici-Celadon Co. v. M. P. Ry. Co., 22 I. C. C. 588, 589; McLean Lumber Co. v. I. & N. R. R. Co., 22 I. C. C. 349, 351, 352; Brackett Co. v. G. N. Express Co., 29 I. C. C. 667, 668; Foster Lumber Co. v. S. Ry. Co., Unrep. Op. A-610; Bangor National Slate Co. v. L. C. R. R. Co., Unrep. Op. A-794; Texarkana Pipe Works v. B. S. L. & W. Ry., 38 I. C. C. 341; Darby & Brown v. B. & O. R. R. Co., 42 I. C. C. 544, 546; Rudiger, Assignee of Griffin Co. v. I. C. R. R., 43 I. C. C. 149; Hurd Brokerage Co. v. W. V. R. R., 45 I. C. C. 117; Ohio Salt Co. v. B. & O. R. R., 48 I. C. C. 423, 424; Brown & Sons Lumber Co. v. Director General, 57 I. C. C. 509; Highland Iron & Steel Co. v. E. & I. R. R. Co., 57 I. C. C. 549; Odell-Daly Material Co. v. Director General, as Agent, 59 I. C. C. 369; Lane Co. v. N. S. R. R. Co., 59 I. C. C. 715; Mulkey Salt Co. v. Director General, 61 I. C. C. 669, 670; Standard Asphalt & Refining Co. v. Director General, as Agent, 66 I. C. C. 295; Mulkey Salt Co. v. Director General, as Agent, 66 I. C. C. 441, 442.

§3½. Conflict Between Billing and Shipping Ticket.

See Bills of Lading §9 (3).

IMPORTANT CASES SINCE 1908

(a) Where a shipping ticket and bill of lading are both executed by a consignor it is commonly the custom for the shipping ticket to be made out accordingly with the tendering of the shipment to the carrier, and in order to promptly get the shipment under way the carrier relies upon the instructions of the shipper, as shown in the ticket in executing its waybill. This custom operates to the advantage of the shipper in securing prompt transportation, and benefits the carrier and the public in preventing the terminal, congestion and undue detention of equipment. Evens & Howard Fire Brick Co. v. Wab. R. R. Co., 26 I. C. C. 152, 153.

(b) Where the terminal carrier finds that the waybill is ambiguous as to place of delivery it should notify the initial carrier and await instructions. Robinson Clay Product Co. v. A. C. & Y. Ry. Co., 40 I. C. C. 177, 179.

(c) On two carloads of lumber billed from Potlatch, Idaho, to Victoria, Ill., C. P. & St. L. Ry. delivery, that station abandoned but still carried in tariff. Victoria, Knox county, Ill., intended. Shipments forwarded to intended destination, one via circuitous route. HELD, initial carrier accepted shipments under bills of lading impossible of execution and failure to send both over a direct route found to result in damages. Reparation awarded. Potlatch Lumber Co. v. W. I. & M. Ry., 50 I. C. C. 277.

ALL OTHER CITATIONS

American Agricultural Chemical Co. v. B. & A. R. R. Co., 28 I. C. C. 398, 401; Union Saw Mill Co. v. St. L. I. M. & S. Ry. Co., 40 I. C. C. 661, 666.

§4. Direct and Cheapest Available Route

CASES 1887-1908

(a) If one shipping from Troupe, Tex., to Fort Lawn, S. C., had given the freight agent no directions whatever as to the particular route by which the freight was to be sent forward to its destination at Fort Lawn, South Carolina, but had simply left it to the freight agent to select the route for him, as is frequently done by shippers in such cases, then, in that event, in selecting such route for the shipper, it would have been the duty of the freight agent to have forwarded the freight by the best and cheapest route for the shipper, so far as the freight agent knew, or was informed, and to have made such notations on the way-bill as would reasonably have carried it by that route, for in doing that service he would have been

acting as the agent of the shipper as well as of the company. Pankey v. Richmond & Danville R. Co., 3 I. C. R. 33.

(b) If the shipper leaves it to the agent to select the route for him then it is the duty of the agent to forward the freight by the best and cheapest route for the shipper, so far as the agent knew, or was informed, and to make such notations on the waybill as would reasonably carry it by that route, for in doing that service he is acting as the agent of the shipper as well as the company. Pankey v. R. & D. R. Co., 3 I. C. C. 33, 36.

(cd) Where there were two routes the place of shipment to the place of destination, one much longer and much more expensive to operate than the other, the longer and more expensive being operated by one, while the more direct and less expensive route was over continuous lines operated by more than one common carrier: HELD, That the rate must be reasonable for the transportation by the shorter and less expensive route. Newland v. Northern Pacific R. Co., 4 I. C. R. 474.

(e) It is the right of shippers to have their goods carried, and the duty of common carriers to receive and forward freights by the least expensive routes at reasonable through rates. Newland, Hauschild and Reeder v. N. P. R. Co., 4 I. C. C. 474, 480.

(f) It is the right of shippers to have their goods carried, and the duty of common carriers to receive and forward freight, by the least expensive routes at reasonable through rates. Newland v. Northern P. R. Co., 6 I. C. C. 131.

(g) It is the duty of the agent of the billing carrier at the point where the goods are received, to route them by the less expensive route, in accordance with the directions of the shipper, and for his failure to do so, such initial carrier was liable to pay, by way of damages, the difference in rate between the two routes, and an award of damages against such initial carrier was made. Rea v. M. & O. R. Co., 7 I. C. C. 43, 54.

(h) Where a carrier, contrary to positive instructions from the shipper, routes a car by an indirect and expensive route, or, without any instructions, sends the car by the longer route so as to burden the shipper with needless expense, such action is prima facie unjust unreasonable, and constitutes a fair basis for an order of reparation. Dewey Bros. Co. v. Baltimore & O. R. Co., 11 I. C. C. 481.

(i) Complainant alleged misrouting on a carload of hay from Summitt, O., to Lenoir, N. C. It was claimed that shipping instructions were given to route the car via Strasburg Junction and Southern Ry. although defendant denied these instructions were issued. Rate via this route was lower than via Cincinnati, through which the shipment moved. HELD, as no routing instructions were shown on the bill of lading, rate applicable via route shipment moved was assessed, complaint dismissed. Dewey Bros. Co. v. B. & O. R. Co., 11 I. C. C. 481.

(j) Where a carrier, contrary to positive instructions from the shipper routes a car by an indirect and expensive route, or, without any instructions, sends the car by a longer route so as to burden the shipper with needless expense, such action is prima facie unjust and unreasonable, and constitutes a fair basis for an order of reparation. Dewey Bros. Co. v. Baltimore & O. R. Co., 11 I. C. C. 481.

(k) In the absence of any instructions by the shipper, it would appear to be the duty of the receiving carrier not only to charge the lowest combination of rates between given points but to give to the shipper the advantage of the shorter route and lower rate. Dewey Bros. Co. v. B. & O. R. R., 11 I. C. C. 481, 483.

(l) It is the duty of a carrier, in the absence of routing instructions to the contrary, to forward shipments, having due regard to the interests of the shipper, ordinarily by that reasonable and practicable route over which the lowest charge for the transportation applies; and damage resulting to a shipper from a disregard of this obligation by the carrier can only be repaired by reparation to the extent of the difference between the higher rate applied over the line by which the traffic improperly moved and the lower rate which would have been applied had the freight been properly forwarded. Hennepin Paper Co. v. Northern Pac., 12 I. C. C. 535.

(m) Shipper entitled to reparation for damage resulting from disregard by carrier of obligation to forward shipment, in absence of routing instructions,

by route over which lowest charge applies. Hennepin Paper Co. v. Northern Pac. R. Co. 12 I. C. C. 535.

IMPORTANT CASES SINCE 1908

(n) When a car is delivered without routing instructions, it is the duty of the initial carrier to send it over the cheapest available route. Chattanooga Imp. & Mfg. Co. v. L. & N. R. R., 40 I. C. C. 146, 149.

(o) Routing instructions of shipper were incomplete and it was defendant's duty to move the shipment over the cheapest reasonably available route. William L. Carney v. Director General, 68 I. C. C. 199, 200.

(p) When the movement is all rail, with certain exceptions, the initial carrier assumes the responsibility of the movement over the cheapest available route unless the consignor gives directions to the contrary. Schules Pure Grape Juice Co. v. Director General, 68 I. C. C. 485, 486.

(q) In the absence of routing instructions by the shipper, it is the duty of the initial carrier to forward a freight shipment over the cheapest reasonable route. Actual mieleage to determine routes on milk and cream by express between points west of the Mississippi River, 69 I. C. C. 90, 94.

(r) The Commission has frequently construed section 15 to impose upon common carriers the duty, in the absence of contrary routing by the shipper, to forward shipments over the cheapest available route, and failing to do so, carriers have been found liable to the damaged shipper in the amount of the difference between the rate charged and the rate over the cheapest available route. North Packing & Provision Co. v. Director General, 73 I. C. C. 749, 752

(s) Shortest distance applies via a branch line, a portion of which is of narrow-gauge construction. Contention that the physical situation is immaterial and that shipper is lawfully entitled to use the shortest distance in the application of distance rates in view of the tariff being unrestricted. HELD, such unrestricted distance rates would clearly be applicable via the branch line, but the charging of such rates on shipments moving via the longer route is not a violation of section 6 , but rather involves ureasonableness under section 1. Since the branch line does not constitute a reasonable route, the moving of shipments via the longer route does not constitute misrouting. Calivada Fertilizer Co. v. S. P. Co., 73 I. C. C. 496, 501, 502.

(t) Conf. Rule 474c, is not applicable where the lower rate is available only when the line to which the shipments have been delivered must turn them over to a competitor at point of origin; but with respect to the shipments that moved during federal control it is applicable where both of the carriers at point of origin were federally controlled, since the carriers were being operated under a unified and co-ordinated national control and not in competition. American Hominy Co. v. Director General, 74 I. C. C. 204, 205.

(u) On shipments moving during federal control, some of the bills of lading contained instructions as to both rate and route, and others as to rate only. Rate named was not applicable over any route of the the originating carrier, but applied in connection with a competing line to which shipper might have tendered shipments. HELD, following Mulkey Salt Co., 66 I. C. C. 441, shipments misrouted where both of the carriers at point of origin were federally controlled, since they were "being operated under a unified and co-ordinated national control and not in competition." Reparation awarded. American Hominy Co. v. Director General, as Agent, 74 I. C. C. 204.

(v) In the absence of specific routing by a shipper it is the duty of the agent of the carrier to route shipments via the cheapest reasonable route known to him. Conference Ruling 214 (c). American Hominy Co. v. Director General, as Agent, 74 I. C. C. 205.

(w) Shipments of lumber and shingles from points in Washington to Minnesota Transfer, Minn., reconsigned to Duluth, Minn., and beyond, found overcharged. Lower joint through rate plus reconsignment charge and unrestricted in its application to any particular route was contemporaneously in effect. Reparation awarded. Pioneer Lumber Co. v. Director General, as Agent, 74 I. C. C. 288.

(x) Shipments routed by shipper over lines of certain carriers, but no junction point or rate specified. Shipments

could have moved through Buffalo, N. Y., but were forwarded over designated lines through Toledo, Ohio. Allegation that shipments misrouted in that initial carrier should have forwarded via Buffalo, to and from which point local rates were in effect which aggregated less than through rate via Toledo, not sustained. Applicable joint rate via Buffalo was in excess of joint rate via Toledo, and shipments moved, therefore, over lowest route consistent with routing instructions. Lycoming Motors Corp. v. E. J. & S. R. R. Co., 80 I. C. C. 757.

(y) Obligation rests upon initial carrier to forward shipments over cheapest reasonable route consistent with routing instructions. Lycoming Motors Corp. v. E. J. & S. R. R. Co., 80 I. C. C. 757, 758.

(z) Contention that lower combination rate, available over route of movement was not applicable on complainant's shipment, since there was no agreed basis of divisions out of such lower combination between carriers parties to tariffs not sustained. Routing under lower rate was not restricted in tariffs and such rate was applicable over lines of all carriers parties thereto. Complainant was entitled to lowest combination over route specified, and it is no excuse that carriers had not agreed on divisions. shipment found overcharged and reparation awarded. Standard Rice Co. v. G. H. & S. A. Ry. Co., 83 I. C. C. 305, 306.

(aa) Routing instructions specified lines which could not be utilized in order given, and carrier forwarded over routes which were higher-rated than other available routes. HELD, shipments misrouted. Dixie Portland Cement Co. v. Director General, as Agent, 83 I. C. C. 417.

(bb) In the absence of specific routing instructions it was the duty of defendant under the circumstances to forward the shipment over the cheapest reasonable route, notwithstanding the fact that such route was intrastate. Mifflin Hood Brick Co. v. Director General, 88 I. C. C. 205, 206.

ALL OTHER CITATIONS

Foster Lumber Co. v. S. Ry. Co., Unrep. Op. 338; Caddell & Sons v. C. & S. Ry. Co., Unrep. Op. 117; Hydraulic Press Brick Co. v. St. L. & S. F. R. R. Co., 13 I. C. C. 342, 347; Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co., 14 I. C. C. 606, 607; Wilson v. C. M. & St. P. Ry. Co., 14 I. C. C. 549, 550; McCaull-Dinsmore Co. v. C. G. W. Ry. Co., 14 I. C. C. 527; Wash. Broom & Woodenware Co., v. C. R. I. & P. Ry. Co., 15 I. C. C. 219, 221; Woodward & Dickerson v. L. & N. R. R. Co., 15 I. C C. 170, 174; Grand Rapids Plaster Co. v. P. M. R. R. Co., 15 I. C. C. 68; Hill & Webb v. M. K. & T. Ry. Co., 16 I. C. C. 569; Preston v. C. & O. Ry. Co., 16 I. C. C. 565; Winters Metallic Paint Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 562, 563; Marshall & Michael Grain Co. v. St. L. & S. F. R. R. Co., 16 I. C. C. 385, 386, modified, 18 I. C. C. 228, 229; Albert Trostel & Sons v. M. St. P. & S. Ste. M. Ry. Co., 16 I. C. C. 348; Hendrickson Lumber Co. v. K. C. S. Ry. Co., 16 I. C. C. 129; Thatcher Mfg. C. v. N. Y. C. & H. R. R. R. Co., 16 I. C. C. 126, 127; Amos Rehberg & Co. v. Erie R. R. Co., 17 I. C. C. 508, 510; Larrowe Milling Co. v. C. & N. W. Ry. Co., 17 I. C. C. 443, 445, 446; Williar v. C. N. Q. Ry. Co., 17 I. C. C. 304; Critchfield & Woolfolk v. L. & N. R. R. Co., 17 I. C. C. 302, 303; Foster Lumber Co. v. A. T. & S. F. Ry. Co., 17 I. C. C. 292, 294; Saner-Whiteman Lumber Co. v. T. & N. O. R. R. Co., 17 I. C. C. 290; Contract Process Co. v. N. Y. C. & St. L. R. R. Co., 17 I. C. C. 184; Carstens Packing Co. v. O. R. R. & N. Co., 17 I. C. C. 125, 127; Germain Co. v. N. O. & N. E. R. R. Co., 17 I. C. C. 22, 25; Cameron v. T. & P. Ry. Co., 18 I. C. C. 560, 561; Noble v. Toledo & Western R. R. Co., 18 I. C. C. 494, 495; Spreckels Bros. Commercial Co. v. Monongahela R. R. Co., 18 I. C. C. 190, 191; Lorleburg Co. v. N. Y. C. & St. L. R. R. Co., 18 I. C. C. 183, 184; Prahlow v. I. H. B. R. R. Co., 19 I. C. C. 572, 573; Beekman Lumber Co. v. Louisiana Ry. & N. Co., 19 I. C. C. 343, 345; Cameron & Co. v. T. E. & W. T. Ry. Co., 19 I. C. C. 146; Idaho Lime Co. v. A. T. & S. F. Ry. Co., 19 I. C. C. 139, 140; Samuels & Co. v. St. L. S. W. Ry. Co., 20 I. C. C. 646, 648; Bookwalter Wheel Co. v. T. C. R. R. Co., 20 I. C. C. 603, 605; Platton Produce Co. v. K. L. S. & C. Ry. Co., 20 I. C. C. 543; Board of Trade of Chicago v. A. C. R. R. Co., 20 I. C. C. 504 508; Crescent Lumber Co. v. I. C. R. R. Co., 20 I. C. C. 228, 229; Whaley-Warren Lumber Co. v. C. C. & O. Ry., 21 I. C. C. 530, 532; Kenworthy & Son v. U. P. R. R. Co., 21 I. C. C. 515, 516;

Winterbotham & Sons v. M. P. Ry. Co., 21 I. C. C. 266, 269; Goodkind Bros. v. C. I. & L. Ry. Co., 21 I. C. C. 17; Lord & Bushnell Co. v. Mississippi Central R. R. Co., 22 I. C. C. 463; Willman & Co. v. St. L. I. M. & S. Ry. Co., 22 I. C. C. 405, 406; Atlantic Refining Co. v. B. & O. R. R. Co., 23 I. C. C. 492; Southern Illinois Millers' Ass'n. v. L. & N. R. R. Co., 23 I. C. C. 672, 678; L. & N. R. R. Co., v. Dickerson, 191 Fed. 705, 710; Wheeler Lumber Bridge & Supply Co. v. N. P. Ry. Co., Unrep. Op. 469; Denton Lumber Co. v. S. Ry. Co., Unrep. Op. 426; Williams v. G. N. Ry. Co., Unrep. Op. 460; Mason Fruit Jar Co. v. M. K. & T. Ry. Co., Unrep. Op. 490; Godfrey & Sons v. N. Y. C. & H. R. R. R. Co., Unrep. Op. 503; Schuette & Co. v. D. & I. R. R. R. Co., Unrep. Op. 595; Nourse-Taylor Lumber Co. v. G. & S. I. R. R. Co., Unrep. Op. 164; American Agricultural Chemical Co. v. Bangor & Aroostook R. R. Co., 28 I. C. C. 398, 400; Lathrop Lumber Co. v. A. G. S. R. R. Co., 27 I. C. C. 250; Newman Lumber Co. v. M. C. R. R. Co., 26 I. C. C. 97, 100; Goodman Mfg. Co. v. P. R. R. Co., 26 I. C. C. 423, 426; Platten Produce Co. v. C. & N. W. Ry Co., 25 I. C. C. 30; Paine Lumber Co. v. C. C. C. & St. L. Ry. Co., 24 I. C. C. 626, 617; Haverhill Box Board Co. v. B. & A. R. R. Co, 28 I. C. C. 336, 338; American Agricultural Chemical Co. v. B. & A. R. R. Co., 28 I. C. C. 398, 400; United States v. U. P. R. R. Co., 28 I. C. C. 518, 522; Ohio Iron & Metal Co. v. C. M. & St. P. Ry. Co., 28 I. C. C. 703, 705; New Roads Oil Mill & Mfg. Co. v. T. & P. Ry. Co., Unrep. Op. A-120; Lagomarcini-Grupe Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. A-122; Hoerr v. C. & N. W. Ry. Co., Unrep. Op. A-177; Whitetaker Bros. v. C. & N. W.Ry. Co., Unrep. Op. A-218; Gamble-Robinson Commission Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-322; Baum Coal Co. v. C. & N. W. Ry. Co., Unrep. Op. A-334; Gamble-Robinson Commission Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-339; Kansas Portland Cement Co. v. M. K. & T. Ry. Co., Unrep. Op. A-353; Sheboygan Mineral Water Co. v. L. & N. R. R. Co., Unrep. Op. A-371; Sioux City Brewing Co. v. C. M. & St. P. Ry. Co., Unrep. A-401; Foster Lumber Co. v. C. & N. W. Ry. Co., Unrep. Op. A-426; Floran v. Wells Fargo & Co., Unrep. Op. A-572; McMurty & Co., v. N. & W. Ry. Co., Unrep. Op. A-580; American Lumber & Mfg. Co., v. D. T. & I. Ry. Co., Unrep. Op. A-584; Flanley Grain Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-638; American Lumber & Mfg. Co. v. C. & O. Ry. Co., Unrep. Op. A-655; Berry Lumber & Stave Co. v. M. & O. R. R. Co., Unrep. O. A-771; Serat v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-784; Fullerton-Powell Harwood Lumber Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-822; Caudle v. U. P. R. R. Co., Unrep. Op. A-873; Clark v. C. M. & St. P. Ry. Co., Unrep. Op. A-897; Yakima County Horticultural Union v. Northern Express Co., Unrep. Op. A-916; Baird Lumber Co. v. A. & St. A. B. Ry. Co., Unrep. Op. 1980;Collins v. C. B. & Q. R. R., 38 I. C. C. 216; Slocomb v. Carolina R. R. Co., 38 I. C. C. 535; Vacherie Cypress Co. v. T. & P. Ry., 38 I. C. C. 538; McCullough & Co. v. G. & S. R. R. R., 38 I. C. C. 541; Meeds Lumber Co. v. A. & V. Ry., 38 I. C. C. 679, 680; Peerless Wire Fence Co. v. Wabash R. R., 38 I. C. C. 721; Drake Marble & Tile Co. v. C. St. P. M. & O. Ry. Co., 38 I. C. C. 363, 364; Donahue-Stratton Co. v. C. M. & St. P. Ry. 38 I. C. C. 739; Sanguinetti v. U. P. R. R., 39 I. C. C. 515; American Woods Corp. v. S. Ry., 40 I. C. C. 63; Bruner Co. v. S. Ry. Co., 40 I. C. C. 549, 551; Trans-Mississippi Grain Co. v. C. B. & Q. R. R. Co., 41 I. C. C. 612, 613; Schlitz Brewing Co. v. S. A. L. Ry. Co., 42 I. C. C. 167; Solum v. Northern Pac. Ry. Co., (Minn., 1916) 157 N. W. 996; Stebbins v. D. L. & W. R. R. Co., 42 I. C. C. 150; Hill Grain Co. v. I. C. R. R. Co., 42 I. C. C. 321; Bradsher v. S. Ry. Co., 42 I. C. C. 327; Reynolds Bros. Lumber Co. v. T. F. Ry. Co., 42 I. C. C. 421, 422; McClintock & Co. v. L. & N. R. R., 42 I. C. C. 429; Trexler Lumber Co. v. S. Ry. Co., 42 I. C. C. 719; Hollingshead Co. v. St. L. & S. F. R. R., 42 I. C. C. 639; Kentucky-Indiana Hardwood Co. v. S. Ry. of Miss., 43 I. C. C. 154, 155; La Crosse Shippers' Asso. v. C. I. & L. Ry. Co., 43 I. C. C. 520, 525; Hurd Brokerage Co. v. W. V. R. R., 45 I. C. C. 117, 118; Hollingshead & Blei Co. v. N. Y. & P. Ry., 45 I. C. C. 169, 170; Austin Powder Co. v. W. & L. E. R. R., 45 I. C. C. 199, 200; Richwood Lumber Co. v. St. L. & S. F. R. R., 48 I. C. C. 485; Natl. Wholesale Lum. D. Asso. v. S. Ry., 48 I. C. C. 679, 680; McCaull-Kinsmore Co. v. C. B. & Q. R. R., 49 I. C. C. 369; Meeds Lumber Co.

v. A. G. S. R. R., 49 I. C. C. 87, 88; Mount Pleasant Fertilizer Co. v. L. & N. R. R., 40 I. C. C. 253; Lamb-Fish Lumber Co. v. Y. & M. V. R. R., 51 I. C. C. 6, 7; Green Bay Specialty Co. v. N. Y. & L. B. R. R., 50 I. C. C. 237; Chicago Lumber & Coal Co. v. A. G. S. R. R., 50 I. C. C. 481; Varley-Wolter Co. v. B. & O. R. R., 51 I. C. C. 493; Central Pennsylvania Lumber Co. v. B. & S. R. R. Corp., 52 I. C. C. 329; Lancaster v. Schreiner, (Mo., 1919), 212 S. W. 19; Gross v. Director General, 53 I. C. C. 429; South Texas Lumber Co. v. M. L. & T. R. R. & S. S. Co., 53 I. C. C. 737; Davis Lumber Co. v. C. C. & St. L. Ry., 53 I. C. C. 223; Neosho Grocery Co. v. Director General, 53 I. C. C. 481; Mayfield Grain Co. v. Director General, 55 I. C. C. 39; Du Pont de Nemours & Co. v. C. R. R. of N. J. 55 I. C. C. 243, 244; Zelnicker Supply Co. v. S. M. P. Ry., 55 I. C. C. 715; Lowry Lumber Co. v. Director General 56 I. C. C. 229; Lindsay Sheridan Co. v. So. Pac. Co., 58 I. C. C. 121; Roxana Petroleum Co. of Oklahoma v. Director General, 55 I. C. C. 607; Interstate Iron & Steel Co. v. Director General, 55 I. C. C. 669; Helena Traffic Bureau v. Director General, 55 I. C. C. 708; Rates on Grain and Grain Products, 56 I. C. C. 133, 141; Du Pont de Nemours Co. v. Director General, 57 I. C. C. 361; Du Pont de Nemours & Co. v. Director General, as Agent, 58 I. C. C. 9; Lindsay Sheridan Co. v. S. P. Co., 58 I. C. C. 121, 122; Atlas Cereal Co. v. Director General, 59 I. C. C. 163, 164; McCloud River Railroad Co. v. O. S. L. 59 I. C. C. 539, 540; Weissbaum & Co. v. Director General, 59 I. C. C. 711; Jno. Lucas & Co., v. Director General, 59 I. C. C. 713, 714; Meeds Lumber Co. v. Director General, 59 I. C. C. 243; Texas Refining Co. v. Director General, as Agent, 59 I. C. C. 548, 549; Parlor City Lumber Co. v. Director General, 61 I. C. C. 203; Du Pont de Nemours & Co. v. Director General, as Agent, 60 I. C. C. 243; West Kentucky Coal Co. v. Director General, 64 I. C. C. 151, 152; Kentucky Wholesale Co. (Inc.) v. Director General, as Agent, 64 I. C. C. 193; Aetna Explosives Co. (Inc.) v. B. & O. R. R. Co., 63 I. C. C. 213; Mulkey Salt Co. v. Director General, as Agent, 66 I. C. C. 441; William Carney v. Director General, 66 I. C. C. 560; Malcolm H. Reed v. Director General, 74 I. C. C. 1; Louisiana Bag Corporation v. Director General, 74 I. C. C. 545; Parkersburg Rig & Reel Co. v. M. K. & T. Ry., 74 I. C. C. 695; Reed v. Director General, as Agent, 74 I. C. C. 1; Louisiana Bag Corp. v. Director General, as Agent, 74 I. C. C. 545; Midland Linseed Products Co. v. Director General, as Agent, 77 I. C. C. 242; Arthur v. Director General, as Agent, 80 I. C. C. 707; Cummings v. Director General, 88 I. C. C. 429.

§4¼. Existence of Embargo.

IMPORTANT CASES SINCE 1908

(a) Shipments found misrouted where embargoes were a disability of the carriers, which did not confer upon them the right of diverting shipments to higher rated routes contrary to shippers' instructions, especially where there were no provisions in tariffs at time shipments moved prohibiting reconsignment to embargoed points, and nothing which would have precluded shipper from specifically routing via lower rated routes had it billed shipments to final destinations in the first instance. McGowin Lumber & Export Co. v. Director General, as Agent, 64 I. C. C. 694, 697.

(b) Where because of congestion or other justifiable cause and consequent embargo, a route is not available, the carrier does not violate its duty if it refused to accept the shipment until after the shipper agrees to a route that is available. North Packing & Provision Co. v. Director General, 73 I. C. C. 749, 752.

(c) An initial carrier is liable for misrouting in accepting a shipment routed over an embargoed route without first calling the shippers attention to the embargo. Empire Lumber Co. v. Director General, 88 I. C. C. 424, 425.

ALL OTHER CITATIONS

Graham County Lumber Co. v. S. Ry., 50 I. C. C. 231; Holgate Bros. Co. v. Pa. R. R., 51 I. C. C. 515; Lesser-Goldman Cotton Co. v. L. & N. W. R. R. Co., 57 I. C. C. 486; Gross v. Director General, 58 I. C. C. 604, 607; Dort Motor Co. v. Director General, 59 I. C. C. 374.

§4½. Interstate, Intrastate or Route.

See Evidence §13 (6).

IMPORTANT CASES SINCE 1908

(a) Shipments moved during Federal control via intrastate routes specified by shipper. Contemporaneously, lower rates applied over interstate route. Contention that under General Order No. 1 of the director general routing designated

should have been disregarded. HELD: While the general order did not deprive a shipper of protection of the rate applicable over route designated by him when shipment was moved over another route for speed and efficiency, it did not provide for the application of a lower rate over another route when shipment moved as routed. Empire Refineries (Inc.) v. Director General, as Agent, 74 I. C. C. 691.

(b) Fact that a lower rate was applicable on intrastate shipments over lines not under Federal control, for corresponding distances, does not establish unreasonableness of rates over lines under Federal control. Empire Refineries (Inc.) v. Director General, as Agent, 74 I. C. C. 691, 692.

(c) Where the question whether a carrier's practice of routing intrastate shipments over its interstate line, instead of its intrastate line, for which a lower rate had been prescribed, was reasonable, was an administrative one of perhaps considerable complexity, the state court should not, in advance of the Interstate Commerce Commission's determination of the question, assume jurisdiction of actions to recover the amount by which the freight for shipments carried over the interstate line exceeded the intrastate rate. Northern Pac. Ry. v. Solum, 38 Sup. Ct. 550.

ALL OTHER CITATIONS

McCaull-Dinsmore Co. v. G. N. Ry., 41 I. C. C. 178; Holmes & Hallowell Co. v. G. N. Ry. Co., 37 I. C. C. 627, 649; McCaull-Dinsmore Co. v. I. C. R. R. Co., 42 I. C. C. 257; Solum v. Northern Pac. Ry. Co., (Minn., 1916), 157 N. W. 996, 998; Cardwell v. C. R. I. & P. Ry. Co., 42 I. C. C. 730; Coffeyville Vitrified Brick & Tile Co. v. A. T. & S. F. Ry., 44 I. C. C. 513; Peshtigo Lumber Co. v. W. & N. Ry., 47 I. C. C. 6; McCaull-Dinsmore Co. v. G. N. Ry., 47 I. C. C. 581; Iola Cement M. T. Asso. v. A. T. & S. F. Ry., 49 I. C. C. 609; Page & Hill Co. v. C. St. P. M. & O. Ry., 51 I. C. C. 487; Aetna Explosives Co. v. P. R. R., 51 I. C. C. 615, 616; Fort Smith Commission Co. v. Director General, 55 I. C. C. 234; Woodbury Lumber Co. v. Director General, 57 I. C. C. 324, 325; Lesser-Goldman Cotton Co. v. L. & N. W. R. R. Co., 57 I. C. C. 486; Barrett Co. v. Director General, as Agent, 61 I. C. C. 401; Jacobson Brothers v. N. P. Ry. Co., 68 I. C. C. 201; North Packing & Provision Co v. Director General, 73 I. C. C. 749, 752.

§5. Lower Rate via Competing Line or Route.

See Evidence §47; Rates via Competing line.

CASES 1887-1908

(a) A carrier operating parallel lines, and accepting lower rates on one line, should make corresponding charges on other line. Board of Trade Union v. Chicago, M. & St. P. R. Co. 1 I. C. R. 608.

(b) Where there were two routes from the place of shipment to the place of destination, one much longer and much more expensive to operate than the other, the longer and more expensive being operated by one, while the more direct and less expensive route was over continuous lines operated by more than one carrier, the rate must be reasonable for the transportation by the shorter and less expensive route. Newland, Hauschild & Reeder v. N. P. R. Co., 4 I. C. C. 474, 480.

(c) Complainant attacked rates on wheat of 32½c from Ritzville, Wash., to Portland, Ore., as unjust and unreasonable. Distance 311 miles. The car of wheat tendered was routed by shipper via Wallula Junction and defendants routed it via Pasco Junction, distance 478 miles over a circuitous route having many heavy grades and curves. The route via Wallula was via two lines while the route via Pasco Junction was via the initial carrier only. HELD, rates attacked unreasonable to extent they exceeded 20c. Newland, Hauschild & Reeder v. N. P. R. Co. 4 I. C. C. 474.

(d) A carrier which sends freight over its own line, which is much longer and more expensive to operate than another route over continuous lines operated in part by other common carriers with which it exchanges traffic, can charge only a rate which is reasonable for the transportation by the shorter and less expensive route. Newland v. Northern P. R. Co. (Com.), 4 I. C. R. 474.

(e) A carrier which sends freight over its own line, which is much longer and more expensive to operate than another route over continuous lines operated in part by other common carriers with which it exchanges traffic, can charge only a rate which is reasonable for transportation by the shorter and less expensive route. Newland v. Northern P. R. Co., 6 I. C. C. 131.

(f) The complainant is entitled to reparation for damages resulting from its inability to ship 640 tons of cotton seed to Hope, which it had contracted for and desired to have transported over defendant's line to Texarkana and then by way of another line to Hope, and which shipment defendant had refused to accept under its local rate to Texarkana, but attempted to compel the complainant to pay the through rate to Hope, which was higher than the local rates based upon Texarkana, Ark. Hope Cotton Oil Co. v. Texas & P. R. Co., 10 I. C. C. 696.

(g) If a carrier, contrary to shipper's instructions, forwards cars by a more expensive instead of a cheaper route, or, without any instructions, sends the cars by the more expensive route, such action is prima facie without justification and constitutes a fair basis for reparation; but if the shipper gives definite instructions to move the cars by the more expensive route, the carrier is relieved of the obligation to forward by the cheaper route. Pankey v. R. & D. R. Co., 3 I. C. C. Rep. 658, 3 Inters. Com. Rep. 33, cited and approved. A. J. Poor Grain Co. v. C. B. & Q. Ry. Co., et al., 12 I. C. C. 418.

(h) A carrier is liable for forwarding cars by a more expensive route contrary to or in absence of instructions. Poor Grain Co. v. C. B. & Q. Ry. Co., 12 I. C. 418, 469.

(i) Carrier forwarding cars by more expensive route contrary to shipper's instructions, or in absence of instructions, must make reparation. Poor Grain Co. v. C. B. & Q. Ry. Co., 12 I. C. C. 418.

(j) Complainant attacked rate charged of $2.17 charged on print paper, carloads, from Little Falls, Minn., to Boise, Ida., via Butte, Mont. At the time of shipment there were three through routes with published through rates from Little Falls to Boise; N. P., and O. S. L. via Butte, 1,546 miles, rate $2.17; N. P., O. R. & N.. and O. S. L., via Portland, 2,450 miles, rate $1.30; and N. P., C. St. P. M. & O., U. P., and O. S. L., distance 1,812 miles, rate $1.36. No routing was shown on the bill of lading, and carriers sent the shipment via Butte. HELD, N. P., misrouted the shipments, reparation awarded on basis of $1.30. Hennepin Paper Co. v. N. P. Ry. 12 I. C. C. 535.

(k) It is the duty of a carrier, in the absence of routing instructions to the contrary, to forward shipments, having due regard to the interests of the shipper, ordinarily by that reasonable and practical route over which the lowest charge for the transportation applies; and damage resulting to a shipper from a disregard of this obligation by the carrier can only be repaired by reparation to the extent of the difference between the higher rate applied over the line by which the traffic improperly moved and the lower rate which would have been applied had the freight been properly forwarded. Hennepin Paper Co. v. N. P. Ry., 12 I. C. C. 535, 537.

IMPORTANT CASES SINCE 1908

(l) A shipment forwarded over an available and reasonable route that complies with the shippers' routing instructions and by which the lowest lawful rate between the points there involved is applicable is not misrouted, and no presumption of unreasonableness attaches to a joint through rate applicable over a particular route because it exceeds the aggregate of intermediate rates over another route. Metrop. Paving Brick Co. v. W. & L. E. R. R., 38 I. C. C. 345, 346.

(m) No duty rested with carrier to ascertain whether a competing line could have transported the shipment at a lower rate and, if so, to turn the shipment over to its competitor. Sunderland Bros. Co. v. M. P. Ry., 49 I. C. C. 135, 136.

(n) Had shipper left routing open or observed tariff restrictions, several routes over which lower rate applied could have been used, but since shipments were routed via higher rated route through error of agent, that fact of itself does not entitle him to reparation. Every shipper is charged with notice of the terms of interstate tariffs governing his shipments, and mere showing of the existence of lower rates over other routes and comparisons based upon distance alone, are insufficient to establish the unreasonableness of the rate charged. South Chester Tube Co. v. M. K. & T. Ry. Co., 64 I. C. C. 78.

(o) Carriers were operated under a unified and co-ordinated national control, and not in competition. In view of this fact, the Commission has held in cases where different rates were in effect over two routes between the same points that if the routes are practically the same in length and subject to the same transpor-

tation conditions, it was unreasonable for the Director General to maintain a higher rate over one route than contemporaneously applied over the other. American Agricultural Chemical Co. v. Director General, 66 I. C. C. 650, 651.

(p) Where tariff of participating carrier provided lower rates between specified points over route other than route of movement, and unrestricted in their application to any particular route, such lower rates are applicable over all routes of carrier. Shipments found overcharged and reparation awarded. Baker-Reid Lumber Co. v. B. & O. R. R. Co., 74 I. C. C. 489.

(q) Where no routing directions are given by a shipper, it is the duty of the carrier, when two routes are equally available, to forward over the one having the lower rate, and where it has not done so it is liable to the shipper under the ruling of the Interstate Commerce Commission, for the difference between the higher and the lower rate, and by general order of the Commission the parties are permitted to make settlement on that basis. Galveston, H. & S. A. Ry. Co. v. Lykes Bros. 294 Fed. 968.

ALL OTHER CITATIONS

Colorado Bedding Co. v. C. B. & Q. R. R. Co., 18 I. C. C. 403, 404; Paragould Lumber Co. v. M. P. Ry. Co., Unrep. Op. 485; J. R. Shoupe & Co. v. T. & B. V. R. R. Co., 26 I. C. C. 570, 571; Break-Bulk Rates on Grain, 30 I. C. C. 357, 363; Tyler Coal & Coke Co. v. P. R. R. Co., Unrep. Op. 1986; Abel & Roberts v. M. P. Ry., 37 I. C. C. 712; Puyallup & Sumner Fruit Growers' Assn. v. N. P. Ry., 38 I. C. C. 701; Consolidated Fuel Co. v. A. T. & S. F. Ry. Co., 38 I. C. C. 474, 477; Hammer v. A. C. L. R. R. Co., 38 I. C. C. 621, 622; Keystone Lumber Co. v. B. & C. R. R. Co., 38 I. C. C. 702, 703; Fish to New York, N. Y., 39 I. C. C. 333, 334; Schlitz Brewing Co. v. S. A. L. Ry. Co., 42 I. C. C. 167, 168; American Lumber & Export Co. v. A. T. & N. R. R. Co., 42 I. C. C. 259; McClintock & Co. v. L. & N. R. R. Co., 42 I. C. C. 429. Healy v. C. & O. Ry., 44 I. C. C. 753; Rawson v. C. C. C. & St. L. Ry., 45 I. C. C. 183; Austin Powder Co. v. W. & L. E. R. R., 45 I. C. C. 199; Ohio Salt Co. v. B. & O. R. R., 48 I. C. C. 423; Northern Pac. Ry. v. Solum, 38 Sup. Ct. 550; Lamb Co. v. C. M. & St. P. Ry., 50 I. C. C. 238; Mount Pleasant Fertilizer Co. v. L. & N. R. R., 50 I. C. C. 253, 255; Zelnicker Supply Co. v. C. & N. W. Ry., 51 I. C. C. 90; Martin Brokerage Co. v. S. P. Ry., 51 I. C. C. 91, 93; Aetna Explosives Co. v. A. T. & S. F. Ry., 51 I. C. C. 513, 514; Beaumont Chamber of Commerce v. Director General, 55 I. C. C. 110, 111; W. A. Gosline & Co. v. Director General, 55 I. C. C. 220, 223; Gross v. Director General, 55 I. C. C. 37; Inman, Akers & Inman v. Director General, 55 I. C. C. 146; Du Pont de Nemours & Co. v. C. R. R. Co. of N. J., 55 I. C. C. 243; Helena Traffic Bureau v. Director General, 55 I. C. C. 708, 709; Lowry Lumber Co. v. Director General, 55 I. C. C. 751; Natchez Chamber of Commerce v. Director General, 56 I. C. C. 261; Du Pont De Nemours & Co. v. Director General, 57 I. C. C. 361; Tuffli Bros. Pig Iron & Coke Co. v. L. & N. R. R. Co., 57 I. C. C. 491; Carolina Portland Cement Co. v. Director General, 57 I. C. C. 496; Brown & Sons Lumber Co. v. Director General, 57 I. C. C. 509; Gulf Refining Co. v. T. & F. S. Ry. Co., 58 I. C. C. 5; Alfred W. Booth & Bro. v. Director General, 59 I. C. C. 139; Atlas Cereal Co. v. Director General, 59 I. C. C. 163; Great Western Portland Cement Co. v. Director General, 58 I. C. C. 205; Kingsport Pulp Corp. v. Director General, as Agent, 59 I. C. C. 723; Berry Co. v. C. & N. W., 61 I. C. C. 405, 407; Empire Refineries (Inc.) v. Director General, as Agent, 60 I. C. C. 379; Du Pont de Nemours & Co. v. Director General, as Agent, 60 I. C. C. 621; Taylor v. Director General, as Agent, 61 I. C. C. 109; Memphis Freight Bureau v. Director General, as Agent, 61 I. C. 125; Iron and Steel Articles from Galveston and Houston to Louisiana, 61 I. C. C. 270; Davis Mfg. Co. v. Director General, as Agent, 61 I. C. C. 345; Ingram-Day Lumber Co. v. L. & N. R. R. Co., 62 I. C. C. 47; Midwest Refining Co. v. Director General, as Agent, 62 I. C. C. 135; Southern Veneer Asso. v. A. C. L. R. R. Co., 62 I. C. C. 669, 674; George C. Holt v. B. & O. R. R., 63 I. C. C. 213; Kentucky Wholesale Co. v. Director General, 64 I. C. C. 193; Aetna Explosives Co. (Inc.) v. B. & O. R. R. Co., 63 I. C. C. 213; Pfeister & Vogel Leather Co. v. Director General, as Agent, 64 I. C. C. 437; Standard Asphalt & Refining Co. v. Director General, 66 I. C. C. 295; National Supply Co. v. C. B. & Q. R. R. Co., 68 I. C. C. 285; Northwestern Traffic & Service Bureau v. C. T. H. & S. E. Ry., 73 I. C. C. 475; Stetson, Cutler & Co. v. Director General, as Agent, 72 I. C. C. 24, 26; Empire Refineries v. Director General, as Agent, 73 I. C. C. 221; Northwestern Traffic &

Service Bureau (Inc.) v. M. P. R. R. Co., 73 I. C. C. 472, 475; American Magnesia Products Co. v. M., B. & S. R. R. Co., 73 I. C. C. 517; Independent Elevator Co. v. M. St. P. & S. S. M. Ry. Co., 73 I. C. C. 521; Standard Oil Co. v. Director General, as Agent, 73 I. C. C., 743; Chicago-Springfield Coal Co. v. Director General, as Agent, 74 I. C. C. 131; Zelnicker Supply Co. v. Director General, as Agent, 74 I. C. C. 543; Rolph, Mills & Co. v. Director General, as Agent, 74 I. C. C. 711; John P. Rausch Co. v. Director General, 77 I. C. C. 193; Macgowan Coffee Co. v. N. O. N. E. R. R., 77 I. C. C. 385; Armour & Co. v. Director General, 80 I. C. C. 108; Cayuga Operating Co. v. Director General, as Agent, 74 I. C. C. 676, 677; Du Pont de Nemours & Co v. Director General, as Agent, 80 I. C. C. 46; North Manchester Foundry Co. v. C. C. C. & St. L. Ry. Co., 80 I. C. C. 69; Seaboard By-Product Coke Co. v. Director General, as Agent, 83 I. C. C. 315; Mexican Gulf Oil Co. v. Director General, as Agent, 83 I. C. C. 411; General Motors Corp. v. Director General, as Agent, 83 I. C. C. 479; California Packing Corp. v. Director General, as Agent, 83 I. C. C. 490; Caddo Central Oil & Refining Corp. v. Director General, as Agent, 83 I. C. C. 734; Massachusetts Ice Dealers Asso. v. Director General, 87 I. C. C. 407; Unit Store & Furnace Co. v. C. & O. R. R., 87 I. C. C. 543; Mifflin Hood Brick Co. v. Director General, 88 I. C. C. 205; Consolidated Coal Co. v. M. P. R. R., 88 I. C. C. 523.

§5½. Particular Junction or Terminal.

See Junction Point Rates.

IMPORTANT CASES SINCE 1908

(a) Where terminal delivery only is shown in bill of lading it is the duty of the carriers to forward shipments to destination named by the cheapest reasonable route affording desired delivery. Trexler Lumber Co. v. S. Ry. Co., 42 I. C. C. 719, 720.

(b) If a shipment is not specifically routed the shipper is entitled to the lowest combination of rates or charges from point of origin to destination, but having routed the car or cars through particular junctions he can not complain because a lower rate might have been obtained via some other junction. Holt, et al, as Receivers of Aetna Explosives Co. v. Alabama Great Southern R. R. Co., et al., 52 I. C. C. 235, 238.

(c) Where routing was specified by shipper, but no rate or junction point the legally applicable rate charged found unreasonable to extent it exceeded lower rate subsequently established via route of movement, but in connection with a different junction. Reparation awarded. Roberts Cotton Oil Co. v. Director General, as Agent, 60 I. C. C. 139.

(d) Shipper specified N. Y. C. delivery and inserted rate in body of bill of lading but not in space provided therefor. Shipments were forwarded in conformity with such routing instructions. Contemporaneously there was in effect a lower rate via another route with N. Y. C. delivery. HELD: Shipments not misrouted as insertion of rate in bill of lading was equivalent to instructing originating carrier to forward by route over which that rate applied, such routing not being inconsistent with instructions for delivery by the N. Y. C. Cayuga Operating Co. v. Director General, as Agent, 74 I. C. C. 676.

(e) Shipper specified delivering carriers in bills of lading, but no rate. Contemporaneously lower rates applied in conjunction with such carriers over other than routes of movement. HELD: Since no rate was specified in bills of lading originating carriers should have forwarded via routes taking lower rates consistent with instructions as to delivery. Shipments found misrouted and reparation awarded. Cayuga Operating Co. v. Director General, as Agent, 74 I. C. C. 677.

(f) Shippers must bear in mind that there is a limit beyond which an agent of a carrier could not reasonably be expected to know as to terminal delivery or local rates at distant points and on lines of distant roads to or within which he has no specific joint through rates. Consignors and consignee should cooperate with agent of carriers in avoiding misrouting and errors in routing and must expect to bear some responsibility in connection therewith. Mifflin, Hood Brick Co. v. Director General, 88 I. C. C. 205, 206..

ALL OTHER CITATIONS

Goodman Mfg. Co. v. P. R. R. Co., 26 I. C. C. 423, 426; Pole Stock Lumber Co. v. G. & S. I. R. R. Co., 26 I. C. C. 451, 454; Platten Produce Co. v. C. & N. W. Ry Co., 25 I. C. C. 30; Davidson Lumber Co. v. S. Ry Co., Unrep. Op. A. 29; Mekus v. W. R. R. Co., Unrep., Op. A 34; Berthold & Jennings Lumber Co. v. M. & O. R. R. Co., Unrep. Op. A. 41; Sikeston Mercantile Co. v. N. Y. N. H.

& H. R. R. Co., Unrep. Op. A. 61; Ingram v. P. R. C. & N. W. Ry. Co., Unrep. Op. A. 80; Ohio Iron & Metal Co. v. C. M. & St. P. Ry. Co., 28 I. C. C. 703, 705; Hettler Lumber Co. v. M. C. R. R. Co., Unrep. Op. A302; United Kansas Portland Cement Co. v. M. P. Ry Co., Unrep. Op. A321; Gamble Robinson Fruit Co. v. C. B. & Q. R. R. Co., Unrep. Op. A322; Gamble-Robinson Commission Co. v. C. M. & St. P. Ry Co., Unrep. Op. A339; Gamble-Robinson Commission Co. v. A. & B. R. Ry. Co., Unrep. Op. A395; Lumber Rates from Oregon and Washington to Eastern Points, 31 I. C. C. 191; Chattanooga Packet Co. v. I. C. R. R., 33 I. C. C. 384, 391; Laclede-Christy Clay Products Co. v. M. P. Ry. Co., Unrep. Op. A-780; What Cheer Tool Co. v. K. & M. Ry. Co., Unrep. Op. 2159; Minnesota & Ontario Power Co. v. C. St. P. M. & O. Ry., 39 I. C. C. 481; Clark Lumber Co. v. S. A. L. Ry., 39 I. C. C. 487; Robinson Clay Products Co. v. A. C. & Y. Ry., 40 I. C. C. 177; Waddell-Williams Lum. Co. v. M. L. & T. R. R. & S. S. Co., 40 I. C. C. 402; American Woods Corp. v. S. Ry. Co., 40 I. C. C. 63, 64; Bruner Co. v. S. Ry., 40 I. C. C. 549; Plainfield Grain Co. v. E. J. & E. Ry., 41 I. C. C. 608; Trans-Mississippi Grain Co. v. C. B. & Q. R. R. Co., 41 I. C. C. 612, 613; Northern Lumber Co. v. S. Ry. Co., 41 I. C. C. 629, 630; McCaull-Dinsmore Co. v. S. D. C. Ry. Co., 41 I. C. C. 663, 666; Fifer Lumber Co. v. G. N. Ry., 42 I. C. C. 13; McCoach & Co. v. N. Y. P. & N. R. R. Co., 42 I. C. C. 171; Bradsher v. S. Ry. Co., 42 I. C. C. 327; Young v. P. C. C. & St. L. Ry. Co., 42 I. C. C. 183; 184; Producers Supply Co. v. A. T. & S. F. Ry. Co., 42 I. C. C. 339; Elmore Brame & Co. v. S. A. & A. P. Ry., 42 I. C. C. 351; Concentrated Cotton Routing, 44 I. C. C. 663; Currier & Compbell v. C. R. R. Co. of N. J., 45 I. C. C. 3; Globe Soap Co. v. A. & S. Ry., 45 I. C. C. 25, 26; Harrison Bros. & Co. v. B. & O. R. R., 45 I. C. C. 85, 86; Page & Hill Co. v. G. N. Ry., 45 I. C. C. 547, 548; Dulweber Co. v. Y. M. V. R. R., 45 I. C. C. 549, 550; International Salt Co. v. S. A. L. Ry., 46 I. C. C. 478; Ohio Salt Co. v. S. A. L. Ry., 46 I. C. C. 478; Ohio Salt Co. v. B. & O. R. R. Co., 48 I. C. C. 423, 424; Richwood Lumber Co. v. St. L. & S. F. R. R. Co., 48 I. C. C. 485, 486; Natl. Wholesale Lum. D. Assn. v. S. Ry., 48 I. C. C. 679; Willard Storage Battery Co. v. N. Y. C. R. R., 49 I. C. C. 141; Republic Creosoting Co. v. N. O. G. N. R. R., 50 I. C. C. 201, 202; Green Bay Spec. Co. v. N. Y. & L. B. R. R., 50 I. C. C. 237; Potlatch Lumber Co. v. W. I. & M. Ry., 50 I. C. C. 277; Hutton & Bourbonnais Co. v. S. Ry., 50 I. C. C. 434; Chicago Lum. & Coal Co. v. A. G. S. R. R., 50 I. C. 481; Ruddock Orleans Cypress Co. v. A. T. & S. F. Ry., 51 I. C. C. 114; Penick and Ford v. M. L. & T. R. R. & S. S. Co., 51 I. C. 147; Fechheimer Steel & Iron Co. v. Penn. R. R., 51 I. C. C. 183; Southern Pine Lumber Co. v. A. C. L. R. R. 50 I. C. 423; Murphey Co. v. C. M. & St. P. Ry., 50 I. C. C. 427; Natl. Wholesale Lumber Dealers Asso. v. S. & S. Ry. 51 I. C. C. 531; Du Pont de Nemours & Co. v. W. J. & S. R. R., 51 I. C. C. 553; N. O. N. & A. Ry. v. Illinois Central R. R., 55 I. C. C. 113, 116; Charles Boldt Paper Mills v. Director General, 55 I. C. C. 331, 332; The Germain Co. v. Director General, 56 I. C. C. 259, 260; Texas Company v. Director General, 57 I. C. C. 48, 51; Carolina Portland Cement Co. v. Director General 57 I. C. C. 496; W. P. Brown & Sons Lumber Co. v. Director General, 57 I. C. C. 509; John Lucas & Co. v. Director General 59 I. C. C. 713; Booth & Bro. v. S. Ry. Co., 59 I. C. C. 139; United Iron Works Inc. v. Director General, as Agent, 59 I. C. C. 312; Williams & Co. v. Director General, as Agent, 66 I. C. C. 305; Lycoming Motors Corp. v. E. J. & S. R. R. Co., 80 I. C. C. 757; California Packing Corp. v. Director General, as Agent, 83 I. C. C. 490.

§5¾. Reconsigned Shipments.

See Reconsignments §6½a.

IMPORTANT CASES SINCE 1908

(a) Complainant attacked as unreasonable and illegal due to misrouting charges collected on a car of yellow pine lumber from Slaughters, Ala., to Cairo, Ill., reconsigned to Cincinnati, O., originally consigned to complainant at Cairo, and moved to that point on August 13, 1917, via the C. of Ga., and I. C. On Sept. 5, after the shipment arrived at Cairo complainant by letter directed the I. C., to reconsign the car to Cincinnati, but specified no routing. Shipment moved from Cairo over the I. C., to Indianapolis, Ind., thence to Cincinnati via the Big Four. Upon its arrival at Cincinnati the consignee ordered the car placed for unloading at St. Bernard, O., a point within the Cincinnati switching limits, charges collected at rate of 31.6c, made up of 20c to Cairo and 11.6c beyond. When the shipment moved a tariff to which the C. of Ga., I. C., and B. & O. S. W. were parties, published a

joint rate of 20c on yellow pine lumber from Slaughters to Cincinnati, this rate not being restricted to any particular route or routes. Tariff of the I. C., authorized reconsignment to destinations beyond the reconsigning points, at the through rates and without additional charge. HELD, had the shipment been forwarded by the I. C. via Odin and the B. & O. S. W., a rate of 20c would have been charged, shipment misrouted by I. C., reparation with interest awarded. Carolina Portland Cement Co. v. Director General, 57 I. C. C. 496.

§6. Right of Carrier to Route or Restrict Route.

CASES 1887-1908

(a) While it is the duty of a state carrier which engages in interstate commerce to forward traffic offered from a connecting line, there is no authority, under the present Act, to compel the carrier to forward the traffic over a route not operated or selected by itself. Mattingly v. Pennsylvania Co. (Com.), 2. I. C. R. 806.

(b) Under the practice of defendants as initial carriers in joint continuous routes of reserving to themselves exclusive control of the routing and denying to shippers any choice or control in a selection as between different established routes, a route or tariff may be available to one shipper but not to another, and open one minute to a shipper but closed the next; this to be determined by the carriers agents according as they may desire to distribute the shippers business among one another from time to time or for any reason whatsoever. This practice of defending whereby shippers are denied the use of their transportation facilities by established routes is in violation of the statute, and, in its application by the defendants to the traffic, subjects the owners and shippers thereof to undue unjust and unreasonable prejudice and disadvantage and gives to the carriers undue and unreasonable preference and advantage. Consolidated Forwarding Co. v. Southern Pacific Co. 9 I. C. C. 183, 206.

(c) If the carrier had contrary to the positive instructions of the shipper taken the responsibility of routing the car by indirect, expensive lines instead of the obvious, direct and cheaper route, or had without any instructions so routed the car as to burden the shipper with the needless expense of the longer route, it would be prima facie unjust and unreasonable and would, without explanation, constitute fair basis for an order requiring the carrier to reimburse the shipper for the overcharge thus wrongfully imposed. Dewey Bros. Co. v. B. & O. R. R. 11 I. C. C. 481, 483.

IMPORTANT CASES SINCE 1908

(d) Carriers may not disregard instructions of shippers as to intermediate routing, except when the tariff of the initial line reserves the right to dictate intermediate routing. Foster Lumber Co. v. A. T. & S. F. Ry. Co., 17 I. C. C. 292, 294.

(e) No obligation rests upon the carrier to hunt up unnatural connections of practically unknown gateways, in order to determine the lowest possible combination for a given shipment, but the Commission cannot, with due regard for the rights of the shipping public, relieve the carriers of the duty of reasonable investigation of recognized practicable routes in connection with a designated delivering line. Goodman Mfg. Co. v. Penn. R. R. Co., 26 I. C. C. 423, 426.

(f) In absence of instructions, it is misrouting to ship via state route taking lower rate. Damages awarded. Lathrop Lumber Co. v. A. G. S. R. R. Co., 27 I. C. C. 250.

(g) The initial carrier is under no obligation to deliver shipments to its competitor at point of origin, unless so directed by the shipper. Terhune Lumber Co. v. S. Ry. in Miss., 42 I. C. C. 317, 318.

(h) The right of a carrier to rout traffic over its own line, provided the public interest does not suffer thereby is well established. Whether or not the exercise of this right in a given case is consistent with the public interest must be determined by the circumstances. The practicability of the preferred route as determined by its directness and other operating conditions, is an important consideration. Petroleum from Oklahoma Points, 48 I. C. C. 737, 738.

(i) In an analgous case it appeared that due to abnormal ice conditions in Norfolk harbor, the customary route and via which shipments were specifically routed, carrier delivered via routes taking higher rates. HELD: Such shipment as were diverted without shipper's authorization, found misrouted. Reparation awarded. Du Pont de Nemours & Co. v. Director General, as Agent, 64 I. C. C. 170.

(j) If carrier intends to restrict the application of rates to any particular route, it should do so by clear and unequivocal language. Baker-Reid Lumber Co. v. B. & O. R. R. Co., 74 I. C. C. 490.

(k) Explanation by originating carrier's agent to shipper of circuity of shipper's routing may restrain shipper thereafter from complaining, but it does not excuse carrier from indulging in uneconomic transportation. Southeastern Express Co. v. American Ry. Express Co., 78 I. C. C. 126, 141.

(l) It is not for carriers to dictate routes to be used by shippers upon theory that ultimate cost of product to consumer would be less by using routes which carriers select; nor is it for commission to attempt to control ocean routing of freight for purpose of augmenting revenues of particular carriers to depletion of revenues of other carriers. Storage-in-transit Rules at Minnesota Transfer. Southeastern Express Co. v. Amer. Ry. Exp. Co. 78 I. C. C. 126, 141, 142, 265, 269.

(m) It is not for carriers to dictate the routes to be used by shippers upon the theory that the ultimate cost of the product to the consumer would be less by using routes which the carriers select; nor is it for the Commission to attempt to control the ocean routing of freight for the purpose of augmenting the revenues of particular carriers to the depletion of revenues of other carriers. Storage in transit rules at Minnesota Transfer, 78 I. C. C. 265, 269.

(n) Proposal of Northern Pacific and Butte, Anaconda & Pacific railroads to eliminate the Midland Continental as an intermediate carrier in traffic between eastern transcontinental group F and certain points in Montana found justified on eastbound but not on westbound traffic. While routes via proposed junctions would in some instances be longer than those embracing the Midland, these junctions are long-established gateways between the Northern Pacific and connections, and employment of an intermediate carrier would necessitate further division of revenue, and on eastbound traffic result in short-hauling the Northern Pacific. Routing via Midland Continental R. R., 78 I. C. C. 328.

(o) Contention that a carrier is not a "shipper" as that term is used in paragraph (10) of section 15 of the act, and that company material therefore must be considered unrouted traffic, not sustained. On contrary, the commission has repeatedly referred to carriers as shippers when engaged in transporting material belonging to them. In the Matter of Transportation of Company Material, 22 I. C. C. 439, 440. As a shipper, therefore, it necessarily follows that such carrier has right to route its traffic as it sees fit so far as this provision of the act is concerned. New Mexico Central Ry. Co. v. A. T. & S. F. Ry. Co., 81 I. C. C. 721, 722.

ALL OTHER CITATIONS

Florida Fruit & Vegetable Shippers' Protect. Ass'n. v. A. C. L. R. R. Co., 14 I. C. C. 476; Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co., 15 I. C. C. 460, 464; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 16 I. C. C. 56, 69; Commission of Oklahoma v. C. R. I. & G. Ry. Co., 17 I. C. C. 379, 382; Hettler Lumber Co. v. G. & S. I. R. R. Co., 21 I. C. C. 14; Public Service Commission of Wash. v. N. P. Ry. Co., 23 I. C. C. 256; Dickerson v. L. & N. R. R. Co., 187 Fed. 874, 879; Pole Stock Lumber Co. v. G. & S. I. R. R. Co., 26 I. C. C. 451; Weyl-Zuckerman & Co. v. C. M. Ry. Co., 27 I. C. C. 493, 495; C. C. C. & St. L. Ry. Co. v. Hayes (Ind., 1914), 103 N. E. 839. On rehearing; Keeton v. St. L. S. W. Ry. Co., 39 I. C. C. 221; Meeds Lumber Co. v. A. T. & N. R. R. Co., 42 I. C. C. 121; American Lum. & Export Co. v. A. T. & N. R. R. Co., 42 I. C. C. 259; Rawson v. C. C. C. & St. L. Ry., 45 I. C. C. 183, 184; B. & M. R. R. v. Oceanic Steam Nav. Co., (Mass. 1917) 116 N. E. 260; Kaw River Sand & Gravel Co. v. A. T. & S. F. Ry., 53 I. C. C. 28, 31; Globe Elevator Co. v. Director General, 55 I. C. C. 587, 594; Gwinn Bros. & Co. v. C. & O. Ry., 56 I. C. C. 298, 300; Seaboard By Product Coke Co. v. Director General. 59 I. C. C. 35; McGowin Lumber & Export Co. v. Director General, 59 I. C. C. 238, 240; McCloud River Railroad Co. v. O. S. L., 59 I. C. C. 539; Meeds Lumber Co. v. Director General, 59 I. C. C. 243; Indian Refining Co. v. Director General, as Agent, 59 I. C. C. 246; Weissbaum & Co. v. Director General, as Agent, 59 I. C. C. 711; Sparr Fruit Co. v. R. G. E. P. & S. F., 60 I. C. C. 455; Boston Wool Trade Assn. v. A. T. & S. F., 62 I. C. C. 228; Du Pont de Nemours & Co. v. Director General, as Agent, 60 I. C. C. 621; Lycoming Motors Corporation v. E. J. & S. R. Co., 80 I. C. C. 757; Boston Wool Trade Asso. v. Director General, 81 I. C. C. 131; Fer-

tilizer and Fertilizer Material, 80 I. C. C. 604; Intermediate Routing, 81 I. C. C. 272, 275, 277; Elk Refining Co. v. B. & O. R. R. Co., 83 I. C. C. 414; Routing of Lumber to Stations on Copper Range R. R., 89 I. C. C. 351.

§6½. Rail-and-Water Route.

See Rail and Water Rates.

IMPORTANT CASES SINCE 1908

(a) If a shipper desire his shipment to move via water and rail route that is cheaper than the all rail route, he must in delivering it to an initial carrier specify such routing, otherwise it is understood that the shipment is to move via an all rail route. Schuhles Pure Grape Juice Co. v. Director General 68 I. C. C. 485, 486.

(b) If complainant desired to have its shipment move over a cheaper rail and water route, it should have specified such routing to the initial carrier. W. A. Zelnicker Supply Co. v. Sugar Land Ry. Co., 81 I. C. C. 189, 190.

(c) Routing instructions designated two roads "and connecting lines" but did not specify rate. Tariff under which charges assessed named certain steamship lines as participating carrier. Contention by complainant that such steamship lines are "connecting lines" under routing instructions given and that reparation be awarded to basis of rate that would have resulted from rail-and-water movement, not sustained. If complainant desired to have shipment move over cheaper rail-and-water route, it should have specified such routing to initial carrier. Schule's Pure Grape Juice Co., 68 I. C. C., 485. Shipment not misrouted. Zelnicker Supply Co. v. S. L. Ry. Co. 81 I. C. C. 189.

(d) After arrival of shipments at originally billed destination, complainant requested reconsignment, specifying partial routing as to some shipments and no routing as to others. Movement via rail-and-water route not requested, but shipper contends that shipments should have moved via such route over which lower rate applied. HELD: Where two routes, one all-rail and other rail-and-water, are available, it is understood that shipments are to move all-rail unless shipper specifies rail-and-water. Shipments found not misrouted. Globe Grain & Milling Co. v. Director General, as Agent, 83 I. C. C. 483.

§7. Shipper's Instructions.

See Bills of Lading §10; Through Routes and Joint Rates VI.

CASES 1887-1908

(a) Through routes and through rates; rights of consignors to route their shipments. An individual shipper, or consignor, cannot legally require a railroad company, to send a shipment by a particular route, beyond the company's line, at the same, or equivalent through rates, which such company may have established with other connecting lines; and what the individual shipper of Interstate commerce may not lawfully demand, common carriers engaged in transporting such commerce may not lawfully require of connecting lines. Kentucky Indiana Bridge Co. v. Louisville & Nashville R. Co., 2. I. C. R. 351.

(b) Where a shipper of freight gives directions to the freight agent of the initial carrier at the point of shipment as to the particular route by which the freight shall be shipped to destination, it is the duty of the freight agent to make such notations on the way bill as will reasonably and properly carry the freight by such particular route to destination. Pankey v. Richmond & Danville R. Co., 3 I. C. R. 3.

(c) A shipper at Troupe, Texas, directs the freight agent of a carrier to bill his freight from that point to Fort Lawn, South Carolina, via Vicksburg, Jackson, Meridian, Birmingham, Atlanta, Augusta and Columbia. The freight agent simply inserts in the way bill that the destination of the freight is Fort Lawn, South Carolina, "via Vicksburg," in consequence of which the freight at Vicksburg is billed to Atlanta and consigned to the Richmond and Danville Railroad Company, by which it is carried to Fort Lawn without being carried by way of Augusta and Columbia, and as a result of this the shipper is compelled to pay eighty-six cents more for the carriage than if it had been billed via Augusta, as directed by the shipper, the rates by all-rail lines from Vicksburg to Augusta being the same, and not the same from Vicksburg to Fort Lawn via Atlanta: HELD, That in this the freight agent failed to do his duty; he should have made a notation on the way-bill via Vicksburg and Augusta; and upon request the initial carrier should refund to the shipper the amount of this overcharge occasioned by the oversight of its freight agent. Pankey v. Richmond & Danville R. Co., 3 I. C. R. 3.

(d) Refusal of a railroad company to receive and route a shipment in accordance with the request of the shipper that it be forwarded via a connecting line with which the company has at the time through billing arrangements and through rates, to the damage of the shipper, is a discrimination against him in violation of the Interstate Commerce Act. Rea v. Mobile & O. R. Co., 7 I. C. C. 43.

(da) Complainant offered the defendant a carload of potatoes at Verona, Miss., and asked that the shipment be forwarded to Cleveland, O., via a connecting line with which defendant had at the time through billing arrangements and through rates, but defendant's agent refused to receive and route the shipment in accordance with such direction, and complainant was thereby damaged to the extent of one hundred dollars. HELD, that complainant was entitled to have his merchandise carried over the route which he directed, and that the failure of defendant to receive and forward the shipment accordingly was a discrimination against complainant in violation of the Act to Regulate Commerce. Reparation ordered. Rea v. Mobile & Ohio R. Co., 7 I. C. C. 43.

(e) Complainant shipped a carload of hay from Summit, O., to Lenoir, N. C. Complainant claims that shipping instructions were given to route the car via "Strasburg Junction and Southern Railway." The defendant initial carrier denies this and asserts that instructions were given to route via "Cincinnati and Southern Railway," the route actually used. The rate was less via Strasburg than via Cincinnati. The complainant was unable to prove definitely the giving of instructions to route via Strasburg, but complainant and defendant both agree that shipping instructions were given. HELD: That if the carrier had, contrary to positive instructions from the shipper, routed the car by an indirect and expensive line instead of the direct and cheaper route, or had without any instructions sent the car by the longer route, so as to burden the shipper with needless expense, such action would be prima facie unjust and unreasonable, and without justification would constitute fair basis for an order of reparation. That the giving of instructions relieves the carrier from any obligation to forward by the cheaper route, and in this case, where the testimony does not indicate what instructions were actually given, an order in favor of the complaining shipper can not be issued. Dewey Bro. Co. v. Baltimore & O. R. Co. et al, 11 I. C. C. 481.

(f) The carrier is not obliged to forward by a cheaper route where he follows the instruction given by the shipper, and an order in favor of the complainig shipper cannot be issued where the testimony does not indicate what instructions were actually given. Dewey Bros. Co. v. Baltimore & O. R. Co., 11 I. C. C. 481.

(g) It is clear that even if the duty of a railroad agent in the absence of instructions is to ship by the route giving the lowest combination he is relieved of that responsibility of direction in the face of specific instructions by a shipper when the agent consents to the routing suggested. Dewey Bros. Co. v. B. & O. R. R., 11 I. C. C. 481, 484.

(h) If a carrier, contrary to shipper's instructions, forwards cars by a more expensive instead of a cheaper route, or, without any instructions, sends the cars by the more expensive route, such action is prima facie without justification and constitutes a fair basis for reparation; but if the shipper gives definite instructions to move the cars by the more expensive route, the carrier is relieved of the obligation to forward by the cheaper route. Pankey v. R. & D. R. Co. 3 I. C. C. Rep. 33, cited and approved. Poor Grain Co. v. C. B. & Q. Ry. Co., 12 I. C. C. 418.

IMPORTANT CASES SINCE 1908

(i) Where routing instructions are followed no misrouting can arise. Empire Wall Paper Co. v. B. & M. R. R., 20 I. C. C. 1; Independent Supply Co. v. C. & P. R. R. Co., 20 I. C. C. 66; Parfrey v. C. M. & St. P. Ry. Co., 20 I. C. C. 104, 105; West Oregon Lumber Co. v. A. & C. R. R. Co., 20 I. C. C. 151, 152.

(j) A shipper may offer his freight without routing instructions, in which event it is the duty of the carrier to route it via the cheapest available practicable route, but he is also entitled when for any reason he specifies a particular route to have his shipments move in accordance with his instructions, at the established rate over that route, and it is the duty of the initial carrier to take the necessary steps to carry out his routing instructions. Any carrier misrouting a shipment in violation of specific instructions to the injury of the shipper, violates the Act, and is respon-

sible for the damage thereby caused to the shipper. Beckman Lumber Co. v. L. & N. Ry. Co., 21 I. C. C. 280, 281.

(k) A delivering carrier was named in the routing instructions. Damages awarded where carrier failed to route the goods to a junction with such road over which a lower rate was applicable. Ryland & Brooks Lumber Co. v. C. & O. Ry. Co., 21 I. C. C. 520.

(l) Where the shipper desires to prescribe the route over which his property shall be transported, all of his instructions in that respect should be placed upon the shipping order given to the carrier as well as upon the bill of lading signed by the carrier and retained by the shipper, and in instances where the bills of lading and shipping orders are prepared by the shipper and the shipper notes upon the bill of lading certain instructions which he fails to note on the shipping order the carrier cannot be held liable for misrouting if it complies with the instructions shown on the shipping order. American Agricultural Chemical Co. v. Bangor & Aroostook R. R. Co., 28 I. C. C. 398, 401.

(m) Section 15, as amended, insures to shippers right to route their shipments. Morse Lumber Co. v. L. & N. R. R. Co., 33 I C. C., 571, 572.

(n) Shippers are chargeable with knowledge of the legal tariff rates, and the definite specification by shippers of the more expensive of two or more available routes relieves carriers of the duty of forwarding the shipments over the cheapest route. Baker-Wakefield Cypress Co. v. T. & P. Ry., 37 I. C. C. 546.

(p) Where routing was specified by the shipper but no rate or junction point the legally applicable rate charged found unreasonable to extent it exceeded lower rate applicable via other routes and subsequently established via route of movement but in connection with a different junction. Reparation awarded. Roberts Cotton Oil Co. v. Director General, as Agent, 60 I. C. C. 139.

(q) Because of an embargo shipper authorized change in destination and ultimately reconsigned shipment to originally billed point. Shipper might have stood upon his right to have joint rate specified in original billing protected, but since he consented to the substitution of a different contract in the face of a warning that change in destination could not be made the effective means of diversion after arrival at new destination, he thereby assumed liability for the combination rates charged and legally applicable over route of movement. George Pottery Co. v. Director General, as Agent, 60 I. C. C. 372.

(r) Where a shipper specifies routing by a carrier, which, in connection with the originating line, forms a through route from point of origin to destination, the initial carrier can not be charged with having misrouted the shipment if it bills it over that route instead of selecting a cheaper route in which those carriers participated, but with a third carrier intervening. Northwestern Traffic Service Bureau v. M. P. R. R. R. Co. 73 I. C. C. 471, 472.

(s) Shipments were specifically routed via lines forming a direct route between origin and destinations, over which they would have ordinarily moved. Due to switchmen's strike initial carrier without consulting shipper forwarded via much longer but lower rate route with a third carrier intervening. HELD, shipments misrouted but since it moved via a less expensive route shipper was benefited thereby instead of being damaged. Northwestern Traffic & Service Bureau (Inc.) v. M. P. R. R. Co., 73 I. C. C. 471.

(t) Following Stebbins case, 42 I. C. C. 150, and other cases cited, shipments found not misrouted where they moved in accordance with routing instructions, although a lower rate, consistent with such instructions, applied via another route. Northwestern Traffic & Service Bureau (Inc.) v. C., T. H. & S. E. Ry. Co., 73 I. C. C., 475.

(u) Shippers are entitled, under the act, to use any through route available under the tariffs. If the tariffs are so worded that routes other than a direct route are possible such routes should be available alike to all shippers whether availed of under a reconsignment order or upon original billing. Baker Reid Lumber Co. v. B. & O. R. R., 74 I. C. C., 489, 491.

(v) The insertion of a rate in the bill of lading by the shipper was equivalent to instructing the defendant to forward the shipments by the route over which that rate applied. Cayuga Operating Co. v. Director General, 74 I. C. C. 676, 677.

(w) To avoid embargo via the usual route, shipments were specifically routed by shipper over route taking a higher

combination rate. HELD: Facts that there were lower rates in effect over routes other than route of movement, that a lower joint rate was subsequently established over the route traversed, and that between other points there were joint rates made on substantially the same basis as that in connection with the less costly route, do not prove unreasonableness. International Paper Co. v. M. C. R. R. Co., 74 I. C. C. 385.

(x) It becomes necessary, in 24 I. C. C., 380, and 28 I. C. C., 131, to forbid an express company from serving unduly its own interest by circuitous routing, and there is no more reason for a shipper to be allowed to route circuitously than there is for an express company. Southeastern Express Co. v. Amer. Ry. Exp. Co., 78 I. C. C. 126, 142.

(y) Where routing instructions are ignored by carrier and shipments move via lower-rated routes, complainants are entitled to rates applicable over route of movement, and same is true with respect to shipments covered by bills of lading containing higher rates without routing instructions and which are moved via routes either all-rail, water-lake-and-rail, or water-ocean-and-rail, over which rates lower than those inserted in bills of lading apply. Boston Wool Trade Asso. v. Director General, as Agent, 81 I. C. C. 131, 133.

(z) Routing instructions designated two roads "and connecting lines" but did not specify rate. Tariff under which charges assessed named certain steamship lines as participating carriers. Contention by complainant that such steamship lines are "connecting lines" under routing instructions given and that reparation be awarded to basis of rate that would have resulted from rail-and-water movement, not sustained. If complainant desired to have shipment move over cheaper rail-and-water route, it should have specified such routing to initial carrier. Schule's Pure Grape Juice Co., 68 I. C. C., 485. Shipment not misrouted. Zelnicker Supply Co. v. S. L. Ry. Co., 81 I. C. C. 189.

(aa) Contention that lower combination rate, available over route of movement, was not applicable to complainant's shipment, since there was no agreed basis of divisions out of such lower combination between carriers parties to tariffs, not sustained. Routing under lower rate was not restricted in tariffs and such rate was applicable over lines of all carriers parties thereto. Complainant was entitled to lowest combination over route specified, and it is no excuse that carriers had not agreed on divisions. Shipment found overcharged and reparation awarded. Standard Rice Co. v. G., H. & S. A. Ry. Co., 83 I. C. C. 305, 306.

(bb) To promote speed and efficiency, circular of director general suggested certain routing, with protection of lower rate over other routes under Federal control. Complainant routed in compliance with circular but shipment moved via route not specified therein and charges applicable to route of movement, but in excess of those via other available routes, assessed. HELD: Even if shipment be found misrouted, rate assessed was applicable since circular was not filed under section 6 of the act and thus had no effect as tariff publication. However, earnings under rate charged not only exceed those under rate via longer routes, but are excessive for a route designated for use "for speed and efficiency." Rate assessed found unreasonable and reparation awarded. Pioneer Paper Co. v. Director General, as Agent, 83 I. C. C. 377.

(cc) A shipper is bound by his routing instructions, and, in absence of proof that rate applicable over route of movement was unreasonable, he has not been subjected to an unreasonable charge merely because there was lower rate over other available routes. Railroad Commissioners of Montana, 26 I. C. C. 482; South Chester Tube Co., 64 I. C. C., 78; Mexican Gulf Oil Co. v. Director General, as Agent, 83 I. C. C. 411, 412, 413.

(dd) The carriers specified by the consignor in the bills of lading formed a complete route from point of origin to destination. The carriers can not be charged with misrouting in forwarding the shipments over that route although a lower rate was applicable over another route in which those carriers participated with a third carrier. Consolidated Coal Co. v. M. P. R. R., 88 I. C. C. 523, 524.

(ee) Where a carrier diverts a shipment from the route specified by the shipper to another route taking a higher rate it is liable to make reparation and cannot escape liability on the ground that the bill of lading contains a provision giving it the right of diversion, where such right is not contained in the published tariffs. L. & N. R. R. Co. v. Dickerson, 191 Fed. 705, 709.

ALL OTHER CITATIONS

Chicago & Riverdal Lumber Co. v. C. & E. I. R. R. Co., Unrep. Op. 346; Barker & Co. v. G. & S. I. R. R. Co., Unrep. Op. 832; Zuber v. C. of Ga. Ry. Co., Unrep. Op. 327; Ludowici-Celadon Co. v. M. P. Ry. Co., Unrep. Op. 320; Utterback Bros. Co. v. N. Y. C. & H. R. R. R. Co., Unrep. Op. 317; Caddell & Sons v. C. & S. Ry. Co., Unrep Op. 177; Larsen Canning Co. v. C. & N. W. Ry. Co., 13 I. C. C. 286, 287; Stedman v. C. & N. W. Ry. Co., 13 I. C. C. 167, 169, 170; Struthers-Wells Co. v. Penn. R. R. Co., 14 I. C. C. 291, 292; Duluth Log Co. v. Minn. & Int. Ry Co., 15 I. C. C. 627, 628, 629; Carstens Packing Co. v. O. R. R. & Nav. Co., 15 I. C. C. 482, 483; Bregman & Co. v. Penn. Co., 15 I. C. C. 478, 479; Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co., 15 I. C. C. 460, 464; Carstens Packing Co. v. O. S. L. R. R. Co., 15 I. C. C. 429, 430; Folmer & Co. v. Great Northern Ry. Co., 15 I. C. C. 33, 36; Counsil v. St. L. & S. F. R. R. Co., 16 I. C. C. 189, 199; City of Spokane v. N. P. Ry., 16 I. C. C. 179, 180; Clemens Horst Co. v. S. P. Co., 17 I. C. C. 576; Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co., 17 I. C. C. 540; Foster Lumber Co. v. A. T. & S. F. Ry. Co., 17 I. C. C. 292, 294; South Canon Coal Co. v. C. & S. Ry. Co., 17 I. C. C. 286, 287; Lebanon Paper Co. v. E. J. & E. Ry. Co., 18 I. C. C. 591, 502; De Bary & Co. v. Louisiana Western R. R. Co., 18 I. C. C. 527; Duluth & Iron Range R. R. Co. v. C. St. P. M. & O. Ry. Co., 18 I. C. C. 485, 487; Platten Produce Co. v. Kalamazoo, Lake Shore & Chicago Ry. Co., 18 I. C. C. C. 249, 250; Delray Salt Co. v. M. C. R. R. Co., 18 I. C. C. 248; Hollingshead & Blei Co. v. P. & L. E. R. R. Co., 18 I. C. C. 193, 194; Spreckels Bros. Commercial Co. v. Monongahela R. R. Co. 18 I. C. C. 190, 191; Stone-Ordeans Wells Co. v. P. B. & W. R. R. Co., 18 I. C. C. 160, 161; Cressey & Co. v. C. M. & St. P. Ry. Co., 18 I. C. C. 132, 134; Donahue v. C. M. St. P. Ry. Co., 18 I. C. C. 92, 93; Fish & Co. v. N. Y. C. & St. L. R. R. Co., 19 I. C. C. 425, 452; Sikeston Mercantile Co. v. B. & M. R. R., 19 I. C. C. 422; Prentiss & Co. v. P. R, R Co., 19 I. C. C. 68, 69; Noble v. J. L. C. & E. R. R. Co., 20 I. C. C. 520, 522; Poor Grain Co. v. C. B. & Q. R. R. Co., 12 I. C. C. 418, 469, approved; Switzer Lumber Co. v. T. & N. O. R. R. Co., 21 I. C. C. 290, 291; Goodkind Bros. v. I. & L. Ry. Co., 21 I. C. C. 17, 18; Humbolt Refining Co. v. M. K. & T. Ry. Co., 22 I. C. C. 363; Atlantic Refining Co. v. B. & O. R. R. Co., 23 I. C. C. 492; Alabama Lumber & Export Co. v. L. & N. R. R. Co., 23 I. C. C. 84; Parafine Federal Lumber Co. v. S. Ry. Co., Un-Paint Co. v. S. P. Co., Unrep. Op. 369; Hirsch v. E. R. R. Co., Unrep. Op. 381; rep. Op. 453; La. Sawmill Co. v. L. Ry. & Nav. Co., Unrep. Op. 422; Biddle Purchasing Co. v. B. & O. R. R. Co., Unrep. Op. 430; Taylor & Mason v. C. & C. Ry. Co., Unrep. Op. 457; Follmer & Co. v. N. P. Ry. Co., Unrep. Op. 458; Doran & Co. v. O. & K. Ry. Co., Unrep. Op. 491; O'Halloran & Jacobs v. B. & A. R. R. Co., Unrep. Op. 494; Hathway Lumber Co. v. L. & N. R. R. Co., Unrep. Op. 544; Milne Lumber Co. v. L. & A. Ry. Co., Unrep. Op. 558; Wahlgren Furniture Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 583; Ferguson Lumber Co. v. L. & A. Ry. Co., Unrep. Op. 584; Grinnell, Collins Lumber Co. v. C. B. & Q. R. R. Co., Unrep. Op. 139; Miller v. I. C. R. R. Co., Unrep. Op. A 82; Barker & Co. v. G. S. & I. R. R. Co., Unrep. Op. A 3; Paine Lumber Co. v. C. C. C. & St. L. Ry. Co., 24 I. C. C. 626, 627; Lathrop Shea Henwood Co. v. L. V. R. R. Co., 24 I. C. C. 622, 623; In re Express Rates, 24 I. C. C. 380, 407; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 76; In re Advances on Coal, 24 I. C. C. 43, 44; Ball Lumber Co. v. T. & P. Ry. Co., 25 I. C. C. 437, 438; Conifer Lumber Co. v. L. & N. R. R. Co., 25 I. C. C. 272; Beekman Lumber Co. v. La. Ry. & Nav. Co., 25 I. C. C. 171; J. R. Shoupe & Co. v. T. & B. V. R. R. Co., 26 I. C. C. 570; Parlin & Orendorff Plow Co. of St. Louis v. U. S. Exp. Co., 26 I. C. C. 561, 562; Railroad Commissioners of Montana v. N. P. Ry. Co., 26 I. C. C. 482, 483; Evens & Howard Fire Brick Co. v. W. R. R. Co., 26 I. C. C. 152, 153; American Agricultural Chemical Co. v. Bangor & Aroostook R. R. Co., 28 I. C. C. 398, 400; Birge & Forbes Co. v. M. K. & T. Ry. Co., 28 I. C. C. 409, 411; Charles Becker v. P. M. R. R. Co., 28 I. C. C. 645, 654; Ploughe v. C. B. & Q .R. R. Co. Unrep. Op. A101; Bristol Door & Lumber Co. v. S. Ry. Co., Unrep. Op. A206; Ploughe v. C. & N. W. Ry. Co., A155; Dunbar-Hansen Co. v. C. & E. I. R. R. Co., Unrep. Op. A250; Vehicle Supply Co. v. L. Ry. & N. Co., Unrep. Op. A252; Swift Beef Co. Ltd., v. C. P. Ry. Co., Unrep. Op. A284; Forester Lumber Co. v. S. Ry. Co., Unrep. Op. A-610; American Hay Co. v. B. & M. R. R. Unrep. Op. A286; Madera Co. v.

G. H. & S. A. Ry. Co., Unrep. Op. A-564; Hedden-Clark Lumber Co. v. B. & O. R. R. Co., Unrep. Op. A301; Hettler Lumber Co. v. M. C. R. R. Co., Unrep. Op. A302; Hinton Fruit & Produce Co. v. C. & O. Ry. Co., Unrep. Op. A312; United Kansas Portland Cement Co. v. M. P. Ry. Co., Unrep. Op. A321; Fullerton-Powell Hardwood Lumber Co. v. M. & N. F. R. R. Co., Unrep. Op. A367; Gamble-Robinson Commission Co. v. A. & B. R. Ry. Co., Unrep. Op. A395; Concentration of Cotton at Points in Arkansas, 29 I. C. C. 106, 108; Brackett Co. v. G. N. Express Co., 29 I. C. C. 667, 668; Weaver v. W. S. R. R. Co., Unrep. Op. A505; Noble v. D. T. & I. Ry. Co., Unrep. Op. A510; Beaver Co. v. N. Y. C. & H. R. R. R. Co., Unrep. Op. A545; Hoover, Owens, Rentschler Co. v. C. H. & D. Ry. Co., 31 I. C. C. 550, 551; Ozark Fruit Grower's Ass'n v. U. S. Exp. Co., Unrep. Op. A-736; Wood & Skilton v. S. Ry. Co., Unrep. Op. A-747; Morse Lum. Co. v. L. & N. R. R., 33 I. C. C. 571, 572; Serat v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-784; McCaull-Dinsmore Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-786; Bartlett Co. v. C. P. & St. L. R. R. Co., Unrep. Op. A-792; Calumet & Arizona Mining Co. v. S. P. Co., Unrep. Op. A-825; Goldfield Cases, 34 I. C. C. 360, 376, 378; Mitchell v. G. S. & A. Ry. Co., (S. Car), 83 S. E. 261; Tyler Coal & Coke Co. v. P. R. R. Co., Unrep. Op. 1986; Consolidated Fuel Co. v. C. B. & Q. R. R. Co., Unrep. Op. 1993; Colonial Salt Co. v. P. Co., Unrep. Op. 2033; Columbus Board of Trade v. A. C. L. R. R. Co., Unrep. Op. 2062; Reeves Coal Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 2052; Brown Paper Co. v. B. & A. R. R. 37 I. C. C. 586, 588; Oden-Elliott Lum. Co. v. S. Ry. Co., 38 I. C. C. 304; Briggs & Turvias v. C. & N. W. Ry., 38 I. C. C. 505; Terminal Freezing & Heating Co. v. P. R. R. Co., Unrep. Op. 2183; Slocomb Jr. v. C. R. R. Co., 38 I. C. C. 535, 536; Woodland Lumber Co. v. N. S. R. R. Co., 38 I. C. C. 709, 710; Pocahontas Coke Co. v. N. & W. Ry., 39 I. C. C. 218; Keeton v. St. L. S. W. Ry. of Tex., 39 I. C. C. 221; Riegel Sack Co. v. C. R. R. of N. J., 39 I. C. C. 222; North State Lum. Co. v. S. Ry., 39 I. C. C. 409; Atlantic Lumber Co. v. A. C. L. R. R. Co., 39 I. C. C. 639; Seidel Lumber Co. v. M. P. Ry. Co., 39 I. C. C. 670; Trexler Lumber Co. v. S. Ry. Co., 39 I. C. C. 753, 754; Homer Lumber Co.. v. S. Ry. Co., 39 I. C. C. 760; Thorne, Neale & Co. v. Wabash R. R. Co., 40 I. C. C. 88; Bruner & Co. v. S. Ry. Co., 40 I. C. C. 549, 551; Plainfield Grain Co. v. E. J. & E. Ry. Co., 41 I. C. C. 608; Trans-Mississippi Grain Co. v. C. B. & Q. R. R., 41 I. C. C. 612; Walsh & Weidner Boiler Co. v. S. Ry. Co., 41 I. C. C. 621; Fullerton-Powell Hardwood Lumber Co. v. G. C. & S. F. Ry. Co., 41 I. C. C. 625, 626; Northern Lumber Co. v. S. Ry. Co., 41 I. C. C. 629, 630; Mesker & Co. v. L. & N. R. R. Co., 41 I. C. C. 675, 676; Cranstron Lumber Co. v. S. Ry. Co., 42 I. C. C. 49; Solum v. Northern Pac. Ry. Co., (Minn. 1916) 157 N. W. 996, Stebbins v. D. L. & W. R. R. Co., 42 I. C. C. 150, 151; Torrey Cedar Co. v. C. & N. W. Ry. Co., 43 I. C. C. 135, 136; Wistar, Underhill & Nixon v. C. & O. Ry. Co., 43 I. C. C. 254, 256; Concentrated Cotton Routing, 44 I. C. C. 663, 665; Healey v. C. & O. Ry. Co., 44 I. C. C. 753; Austin Powder Co. v. W. & L. E. R. R., 45 I. C. C. 199, 200; Dulweber Co. v. Y. & M. V. R. R., 45 I. C. C. 549; Currie & Campbell v. C. R. R. of N. J. 45 I. C. C. 3; Globe Lumber Co. v. S. L. B. & S. Ry. Co., 45 I. C. C. 135, 136; Schuh-Mason Lumber Co. v. M. & O. R. R., 46 I. C. C. 365, 368; Curtis & Yale Co. v. C. & N. W. Ry., 47 I. C. C. 12; Kruger Lumber Co. v. St. L. & S. F. R. R., 47 I. C. C. 52; Pac. Coast Shippers Asso. v. N. P. Ry., 47 I. C. C. 57; Flanley Grain Co. v. G. N. Ry. 47 I. C. C. 74; American Bridge Co. v. N. & W. Ry., 47 I. C. 235; Oden Elliott Lumber Co. v. Louisville & N. R. R., (Ala. 1918), 77 So. 240; Ewing & Co. v. S. I. Ry. Co., 48 I. C. C. 415, 417; Galloway Co. v. G. B. & W. R. R., 48 I. C. C. 455; McCaull-Dinsmore Co. v. C. B. & Q. R. R., 48 I. C. C. 508; McCaull-Dinsmore Co. v. C. B. & Q. R. R., 49 I. C. C. 369; Lamb Co. v. C. M. & St. P. Ry., 50 I. C. C. 238; Southern Pine Lum. Co. v. A. C. L. R. R., 50 I. C. C. 423; Murphey Co. v. C. M. & St. P. Ry. 50 I. C. C. 427; Ex Parte Louisville & N. R. Co., (Ala. 1918), 79 So. 139; Page & Hill Co. v. C. St. P. M. & O. Ry., 51 I. C. C. 487; Beekman Lum. Co. v. L. R N. Co. 51 I. C. C. 551; Ruddock Orleans Cypress Co. v. A, T. & S. F. Ry., 51 I. C. C. 114; International Molasses Co. v. M. L. & T. R. R. & S. S. Co., 51 I. C. C. 147; Dewey Bros. Co. v. S. Ry., 51 I. C. C 160, 161; Fechheimer Steel & Iron Co. v. P. R. 51 I. C. C. 183; Holgate Bros. Co. v. P. R. R., 51 I. C. C. 515; Walsh & Weidner Boiler Co. v. C. & O. Ry., 51 I. C. 584; Hull Co. v. C. M. & St. P. Ry., 51 I. C. C. 612, 613; Central Penna. Lum-

ber Co. v. B. & S. R. R. Corp., 52 I. C. C. 329; Wisconsin Granite Co. v. C. & N. W. Ry., 52 I. C. C. 330; Davis Lumber Co. v. C. C. C. & St. L. Ry. Co., 53 I. C. C. 223; Sligo Iron Store Co. v. W. M. Ry. Co., 53 I. C. C. 520, 522; Walter A. Zelnicker Supply Co. v. C. B. & Q. Ry., 53 I. C. C. 15; Herman Gross v. Director General, 53 I. C. C. 429; Difenderfer Lumber Co. v. M. A. & E. Ry., 53 I. C. C. 571; South Texas Lumber Co. v. M. L. & T. R. R., 53 I. C. C. 737; Herman Gross v. Director General, 55 I. C. C. 37; Du Pont de Nemours & Co., v. C. R. R. of N. J., 55 I. C. C. 243, 244; Interstate Iron & Steel Co. v. Director General, 55 I. C. C. 669; The Germain Co. v. Director General, 56 I. C. C. 259; Aetna Explosives Co. v. Director General, 56 I. C. C. 257; James v. Alabama Great Southern R. Co., (Ala. 1919), 81 So. 582; Wright Tie Co. v. B. S. R. R. Co., 57 I. C. C. 286; Lesser-Goldman Cotton Co. v. L. & N. W. R. R. Co., 57 I. C. C. 486; Lukens Steel Co. v. Director General, 57 I. C. C. 623; William W. Johnson v. G. N., 58 I. C. C. 3; Old Ben Coal Corporation v. Director General, 58 I. C. C. 42, 44; Danzer & Co. (Inc.) v. C. & O. Ry. Co., 58 I. C. C. 119; Great Western Portland Cement Co. v. Director General, as Agent, 58 I. C. C. 205, 206; Goldsmith Bros. Smelting & Refining Co. v. Director General, 59 I. C. C. 96; Odell-Daly Material Co. v. Director General, as Agent, 59 I. C. C. 369; Jennings Jarrett Co. v. Director General, as Agent, 59 I. C. C. 93; Atlas Cereal Co. v. Director General, as Agent, 59 I. C. C. 163; Dort Motor Car Co. v. Director General, 59 I. C. C. 374; Seaboard By-Products Coke Co. v. Director General, as Agent, 59 I. C. C. 453, 454; Kansas Flour Mills Co. v. A. T. & S. F. Ry. Co., 59 I. C. C. 557; Union Petroleum Co. v. Director General, 60 I. C. C. 655; Berry Bros. v. C. & N. W., 61 I. C. C. 405, 406; Sparr Fruit Co. v. R. G. E. P. & S. F. R. R. Co., 60 I. C. C. 455; Universal Portland Cement Co. v. B. & L. E. R. R. Co., 60 I. C. C. 489; Du Pont de Nemours & Co. v. Director General, as Agent, 60 I. C. C. 243, 621; Union Petroleum Co. v. Director General, as Agent, 60 I. C. C. 655; United Paperboard Co. Inc. v. M. & E., 61 I. C. C. 483, 484; Kaufman & Sons v. Director General, as Agent, 63 I. C. C. 367; South Chester Tube Co. v. M. K. & T. Ry. Co. 64 I. C. C. 78; West Kentucky Coal Co. v. Director General, as Agent, 64 I. C. C. 151; Pfeister & Vogel Leather Co. v. Director General, as Agent, 64 I. C. C. 437; Indian Refining Co., Inc., v. Director General, 64 I. C. C. 643; Standard Asphalt & Refining Co. v. Director General, 66 I. C. C. 295; Mulkey Salt Co. v. Director General, 66 I. C. C. 441; National Supply Co. v. C. B. & Q. R. R. Co., 66 I. C. C. 604, 605; American Agricultural Chemical Co. v. Director General, 66 I. C. C. 650; Bilrower Alloys Co. v. N. P. Ry., 73 I. C. C. 625; H. A. Logan for Warren Oil Co. v. Director General, 73 I. C. C. 745; Stetson, Cutler & Co. v. Director General, as Agent, 73 I. C. C. 24, 26; Independent Elevator Co. v. M. St. P. & S. S. M. Ry. Co., 73 I. C. C. 521; International Paper Co. v. Maine Central R. R. 74 I. C. C. 385; Beaumont Chamber of Commerce v. Director General, as Agent, 74 I. C. C. 389; Cayuga Operating Co. v. Director General, as Agent, 74 I. C. C. 676; Midland Linseed Products Co. v. Director General, 77 I. C. C. 242; Southeastern Express Co. v. American Ry. Express Co. 78 I. C. C. 126, 141, 142; TideWater Paper Mills Co. v. Bush Terminal R. R. Co., 80 I. C. C. 493; W. A. Zelnicker Supply Co. v. Sugar Land R. Co., 81 I. C. C. 189.

§7½ Washouts

IMPORTANT CASES SINCE 1908

(a) In cases involving washouts, a carrier diverting traffic to a route over which a higher rate applies without authority of the shipper, is liable for the resulting increase in the transportation charges. Weyl-Zuckerman & Co. v. C. M. Ry. Co., 27 I. C. C. 493, 495.

(b) Washouts on connecting lines afford initial carriers no excuse for disregarding shippers' routing instructions, Morse Lumber Co. v. L. & N. R. R. Co., 33 I. C. C., 571, 572.

ALL OTHER CITATIONS

J. J. Newman Lumber Co. v. Miss. C. R. R. Co., 26 I. C. C. 97, 100; Kay v. Dry Fork R. R. Co., Unrep. Op. A-770;

III. LIABILITY FOR MISROUTING.

§7¾ In general

IMPORTANT CASES SINCE 1908

(a) Where reparation is sought because of loss of milling-in-transit service due to misrouting, final destination of shipment or its products must be shown to establish fact and amount. Gray & Smith v. P. Co., 34 I. C. C. 25.

(b) No order for future necessary on account of carrier's failure to receive and transport shipment as originally routed

by the shipper, in view of the penalties provided by the Act for the willful failure to comply with the provisions of section 15. Wistar, Underhill & Nixon v. C. & O. Ry. Co., 43 I. C. C. 254, 256.

(c) Regardless of the fact that complainant could have secured a lower rate had it routed its shipment via another route, it could not be urged that complainant should be required to suffer a loss resulting from an unreasonable exaction on the part of the defendants, and that the latter should be permitted to retain their excessive profits. Mississippi River & Bonne Terre Ry. v. Director General, 55 I. C. C. 674, 677, 678.

(d) A carrier is not to be relieved of liability for damage resulting from misrouting by offsetting against it losses which the shipper might, or might not, have suffered if the carrier had done its duty. Empire Lumber Co. v. Director General, 88 I. C. C. 424, 425.

ALL CITATIONS

Williar v. C. N. Ry. Co., 17 I. C. C. 304; Lee-Coit-Adreesen Hardware Co. v. Crosby Transportation Co., Unrep. Op. A- 944; Consolidated Fuel Co. v. C. B. & Q. R. R. Co., Unrep. Op. 1993; Trexler Lumber Co. v. S. Ry. 42 I. C. C. 719, 721; Schuh-Mason Lum. Co. v. M. & O. R. R., 46 I. C. C. 365; Page & Hill Co. v. C. St. P. M. & O. Ry., 52 I. C. C. 495; Zelnicker Supply Co. v. Director General, 55 I. C. C. 137; Cannon Mfg. Co. v. S. Ry., 56 I. C. C. 128.

§8. Burden of Proof.

See Burden of Proof; Evidence I.

IMPORTANT CASES SINCE 1908

(a) Where routing instructions are given under which more than one route may be selected by the carriers, the presumption is that the lowest rate will be applied by them and the burden is upon the carrier charged with misrouting to show that it applied such rate. Duluth Log Co. v. M. & I. Ry. Co., 15 I. C. C. 627, 630.

(b) Where the record fails to indicate clearly the character of the shipping instructions given the initial carrier, the Commission is left with no adequate grounds for a finding of misrouting. La-Crosse Shippers Asso. v. C. I. & L. Ry., 43 I. C. C. 520.

ALL CITATIONS

Pole Stock Lumber Co. v. G. & S. I. R. R. Co., 26 I. C. C. 451, 455; McCullough v. Missouri Pacific Ry. Co., 160 Pac. (Kans. 1916) 214; Zelnicker Supply Co. v. M. P. R. R., 55 I. C. C. 128; Lowry Lumber Co. v. Director General, 57 I. C. C. 623, 624.

§8½. Missing in Transit Privilege.

IMPORTANT CASES SINCE 1908

(a) Shipments of wheat milled in transit and product forwarded thence to destinations found misrouted as initial carrier could have forwarded via another route over which milling in transit available on the basis of the through rates from origin to destinations, plus the transit charge. Reparation awarded. Gwinn Bros. & Co. v. C. & O. Ry., 56 I. C. C. 298, 302.

ALL CITATIONS

McCullough v. Missouri Pac. Ry. Co., 160 Pac. (Kans. 1916), 214; Three States Tie Co. v. C. & E. I. 57 I. C. C. 24; Lesser Golman Cotton Co. v. L. & N. W., 57 I. C. C. 486; Acme Mills v. Director General, as Agent, 81 I. C. C. 492.

§9. Measure of Damages.

See Reparation §18.

CASES 1887-1908

(a) Reparation on shipment of silos, on basis of difference between joint through rate and combination rate on Chicago between same points. Kalamazoo Tank & Silo Co. v. M. C. R. R. Co., 12 I. C. C. 154.

(b) Where a shipper gives no routing directions and the carrier forwards traffic over one route when another route carrying a lower rate is equally available, the Commission holds it liable to the shipper for the difference between the higher rate and the rate applying over the less expensive route. A. J. Poor Grain Co. v. C. B. & Q. R. R. Co., 12 I. C. C. 469, 470.

(ba) Measure of damages, for disregard by carrier obligation to forward shipment by route over which, in the absence of routing instructions, is the lowest charge for the transportation applies. Hennepin Paper Co. v. Northern P. Ry. Co., 12 I. C. C. 535.

(c) To require reparation in misrouting cars is only to require the carrier to make just compensation for injury resulting from failure to perform its duty; but to require or permit any other carrier than the one responsible for the misrouting to participate in the making of such reparation would be to permit or require departure from established rates, which is expressly for-

bidden by law. Hennepin Lumber Co. v. N. P. Ry., 12 I. C. C. 535, 557.

IMPORTANT CASES SINCE 1908

(d) The measure of damages for misrouting a shipment billed to a consignee carrier is not the full division of the rate, because it would have cost that carrier something to perform the haul. In Re Transportation of Company Material, 22 I. C. C. 439, 441.

(e) Where an unauthorized diversion in transit makes a higher rate, damages will be awarded. Weyl-Zuckerman & Co. v. C. M. Ry. Co., 27 I. C. C. 493, 495.

(f) Damages for misrouting, are measured by the extent to which the charges collected exceeded those which would have accrued via the route directed by shipper or which the carrier should have used in the absence of any instructions. Northwestern Traffic Service Bureau v. M. P. R. R. Co. 73 I. C. C. 471, 472.

ALL OTHER CITATIONS

Hill-Ingham Lumber Co. v. K. C. S. Ry. Co., Unrep. Op. 45; Goddard Co. v. C. & N. W. Ry. Co., Unrep. Op. 83; Mason Gregg Grain Co. v. Wabash R. R. Co., Unrep. Op. 89; Sterling Lumber Co. v. L. & N. R. R. Co., Unrep. Op. 222; Craig & Sons v. C. & O. Ry Co., Unrep. Op. 266; Sabine Lumber Co. v. L. Ry. & Nav. Co., Unrep. Op. 270; Hill & Webb v. C. R. I. & P. Ry. Co., Unrep. Op. 274; Benton v. St. L. & S. F. R. R. Co., Unrep. Op. 304; Newman Lumber Co. v. M. C. R. R. Co., 26 I. C. C. 97, 100; Difenderfer Lumber Co. v. M. A. & E. Ry. Co., 53 I. C. C. 571; Indian Refining Co. v. Director General, as Agent, 59 I. C. C. 246; I. E. Du Pont De Nemours & Co. v. Director General, 60 I. C. C. 621; Danzer & Co. v. G. & S. I. R. R.. 69 I. C. C. 59.

§10. Parties to Make Refund.

See Parties; Reparation §19.

CASES 1887-1908

(a) To require reparation for misrouting is only to require the carrier to make just compensation for injury from failure to perform its duty; but to require or permit any other carrier than the one responsible for the misrouting to participate in the making of such reparation would be to permit or require departure from established rates, which is expressly forbidden by law. Hennepin Paper Co. v. Northern Pac. 12 I. C. C. 535.

(b) To require or permit any other carrier than the one responsible for misrouting to participate in making reparation would be to permit or require departure from established rates, which is expressly forbidden by law. Hennepin Paper Co. v. N. P. R. Co., 12 I. C. C. 535.

IMPORTANT CASES SINCE 1908

(c) Carriers at fault in misrouting are liable for damages represented by higher charges than would have been lawfully assessable had the misrouting not occurred, and their liability is not limited to such damage as can be reasonably anticipated, since a shipper cannot be deprived through a carrier's negligence of any lawful privilege offered by another carrier, especially after due diligence on his part to secure such advantage. Kile & Morgan Co. v. Deepwater Ry. Co., 15 I. C. C. 235, 238.

(d) The demand of carriers that Administrative Rulings 60, 70 and 83, requiring published tariffs to be adhered to and imposing the liability for reparation solely on the carrier diverting a shipment intentionally or unintentionally to a route involving a higher rate, be so modified as to permit such diversion in cases of emergency or necessity is denied. Woodward & Dickerson v. L. & N. R. R. Co., 15 I. C. C. 170, 173.

(e) Where a shipment is found to have been misrouted no reparation can be awarded until it is shown which carrier was responsible for the misrouting. Meeds Lumber Co. v. A. V. Ry., 38 I. C. C. 679, 681.

(f) Where the shipper gave proper directions for the shipment of the goods, but the shipment miscarried as a result of the initial carrier's negligence, the agent of the terminal carrier, and the shipper is not liable to the latter for the freight charges from the erroneous to the true destination, and can recover from the terminal carrier in detinue for the wrongful detention of the goods. Louisville & N. R. Co. v. James (Ala. 1920), 86 So. 906.

ALL OTHER CITATIONS

Wolter v. St. L. & S. F. R. R. Co., Unrep. Op. 132; Wells-Higman Co. v. G. R. & I. Ry. Co., Unrep. Op. 48; Wilson v. C. M. & St. P. Ry. Co., 14 I. C. C. 549, 550; Washington Broom & Woodenware Co. v. C. R. I. & P. Ry. Co., 15 I. C. C. 219, 221; Duluth Log Co. v. M. & I. Ry. Co., 15 I. C. C. 192, 195,

627, 629; Grand Rapids Plaster Co. v. P. M. R. R. Co., 15 I. C. C. 68, 69; Cameron & Co. v. T. & P. Ry. Co., 18 I. C. C. 560, 561; Frederick Du Barry & Co. v. Louisiana Western R. R. Co., 18 I. C. C. 527, 528; Duluth & Iron Range R. R. Co. v. C. St. P. M. & O. Ry. Co., 18 I. C. C. 485, 486, 488, 489; Marshall & Miehel Grain Co. v. St. L. & S. F. R. R. Co., 18 I. C. C. 228, 230; C. H. Algert Co. v. D. & R. G. R. R. Co., 20 I. C. C. 93, 94; Goodman Mfg. Co. v. P. R. R. Co., 26 I. C. C. 423, 426; St. Louis Southwestern Ry. Co. v. P. & R. Co., Unrep. Op. A-783; Mitchell v. G. S. & A. Ry. Co., (S. Car.) S. E. 261; Vacherie Cypress Co. v. T. & P. Ry. Co., 38 I. C. C. 539; Donahue- Stratton Co. v. C. M. & St. P. Ry. Co., 38 I. C. C. 739; Lancaster v. Schreiner, (Mo. 1919), 212 S. W. 19; W. T. Ferguson Lumber Co. v. L. & A. Ry. Co., 52 I. C. C. 486; Pine Lumber Co. v. Alcolu R. R. Co., 52 I. C. C. 541; Rausch Co. v. Director General, as Agent, 77 I. C. C. 193.

§10½. Procedure.

See Procedure Before Commission.

IMPORTANT CASES SINCE 1908

(a) It has been the Commission's practice to consider a claim for reparation on account of misrouting as akin to one for overcharges and, provided defendants have been accorded full hearing upon it, to determine the question upon its merits under a general allegation of unreasonableness even though no specific allegation of misrouting was made in the complaint. Gwinn Bros. & Co. v C. & O. Ry., 56 I. C. C. 298, 302.

§11. Reparation in General.

See Reparation.

IMPORTANT CASES SINCE 1908

(a) Where the initial carrier has knowledge of the rates applying over two different routes, it is solely liable for misrouting despite inquiries made by it as to rates over the lines of connecting carriers. Cameron & Co. v. T. & P. Ry. Co., 18 I. C. C. 560, 561.

(b) The Commission has frequently held that a shipper is bound by his routing instructions and that merely because there was a route over which he might have sent his shipment at a lower rate he has not been subjected to unreasonable charges, and this principle controls in all cases where no showing is made that the rate applicable over the route of movement was unreasonable. Ball Lumber Co. v. T. & P. Ry. Co., 25 I. C. C. 437, 438.

(c) The fact that shipper gave routing instructions over a route taking a higher rate does not relieve carrier of liability if that rate is unreasonable. Shoupe & Co. v. T. & B. V. Ry. Co., 26 I. C. C. 570, 571.

(d) It has been the practice to consider a claim for reparation on account of misrouting as akin to one for overcharges and, provided defendants have been accorded full hearing upon it, to determine the question on its merits under a general allegation of unreasonableness even though no specific allegation of misrouting was made in the complaint. Citing Bradsher v. S. Ry. Co., 42 I. C. C. 327. Gwinn Bros. & Co. v. C. & O., 56 I. C. C. 298, 302.

ALL OTHER CITATIONS

Greenbaum Co. v. C. & O. Ry. Co., 25 I. C. C. 352, 355; Lathrop, Shea, Henwood Co. v. L. V. R. R. Co., 24 I. C. C. 622; Arbuckle Bros. v. Old Dominion S. S. Co., Unrep. Op. A-550; Commercial Coal Mining Co. v. P. R. R. Co., Unrep. Op. A-721; Gray & Smith v. P. Co., 34 I. C. C. 25, 27; McDiarmid Co. v. P. R. R. Co., Unrep. Op. 1908; Trexler Lumber Co. v. S. Ry., 39, I. C. C., 753; Trexler Lumber Co. v. S. Ry., 42 I. C. C. 719, 720; Schuh-Mason Lumber Co. v. M. & O. R. R., 46 I. C. C. 365, 368; International Salt Co. of New York v. S. A. L. Ry., 46 I. C. C. 478, 479; Neosho Grocery Co. v. Director General, 53 I. C. C. 481; E. I. Du Pont de Nemours & Co. v. Director General, 60 I. C. C. 621; William L. Carney v. Director General 68 I. C. C. 199; Los Angeles Pressed Brick Co. v. Director General, 69 I. C. C. 254; Kansas Rock Salt Co. v. A. T. & S. F. Ry., 69 I. C. C. 745, 751; Northwestern Traffic & Service Bureau v. M. P. R. R. Co., 73 I. C. C. 471; Markley & Co., 42 I. C. C. 187; McGowin Lumber & Export Co., 59 I. C. C. 238; Acme Mills v. Director General, as Agent, 81 I. C. C. 492, 494.

§12. Unpublished Rate.

See Unpublished Rates.

IMPORTANT CASES SINCE 1908

(a) Previous decisions must be modified to the extent that, in misrouting cases, a lower state rate, not on file with the Commission, may be accepted as a basis for reparation where officially verified by the local authorities. Lathrop Lumber Co. v. A. G. S. R. R. Co., 27 I. C. C. 250, 251.

(b) Complainant routed shipment via

line of a water carrier not filing tariffs with the Commission. Routing instructions disregarded and shipment forwarded all rail. HELD, following Conference Rulings 93 and 354, reparation denied as there is no official measure of the accuracy of the overcharges alleged. American Cement Plaster Co. v. Ft. W. & D. C. Ry. Co., 58 I. C. C. 435.

(c) To promote speed and efficiency, circular of director general suggested certain routing, with protection of lower rate over routes under Federal control. Complainant routed in compliance with circular but shipment moved via route not specified therein and charges applicable to route of movement, but in excess of those via other available routes, assessed. HELD: Even if shipment be found misrouted, rate assessed was applicable since circular was not filed under section 6 of the act and thus had no effect as tariff publication. However, earnings under rate charged not only exceed those under rate via longer routes, but are excessive for a route designated for use, "for speed and efficiency." Rate assessed found unreasonable and reparation awarded. Pioneer Paper Co. v. Director General, as Agent, 83 I. C. C. 377.

ALL OTHER CITATIONS

Arizona Lumber & Timber Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A920.

§13. State Courts.

See Courts §11.

IMPORTANT CASES SINCE 1908

(a) The state courts have jurisdiction of an action against a carrier for damages occasioned by the misrouting of an interstate shipment, by which a privilege of milling in transit was lost, which would have been available if the shipping directions had been followed. McCullough v. Missouri Pac. Ry. Co., 160 Pac. (Kans. 1916) 214.

§14. Procedure.

IMPORTANT CASES SINCE 1908

(a) An allegation of unreasonableness and violations of sections 1, 2 and 3 is sufficient to permit of the consideration of a claim for misrouting. Miflin Hood Brick Co. v. Director General, 88 I. C. C. 205, 206.

ALL OTHER CITATIONS

Dixie Portland Cement Co. v. Director General, as Agent, 83 I. C. C. 417, 418.

RULES AND REGULATIONS

See Classification II; Compress Companies and Charges III; Electric Lines VII; Express Companies *X*; Passenger Fares and Facilities §8; §10; Storage II; Transportation §12.

SACKING

See Facilities and Privileges §11¾.

SAFETY APPLIANCE ACTS

See Cars and Car Supply §7¾; Employer's Liability Act; Personal Injuries.

CASES 1887-1908

(a) After a freight tank car has just returned from one long journey, it is the duty of the carrier, before permitting it to start out loaded on another distant run, in which the lives and safety of brakeman, trainmen, and the property of the shipper will be involved, to have such car carefully inspected by a competent inspector, in order to ascertain whether it is in a safe condition for such service. Michigan Congress Water Co. v. Chicago & G. T. R. Co., (Com.) 2 I. C. R. 428.

(b) Petitions of J. G. McCullough and E. B. Thomas, Receivers of the New York, Lake Erie & Western Railroad Company, and other carriers for extension of time within which to comply with sections four and five of an Act of Congress, entitled "An Act to Promote Safety of Employes and Travelers upon Railroads by Compelling Common Corriers Engaged in Interstate Commerce to Equip Cars with Automatic Couplers and Continuous Brakes and their Locomotives with Driving-wheel Brakes, and for other purposes," approved March 2, 1893. Re Safety of Employes and Travelers 6 I. C. C. 332.

(c) The time for placing grab irons and drawbars of a standard height, on freight cars, as required by the Act of Congress of March 2, 1893, was extended from July 1, 1895, to specified later dates. Re Safety of Employes and Travelers, 6 I. C. C. 332.

(d) Couplers are required by act of Congress. Re Safety of Employes and Travelers, 6 I. C. C. 332.

(e) The petitioning carriers, and all other common carriers engaged in interstate commerce by railroad, granted a further extension of seven months from January 1, 1900, within which to comply with provisions of sections 1 and 2 of the safety-appliance act of March 2,

1893. Safety Appliance Act of March 2, 1893 v. 8 I. C. C. 662.

(f) Petitioning carriers granted extension of two years from January 1, 1898, within which to comply with sections 1 and 2 of the railway safety-appliance act of March 2, 1893; and those owning cars and locomotives not equipped with couplers and train brakes as provided in sections 1 and 2 of said act required to make semiannual report of cars and locomotives so equipped during the six months preceeding. Safety Appliance Act of March 2, 1893 v. 8 I. C. C. 643.

(g) The discretionary power lodged with the Commission to extend the period of time within which carriers are required to comply with the safety appliance act, was designed to prevent special hardship upon the public and the carriers, and should only be exercised under such circumstances and for such length of time as was contemplated by the framers of the statutes, and are plainly inferable from its terms. In Re Applications of Certain Railroad Companies for and Extension of Time, etc. 9 I. C. C. 522.

(h) Extension of time granted to petitioning carriers to comply with certain provisions of the Act of March 2, 1903 amending the Safety Appliance Act of March 2, 1893 as amended April 1, 1896. Re Application of Certain Railroad Companies v. 9 I. C. C. 522.

(i) The manifest purpose of the amended safety appliance law is that all freight cars shall be equipped with air-brakes, and that all brakes shall be used and operated; and such condition is necessary to the safety of both the railway employes and traveling public, besides facilitating traffic movement, and resulting in the handling of traffic with greater economy. Increasing the minimum percentage of air-braked cars in trains from 50 to 75 per cent would result in the earlier operation of trains fully equipped with air brakes, and accelerate the removal from service of old and comparatively unsafe cars now unequipped with that appliance; but under the present public demand the use of every available car is required to move the unusual volume of traffic now offered, and ordering such increased percentage into immediate effect would hamper railway operations and impose severe hardships upon shippers and the general public. After due notice and full hearing, HELD, that the minimum percentage of air-braked freight cars in trains on railroads used in interstate commerce shall stand increased to 75 per cent on and after August 1, 1906. Re Proposed Increase in the Minimum Percentage of Cars in Trains Required to be Operated with Power or Train Brakes, 11 I. C. C. 429.

(j) The car involved in this case was hauled from one of defendant's yards to another, the movement being preparatory to going upon the main line toward destination in another state. HELD, that this car was used in interstate commerce within the meaning of the act of March, 2, 1893, as amended. United States v. Pittsburgh, C. C. & St. L. R. Co. (U. S. Dist. Ct. S. D. O.) 11 I. C. C. 696.

(k) In an action brought jointly against two or more railroad companies to recover the statuatory penalty specified in the safety appliance acts, judgment may be rendered against any one of the defendants when the proof shows that such defendant has violated that statute. Chaffee v. United States, 18 Wall. 518, 538, 21 L. ed. 908, 911. U. S. v. C. P. & St. L. R. Co. et al., 11 I. C. C. 698.

(l) The safety appliance acts apply to cars while being used in a switching movement. United States v. Pittsburgh, C. C. & St. L. R. Co. (U. S. Dist. Ct. S. D. O.) 11 I. C. C. 696.

(m) When a railroad company hauls over its line a car having a defect covered by the safety appliance acts it is liable for the penalty provided by said statutes. United States v. Chicago, P. & St. L. R. Co., (U. S. Dist. Ct. S. D. Ill.) 11 I. C. C. 698.

(n) In an action brought jointly against two or more railroad companies to recover the statutory penalty specified in the safety appliance acts, judgment may be rendered against any one of the defendants when the proof shows that such defendant has violated the stat-has violated the statutes. United States v. Chicago, P. & St. L. R. Co. (U. S. Dist. Ct. S. D. Ill.) 11 I. C. C. 698.

(o) In an action brought jointly against two or more railroad companies to recover the statutory penalty specified in the safety appliance acts, judgment may be rendered against any one

of the defendants when the proof shows that such defendant has violated the statute. United States v. Chicago, P. & St. L. R. Co. (U. S. Dist. Ct. S. D. Ill.) 11 I. C. C. 698.

IMPORTANT CASES SINCE 1908

(p) The Commission, is without power to except railroads in Porto Rico from the provisions of the safety appliance acts. Safety Appliances on Railroads in Porto Rico, 37 I. C. C. 470, 476.

(q) Apparently the sole purpose of the safety appliance act was to authorize the Commission to fix a reasonable time within which the carriers should make their cars comply therewith. The period fixed by the Commission having expired, it became unlawful under the provisions of the act to use any car not conforming with the standards as prescribed by the Commission. Under a strict construction of the law a doubt arises as to whether there was any intention on the part of Congress to authorize the Commission to suspend the operation of the statute with respect to standardization of equipment after its terms once became effective. Ex Parte 33, Safety Appliances, 58 I. C. C. 655, 656.

(r) This is a proceeding under section 26 of the act which authorizes the Commission, after investigation, to prescribe the installation of automatic train stop or train control devices or other safety devices, upon the whole or any part of the railroad of any carrier by railroad subject to the act. On Jan. 10, 1922, the Commission entered an order under which certain specified carriers, respondents, were given an opportunity to show cause, if any, why an order should not be entered requiring the installation of automatic train stop or train control devices upon designated portions of their lines. The conclusions reached as a result of the practically continuous investigations conducted from 1906 to 1920 were identical in substance, namely, that automatic train control of devices is desirable as a means of increasing safety; and that the development of automatic train control devices had reached a stage warranting the installation and use of such devices on a more extended scale. The essential safety function of any automatic train stop device is to stop a train where a dangerous condition exists ahead of the train, when the engine man, for any cause fails to take proper action to stop. In the most recent development of automatic train control devices, continuous control is obtained whereby the engineman is not dependent upon indications received at fixed locations, but is immediately made aware of a change in condition ahead of his train and may act promptly to govern his train accordingly, but in the event of his failure so to do the device automatically operates to protect the train, either by slowing it down or by stopping it. The record indicates that automatic train control devices of the ramp type are practicable under actual service conditions, and that when properly installed and maintained they unquestionably increase the safety of train operation. The record holds expectations of satisfactory tests and operation. The record holds out expectation of satisfactory tests and operation of the other types of train control devices. The cost of installing automatic train control devices depends upon the nature of the particular installation, the number of locomotives to be aquipped, the type of device selected and the extent of train control that is desired. The Commission is convinced that the carriers can, if they are determined to do so, readily install upon their roads devices which will meet the requirements of safety and which at the same time will not unduly interfere with operating requirements. The development of its present state of efficiency is evidence of what can be accomplished. Investigations have shown that the art of automatic train control has long since passed the experimental stage. The time has now arrived when the carriers should be required to select and install such devices as will meet the specifications and requirements of the Commission. Under the act the order of the Commission must be issued and published at least two years before the date specified for its fulfillment. The Commission is of the opinion that a six months period will give sufficient time for any road to decide upon the device it should select. Respondents will be required to make monthly reports to the Commission during the six months period beginning July 1, 1922, of their arrangements for such tests and of the progress made. HELD, carriers are required to install on or before Jan. 1, 1925, an automatic or train control or train device or devices which comply with specifications and requirements of the Commission, such device to be applied to or operated in connec-

tion with all road engines running on or over at least one full pessenger locomotive division. Each of the carriers will be required to file with the Commission on or before Jan. 1, 1923, complete and detailed plans of the signal systems in use on the portion or portions of its lines designated and a report of the number and type of locomotives assigned to or engaged in road servoice on the designated portion or portions of its line. Automatic train control devices, 69 I. C. C. 258.

(s) Section 26 of the act places upon the commission the duty, after investigation, of ordering the carriers or any of them to install upon the whole or any part of their lines automatic train-stop or train-control devices or other safety devices which comply with specifications and requirements prescribed by the commission. Automatic Train Control Device, 69 I. C. C. 263.

(t) An automatic train-stop or train-control device is a system of installation so arranged that its operation will automatically result in either the application of the brakes until the train has been brought to a stop, or, when the speed of the train exceeds a prescribed rate, until the speed has been reduced to a predetermined or prescribed rate. Automatic Train Control Devices, 69 I. C. C. 264.

(u) The essential safety function of an automatic stop is to compel obedience to a stop signal. Where the device is made subject to manual control of the engineman so that he may forestall the automatic-brake application according to his own judgment of the conditions, the automatic safety feature of the device is to that extent nullified. This factor of human judgment is the factor which an automatic train-stop device is designed to eliminate. Automatic Train Control Device, 69 I. C. C. 264, 276.

(v) An undesirable stop is one which occurs when there is no operating or traffic condition which requires the stop to be made. Where the train-control device causes a stop under such conditions, the action is upon the side of safety. It is undesirable, however, from an operating point of view. A false-clear failure is one in which the train-control device indicates by its action or lack of action that no danger exists, when the contrary is true. Failure in this case is a dangerous one. Automatic Train Control Devices, 69 I. C. C. 266.

(w) Carriers can, if they are determined to do so, readily install upon their roads devices which will meet the requirements of safety and which at the same time will not unduly interfere with operating requirements. Had railroads taken prompt action when the block-signal and train-control board pointed the way in 1911, the art would have been far advanced to-day. Many of the operating problems, such as the interchangeability, effect on track capacity, and others, would have been solved. The development of the automatic block-signal system to its present state of efficiency is evidence of what can be accomplished. Automatic Train-Control Devices, 69 I. C. C. 273.

(x) Disastrous collisions will continue to occur until automatic train-control devices are installed to protect against human failure. Investigations have shown that the art of automatic train control has passed the experimental stage. No other safety devices were perfected to as high a degree as the automatic train control before they were either ordered installed or were voluntarily adopted. The results obtained in actual employment have clearly demonstrated the practicability of and the necessity for automatic train stops or train control, and the time has now arrived when carriers should be required to select and install such devices as will meet the commission's specifications and requirements. Automatic Train-Control, 69 I. C. C. 274.

(y) Power of commission to prosecute an inquiry upon its own motion under provisions of section 1 of interstate commerce act, as to adequacy of facilities for performance as common carriers of car service by each of the railroads subject to its jurisdiction, with view to requiring carriers to provide themselves with such safe and adequate locomotives and cars as may be warranted by facts as shown, and as required by law, first came into the interstate commerce act as one of the amendments made by the transportation act, 1920. Assigned cars for Bituminous Coal Mines, 80 I. C. C., 520, 562.

(z) Where ore cars of a railroad used in interstate commerce were no longer required for carrying ore, but were reconstructed for carrying limestone by placing thereon a superstructure which raised the height of the sides above the 36 inches permitted by regulations of the

Interstate Commerce Commission for cars having no ladder on the side, and some of the cars had been so used for five years, and all would be so long as the limestone traffic continued, the superstructure was not a mere temporary addition to the cars, but the placing of it on the cars, without also placing ladders, subjected the railroad company to the penalty for violation of the order. United States v. Duluth, S. S. & A. R. Co., 281 Fed. 347.

(aa) The regulation of the Interstate Commerce Commission that all cars having sides more than 36 inches high must be equipped with side ladders is final, and not subject to review or change by the courts. United States v. Duluth, S. S. & A. Ry. Co., 281 Fed. 347.

(bb) Since the order of the Interstate Commerce Commission requires that cars of special construction shall have the equipment of cars of general construction nearest in class or kind, the construction of stone cars from ore cars by adding a superstructure, even though it makes the cars of special construction, does not relieve the carrier of its obligation to place side ladders thereon, and it was its duty to construct the superstructure in such manner that the side ladders could have been so placed. United States v. Duluth, S. S. & A. Ry. Co., 281 Fed. 347.

(cc) Where three cars loaded with coal had been brought in by a railroad from another state and placed on a siding for the consignee, who had unloaded two of the cars, the shifting of the three cars by the carrier, so as to remove the two unloaded cars to another siding until orders were received to return them to the mine, and to place the loaded car in position for unloading, was a movement in "interstate commerce," so that there may be recovery for the death of an employee resulting from the violation of the federal Safety Appliance Act requiring automatic couplers. Camp v. Pennsylvania R. Co., 195 N. Y. S. 90.

(dd) An interurban railway company which confines its business to transportation of passengers and goods from place to place within the state, but which rents its cars and transfers its employes to the service of a street railway company for street car traffic in Kansas City, Kas., and Kansas City, Mo., located contiguously on opposite sides of the Kansas-Missouri state line, is not engaged in the sort of "interstate commerce" which is governed by the federal Safety Appliance Act. Kasper v. Kansas City, L. & W. Ry. Co., (Kans. 1922,) 207 Pac. 203.

(ee) Power of commission to prosecute an inquiry upon its own motion under provisions of section 1 of interstate commerce act, as to adequacy of facilities for performance as common carriers of car service by each of the railroads subject to its jurisdiction, with view to requiring carriers to provide themselves with such safe and adequate locomotives and cars as may be warranted by facts as shown, and as required by law, first came into the interstate commerce act as one of the amendments made by the transportation act, 1920. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 562.

(ff) Act Cong. Feb. 17, 1911 (U. S. Comp. St. §§ 8630-8639), to promote the safety of employees and travelers on railroads, the 1915 amendment thereof (U. S. Comp. St. §§ 8639a-8639d), extending the act to include "the entire locomotive and tender and all parts and appurtenances thereof," and the regulations of the Interstate Commerce Commission show the plain intent of Congress to occupy the field of regulation exclusively; and hence Railroad Law § 77, as amended by Laws 1918, c. 649, requiring all openings between the engine cab, and tender to be inclosed, could not apply to trains in interstate commerce. Whish v. Public Service Commission, 200 N. Y. S. 282.

ALL OTHER CITATIONS

Extension of time to comply with safety appliance acts, 36 I. C. C. 370, 373; Coleman v. Illinois Cent. R. Co., (Minn. 1916), 155; Safety Appliances, 44 I. C. C. 303, 304; G. N. Ry. v. U. S., 244 Fed. 406; Kenna v. Calumet, H. & S. E. R. Co., (Ill. 1918), 120 N. E. 259; Pennsylvania R. Co. v. Public Service Commission, 40 Sup. Ct. 36; United States v. Northern Pac. Ry. Co., 41 Sup. Ct. 101; Jackson v. Pirtle (Ind. 1920) 127 N. E. 305; Safety Appliances, 58 I. C. C. 655, 658; Tyon v. Wabash Ry. Co. (Mo. 1921), 232 S. W. 786; Industrial Accident Commission of State of California v. Payne, 42 Sup. Ct. 489; Sims v. Pennsylvania R. Co. (Pa. 1924) 123 Atl. 676; Hodgert v. Delaware L. & W. R. Co., 202 N. Y. C. 793.

SALE OF FREIGHT

IMPORTANT CASES SINCE 1908

(a) A shipper was entitled to rely on

a railroad selling goods pursuant to a general order of the Director of Railroads before the freight and demurrage charges equaled or exceeded their value. Davis v. Smutzinger, 281 Fed., 640.

ALL OTHER CITATIONS

Thomas v. Northwestern R. Co. of South Carolina, (S. C. 1919), 98 S. E. 336.

SCALE WEIGHTS

See Weights and Weighing §7.

SCALEAGE AND SHRINKAGE

See Allowances §8 (4¾); Facilities and Privileges §12; Weights and Weighing §7.

SEALS

IMPORTANT CASES SINCE 1908

(a) Testified that lead seals afford no protection against pilferage because they can be split easily from the side, removed from the cords, and after the box has been opened can be replaced without possibility of detection. Reed Tobacco Co. v. C. & O. Ry., 51 I. C. C. 201, 202.

SEASON RATES

See Reasonableness of Rates §35.

IMPORTANT CASES SINCE 1908

(a) Rates on grain products from Missouri River cities to Virginia ports are equalized during the season of open navigation with the rail-lake-and-rail rates in effect to Baltimore; and are likewise equalized with the all-rail rates via Chicago to Baltimore during the season of closed navigation on the lakes. Export Grain Products from Missouri River Points, 40 I. C. C. 195, 198.

(b) Traffic of ocean carriers operating along the Alaska coast is essentially a one-way seasonal traffic in which full cargoes are the exception rather than the rule. The Alaska Investigation, 44 I. C. C. 680, 692.

(c) Peanuts are shipped from farms during period from October to December and from mills from October to July Fidelity Cotton Oil Co. v. A. & V. Ry., 47 I. C. C. 542, 544.

(d) The demand for heater cars and lined cars during the season from November to April is heavy and prompt release of equipment is necessary. New York & New Jersey Produce Co. v. N. Y. N. H. & H. R. R., 51 I. C. C. 399, 400.

(e) The movement of fruits and vegetables is not wholly seasonal, and is becoming less so with the increasing use of cold storage facilities, and the need for refrigeration varies widely during the period in which fruits and vegetables commonly move. Perishable Freight Investigation, 56 I. C. C. 449, 471.

(f) A railroad company issued and filed a local tariff, naming special car demurrage rules and charges on lake coal held by the company for transshipment at a lake port during the shipping season which was fixed as from August 15th to December 31st. This tariff was to become effective July 12th, and provided that all cars on hand August 15th should be recorded as arriving on that date, and that all cars remaining on December 21st should be recorded as released on that date, and after 10 free days should be subject to local demurrage. HELD, that such tariff was a "seasonal tariff," operating only during the summer shipping season, and applying only to shipments made after July 12th each year, and that a new tariff, issued and filed in a subsequent year and effective before July 12th, governed as to shipments for the following shipping season, although such shipments were made before it became effective. Toledo & O. C. Ry. Co. v. C. & O. Coal & Coke Co., 238 Fed. 629.

ALL OTHER CITATIONS

Oakley & Son v. C. T. H. & S. E. Ry., 44 I. C. C. 488, 490; Pittsburgh Crucible Steel Co. v. Director General 61 I. C. C. 56.

SHERMAN ACT

See Anti-Trust Law; Evidence §10.

SHIPPING POUND

See Bills of Lading §9 (3); Routing and Misrouting §9 (3).

IMPORTANT CASES SINCE 1908

(a) The "shipping pound" includes the weight of the package in which silk is shipped; and, when used, the spool, bobbin, warp beam, or cone on which it is wound. Silk Asso. of America v. P. R. R., 44 I. C. C. 578, 579.

SHRINKAGE RATES

IMPORTANT CASES SINCE 1908

(a) To equalize rates, carriers es-

tablished proportional or shrinkage rates from upper Ohio River crossings, making them applicable on coarse grains and their products moving through certain stated gateways or junctions from a defined territory west of the Illinois-Indiana state line, usually referred to as shrinkage territory. Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 26 I. C. C. 53, 55.

(b) Complainant attacked the rate on corn and its products from Cincinnati, O., Covington and Louisville, Ky., to Wilmington, N. C., as unjustly discriminatory in comparison with a proportional or shrinkage rate of 21c applying from the same crossings to Charleston, S. C., as a typical lower port on traffic originating at points west of the Mississippi River or in Illinois. The 20c rate to Wilmington, applied whether the traffic originated at Cincinnati, etc., or beyond. From Cincinnati to Charleston the local rate was 23c per 100 lbs. When corn originated from beyond this rate from Cincinnati to Charleston was shrunk to 21c. Wilmington demanded that the 20c rate on like traffic should be shrunk so as to give it a rate of 18c on corn from Cincinnati, when from beyond. It appeared, however, that the shrinkage rate of 21c to Charleston was made in order to equalize the rates at the upper and lower crossings, whereas to Wilmington the rate from the lower crossings, such as Cairo and Evansville was 22c, as against 20c, and it was necessary for the carriers at the upper crossings to shrink the 20c rate in order to gain their share of the business. The rate from shrinkage territory, taking Champaign, Ill., as representative, to the lower crossings, was 7c on grain, and that for the upper crossings was 9c. The rate from both the lower and upper crossings to Charleston is 23c, necessitating the shrinkage of 2c from the upper crossings. To Wilmington the rates from the lower and upper crossings were 22c and 20c, respectively, resulting in a total rate of 29c in both cases. HELD, the 20c rate attacked was not shown to be unjustly discriminatory against Wilmington. Boney & Parker Milling Co. v. A. C. L. R. R. Co., 28 I. C. C. 383.

(c) Assuming local rates to be reasonable, a carrier cannot be compelled on through traffic to shrink such rates to absorb other local rates of another carrier beyond a designated destination. Kansas City & M. Rate Cancellation, 28 I. C. C. 640, 643.

ALL OTHER CITATIONS

Rates on Grain Milled in Transit, 35 I. C. C. 27, 28.

SIDE TRACKS AND SPUR TRACKS

See Switch Tracks and Switching §11; Transportation §5.

CASES 1887-1908

(a) Defendants failure or refusal to provide at its own cost and thereafter maintain a spur or side track from its main line to complainant's mill and elevator at Mt. Vernon, South Dakota, was not, by the evidence adduced as to the provision and maintenance of side tracks from defendant's line to mills or elevators at other points in South Dakota, shown to be a violation of section 3 of the Act to Regulate Commerce. Mt. Vernon Milling Co. v. Chicago M. & St. P. R. Co., 7 I. C. C. 194.

(b) A railroad company will not be required to provide and maintain spur track to a mill and elevator because of the maintenance of such tracks to mills and elevators at other points in the state, where the latter were erected before the passage of the Interstate Commerce Act and the adoption by the railroad company of a fixed policy of requiring private individuals for whom it constructs switch tracks to pay the actual cost, and under different circumstances. Mt. Vernon Milling Co. v. Chicago, M. & St. P. R. Co., 7 I. C. C. 194.

(c) The enactment by Congress, in section 3 of the Act to Regulate Commerce, that the carriers affected thereby shall not subject persons, localities, or descriptions of traffic to undue prejudice or unreasonable disadvantage, or give any undue or unreasonable preference or advantage to persons, localities, or kinds of traffic, in any respect, whatsoever, applies to discrimination in facilities or instrumentalities of shipment or carriage; and while the Commission has no authority to order a carrier to put in sidetrack connections, or to prescribe the terms or conditions relating to the construction of such connections, its jurisdiction does extend to any case of wrongful prejudice resulting from discrimination in the provision of such facilities or instrumentalities of shipment or carriage, including track connections.

Red Rock Fuel Co. v. Baltimore & O. R. Co., 11 I. C. C. 438.

(d) Complainant alleged defendant refused to allow a side track connection with its line which will enable complainant to equip its coal mines in West Virginia with side track facilities and make shipments from such mine to points in other states, while allowing such concessions to its competitors. Defendant controls through ownership of capital stock, large coal mining enterprises in the Fairmont district which, during the year 1904, shipped more than one half the tonnage from that district. Complainant has purchased the right of way for the side track and the physical conditions pertaining to the proposed connections are at least as favorable as those pertaining to connections already made for the other mines in that coal field. It is found generally that as between complainants and the favored mines similarity exists in essential respects. Under such discrimination complainant is made unable to make interstate shipments of coal from its mine, and the defendant, by continuing its policy of denying these facilities to applying owners of coal lands, may practically control in its own interest all the undeveloped coal in this field, as well as derive greater profits from its large holdings in mines already developed in that section. HELD, that the discrimination is not wrongful as between complainant and other favored shippers, but amounts to undue and unreasonable preference by defendant of itself, and that order forbidding further violation of section three of the Act should issue accordingly. Red Rock Fuel Co. v. B. & O. R. R., 11 I. C. C. 438.

(e) Defendant declines to permit a sidetrack connection between its line and a switch or sidetrack to complainant's coal mine in the Fairmont District of West Virginia for the purpose of receiving interstate shipments of coal from its mine, although it has provided and maintains sidetrack connections for other mines in that district from which large quantities of coal are shipped to interstate destinations. Defendant controls, through ownership of capital stock, large coal mining enterprises in the Fairmont District which, during the year 1904, shipped more than one-half the tonnage from that district. Complainant has purchased the right of way for side track and the physical conditions pertaining to the proposed connection are at least as favorable as those pertaining to connections already made for other mines in that coal field. It is found generally that as between complainant's and the favored mines similarity of situation exists in essential respects. Under such discrimination complainant is unable to make interstate shipments of coal from its mine, and the defendant, by continuing its policy of denying these facilities to applying owners of coal lands, may practically control in its own interest all the undeveloped coal in this field, as well as derive greater profits from its large holdings in mines already developed in that section. HELD: That the discrimination is not only wrongful as between complainant and other more favored shippers, but amounts to undue, and unreasonable preference by defendant of itself, and that order forbidding further violation of section three of the statute should issue accordingly. Red Rock Fuel Co. v. Baltimore & O. R. Co., 11 I. C. C. 441.

(f) Complainant sought an order compelling defendant to install a side track from its line at Sioux Falls, S. Dak., to complainant's nearby coal sheds. It appearing at the hearing that defendant is wiling to install such side track upon payment of actual cost thereof and agreement by complainant that the side track may be removed when a proposed new station building is undertaken, no order will now be made, but the case is retained awaiting action of the parties. James E. Nield v. C. St. P. M. & O. Ry. Co., 12 I. C. C. 203.

(g) Location of private siding will be left largely to discretion of carrier. Weleetka Light & Power Co. v. Ft. S. & W. R. R. Co., 12 I. C. C. 503.

(h) A contract for prepayment to shipper of advances for building switch, should be filed with Commission. Weleetka Light & Water Co. v. Ft. S. & W. R. R. Co., 12 I. C. C. 503.

IMPORTANT CASES SINCE 1908

(i) A spur used or necessary exclusively in the transportation of persons is as much subject to the Act as are "freight depots, yards and grounds" used or necessary "in the transportation or delivery of property." West End Improvement Club v. O. & C. B. R. & B. Co., 17 I. C. C. 239, 244.

(j) Because a spur track is included

in service of one carrier, it does not follow that service of another carrier without a spur track is inadequate. Southern California Sugar Co. v. S. P. L. A. & S. L. R. R. Co., 19 I. C. C. 6, 11.

(k) Complainant built a spur track to connect its factory with the main line of defendant. Defendant refused to operate the same unless its standard form of industrial switch track agreement was signed, one clause of which required the industry to indemnify it from liability and claim from loss and damage by fire caused by the sparks of burning coal from its locomotive on its spur track. The spur track ran between lumber piles and there were shavings and sawdust and other inflammable material on the premises. HELD, it is no part of the duty of the carriers either at common law or under the Act to spot cars at a warehouse or factory, or to do more than set them on the spur track and off its own right of way. If it undertakes to do so, with or without additional compensation, there is no reason why it may not predicate its undertaking upon the condition that it shall not be liable to the industry for fire losses of the nature presented. Imperial Wheel Co. v. St. L. I. M. & S. R. R. Co., 20 I. C. C. 56, 58.

(l) Complainant built a spur track 2.71 miles long to the C. B. & Q. R. R. tracks from its mines at Thayer to Thayer Junction. The C. B. & Q. R. R. built and operated spur tracks to other mines in the Springfield group in which Thayer is located but refused to build or, after construction, to operate the connection between its rails and complainant's mine. At other mines except Thayer, the C. B. &. Q. R. R. had operated spurs without extra charge above the group rate applicable from stations on its own rails. HELD, that such a practice created a case of unjust discrimination. C. W. & V. Coal Co. v. C. B. & Q. R. R. Co., 23 I. C. C. 13, 16.

(m) It is not the duty of a common carrier by rail, as a matter of law, to deliver and receive carload freight on private sidings or spurs without making separate charge for such service in addition to the line haul rate. R. R. Commissioners of Florida v. F. E. C. Ry., 42 I. C. C. 616, 624.

(n) The typical spur track ordinarily does not exceed a few hundred feet in length. National Tube Co. v. B. & O. R. R., 50 I. C. C. 489, 497.

(o) The Commission is without jurisdiction to prescribe uniform liability clauses to be contained in leases or contracts for the construction, maintenance, and use of industrial or private side tracks, limiting liability for loss and damage caused by fire from locomotives operating over such tracks. National Industrial Traffic League v. A. & R. R. R. Co., 61 I. C. C. 120.

(p) Section 1 of the act clearly refers to the construction, maintenance, and operation of switch connections, and under its provisions the Commission has no authority to require a railroad to construct a private side track, authority being limited to requiring a carrier to make a switch connection with a private side track. National Industrial Traffic League v. A. & R. R. R. Co., 61 I. C. C. 120, 121, 122.

(q) The demands upon a carrier which lawfully may be made are limited by its duty, but it is not its duty as a common carrier to enter into a contract to lease a railroad siding to a shipper or to enter into an agreement to operate privately owned side tracks. National Industrial Traffic League v. A. & R. R. R. Co., 61 I. C. C. 120, 123.

(r) Shipments delivered to complainant's private siding by P. & R. were switched by the Pennsylvania to another private siding, both within the switching limits of Williamsport, Pa., for which later service the Pennsylvania assessed a class rate. Lower switching charge in effect but tariff provided that "this charge not applicable from or to tracks of connecting line." Contention that complainant's private siding should be considered an interchange track of the carriers held not sustained and since shipments were switched from a private siding and not from tracks of a connecting carrier, lower switching charge legally applicable. Refund of overcharges directed. Central Pennsylvania Lumber Co. v. Director General, as Agent, 62 I. C. C. 99.

(s) In determining the amount of damages for loss of profits resulting from failure of carrier to construct a siding and switch connection, the Commission is restricted to shipments that would have moved in interstate commerce. Schlicher v. Director General, 62 I. C. C. 181, 186.

(t) Without deciding that term "transportation" in section 1 is broad enough to cover a siding and switch connection, paragraph 9 of section 1 makes it the duty of common carriers to construct, maintain, and operate switch connections with private sidetracks, but the shipper must construct his sidetrack before the carrier is obliged to grant him the switch connection. Schlicher v. Director General, 62 I. C. C. 181, 187.

(ta) There is no duty on the part of the common carriers subject to the act to provide sidetracks off their lands to effect connection with an industry. If an industry desires connection with a trunk line, the duty devolves upon it to make arrangements for the procuring of a spur. Certain-Teed Products Corp. v. C. R. I. & P. Ry. Co., 68 I. C. C. 260, 263.

(u) Contention that a carrier's team tracks are its private terminals for the accommodation of its traffic and the shippers it serves, and their use may not be required for the traffic of foreign lines, HELD: Where carrier permits the use of such tracks and performs the switching service out of which a complaint arises, the commission may determine whether or not the switching charge was unreasonable. Oakes Co. v. M., St. P. & S. S. M. Ry. Co., 77 I. C. C. 93, 95.

(v) Complainant attacked rate charged on one car of coal shipped Dec. 12, 1918 from Ferndale, W. Va., to Madrys Spur, N. C., as illegal and unreasonable. Shipment was consigned to Madry Siding, N. C., but shipment was not accepted because defendants agents were unable to locate a siding by that name in the tariffs. Madrys Spur is listed in the tariffs. Complainant thereupon revised the address of consignee to Scotland Neck, N. C., Care Madry Siding, N. C. The latter is about 12 miles from Scotland Neck. For operating reasons the A. C. L. handled through Madrys Spur to Scotland Neck. Charges were applicable rate of $3 per ton to Scotland Neck, demurrage which accrued while the A. C. L., was obtaining disposition orders $9.00 back haul charge from Scotland Neck to Madrys Spur, $36.09. If the shipment had moved over the short route there would have been no back haul. Deemurrage accruing at Scotland Neck was due to carrier's error. HELD, charges should have been $150.60, shipment overcharged $45.09, reparation awarded. Webb Fuel Company v. Director General 81 I. C. C. 631.

(w) When a spur track is erected by a railroad company under a contract with a shipper, and such spur track is not a part of the carrier's railroad track that is used for the ordinary or a substituted delivery of freight on such spur track is an additional service of special advantage to the particular shipper that is rendered under special contract, and the agreed compensation for such special service has been paid as the service is rendered, the amounts so paid cannot be recovered from the carrier upon the ground that the charges were unlawful. Henderson v. Hines (Fla. 1923), 98 So. 333.

(x) Contracts between railroad company and one for whose use spur tracks were constructed, requiring the user to hold the railway company harmless and indemnify it from loss or liability, were binding as between the user and Director General of Railroads, in absence of unconditional refusal by Director General to be bound thereby, especially where Director General's order provided that such contracts should be adhered to until otherwise ordered. Davis v. A. F. Gossett & Sons (Georgia 1923) 118 S. E. 773.

ALL OTHER CITATIONS

Standard Combed Thread Co. v. P. R. Co., (N. J. 1915), 95 Atl. 1002; Hocking Domestic Coal Co. v. K. & M. Ry., 44 I. C. C. 392, 398; Dow Chem. Co. v. P. M. R. R., 51 I. C. C. 1, 2; Schlicher v. Director General, 62 I. C. C. 181, 183; Meyersdale Smokeless Coal Co. v. B. & O. R. R. Co., 62 I. C. C. 429, 432.

SLEEPING CAR COMPANIES

IMPORTANT CASES SINCE 1908

(a) Complainant alleged that defendants, by reason of having discontinued a through sleeping car service between Guthrie, Okla., and Canadian, Tex., are subjecting the citizens of Oklahoma to great inconvenience. The service in question was installed when Guthrie was capitol of Oklahoma. The average daily number of passengers was 5.6, and the average revenue was 13.4c per mile, for the period during which the car was in service. Defendants assert that it was a financial loss. No roads offer Pullman service between the points in question, but defendant's witness testified that passengers from Guthrie to Canad-

ian could usually get a Pullman on the train leaving Kiowa, Kans., at 10:30, and when coming from Canadian could occupy a sleeping car until Kiowa is reached at 4 a. m. HELD, without raising a question of the sufficiency of the petition, or the jurisdiction of the Commission, the facts proved do not call for the exercise of regulative power under the statute. Complaint dismissed. Corporation Commission of Oklahoma v. A. T. & S. F. Ry. Co., 25 I. C. C. 120.

(b) The value to the passenger of sleeping-car occupancy can not be gauged by exactly the same standards as passenger transportation by day. To the latter, mileage, in the absence of unusual conditions, may be applied as a fair rule of the value of the service. The bare service of transportation to the occupant of a sleeping car, however, has been covered in the first instance by the passenger fare paid. The value of the occupant of a sleeping car, however, over and above the value of being carried a certain distance is found primarily in obtaining a night's rest under as comfortable conditions as compatible with railroad travel, essentially a night's lodgings; and secondly, in the keeping intact for the transaction of business the daylight hours which otherwise would be spent in covering distance. If the physical conditions under which transportation is conducted were invariably the same, if the speed of sleeping cars were uniformally the same, if the traffic density on all sleeping-car lines were the same, and if detraining during the night imposed no discomfort, mileage might possibly be taken as a measure of the value of sleeping-car occupancy. But it would then be a fair test because it would roughly measure the advantage of a nights occupancy of the sleeper to the passenger and the cost of service to the carrier. What the patron of a sleeper seeks first is a night's rest, and for this he pays as he would for a hotel room, for a unit service, and this service is approximately the same whether the car be hauled 200 or 300 miles during the sleeping hours. Whether a berth has been in use four hours or ten hours, as a rule, it cannot again during the same night be made a source of revenue to the carrier. Hence, berth-mile rates are of little comparative value, and are not controlling in fixing rates for the occupancy of sleeping cars. Commercial Club of Sioux Falls v. Pullman Co., 31 I. C. C. 654, 657.

(c) The Commission has not undertaken to prescribe what is a reasonable rate or return upon property employed in a particular service, nor that the rates of return upon all services shall be uniform hence, the mere showing that specific rates attacked yield a goodly profit is not conclusive as to their unreasonableness. Where the rates for a particular service, such as a full night's occupancy of a sleeper are fairly uniform, the reduction of such rates wherever they afford a good profit coupled with maintenance of the rates wherever they result in loss would materially level the average of profits generally. Commercial Club of Sioux Falls v.Pullman Co.,31 I. C. C. 654.

(d) The value to the passenger of sleeping car occupancy can not be gauged by exactly the same standards as passenger transportation by day To the latter, mileage, in the absence of unusual conditions, may be applied as a fair rule of the value of the service. The bare service of transportation to the occupant of a sleeping-car, however, has been covered in the first instance by the passenger fare paid. The value of the occupancy of a sleeping car over and above the value of being carried a certain distance is found primarily in obtaining a night's rest under as comfortable conditions as compatible with railroad travel, essentially a nights' lodging; and secondly, in the keeping intact for the transaction of business the daylight hours which otherwise would be spent in covering distance. If the physical conditions under which transportation is conducted were invariably the same, if the speed of sleeping cars were uniformly the same, if the traffic density on all sleeping-car lines were the same, and if detraining during the night imposed no discomfort, mileage might possibly be taken as a measure of the value of sleeping-car occupancy. But it would then be a fair test because it would roughly measure the advantage of a night's occupancy of the sleeper to the passenger and the cost of service to the carrier. What the patron of a sleeper seeks first is a night's rest, and for this he pays as he would for a hotel room, for a unit service, and this service is approrimately the same whether the car be

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(e) Surcharge upon passengers in sleeping and parlor cars amounting to 50 percent of the charge for space such cars, authorized, such charge to be collected in connection with the charge for space, and to accrue to the rail carriers. Increased Rates, 1920, 58 I. C. C. 220, 242.

(f) Under section 1 of the interstate Commerce Act, as amended June 29, 1906, the term "common carrier" as used in the Act includes sleeping car companies, so as to make it unlawful to attach a sleeping car moving in interstate commerce under a state writ. Pullman Co. v. Linke, 203 Fed. 1017, 1019.

(g) Where a Pullman passenger is refused admission to car his tickets called for gave his tickets to a station porter with instructions to return to the ticket office and ascertain whether another berth could be had, the porter was the messenger of and not the passenger's agent and information given him by the ticket agent as to berth vacancies in the designated car not being communicated was not binding. Pullman Co. v Walton, (Ark. 1922), 239 S. W. 385.

(h) Where passengers were refused admission to cars designated, a sleeping car company was not absolved from liability for its refusal to furnish accommodations conforming to tickets purchased, by the fact that the holders surrendered their tickets and accepted a return of the price thereof. Pullman Co. v. Walton, (Ark. 1922), 239 S. W. 385.

(i) Where a sick passenger was refused Pullman accommodation, and his suffering augmented by his failure to secure a comfortable bed during a 15 hour journey, a verdict of $1,000 for added suffering, inconvenience, and discomfort from his riding on the day coach HELD not excessive. Pullman Co. v. Walton, (Ark. 1922), 239 S. W. 385.

(j) Where a desperately ill passenger was refused admission to the sleeping car his ticket called for and proceeded on his journey in the day coach, the inconvenience of remaining over was sufficient to justify him in failing to suspend his journey and mitigate possible damages. Pullman Co. v. Walton, (Ark. 1922), 239 S. W. 385.

(k) A verdict for $25 damages for refusal of Pullman berth accommodation conforming to a passenger's ticket for a 15-hour journey HELD excessive, and should be reduced to $25. Pullman Co. v. Walton, (Ark. 1922), 239 S. W. 385.

(l) In invalid passenger's action against sleeping car company for breach of contract to allow her to occupy berth as bed during a trip extending into the daytime, special findings of the jury that such breach was the proximate cause of her injuries, that her own acts were the proximate or contributinng cause, and that the overexertion of the long trip was the proximate cause of her injuries, HELD so conflicting as to require a new trial. Pullman Co. v. Castleberry, (Tex. 1923), 251 S. W. 518.

(m) If sleeping car company breached its contract with invalid passenger to permit her to occupy berth as bed during a trip extending into the daytime, she was entitled to recover only such substantial damages as may reasonably be supposed to have been in the parties' contemplation, and for injuries occasioned by her own negligence, or from overtaxing her strength by taking the trip while too frail to endure it, no damages could be recovered. Pullman C. v. Castleberry, (Tex. 1923), 251 S. W. 518.

(n) A provision in the contract of employment between the Pullman Company and a porter by which the latter released all railroad corporations over whose lines the cars of that company might be operated while he was traveling in its service "from all claims for liability of any nature or character whatsoever on account of any personal injury or death" is valid. Robinson v. B. & O. R. R. Co., 35 Sup. Ct., 491.

ALL OTHER CITATIONS

Rates, Fares and Charges, of N. Y. C. R. R. Co., 59 I. C. C. 290, 298; Wisconsin Passenger Fares, 59 I. C. C. 391; Iowa Passenger Fares and Charges, 60

I. C. C. 55; Montana Rates and Fares, 60 I. C. C. 61; Ohio Rates, Fares, and Charges, 60 I. C. C. 78; Michigan Passenger Fares, 60 I. C. C. 245; Indiana Rates, Fares and Charges, 60 I. C. C. 337; Interstate Rates, within the State of Texac, 60 I. C. C. 421; Louisiana Rates Fares and Charges, 60 I. C. C. 467; Nevada Rates, Fares and Charges, 60 I. C. C. 623; North Dakota Rates, Fares, and Charges, 504; Arizona Rates, Fares, and Charges, 61 I. C. C. 572; Surcharge for Sleeping Car Service in Alabama, 62 I. C. C. 153; Can. Ry. Board Judgments, Vol. IV, No. 5, p. 142; Commercial Club of Sioux Falls v. Pullman Co., 31 I. C. C. 654, 657, 658; Rules and Regulations Governing Checking of Baggage, 35 I. C. C. 157.

SPACE RENTAL CHARGES

IMPORTANT CASES SINCE 1908

(a) Proposed increased "space rental" charges on domestic, export, and coastwise shipments of cotton and cotton linters at New Orleans, La., and subports, found not justified as the general level of charges on all commodities handled in domestic, export, import, or coastwise traffic is not only lower than the level of the charges proposed, but is lower than the level of the present charges. Space Rental Charges on Cotton, 66 I. C. C., 121.

(b) "Space rental" charges found, in fact, to be charges for storage, and ambiguities in tariffs giving color to a distinction between charges for "storage" and charges for "space rental" should be eliminated. Space Rental Charges on Cotton, 66 I. C. C., 121, 123.

SPECIAL CONTRACTS

I. CONTROL AND REGULATION.
  §1. Constitutionality of act.
II. LEGALITY AND EFFECT SINCE PASSAGE OF ACT.
  §2. In general.
  §2½. Previous validity.
III. LIABILITY.
  §3. Criminal liability.
  §4. Damages for breach.
    (1) In general.
    (2) Jurisdiction of Commission.
  §5. Discrimination through contract.
IV. ACTIONS TO ENFORCE.
  §5½. In general.
  §6. Defenses.
V. AS EVIDENCE OF REASONABLE RATES.
  §7. In general.

CROSS REFERENCES

See Auction Company; Baggage Transfer II; Cars and Car Supply IV; Commerce Court §4½; Evidence §15, §27; Exclusive oCntracts; Express Companies §8, §37½; Loss and Damage I; §8, §9; Passenger Fares and Facilities §12; Released Rates Stock Yard Company; Trackage Contracts; Traffic Contracts.

I. CONTROL AND REGULATION.

§1. Constitutionality of Act.

See Constitutional Law; Exclusive Contracts.

CASES 1887-1908

(a) The power of the state to regulate is not a power to destroy, and limitation is not the equivalent of confiscation. Chicago M. & St. P. R. R. Co., v. State of Minn. 3 I. C. R. 209.

(b) Laws of Minnesota of 1869, chap. 78 p. 95, and sec. 8 of chap. 103 of the General Laws of Minnesota of 1875, do not constitute such a contract with the corporation, as to the fixing by it of its rate of charges, as to deprive the Legislature of its power to regulate those charges. Minneapolis Eastern R. Co. v. State of Minn. 3 I. C. R. 224.

IMPORTANT CASES SINCE 1908

(c) The Act is not unconstitutional as infringing the right of contract or as taking property for public use without just compensation or due process of law by reason of the fact that it invalidates a contract entered into prior to its passage between a person and a railroad by which the latter, in consideration of the release of a cause of action for personal injuries, granted to such person and his family free transportation for life. L. & N. R. R. v. Mottley, 219 U. S. 467, 482, 484, 31 Sup. Ct. 265, 55 L. ed. 297.

II. LEGALITY AND EFFECT SINCE PASSAGE OF ACT.

See Legality.

§2 In general.

CASES 1887-1908

(a) An assurance made by a carrier that if one will locate in business on the line of its road his property shall be taken for transportation as belonging to a specified class cannot bind the carrier so as to compel a classification according-

ly. A right to special rates cannot be made out in this way; the classification must have the same construction in favor of all persons; the law requires uniformity and impartiality in the dealings of a carrier with all persons. Hurlbert v. Lake Shore & Michigan Southern R. Co., 2 I. C. R. 81.

(b) A common carrier by rail, to which property is offered for transportation, cannot in an indirect manner as by refusing to carry freight and by refusal to perform obligations imposed by law upon it, enforce its contracts, but must for that purpose resort to the customary remedies. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co. 2 I. C. R. 102.

(c) No common carrier by rail can by any contract with another confer upon the latter any privileges which, either directly or otherwise can have the effect to limit the rights which any locality or any person otherwise under its charter, or under common law principles, have against it. Alford v. C. R. I. & P. R. Co. 2 I. C. C. 771, 774.

(d) A railroad corporation takes its charter, containing such a provision, subject to the general law of the State, and to such changes as may be made in such general law, and subject to future constitutional provisions and future general legislation, in the absence of any prior contract with it exempting it from liability to such future general legislation. Chicago M. & St. P. R. Co. v. State of Minn. 3 I. C. R. 209.

(e) The grant of power by section 9 of the charter, to the directors of the company, to make needful rules and regulations touching the rates of toll and the manner of collecting the same, does not deprive the State of its general authority itself to regulate the rates of toll to be collected by the company. Chicago M. & St. P. R. Co. v State of Minn. 3 I. C. R. 209.

(f) Exemption from future general legislation, either by a constitutional provision or by an Act of the Legislature, does not exist unless it is given expressly or unless it follows by an implication equally clear with express words. Chicago M. & St. P. R. Co., v. State of Minn. 3 I. C. R. 209.

(fa) A contract between corporations charged with a public duty, such as is that of common carriers, providing for the formation of a combination having no other purpose than that of stifling competition and providing means to accomplish that object, is illegal and against public policy. Cleveland C. C. & I. R. Co. v. Closser 3 I. C. R. 387.

(g) Existing contracts for special freight rates or rebates from regular tariff rates, which had been made with railroad companies subject to the Interstate Commerce Act, became illegal when that Act took effect, and were after that time incapable of enforcement. Bullard v. Northern Pacific R. Co., 3 I. C. R. 536.

(h) The Act of Congress of Feb. 4, 1887, to Regulate Commerce, prohibiting unjust freight discriminations by common carriers, applies to contracts which are within its provisions, entered into prior to, but not fulfilled until after its passage; and a shipper in whose favor such unjust discrimination has been made cannot recover rebates stipulated for in such contract. Bullard v. Northern P. R. Co. (Mont.) 3 I. C. R. 536.

(i) A contract between a carrier and shipper stipulating for certain rebates, the effect of which is that other shippers having no special agreement will pay the amount of such rebates for the same service in excess of the freight paid by such shipper, is contrary to public policy and cannot be enforced. Bullard v. Northern P. R. Co. (Mont.) 3 I. C. R. 536.

(j) A contract is invalidated by the subsequent enactment of police regulations which render its performance illegal as to one of the parties. Jamieson v. Ind. Natural Gas & Oil Co. 3 I. C. R. 613.

(k) But a private and secret agreement between a railroad company and favored shippers for the payment of rebates to the latter, thereby discriminating against other shippers of the same class of goods under like conditions, to whom such rebates are not allowed, is illegal at common law. Cook v. Chicago, R. I. & P. R. Co. (Iowa) 383; Fitzgerald v. Grand Trunk R. Co. (Vt.) 3 I. C. R. 633.

(l) Contracts concerning interstate transportation must be regarded as made upon the basis and with the understanding that changes in the law applicable to them may be made by Congress, and there is no vested right in the law

as it exists at the time they are made. Fitzgerald v. Grand Trunk R. Co. 3 I. C. R. 633.

(m) A contract with a carrier for rates less than those on its schedule, and which is therefore unlawful as to the carrier because in violation of the Interstate Commerce Law, may nevertheless be enforced by the shipper if he had no knowledge that the schedule rate was higher than that given him. Mobile & O. R. Co. v. Dismukes (Ala.) 4 I. C. R. 200.

(n) Where a contract is made with a shipper by a carrier, member of a thru line, for shipments of goods over the line at a less than the published lawful rate charged shippers in general, it is not a violation of the act for the delivering carrier to exact payment of the full lawful rate before delivery. Where, however, the shipper did not enter into the contract willfully for the purpose of securing a rate which he knew, or by the exercise of reasonable diligence might have known, but was an innocent party to it and made shipment on the faith of the rate named, the courts seem inclined to hold that justice to the shipper requires that the goods be delivered on payment by him of the amount specified in the contract. Duncan v. A. T. & S. F. R. Co., 4 I. C. C. 385, 390.

(o) A contract of employment for the main purpose of getting cut freight rates and rebates from railroad companies, within the Interstate Commerce Act is void, and no recovery can be had for its breach under the provisions prohibiting special rates and rebates and making it a misdemeanor for the shipper or his agent to solicit or induce the violation of its provisions. Parks v. Dold Packing Co., 4 I. C. R. 486.

(p) In determining whether a contract of employment to procure rebates from railroads included railroads within the operation of the Interstate Commerce Act, the conduct of the parties in obtaining rebates from roads outside the state may be resorted to. Parks v. Jacob Dold Packing Co. (Buff. Super. Ct.) 4 I. C. R. 486.

(q) Where a contract is made with a shipper by a carrier, member of a through line, for shipment of goods over the line at a less than the published lawful rate charged shippers in general, it is not a violation of the Act to Regulate Commerce for the delivering carrier to exact payment of the full lawful rate before delivery. Where, however, the shipper did not enter into the contract willfully for the purpose of securing a rate which he knew, or by the exercise of reasonable diligence might have known, to be illegal, but was an innocent party to it and made the shipment on the faith of the rate named, that courts seem inclined to hold (and it is a matter for their determination) that justice to the shipper requires that the goods be delivered on payment by him of the amount specified in the contract. Blanton Duncan v. A. T. & S. F. R. R. Co., et al, 6 I. C. C. 85.

(r) The fact that a special rate was offered the plaintiff by mistake of the agent of one of two connecting lines of railroad cannot give any added force to the contract. A contract made by mistake can have no greater validity than one intentionally entered into. Chicago, Rock Island & Pacific R. Co. v. Hubbell, 5 I. C. C. 241.

(s) A contract for the transportation of freight from a point in Missouri to a point in Kansas for a rate less than that demanded and collected from other persons for like service at the same time, where the usual rate is not unreasonable or excessive, violates the provisions of the interstate commerce act, and is utterly void. Chicago, Rock Island & Pacific R. Co. v. Hubbell, 5 I. C. R. 241.

(t) Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate, so as to give undue preference or advantage to persons or traffic similarly circumstanced, the Act to Regulate Commerce leaves common carriers as they were at the common law, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce, and generally to manage their important interests upon the same principles which are regarded as sound and adopted in other trades and pursuits. C. N. O. & T. P. R. Co. v. Inters. Com. Commission, 5 I. C. R. 391.

(u) A contract of interstate shipment, which violates the interstate commerce act in fixing the terms of ship-

ment at a less amount than that fixed in the schedules by the carrier and Interstate Commerce Commissioners, will not be enforced. Gerber v. Wabash R. Co. (Mo. App.), 5 I. C. R. 458.

(v) A contract of interstate shipment, which violates the interstate commerce act in fixing the terms of shipment at a less amount than that fixed in the schedules by the carrier and interstate commerce commissioners, will not be enforced, even in favor of a shipper who was ignorant of the violation. Gerber v. Wabash R. Co., 5 I. C. R. 458.

(w) The Act to Regulate Commerce is not to be construed so as to abridge or take away the common law right of the carrier to make contracts and adopt proper business methods further than its terms and recognized purposes require. A railroad company may lawfully charge lower rates on coal in the summer months, in order to keep its coal cars and coal crews employed during that season of the year, provided such rates be offered in good faith to all persons upon equal terms. Interstate Commerce Commission v. L. & N. R. Co., 5 I. C. R. 656.

(x) The interstate commerce act is not to be construed so as to abridge or take away the common law right of the carrier to make contracts and adopt proper business methods, further than its terms and recognized purposes require. Interstate Commerce Commission v. Louisville & N. R. Co. (C. C. M. D. Tenn.), 5 I. C. R. 656.

(y) Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate, so as to give undue preference or advantage, or subject to undue prejudice or disadvantage, the act leaves common carriers as they were at common law, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce, and, generally, to manage their important interests upon the same principles which are recognized as sound and adopted in other trades and pursuits. Interstate Commerce Commission v. Alabama M. R. Co., 5 I. C. R. 685.

(z) Common carriers may under the Act to Regulate Commerce make special contracts looking to the increase of their business, classify their traffic, adjust and apportion their rates so as to meet the necessities of commerce, and generally manage their important interests on the same principles which are recognized as sound in other trades and pursuits, subject to the prohibition that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate so as to give undue preference or advantage or subject to undue prejudice or disadvantage persons or traffic similarly circumstanced. Interstate Commerce Commission v. Alabama Midland R. Co. (C. C. App. 5th C.), 5 I. C. R. 685.

(aa) The Interstate Act abrogated all existing contracts with common carriers for interstate commercial rates, and especially vested in the Federal tribunals exclusive jurisdiction to inquire and adjust such interstate rates as are alleged to be unfair and discriminative. The Fitzgerald & Mallory Construction Company had a contract with the Missouri Pacific Railway Company to transport men and materials to be used in the construction of certain roads by the Fitzgerald & Mallory Construction Company, at construction rates, which were calculated to be about the cost of transportation. Subsequently the railroad company exacted payment at the regular transportation rates, and the attempt was made to recover back the overcharge. The opinion contains a valuable discussion of the question, with the citation of many authorities. Fitzgerald v. Fitzgerald & Mallory Construction et al., 7 I. C. C. App. V.

(bb) A contract by a railroad company subject to the provisions of the Interstate Commerce Law to ship all lumber of the other party to the contract to a specified place at a rate not to exceed two cents per hundred pounds, where the rate charged other customers varied from two to four cents per hundred, is void because it violates such law which prohibits any special rate, rebate, or drawback, and makes it unlawful to give any undue or unreasonable advantage to any particular person. Kizer v. Texarkana & Ft. Smith Ry. Co., 8 I. C. C. App. LXXXVI.

(bba) Complainant attacked rate charged on machinery, carloads, from Erie, Pa., to Salton, Calif., as unreasonable in that the rate charged was higher than he claimed was contracted

for by him with the defendant. Shipment moved via the Lake Shore, Chicago, C. R. I. & P., T. & P., and S. P. The tariff naming the rate having been legally established, it was the duty of defendant to apply the rate so published and in effect between the points in question; and if, as claimed by complainant, a contract was made with defendant for a lower charge upon that shipment, such contract was not binding and its violation furnishes no ground for redress under the act. HELD, lawful rate assessed, complaint dismissed. Red Cloud Mining Co. v. Southern Pacific Co., 9 I. C. C. 216.

(cc) A contract made by a carrier to transport machinery at a lower rate than that fixed by the legally fixed tariff is not binding upon the company, and its violation furnishes no grounds for redress under the Act to Regulate Commerce. Red Cloud Mining Co. v. Southern P. Co. 9 I. C. C. 216.

(dd) Reparation for breach of contract for privilege not mentioned in tariff, because its allowances with publication was in violation of law. Shiel & Co. v. Ill. C. R. R. Co., 12 I. C. C. 210.

IMPORTANT CASES SINCE 1908

(ee) Contract rates cannot prevail against the legal, published, and filed rates. Rates for transportation of anthracite coal, 35 I. C. C. 220, 243.

(ff) The application of special contract rates on through rail-and-water shipments for cannery and mining companies which are lower than the published rates constitutes an unlawful departure from the tariffs and an unjust and unlawful discrimination against other shippers. The Alaska Investigation, 44 I. C. C. 680, 704.

(gg) Where a carrier buys out the interest of a mercantile company in transportation facilities, an agreement to pay the latter annually an amount "equivalent to $12 per ton on all commercial tonnage originating at or destined to points beyond the lines of the carrier, whether the property of the mercantile company or of others," by way of deferred payment on the purchase price, would seem to be contrary to the well-settled rule that nothing but money may be lawfully received in payment for transportation. The Alaska Investigation, 44 I. C. C. 680, 708.

(hh) A contract under which a shipper has placed itself in a position where it can not take advantage of facilities offered by certain carriers, affords no basis for a finding of unjust discrimination or undue prejudice, and such contracts can not be held to obligate carriers to move traffic or furnish facilities at rates that are less than reasonable. Tennessee Copper Co. v. Director General as Agent, 59 I. C. C. 253, 256.

(ii) Property owners advanced sum to short-line carrier toward building a branch, and agreement entered into providing for repayment out of earnings, and that a certain arbitrary over main-line rate be charged on traffic moving off the branch. HELD: No such contractual provisions can preclude commission from fixing reasonable or nonprejudicial rates from points on such carrier to interstate destinations. Clay County Coal Asso. v. C. & M. R. R. Co., 81 I. C. C. 414, 422.

(jj) A contract between carriers can not be permitted to defeat the plain requirements of the law. St. Louis & O'Fallons Ry. v. East St. Louis & Suburban Ry., 81 I. C. C. 538, 541.

(kk) The power of Congress under the commerce clause of the Constitution and the authority of the Commission by virtue of enactments of Congress thereunder can not be restricted by any preexisting or subsequent private agreement. C. M. & St. P. Ry. v. U. P. R. R., 88 I. C. C. 312, 317.

(ll) A contract between a railroad company and a pipe line company by which the latter was granted right of way for its pipe line over the railroad right of way in consideration for which it agreed to ship a stipulated tonnage of oil over the railroad in interstate commerce at a fixed rate, which was less than the published rate, HELD indivisible and illegal, and not enforceable by either party. Central R. Co., of N. J. v. U. S. Pipe Line Co. (Penn. 1923), 290 Fed. 983.

(mm) Whatever power under its charter a terminal company may have to convey or lease its property generally does not give it authority to enter into a contract under the operaion of which one shipper is preferred over another, and such preference cannot be secured by making a contract in the form of a lease of property. Eichenberg v. S. P. Co., 14 I. C. C. 250, 269; decision of Commission sustained, S. P. Terminal Co. v. I. C. C., 219 U. S. 498, 31 Sup. Ct. 279, 55 L. ed. 310.

(nn) A special contract with respect to an interstate shipment contrary to tariff provisions is void and of no effect. King v. Chicago, R. I. & Co., (Tex. 1922), 241 S. W. 180, 181.

(oo) Under the Act to Regulate Commerce contracts causing unlawful preferences and discrimination are void. Fort Worth & R. G. Ry. Co. v. Burns, (Tex. 1922), 242 S. W. 295.

(pp) Where claimant, who contracted to construct and lease a line of railway to the receiver of another road for the period of receivership, with an option to continue for 10 years and with trackage rights after expiration of lease, was not required to ballast road, receiver's agreement, inconsideration of fact that ballasting would reduce expense of maintenance and operation to transport chats for ballasting for cost of transporting in work trains, instead of amount fixed by tariffs filed with the Interstate Commerce Commission, was valid. Oklahoma Belt R. Co. v. Schaff, 282 Fed. 128.

(qq) A promise by the owner of a grain elevator to a railroad company, whose schedule, as filed with the Interstate Commerce Commission, included a charge for elevation and transfer of grain from vessels to cars, that such charge, when paid to such owner, would be retained, and that no part would be given to any one having an ownership interest in the grain but that this was subject to cancellation on written notice, was not violated by giving a special rate or rebate to a forwarding agent, after notice had been given withdrawing the promise. Spencer Kellogg & Sons, Inc., v. Delaware, L. & W. R. Co., 197 N. Y. S. 380.

(rr) Though a contract for rebates of freight rates was lawful when executed, Congress, by subsequent legislation could make it illegal. State Line & S. R. Co. v. Leigh Valley R. Co. (Pa. 1923), 120 A 829.

(ss) The rule that, where a contract is susceptible of two constructions, one of which is legal and the other not, that construction should be followed which makes the contract legal cannot be applied, if the contract is undoubtedly illegal. State Line & S. R. Co. v Lehigh Valley R. Co. (Pa. 1923), 120 A 829.

(tt) Contracts made in violation of the carrier's interstate tariff are void, and cannot be enforced. McGuire v. Atlantic Coast Line R. Co. (Va. 1923), 118 S. E. 225.

(uu) The Interstate Commerce Act does not forbid all contracts between shippers and carriers, but only those which give undue or unreasonable preference or advantage. Vander Zyl v. Chicago R. I. & P. Ry. Co., (Iowa 1922) 189 N. W. 953.

(vv) A contract by which a carrier agrees to furnish cars to a shipper of livestock by a certain time on its line is not forbidden by the Interstate Commerce Act, and if it fails to furnish cars under such contract is liable for the resulting damages. Vander Zyl v. Chicago, R. I. & P. Ry. Co., (Ia. 1922), 189 N. W. 953, 955.

(ww) Where a carrier agreed to ship cattle within a reasonable time, the contract was not made a preferential one, in violation of the Interstate Commerce regulating interstate commerce merely because the shipper requested the carrier to extend the time of confinement of the cattle without unloading for feed, water and rest for 36 hours, as authorized by the twenty-eight hour law. Baltimore & O. S. W. R. Co. v. Bower (Ind. 1920), 127 N. E. 458.

(xx) No verbal agreement for cattle cars for shipment in interstate commerce can be relied on under the Carmack Amendment which requires a written contract, nor can a preliminary oral agreement for a future interstate shipment. Underwood et al. v. Hines, Director General of Railroads (Mo. 1920), 222 S. W. 1037.

(yy) A station agent of a railroad operating under federal control has no authority to make an absolute and unconditional contract to have cattle cars ready at a certain place or date, irrespective of the government's needs or of general service to the public; such a contract being special and discriminatory, and violative of the Commerce Act. Underwood et al. v. Hines, Director General of Railroads, (Mo. 1920), 222 S. W. 1037.

(zz) A contract between the local agent of a railway company under federal control and a shipper, whereby the carrier agreed to furnish nine stock cars at a certain station on a named date, HELD not to violate the Interstate Commerce Act prohibiting unjust discrim-

ination among shippers. Cornwell v. Davis, (Mont. 1923), 213 Pac. 218.

ALL OTHER CITATIONS

L. & N. R. R. v. Mottley, 219 U. S. 467, 478, 31 Sup. Ct. 265, 55 L. ed. 297; I. C. C. v. C. G. W. Ry. Co., 209 U. S. 108, 119 28 Sup. Ct. 493, 52 L. ed. 705; First Trust & Savings Bank v. So. Ind. Ry. Co., 195 Fed. 330, 334; Taenzer & Co. v. C. R. I. & P. Ry. Co., 191 Fed. 543, 549; Bibber-White Co. v. White River Valley Elec. R. R. Co., 175 Fed. 470, 475; C. & O. Ry. Co. v. Standard Lumber Co., 174 Fed. 107, 112; Cosby v. Richmond Transfer Co., 23 I. C. C. 72, 75; Sinclair & Co. v. C. M. St. P. Ry. Co. 21 I C. C. 490, 496; Cook v. Wabash R. R. Co., 21 I. C. C. 563, 564; Baltimore Butchers Live Stock Co. v. P. B. & W. R. R. Co., 20 I. C. C. 124, 128; Arizona Ry. Com. v. Wells Fargo & Co., 20 I. C. C. 571, 574; Shoemaker v. C. & P. Tel. Co., 20 I. C. C. 614, 621; Peale, Peacock & Kerr v. C. R. R. of N. J., 18 I. C. C. 25, 33; Armour Car Lines v. S. P. Co., 17 I. C. C. 461, 463; In Re Contracts of Express Companies, 16 I. C. C. 246, 253; Interstate Remedy Co. v. American Express Co., 16 I. C. C. 436, 437; Ames Brooks Co. v. Rutland R. R. Co., 16 I. C. C. 479; American Bankers' Ass'n. v. American Express Co., 15 I. C. C. 15, 21; Cedar Hill Coal & Coke Co. v. A. T. & S. F. Ry. Co., 15 I. C. C. 73, 77; Beatrice Creamery Co. v. I. C. R. R. Co., 15 I. C. C. 109, 128; Western Oregon Lumber Co., etc., v. S. P. Co., 14 I. C. C. 61, 70; Traer v. C. & A. R. R. Co., 13 I. C. C. 451, 457; Santa Fe., P. & P. Ry. Co. v. Grant Bros. Const. Co. (Ariz. 1910), 108 P. 467, 470; Baltimore & O. S. W. Ry. Co., v. New Albany Box & Basket Co. (Ind. 1911), 94 N. E. 906, 909; K. C. S. Ry. Co. v. Albers Commission Co., 79 Kans. 59, 69, 99 P. 819, 824; L. & N. R. R. Co. v. Coquillard Wagon Works, Assignees, (Ky. 1912), 144 S. W. 1080, 1082; Chesapeake & O. Ry. Co. v. Maysville Brick Co., 132 Ky. 643, 654, 116 S. W. 1183; Louisiana Ry. & Nav. Co. v. Holly, 127 La. 615, 53 So. 882; Foster, Glessel Co. v. K. C. S. Ry. Co., 121 La. 1053, 1055, 46 So. 1914; Gulf & S. I. R. R. Co. v. Laurel Cotton Mills, 91 Miss. 166, 194 45 So. 982; Sutton v. St. L. & S. F. R. R. Co. (Mo. App., 1911, 140. S. W. 76; Pecos Valley & N. E. Ry. Co. v. Harris (N. M. 1908), 94 P. 951; Houseman v. Fargo (N. Y. 1910), 142 N. Y. Supp. 1086, 1088; Baltimore & O. R. R. Co. v. La Due, 57 Misc. 614, 616, 108 N. Y. Supp. 659; reversed 128 App. Div. 594, 112 N. Y. Sup. 964; A. T. & S. F. Ry. Co. v. Bell (Okla. 1912), 120 P. 987; Hardaway v. Southern Ry. Co. (S. C. 1912), 73 Se. 1020, 1021; Louisville & N. R. R. Co. v. Smith (Tenn. 1911), 134 S. W. 886, 872; St. L. S. F. & T. Ry. Co. v. Birge-Forbes Co. (Tex. 1911), 139 S. W. 3, 4, 5; Cowley v. N. P. Ry. Co. (Wash. 1912), 123 P. 998, 999, 1000, 1001; Fisher v. G. N. Ry. Co., 49 Wash. 205, 210, 211, 95 P. 77; Coeur D'Alene & S. Ry. Co. v. U. P. R. R. Co. (Wash. 1908), 95 P. 71, 75; Wilkoff Bros. Co. v. P. & L. E. R. R. Co., Unrep. Op. 467; C. H. & S. A. Ry. Co. v. Breaux (Tex., 1912), 150 S. W. 287, 290; Hunter v. St. L. & S. F. R. R. Co. (Mo. 1912), 150 S. W. 733, 735; L. & N. R. R. v. Jones (Ala., 1912), 60 So. 945, 948; C. of Ga. Ry. Co. v. Patterson (Ala. 1912), 60 So. 465, 467; N. Y. N. H. & H. R. R. Co. v. York & Whitney Co. (Mass., 1913), 102 N. E. 366, 368; Wabash R. R. Co. v. Priddy (Ind. 1913) 101 N. E. 724, 728, 729, 730; Siemonsma v. C. M. & St. P. Ry. Co. (Ia., 1913), 139 N. W. 1077, 1079; Michigan Upper Peninsula Pig Iron Rates, 26 I. C. C. 284, 285; Elwood Grain Co. v. St. J. & G. I. Ry. Co., 202 Fed. 845, 847; C. C. C. & St. L. Ry. Co. v. Hirsch, 204 Fed. 849, 853; Clegg v. St. L. & S. F. R. R. Co., 203 Fed. 971, 973; Kansas City S. R. Co. v. Carl, 33 Sup. Ct. 391, 395; L. & N. Ry. Co. v. Crowe (Ky., 1913), 160 S. W. 759, 760; Lewis, Leonhardt & Co. v. Southern Ry. Co., 217 Fed. 321, 328; Lumber Rates from the Southwest to Points North, 29 I. C. C. 1; Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502, 505; Becker v. P. M. R. R. Co., 28 I. C. C. 645, 655; Central Ry. Co. of N. J. v. Maurer (Pa., 1913), 88 Atl. 791, 793; N. Y. Cent. & H. Ry. Co. v. General Electric Co. (N. Y. Trial Term., 1914), 146 N. Y., Sup. 322, 326; Ray v. M. K. & T. Ry. Co. (Kan., 1913), 133 Pac. 847, 849; C. & W. C. Ry. Co. v. Thompson, 80 S. E. (Ga., 1913), 1097, 1099, affirming, 79 S. E. 242; St. L. I. M. & S. Ry. Co. v. West Bros. (Tex. Civ. App., 1913), 159 S. W. 142, 144; Morrison Grain Co. v. Missouri Pac. Ry. Co. (Mo., 1914), 170 S. W. 404, 407; Zoller Hop Co. v. So. Pac. Co., 143, Pac. 931, 935; So. Pac. Co. v. Frye & Bruhn, 143 Pac. 163, 165; J. W. Stew-

art & Son v. C. R. I. & P. Ry. Co. (Ia. 1915), 151 N. W. 485, 487; Jordan v. Southern Ry. Co., (S. C. 1915), 84 S. E. 871, 872; Canby v. Merchant's & Miners Transp. Co., (Ga. 1915), 85 S. E., 361, 362; Norfolk Southern R. Co., v. White-Hurst (Va. 1915) 85 S. E., 458, 459; P. R. R. Co. v. Titus (N. Y. 1915), 109 N. E. 857; Western Rate Advance Case, 35 I. C. C. 497, 593; Keithley v. Lusk, (Mo. 1915), 177 S. W. 756, 758; Knapp v. Minneapolis, St. P. & S. S. M. Ry. Co. (N. Dak. 1916) 156 N. W. 1019, 1020, 1021; Bennett & Son v. C. O. Ry. Co., 38 I. C. C. 310, 314; City of Memphis v. C. R. I. P. R. R. Co., 39 I. C. C. 256, 258, 260; Stonega Coke & Coal Co. v. L. & N. R. R. Co., 39 I. C. C. 523, 549; St. Louis, Mo.-Illinois Passenger Fares, 41 I. C. C. 584, 591; Davis v. So. Pac. Co., 235 Fed. 731; Atchison, T. & S. F. Ry. Co. v. Bowman, 158 Pac. (Colo. 1916) 814; W. M. Carter Planing Mill Co. v. New Orleans, M. & C. R. Co., 72 So. R. (Miss. 1916), 884; St. Louis, I. M. & S. Ry. Co. v. Landa & Storey, (Tex. 1916) 187 S. W. 358; A. T. & S. F. Ry. v. Stannard & Co. Kan. 1917), 162 Pac. 1176; Foster Lumber Co. v. A. T. & S. F. Ry., (Mo. 1917), 194 S. W. 280, 281; Dorr v. C. & O. Ry., (W. Va. 1916), 88 S. E. 666; Sunderland Bros. Co. v. B. & O. S. W. R. R., (Mo. 1916), 190 S. W. 650; Chicago, Great W. R. R. v. Postal Telegraph-Cable Co., 245 Fed. 592, 595, 596, 597, 598, 599, 600; Draper v. Georgia, F. & A. Ry. Co., (Ga. 1918), 95 S. E. 16; Southern Ry. v. Linear, et al., (Tenn. 1917), 198 S. W. 887; N. P. Ry. v. Longmire (Wash. 1917) 167 Pac. 79, 80; Adams Express Co. v. Burr Oak Jersey Farm. (Ky. 1918), 206 S. W. 173; Irvine v. Postal Teleg.-Cable Co. (Cal. 1918), 173 Pac. 487; In re Private Cars, 50 I. C. C. 652, 708; Cape Girardeau Commercial Club v. I. C. R. R., 51 I. C. C. 105, 106, 107; West Const. Co. v. Seaboard Air Line Ry., 210 S. W. 633; Cicardi Bros. Fruit & Produce Co. v. Pa. Co., (Mo. 1919), 213 S. W. 531; Thee v. Wabash Ry. Co. (Mo. 1920), 217 S. W. 566; Baker v. J. W. McMurry Contracting Co. (Mo. 1920) 223 S. W. 45, 46.

§2½. Previous Validity.

CASES 1887-1908

(a) A common carrier may contract to ship freight at a lower rate than the published tariff, but he cannot contract to deny the same reduced rate to other shippers. Christie v. Missouri Pacific R. Co. 2 I. C. R. 22.

(aa) A contract by a railroad company to carry corn at the customary rates and to grant a rebate to the shipper, is not illegal, as being in violation of the law to prevent unjust discrimination, nor is it fraudulent as to the purchaser of the corn. Christie v. Missouri Pacific R. Co. 2 I. C. R. 22.

(b) Neither the Act to Regulate Commerce, nor the Act of June 15, 1866 (U. S. Rev. Stat. § 5258), was ever intended to invade the domain of private contracts between common carriers, which were valid when made, and are not in conflict with the provisions of the Law. The observance of good faith between parties, the upholding of private contracts, and enforcing their obligations, are matters of higher moment and importance to the public welfare, and far more reaching in their consequences, than the public policy sought to be established in the facilitation of commercial intercourse among the States, which the Act of June 15, 1866, aimed to promote. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(c) A statute confirming a contract between commissioners for placing electric wires underground, and a subway company, to lay subways for such wires, is none the less an exercise of police power because it gives to such company special privileges but no exclusive privileges or franchises. Western Union Telegraph Co. v. Mayor of New York., 2 I. C. R. 533.

(d) Mere inequality between the rate charged a shipper by a railroad company for transporting goods, and the company's published tariff rates, is not prohibited either by the common law or by the provision in section 6, article 15, of the Constitution, that "no undue or unreasonable discrimination shall be made in charges," hence a contract to transport a certain shipper's goods at less than regular tariff rates is valid unless it be shown that an unjust discrimination was thereby made or intended. Bayles v. Kansas Pacific R. Co. 2 I. C. R. 643.

(e) The ninth section of the charter of the Minneapolis & Cedar Valley Railroad Company giving power to the directors of that company to make rules as to rates of toll does not constitute

an irrepealable contract with that company that it shall have the right for all future time to prescribe its rates of toll, free from all control by the Legislature of the State. Chicago M. & St. P. R. R. v. State of Minn., 3 I. C. R. 209.

(f) Complainant is a miner and shipper of anthracite coal from a region in Pennsylvania from which defendant is a common carrier, and also a miner, purchaser and shipper of coal on its own account. Complainant alleges that defendant gives to itself as a shipper of coal an undue and unreasonable preference and advantage in rates, as compared with those charged complainant; and further alleges specifically that the rates charged him by defendant on coal east to Hoboken, and west and north to Buffalo and other points, are unreasonable and unjust. Respondent in reply relies on certain contracts between itself and complainant entered into prior to the enactment of the Act to Regulate Commerce, as controlling the charges for that transportation of coal by the former for the latter, and as precluding the jurisdiction of the Commission in the premises. The substance of one of these contracts is that the price for transporting complainant's coal to Hoboken shall be fifty per cent of the price for which respondent sells its own coal in Hoboken; the substance of the contracts is that complainant may ship his coal to points north and west upon the same terms and conditions as respondent for the time being transports coal for other parties, the terms to other parties being fixed in the published tariffs of respondent. No claim is made that the validity of these contracts has been impaired or affected by the passage of the Act to Regulate Commerce, although the Commission distinctly propounded the inquiry whether such. claim was made. The case being thus at this issue the complainant applied for subpoenas duces tecum, to compel certain third parties, as well as officers of respondent, to produce certain papers and contracts, alleged to be material as evidence upon the issue; and respondent moved to dismiss for want of jurisdiction. The Commission carefully abstains from expressing any opinion as to the effect of the Act to Regulate Commerce in impairing the validity of the contracts referred to, but, assuming them to be still in force, as both parties admit them to be HELD: That complainant is precluded, by the terms of the contract for shipping coal to Hoboken, from going into evidence to show that the rate on his coal to Hoboken ought to be different from that fixed by the contract; and witnesses and evidence asked for to that end are immaterial. The contracts providing that complainant may ship coal to points north and west, on the same terms and rates that respondent for the time being gives other persons, do not preclude complainant from showing that such rates are unjust, oppressive or unreasonable. Complainant is therefore entitled to a hearing upon that question. The Commission cannot, for the purpose of discovery and preventing unjust discrimination by respondent, which is both a shipper and a carrier of its own products over its own line, compel it to keep separate accounts showing what it charges itself for transportation or what the cost of transportation to it is; and even were such a separate account required, it would form no safe guide in determining whether respondent did or did not use its power as a carrier oppressively. The application for subpoenas duces tecum is denied. As applicable to contracts and papers of third persons, not before the Commission, it is denied on the ground of the injustice that might be done such persons; and generally (for the present at least) it is denied on the ground that the material facts can be proven by the testimony of witnesses, without the aid of the documentary evidence; although respondent will be expected to produce, for purposes of examination any books and papers of its own, material to the controversy. The respondent's motion to dismiss the complaint in toto is denied, as good ground of complaint is set forth in respect to northern and western shipments. Haddock v. Delaware, Lackawana & W. R. C., 3 I. C. R. 302.

(g) If an agreement is legally void and unenforceable by reason of some statutory or common law prohibition which does not involve any positive immorality, and there is no other reason of public policy why the courts should refuse to grant relief, a party who has received anything under it from the other party, and has failed to perform on his part, must account to the other for what he has received. Manchester & L. R. Co. v. Concord R. Co. (N. H.) 3 I. C. R. 319.

(h) Where a carrier agrees that he will carry goods at a certain rate and that after the shipment he will repay the shipper a rebate of part of such rate, this is only an agreement to carry the goods at a compensation ultimately agreed upon, and is not illegal. Cleveland C. C. & I. R. Co. v. Closser, 3 I. C. R. 387.

(i) If a common carrier makes a special contract to repay part of the sum received from the shipper, he must perform his part of the contract unless he overthrows the presumption of fairness and right by countervailing facts. Cleveland C. C. & I. R. Co. v. Closser, 3 I. C. R. 387.

(j) A contract binding a carrier to transport as many carloads of grain as the shipper may desire transported is valid as to acts done in performance of it, until revoked. Cleveland C. C. & I. R. Co. v. Closser (Ind.), 3 I. C. R. 387.

(k) A contract between corporations charged with a public duty, such as is that of common carriers, providing for the formation of a combination having no other purpose than that of stifling competition and providing means to accomplish that object, is illegal and against public policy. Cleveland, C. C. & I. R. Co. v. Closser (Ind.), 3 I. C. R. 387.

(l) Interstate carriers have power to make commodity class rates and special class rates to meet the circumstances and conditions of traffic along their lines. New York Bd. of Trade & Transp. v. Pennsylvania R. Co., (Com.) 3 I. C. R. 417.

(m) A contract with a carrier for rates less than those on its schedule, and which is, therefore, unlawful as to the carrier because in violation of the Interstate Commerce Law, may nevertheless be enforced by the shipper if he had no knowledge that the schedule rate was higher than that given him. Mobile & Ohio R. Co., v. Dismukes, 4 I. C. R. 200.

(n) Where a contract is made with a shipper by a carrier, member of a thru line, for shipment of goods over the line at a less than the published lawful rate charged shippers in general, it is not a violation of the Act to Regulate Commerce for the delivering carrier to exact payment of the full lawful rate before delivery. Where, however, the shipper did not enter into the contract willfully for the purpose of securing a rate which he knew, by the exercise of reasonable diligence have known, to be illegal, but was an innocent party to it and made the shipment on the faith of the rate named, the courts seem inclined to hold (and it is a matter for their determination) that justice to the shipper requires that the goods be delivered on payment by him of the amount specified in the contract. Duncan v. Atchison, T. & S. F. R. Co., 4 I. C. R. 385.

(o) Where a railroad company is not restricted or inhibited by its charter or the law of the land, it is not unlawful for it to make an arrangement of rates for special purposes, on a sufficient consideration, and for the legitimate increase of its business. Missouri P. R. Co. v. Texas & P. R. Co. (C. C. E. D. La.) 4 I. C. R. 428.

(p) Contracts between carriers are not necessarily invalid because they incidentally restrict competition, but this depends upon their reasonableness. United States v. Trans-Missouri Freight Association, 4 I. C. R. 443.

ALL OTHER CITATIONS

Davis v. Southern Pac. Co., 235 Fed. 731.

III. LIABILITY.

§3. Criminal liability.

IMPORTANT CASES SINCE 1908

(a) Defendant initial carrier made a contract with a shipper to haul goods destined for export from Kansas City to New York City at the published rate then in effect over the lines of defendant and its connecting carriers. Subsequent to the making of the contract, the connecting carriers, without the consent of the initial carrier, raised the rates for their portion of the haul and duly published them, so as to make the lawfully published rate from Kansas City to New York City higher than that specified in defendant's contract with the shipper. HELD, in an indictment under the Elkins Act for granting concessions defendant was guilty, despite the existence of its contract with the shipper, for accepting less than the duly published increased rates. C. B. & Q. Ry. Co. v. U. S., 157 Fed. 831, 835.

(b) Where a carrier, under a private contract with a shipper, pays back from the published interstate rate to the ship-

per a sum of money as an allowance for the service rendered by the shipper in bringing carloads of its products from its plant over its private plant tracks to the tracks of defendant carrier, it is guilty of a violation of the Elkins law forbidding a carrier from granting a rate less than the published rate. C. & A. Ry. Co. v. U. S., 156 Fed. 558, 562.

§4. Damages for breach.

(1) In general.

See Interstate Commerce Commission I; Jurisdiction of Commission.

CASES 1887-1908

(a) The Commission has no power to enforce contracts, nor has it any general power to manage business of carriers. Traders & Travelers Union v. Phila. etc. R. R. Co., 1 I. C. R., 371.

(aa) That the power to enforce contracts has not been confided to the Commission, nor has it any general power or authority to manage the business of carriers, but only a limited power, expressly defined by the Act, to interfere to prevent wrong and oppression in specified cases. Traders & Travelers Union v. P. & R. R. 1 I. C. C. 371, 374.

IMPORTANT CASES SINCE 1908

(b) The Commission has no authority to approve or enforce a private agreement made between shippers and carriers concerning charges for transportation, nor is it bound by such agreement, when the reasonableness of such charges are challenged in the mode prescribed in the Act. The Commission will not undertake to interfere or construe an agreement, nor to determine its legal effect, nor to see that a tariff shall be issued in compliance therewith. But such an agreement may be regarded as an admission as between the parties executing it of strong evidentiary value that the rate agreed upon is reasonable and such evidence will be considered by the Commission together with all other facts, circumstances and conditions that may reasonably apply to the matters under investigation. Hood & Sons v. D. & H. Co., 17 I. C. C. 15, 18.

(c) The Commission has no authority to enforce express or implied contracts between shippers and carriers as to the maintenance of specific rates. Allegheny Ore & Iron Co. v. C. & O., 52 I. C. C. 415, 423.

(d) The fact that rates to certain points are maintained under contract between the carriers and shippers does not affect the authority of the Commission to require the carriers to desist from violations of the act. Graham & Gila Counties Traffic Asso. v. A. E. R. R. Co., 81 I. C. C. 134, 143.

(e) The Commission has no jurisdiction to construe or enforce contracts and may inquire into contractual relations only in so far as is necessary to determine who, in fact, paid and bore the freight charges as such. International Coal Products Corp. v. Director General, 81 I. C. C. 435, 439.

ALL OTHER CITATIONS

C. & A. R. R. Co. v. Kirby, 225 U. S. 155, 166, 32 Sup. Ct. 648, 56 L. ed. 1033; K. C. S. Ry. v. Albers Comm. Co., 223 U. S. 573, 596, 32 Sup. Ct. 316, 56 L. ed. 556; Ralston Townsite Co. v. M. P. Ry. Co., 22 I. C. C. 354, 355; Wood-Mosaic Flooring & Lumber Co. v. L. & N. R. R. Co., 22 I. C. C. 458, 459; Alan Wood Iron & Steel Co. v. P. R. R. Co., 22 I. C. C. 540, 547; Crane R. R. Co. v. P. & R. Ry. Co., 15 I. C. C. 248, 254; Holley Mathews Mfg. Co., v. Y. & M. V. Ry. Co., 15 I. C. C. 436, 437; General Electric Co. v. N. Y. C. & H. R. R. R. Co., 14 I. C. C. 237, 242; Eddleman v. M. V. R. R. Co., 13 I. C. C. 610, 612; Rhinelander Paper Co. v. N. P. Ry. Co., 13 I. C. C. 633, 636; Consolidated Pump Co. v. L. S. & M. S. Ry. Co., 27 I. C. C. 519, 621; Wisconsin Lime & Cement Co. v. C. C. C. & St. L. Ry. Co., 25 I. C. C. 366; Greenbaum Co. v. C. & O. Ry Co., 25 I. C. C. 352, 354; Laona & Nor. R. R. Co. v. M. St. P. & S. Ste. M. R. R., 24 I. C. C. 639, 644; In Re Weighing of Freight by Carriers, 28 I. C. C. 7, 25; Alexandria Lumber Co., Ltd., v. L. R. & N. Co., Unrep. Op. A-710; Car-Ferry Allowance at Cheboygan, Mich., 32 I. C. C. 578, 580, 581; The Tap Line Case, 34 I. C. C. 116, 118; Picher Lead Co. v. St. L. & S. F. R. R., 35 I. C. C. 45, 46; Elwood Grain Co. v. St. J. & G. I. Ry., 202 Fed. 845, 847; McArthur Bros. Co. v. E. P. & S. W. Co., 34 I. C. C. 30, 31; Picher Lead Co. v. St. L. & S. F. R. R. Co., 35 I. C. C. 45, 46; Ludowici-Celadon Co. v. F. E. C. Ry. Co., 35 I. C. C. 81, 82; Samuel v. D. L. & W. R. R., 36 I. C. C., 255, 256; Marquette Coal Co. v. P. R. R. Co., 40 I. C. C. 4, 6; Hocking Domestic Coal Co. v. K. & M. Ry., 44 I. C. C. 392, 398, 399; Cudahy Packing Co. v. Bixby, (Mo. 1918), 205 S. W. 865; Diamond Lumber Co. v. C. M. & St. P. Ry. 51 I. C. C. 78, 88; Cape Girardeau Com.

Club v. I. C. R. R., 51 I. C. C. 105, 106, 107; Lay v. American Exp. Co. 51 I. C. C. 373; Allegheny Ore & Iron Co. v. C. & O. Ry. Co., 53 I. C. C. 415, 423; Consolidation of Express Companies, 59 I. C. C. 459, 465; Empire Refineries, Inc. v. Guaranty Trust Co. of New York et al., 271 Fed. 668; National Box Co. v. M. P. R. R. Co., 61 I. C. C. 211, 213; Rowland Power Consolidated Collieries Co. v. Director General, as Agent, 62 I. C. C. 101; Van Dusen Harrington Co. v. Director General, as Agent, 64 I. C. C. 461; Graham & Gila Counties Traffic Asso. v. A. E. R. R. Co., 81 I. C. C. 134, 143; International Coal Products Corp. v. Director General, 81 I. C. C. 435, 439.

§4 (2) Jurisdiction of Commission.

IMPORTANT CASES SINCE 1908

(a) There is nothing in the prohibition of the Hepburn Act against charging, collecting, or receiving a greater or less or different compensation for transportation than that specified in the carrier's published rates, which prevents or relieves a carrier from making just compensation in money for the unpaid balance of the purchase price of a map made for it, because the delivery of the particular consideration stipulated for in the contract, viz., free transportation, became unlawful upon the passage of that statute. N. Y. C. & H. R. R. R. Co. v. Gray, 36 Sup. Ct. 176, 239 U. S. 583, 60 L. ed. 451.

(b) Whether a contract between a carrier and a shipper has been discharged depends upon the circumstances of the transaction. The question under the Interstate Commerce Act is not one of form but of actuality Southern R. Co. v. Prescott, 36 Sup. Ct. 469, 472, 240 U. S. 632, 60 L. ed. 836.

ALL OTHER CITATIONS

Este Co. v. A. C. L. R. R. Co., 34 I. C. C. 469.

§5. Discrimination Through Contract. See Discrimination.

CASES 1887-1908

(a) Complainant alleged that defendant gives to itself as a shipper of coal an undue and unreasonable preference and advantage in rates, as compared with those charged complainant; and further complained specifically that the rates charged him on coal east to Hoboken, N. Y., and west and north to Buffalo and other points are unreasonable and unjust. Certain contracts were in effect between complainant and defendant whereby the price for transporting complainants coal to Hoboken shall be fifty per cent of the price for which respondent sells its own coal at Hoboken. No claim is made that the validity of these contracts has been impaired or affected by the act. HELD, complaint dismissed as to the rates to Hoboken, but held open as to rates to western and northern points. Haddock v. D. L. & W. R. Co., 3 I. C. C. 302.

IMPORTANT CASES SINCE 1908

(b) Contracts cannot justify unjust discrimination. Baltimore Butchers Live Stock Co. v. P. B. & W. R. R. Co., 20 I. C. C. 124, 128; Shoemaker v. C. & P. Tel. Co., 20 I. C. C. 614, 621.

(c) The law contemplates that all shippers shall be treated alike and shall pay one rate, as established, published, and posted. The provisions of the Act are controlling as to contracts entered into prior to the Act's enactment. Therefore, contractural obligations can not be accepted as justification for the unlawful preference of one shipper to the disadvantage of others, or for the payment to a shipper of allowances in contravention of law. Allowances on Anthracite Coal, 36 I. C. C., 164, 170.

(d) Defendant carrier made a special contract with plaintiff for the transportation of horses by which it agreed to make the haul within a particular time, to make a particular connection, and to carry by a particular train. The shipment was to move at the regular rate. This expedited service was not provided for in its published tariffs and was not open to all. HELD, the contract was in violation of sections 3 and 6 of the Act forbidding unreasonable preferences in rates or regulations. Plaintiff could not recover damages for a breach thereof for delay of the shipment in transit. C. & A. R. R. Co. v. Kirby, 225 U. S. 155, 165, 32 Sup. Ct. 648, 56 L. ed. 1033.

ALL OTHER CITATIONS

Merchants Cotton Press & Storage Co. v. I. C. R. R. Co., 17 I. C. C. 98, 104; Lock Lynn Construction Co. v. V. & O. R. R. Co., 17 I. C. C. 396, 399; Armour Car Lines v. S. P. Co., 17 I. C. C. 461, 462; Douglas & Co. v. C. R. I. & P. Ry. Co., 16 I. C. C. 232; rehearing denied, 21 I. C. 541; Eichenberg v. S. P. Co., 14 I. C. C. 250, 269; decision of Commission sustained, S. P. Terminal Co. v. I. C. C., 219

U. S. 498, 31 Sup. Ct. 279, 55 L. ed. 310. Sanders v. A. C. L. R. Co. (S. C. 1915) 85 S. E. 167, 168; J. W. Stewart & Son v. C. R. I. & P. Co., (Ia. 1915), 151 N. W. 485, 487; Bennett & Son v. C. & O. Ry., 38 I. C. C. 310, 314; Graustein v. B. & M. R. R., 45 I. C. C. 393, 404; Miller Engineering Co. v. Louisiana R. & Nav. Co. (La. 1919), 81 So. 314.

IV. ACTIONS TO ENFORCE.
See Actions at Law.

§5½. In general.

CASES 1887-1908

(a) In case of a transaction which is simply ultra vires, neither party will be heard to allege its invalidity while retaining its fruits. Limitation of the contractural power of a corporation does not prevent it from making restitution of money or property obtained under an unauthorized contract. Manchester & L. R. Co. v. Concord R. Co. (N. H.), 3 I. C. R. 319.

(b) Where a special service is required of the carrier, such as rapid transit and speedy delivery in cases of perishable freight, a higher rate than for the carriage of ordinary freight is warranted, and, if a carrier charging a rate based on such special service, fails to render it, to the damage of the shipper, and without legal excuse, the remedy of the latter would seem to be by a proper proceeding in a court of law. Land v. South Carolina R. Co., 4 I. C. R. 205.

(c) Fraud and illegality in contracts are not to be presumed. United States v. Trans-Missouri Freight Association, 4 I. C. R. 443.

(d) Performance of an illegal contract on one side only does not make it an executed contract so that an action can be maintained for the consideration. Chicago, M. & St. P. R. Co. v. Wabash, St. L. & P. R. Co. (C. C. App. 8th C.), 4 I. C. R. 578.

IMPORTANT CASES SINCE 1908

(e) Only the courts are empowered to enforce provisions of a contract, even though interpretation thereof involves the question of rebating. McArthur Bros. Co. v. E. P. & S. W. Co., 34 I. C. C. 30, 31.

(f) Although the Hepburn Act prohibits a railroad from performing a special contract under which railroad charges may be payable in other things than money, it by no means follows that the carrier is thereby relieved from any performance of such contract. Therefore, a carrier which prior to the passage of the Hepburn Act agreed to purchase a map for $750 of which $150 was to be paid in cash and the balance in transportation is obligated to pay the maker of the map cash in lieu of the consideration which was to be paid. N. Y. C. & H. R. R. R. Co. v. Gray, 36 Sup. Ct. 176. 239 U. S. 583; 60 L. ed. 451.

(g) Where a railroad agreed to perform intra-plant switching free for a large shipper and receiver of freight and filed an agreement to this effect with the Interstate Commerce Commission it cannot afterwards contend that such an agreement was void and recover the reasonable value of such switching. Oregon Short Line R. Co. v. American Smelting & Refining Co., 269 Fed. 898.

(h) Where a lessor of a railroad sought to recover as additional rent, 5 cents per ton for all coal that the lessor had shipped during the year as provided for in the lease, if the amount of coal shipped by lessor exceeded 100,000 gross tons, HELD, that the 5 cents per ton was a rebate, and not rent, and even though plaintiff could recover this illegal rebate, he should have sued for breach of contract and not on covenant for rent. State Line & S. R. Co. v. Lehigh Valley R. Co. (Pa. 1923) 120 Atl. 829.

(i) That a contract in violation of law has been performed by one party, the part performed including that part which was illegal, does not entitle such party to enforce it against the other. Central R. Co. of N. J. v. U. S. Pipe Line Co., (Penn. 1923), 290 Fed. 983.

ALL OTHER CITATIONS

Este Co. v. A. C. L. R. R. Co., 34 I. C. C. 469, 471; In re Private Cars, 50 I. C. C. 652, 764; Kneeland-Bigelow Co. v. Michigan Cent. R. Co., (Mich. 1919), 174 N. W. 605; New River Lumber Co. v. Tennessee Ry. Co., (Tenn. 1922), 238 S. W. 867.

§6. Defenses.
See Courts §2.

CASES 1887-1908

(a) In case of a transaction which is simply ultra vires neither party will be heard to allege its invalidity while retaining its fruits. Limitation of the contractural power of a corporation does not prevent it from making restitution

of money or property obtained under an unauthorized contract. Manchester & Lawrence R. Co. v. Concord R. Co., 3 I. C. R. 319.

(b) If an agreement is legally void and unenforceable by reason of some statutory or common-law prohibition which does not involve any positive immorality, and there is no other reason of public policy why the courts should refuse to grant relief, a party who has received anything under it from the other party and has failed to perform on his part must account to the other for what he has received. Manchester & Lawrence R. Co. v. Concord R. Co., 3 I. R. 319.

(c) No right of action can spring out of an illegal contract; and this rule applies, not only when the contract is expressly illegal, but whenever it is opposed to public policy. Cleveland C. & C. & I. R. Co. v. Closser 3 I. C. R. 387.

(d) The rule that the question of the illegality of the contract for breach of which an action is brought is not raised when not alleged in the answer does not apply when from plaintiff's own testimony the contract appears to be illegal. Parks v. Jacob Dold Packing Co. (Buff. Super. Ct.), 4 I. C. R. 486.

(e) Where it appears that a complainant has invoked the aid of the law for the purpose of securing what he, with the acquiescence of the carrier, had previously obtained in apparent contravention of the law, such acquiescing carrier will not be held entitled to plead violations of the law by complainant in bar of a decision on the merits, nor will the individual interests of the complainant be taken into consideration; but the Commission will examine the evidence and make such report thereon as, under the provisions of the law, the rights of other shippers and the public generally may require. If, independently of any action or interest of complainants, the conduct of defendants with reference to the transportation which is the subject of the proceeding is shown by the evidence to be unlawful, it is the duty of the Commission to execute and enforce the statutory provisions applicable thereto. Page v. Delaware, L. & W. R. Co., 4 I. C. R. 525.

(f) Performance of an illegal contract on one side only does not make it an executed contract so that an action can be maintained for the consideration. Chicago, M. & St. P. R. Co. v. Wabash, St. L. & P. R. Co., 4 I. C. R. 578.

(g) Any question as to complying with special contract terms touching presentation of claim or making demand, or the time of so doing, does not arise where the default sued for is failure to start the message. A contract which one party abandons without excuse or justification cannot be enforced against the other. Western Union Telegraph Co. v. Michelson, 5 I. C. R. 236.

(h) A railroad company which seeks to release itself from its agreement to deliver goods for a specified freight rate, on the ground that the contract is illegal because the rate specified is less than that fixed by the Interstate Commerce Commission, has the burden of proving that the contract was necessarily unlawful, and not merely that it might have been so. Southern Pacific Co. v. Redding & Son, 8 I. C. C. App. II.

(i) Contracts for carriage made by carriers within the scope of their general powers are not to be declared, in any collateral proceedings, null and void by reason of some alleged or supposed departure from the requirements of the Interstate Commerce Act with reference to the matters of fares and charges. Pond-Decker Lumber Co. v. Spencer 8 I. C. C. App. LXV.

IMPORTANT CASES SINCE 1908

(j) Where a contract with a railroad company is in contravention of the Act to Regulate Commerce by reason of granting the shipper rates lower than those lawfully published, defendant cannot be estopped from setting up such illegality as a defense to a suit at law for damages for breach thereof. Taenzer & Co. v. C. R. I. & P. Ry. Co., 191 Fed. 543, 551.

(k) The fact that one portion of a contract is illegal under the Interstate Commerce Act vitiates the whole contract and prevents its enforcement. Lewis, Leonhardt & Co. v. Southern Ry. Co., Fed. 321, 328.

(l) The courts will not enforce a contract opposed to public policy. Davis v. Southern Pac. Co., 235 Fed. 731.

(m) A decision of the United States Supreme Court is controlling on the District Court in determining whether a railroad's contract with hop growers to transport hops at a lesser rate than the

road's published tariff is violative of the Interstate Commerce Act. Davis v. Southern Pac. Co., 235 Fed. 731.

(n) A contract by a carrier contrary to express provision of law prohibiting rebates, concessions, and discrimination, and opposed to public policy as declared by the supreme legislative authority of the country, cannot be enforced in any court. Davis v. Southern Pac. Co., 235 Fed. 731.

ALL OTHER CITATIONS

Lewis, Leonhardt & Co. v. Southern Ry. Co., 217 Fed. 321, 328; St. Louis, I. M. & S. Ry. Co. v. Landa & Storey, (Tex. 1916), 187 S. W. 358.

V. AS EVIDENCE OF REASONABLE RATES.

§7. In general.

IMPORTANT CASES SINCE 1908

(a) A contract between an express company and railroad companies over whose lines it operates providing that the former shall not charge less than a certain percentage over the railroad rate applying on the same commodity between the same points, cannot be considered as a controlling factor in passing upon the reasonableness of the express rates. The Commission will, of course, notice the railroad rate as affording a basis of comparison, but the law requires the fixing of just and reasonable charges and the authority of the Commission to prescribe a reasonable rate is not restricted by the terms of any agreement between the express company and the railroad company. Reynolds v. Southern Express Co., 13 I. C. C. 536, 539.

(b) The Commission can give no weight to fact that defendant's practice of absorbing connecting line charges to and from Commonwealth pier at Boston are subject of contract, except in so far as that fact may have evidential bearing upon rates, practices, and status of the carriers. National Dock & Storage Warehouse Co. v. B. & M. R. R., 38 I. C. C. 643, 647.

(c) Carrier and city, in consideration of grant of certain privileges by city to carrier, contracted for maintenance of a definite rate on freight moving interstate. Carrier afterwards established a higher rate in manner provided by the Act. HELD, Commission not authorized in testing the reasonableness of the increased rate, to apply considerations other than those which would be generally applicable in any other case. Cape Girardeau Commercial Club v. I. C. R. R., 51 I. C. C. 105, 106, 107.

(d) Fact that a city ordinance was passed and contractual relations were entered into thereunder many years ago can give that ordinance and those contractual relations no more validity as a bar to the Commission's jurisdiction than if they had been recently adopted and entered into. City of East Liverpool, Ohio v. S. E. L. & B. V. T. Ry., 51 I. C. C. 563, 569.

ALL OTHER CITATIONS

Alphons Custodis Chimney Construction Co. v. V. R. R. Co., 16 I. C. C. 600, 601; Milk and Cream Rates to New York City, 45 I. C. C. 412, 417.

SPECIAL DAMAGES

See Loss and Damage §13.

SPECIAL RATES AND SERVICES.

See Additional Charges and Services; Auction Company; Car Ferry; Cars and Car Supply §9¼; §9½; §9⅝; §9¾; §9⅞ §10; §10½; §11; §11½; §11¾; §11⅞; Disinfecting Charges and Services; Expedited Service; Facilities and Privileges §9; §10; §12½; Passenger Fares and Facilities §7¼; Precooling; Protective Service; Reasonableness of Rates §31; Reconsignment; Refrigeration §3; Reparation §14; Stock Yard Company; Stoppage in Transit; Switch Tracks and Switching §5; Transfer; Transportation §8; Ventilation; Warehousing; Weights and Weighing.

CASES 1887-1908

(a) A carrier may make special rates with individuals to enable the latter to make proposals to the Interior Department for transportation of Indian supplies, such transportation being for the United States. Re Indian Supplies, 1 I. C. R. 22.

(aa) The Commission should clearly see that duty requires an answer to the question, on ex parte application, whether special privileges by a railroad to manufacturers in a single line of trade, and not to manufacturers generally, is consistent with the law, before it does so. Re Iowa Barb Steel Wire Co. 1 I. C. R. 605.

(b) For a special service by a carrier, —such as the transportation of perishable freight,—requiring quick movement, prompt delivery at destination, special fitting up of cars, their withdrawal from other service, and their return empty on fast time, a higher rate than for the carriage of ordinary freight is reasonable and just, but should bear a just relation to the value of the service to the traffic, and is not wholly in the discretion of the carrier. Delaware State Grange, Patrons of Husbandry v. New York, P. & N. R. Co. (Com.) 3 I. C. R. 554.

(c) The higher rate for a special service should bear a just relation to the value of the service to the traffic, and is not wholly in the discretion of the carrier. While a carrier should be fully compensated, the public interests require that the traffic should not be rendered valueless to the producer, if the charges of the carrier have such an effect and can be reasonably reduced. Delaware State Grange v. N. Y. P. & N. R. Co., 3 I. C. C. 554, 561.

(d) The violation, by giving special rates, of schedules of joint rates for through shipments from points in the United States to points in Canada which have been established and filed with the Interstate Commerce Commission and posted in the carriers' offices cannot be punished by the United States government so far as the vialotion was committed wholly or partly in Canada. United States v. Knight, 3 I. C. R. 801.

(e) Where a special service is required of the carrier,—such as rapid transit and speedy delivery in cases of perishable freight,—a higher rate than for the carriage of ordinary freight is warranted; and if a carrier charging a rate based on such special service fails to render it, to the damage of the shipper and without legal excuse, the remedy of the latter would seem to be by a proper proceeding in a court of law, and not by a complaint of excessive rates. Loud v. South Carolina R. Co. (Conn.) 4 I. C. R. 205.

(f) As a general proposition, where a railroad company is not restricted or inhibited by its charter or the law of the land, it is not unlawful for it to make an arrangement of rates for special purposes, on a sufficient consideration and for the legitimate increase of its business. Missouri Pac. R. Co. v. Texas & P. R. Co. 4 I. C. R., 428.

(g) A contract to furnish single-deck cars for shipping hogs at the same schedule rate per hundred as for double-deck cars is invalid, although made by a railroad which is wholly within one State, if the shipment was destined for a point in another State, to be completed by carriers with which the initial carrier had established a through traffic arrangement. Houston & Texas Central R. R. Co. v. Dumas 8 I. C. C. App. IV.

(h) It is the duty of a carrier to provide special service, or to cease from charging higher rate therefor. American Fruit Union of Cincinnati v. C. N. O. & T. P. Ry. Co. 12 I. C. C. 411.

(i) Carrier undertaking to provide special service in consideration of an unusually high rate, must do so or desist from charging the higher rate. American Fruit Union v. C. N. O. & T. P. Ry. Co., 12 I. C. C. 411.

(j) Special rates with conditions possible to few shippers, disapproved. Paper Mills Co. v. Pa. R. R. Co., 12 I. C. C. 438.

IMPORTANT CASES SINCE 1908

(k) If a consignor orders a car placed on his private track, and he there loads it with less-than-carload shipments, and then orders the carrier to transport the car to its local freight or transfer station for rehandling and forwarding of contents, the consignor has used the facilities of the carrier to dray his shipments. The carrier has rendered a service which is special in character and for which it would seem to be entitled to fair compensation, with due regard to the service rendered. The same character of service is rendered when a car is held at a local freight or transfer station and inbound less-than-carload shipments are loaded into it and it is then transported to an industry sidetrack. If a car is loaded with less-than-carload shipments and is transported between the sidetrack and transfer point outside the terminal district, on or off the line of the industry carrier, or if the car moves between a gateway and destination, the service at the terminal is not different from that rendered with respect to carload shipments moved from or to the same siding. The so-called trap or ferry car service involved is not a free service. Trap or Ferry Service Charges, 34 I. C. C. 516, 546.

(l) Special services in particular localities should be paid for by a special

charge and the cost not distributed generally among all the rates upon a commodity; but the peculiar terminal costs incident to the delay of equipment carrying hay at the markets, while they differ somewhat in the several localities, appear in the great majority of places where hay is delivered, and may be said to be incident to the hay traffic as at present conducted. This loss of the use of the equipment resulting from the method of handling this traffic is an important factor to be considered in determining the reasonableness of a rate. 1915 Western Rate Advance Case, 35 I. C. C. 497, 630.

(m) The fact that a similar service was for a time performed to a limited extent and without extra charge furnishes no good reason why a proper charge may not be imposed when the nature or conditions of the shipment makes the service necessary. Hammond, Standish & Co. v. M. C. R. R. 42 I. C. C. 102, 104.

(n) Unloading, reconsigning, reshipping and similar services are strictly transportation functions; and the detention of a car for any such purpose bears not even a remote relation to the detention of a car by a shipper as a salesroom for its contents. The latter use of a carrier's equipment and property, while undoubtedly a commercial convenience to the shipper, lies entirely outside the service and duty a railroad owes the shipper as a common carrier and is in no sense a common carrier service. The Car Peddling Case, 45 I. C. C. 494, 499.

(o) Obviously service should be rendered as not to bring about discrimination between shippers. The only way to make it definite, certain, and equal in value to all shippers is to require that the cars be placed on hold tracks designated for the purpose and that notice of the location of these tracks be given to the consignees. Respondents can not fairly dispute the reasonableness of this requirement; it comprehends no more service than they claim to be performing at the present time, and it is the precise remedy recommended by the Western Demurrage and Storage Bureau. Reconsignment Case No. 3, 53 I. C. C. 455, 472.

(p) Services of a special character are not subject to the increases authorized under Increased Rates, 1920, 58 I. C. C., 220. National Box Co. v. M. P. R. R. Co., 61 I. C. C. 211, 213.

(q) Proposed cancellation of special newspaper rates on illustrated newspaper supplements shipped in baggage cars on passenger trains prior to publication; leaving in effect higher first-class freight or express rates, found not justified. Withdrawal of the present service and rates would necessitate resort to the express service as the only kind that would appear adequate, and the higher rates that would then be applicable are not to be sanctioned on this traffic. Rates on Illustrated Newspaper Supplements, 74 I. C. C. 336.

ALL OTHER CITATIONS

Western Classification Case, 25 I. C. C. 442, 448; In Re Advances on Furniture, 25 I. C. C. 299, 301; Detroit Reconsigning Case, 25 I. C. C. 392, 394; Protection of Potato Shipments in Winter, 26 I. C. C. 681, 682, 684; L. & P. Ry. Co. v. United States, 209 Fed. 244, 249, 250; In Re Express Rates, 28 I. C. C. 132, 136; Iowa-Minnesota Cement Rates, 28 I. C. C. 477, 481; Rates on Packinghouse Products, 28 I. C. C. 599, 600; Railroad Commissioners of Florida v. S. Exp. Co., 28 I. C. C. 634, 636, 637; Harrington v. N. Y. C. & H. R. R. R. Co., Unrep. Op. A227; Johnson v. N. J. N. H. & H. Ry. Co., 88 Atl. 988, 991. (Me., 1913); New York Shippers' Protective Assn. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 437, 439, 441; Rock Spring Distilling Co. v. I. C. R. R. Co., 29 I. C. C. 18, 23; Minimum Weight on Fresh Meat and Other Commodities, 30 I. C. C. 349, 350; Dunnage Allowance, 30 I. C. C. 538, 543; Five Per Cent Case, 31 I. C. C. 351, 373, 409; Globe Wernicke Co. v. B. & O. R. R. Co. 31 I. C. C. 274, 276; Lighterage and Storage Regulations at New York, 35 I. C. C. 47; Rates in Chicago Switching District, 34 I. C. C., 234, 239; Samuel v. D. L. & W. R. R. Co., 36 I. C. C. 255, 256; Eastern Live Stock Case, 36 I. C. C. 675, 693; Iron Ore Rate Cases, 41 I. C. C., 181, 200; Royal Milling Co. v. G. N. Ry. Co., 41 I. C. C. 29; R. R. Comm. of La. v. A. H. T. Ry. Co., 41 I. C. C. 83, 97; Colorado Alfalfa Meal & Mfg. Co. v. M. P. Ry. Co., 41 I. C. C. 540, 544; R. R. Comm'rs. of Fla. v. F. E. C. Ry. Co., 42 I. C. C. 616, 617, 624; Pomeroy Salt Assn. v. H. V. Ry., 42 I. C. C. 627,630; Southern Rice Growers' Asso. v. T. & N. O. R. R. Co., 43 I. C. C. 90, 97; South Mississippi Dairymen's Asso. v. I. C. R. R. 44 I. C. C. 297; Northern Potato Traffic Assn. v. C. & A. R. R. 44

I. C. C. 426; Independent Ice, Feed & Fuel Co. v. S. P., L. A. & S. L. R. R., 44 I. C. C. 666, 669; The Alaska Investigation, 44 I. C. C. 680, 704; Graustein v. B. & M. R. R. 45 I. C. C. 393, 404; Milk and Cream Rates to New York City, 45 I. C. C. 412, 418; New York Produce Exchange v. B. & O. R. R., 46 I. C. C. 666; New Orleans Cotton Exchange v. L. & N. R. R., 46 I. C. C. 712; Lake Cargo Coal Rates, 46 I. C. C. 159, 194; Export Freight Free Time, 47 I. C. C. 162, 172; Chicago, R. I. & P. Ry. v. Stallings, (Ark., 1918), 201 S. W. 294; Allen v. L. V. Ry., 53 I. C. C. 33, 36; Reconsignment Case No. 3, 53 I. C. C. 455, 468; Perishable Freight Investigation 56 I. C. C. 449, 486, 552, 554, 536 Bryant & Chapman Co. v. Director General, as Agent, 60 I. C. C. 237.

SPECIAL TRAINS

See Passenger Fares and Facilities §7¾.

IMPORTANT CASES SINCE 1908

(a) Complainant attacked the charge of $1,260 collected by defendant for a special train from Yuma to Tucson, Arizona, alleging that it was unreasonable to the extent that it exceeded $880. The train was chartered on the morning of July 25, 1912, to expediate the arrival of a specialist summoned by complainant by telegraph from Los Angeles. The physician left Tucson with a through ticket over defendant's line to Los Angeles and without knowledge that a special train would be provided, the decision to use the same being reached while he was well on his way. The tariff charge for the special train was 125 fares. Complainant was allowed $7.60 for the unused portion of the ticket. The question is, whether the journey from Yuma to Tuscon was part of an interstate journey or an intrastate journey beyond the jurisdiction of the Commission. Unquestionably it was the intention of the physician to make the journey continuously from Los Angeles to Tucson on the regular train. The journey by special train from Yuma to Tucson was under a new contract subsequent to his own between defendant and complainant and without his knowledge or request. HELD, when the physician left the regular train and boarded the special train at Yuma, his contract with defendant ceased, and the charge imposed for the special train from Yuma to Tuscon is beyond the Commission's jurisdiction. Wait Talcott v. Southern Pacific Co., 33 I. C. C. 292.

ALL OTHER CITATIONS

Bush v. Cole (Ark. 1917), 194 S. W. 24.

SPLIT CLASSES

See Classification §9½; 18½.

SPOTTING

See Allowances §8 (5); Facilities and Privileges §12½.

STAGE LINES

IMPORTANT CASES SINCE 1908

(a) Upon further hearing, period of 96 hours heretofore fixed in 57 I. C. C., 591, for the payment of transportation charges, in so far as applicable to freight from and to Bartle, Calif., when destined to or from certain interior points not served by railroad, but by stage or truck, authorized to be computed from the first 4 p. m., following 26 days after the mailing by the McCloud River R. R. Co. of the freight bills for such traffic. Regulations for Payment of Rates and Charges, 69 I. C. C. 351.

STACKING

See Allowances §8 (6); Facilities and Privileges §13.

STANDARD OF RATES

See Reasonableness of Rates §32.

STATE RATES AND REGULATIONS

See Accounting §2; Act to Regulate Commerce; Advanced Rates §5 (7¼); Cars and Car Supply §33; Courts III; V; Demurrage §1½; Discrimination §2½; §8 (6); §11; §12½; Equalization of Rates §5; §13 (6); V; Evidence §13 (6); §25; Express Companies §1½; Interstate Commerce I; §2; §4; §5; §10; Interstate Commerce Commission §10; III; Loss and Damage §2; §3; §5; Reasonableness of Rates §3; Routing and Misrouting §4½; §13; Tariffs §17; Through Routes and Joint Rates §16½; §19; §22; Undercharges §7½; Water Carriers §4½.

CASES 1887-1908

(a) The O. R. & N. Company carries certain kinds of goods on its steamers forth and back between Portland and San Francisco at special and reduced rates; the O. & C. Railway, under the manage-

ment of the petitioner, carries the same kind of goods forth and back between Portland and Ashland and way stations in Oregon, at special and reduced rates; the O. P. Railway Company carries the same kind of goods forth and back between certain points on the line of the O. & C. Road and San Francisco via its railway from Albany to Yaquina Bay and thence by steamer, at reduced rates and thereby competes with the O. & C. and the O. R. & N. for business between said points and San Francisco. The O. R. & N. and the receiver of the O. & C. act independently, although concurrently, in making these reduced rates; but no through bill of lading or freight receipt is given, nor is either interested in or liable for the carriage of the goods beyond its own line of transportation. HELD, that the O. & C. Road and the steamers of the O. R. & N. Company in the carriage of the goods in question are not "used under any common control, management or arrangement for a continuous carriage or shipments" thereof, to and from San Francisco, within the intent and meaning of the Act, and that the carriage and handling of said goods so far as the receiver is concerned is performed wholly within the State, and therefore especially exempted by the terms of the Act from its operation; provided, the same are not directly shipped to or from a foreign country. Ex Parte Koehler, Receiver of Ore. & Cal. R. Co. 1 I. C. R. 28.

(b) Illinois Act regulating transportation of goods under one contract to points beyond the State is unconstitutional. Wabash, St. L. & P. R. Co. v. People (U. S. Sup. Ct.) 1 I. C. R. 31.

(ba) A statute of Illinois enacts that if any railroad company shall, within that State, charge or receive for transporting passengers or freight of the same class, the same or a greater sum for any distance than it does for a longer distance, it shall be liable to a penalty for unjust discrimination. The defendant in this case made such discrimination in regard to goods transported over the same road or roads from Peoria in Illinois and from Gilman in Illinois to New York; charging more for the same class of goods carried from Gilman than from Peoria, the former being eighty-six miles nearer to New York than the latter, this difference being in the length of the line within the State of Illinois. The U. S. Supreme Court follows the Supreme Court of Illinois in holding that the Statute of Illinois must be construed to include a transportation of goods under one contract and by one voyage from the interior of the State of Illinois to New York. That adopting such construction the Statute is void, as an interference with Interstate Commerce. Wabash, etc. R. Co. v. People, 1 I. C. R. 31.

(c) The negotiation of sales of goods which are in another State, for the purpose of introducing them into the State in which the negotiation is made, is interstate commerce. Such commerce is not subject to state taxation, even though there be no discrimination between it and domestic commerce. Robbins v. Taxing District of Shelby County 1 I. C. R., 45.

(d) A state statute which levies a tax upon the gross receipts of railroads for the carriage of freights and passengers into, out of, or through the State, is a tax upon commerce among the States, and therefore void. Fargo v. Stevens, 1 I. C. R. 51.

(e) While a State may tax the money actually within the State, after it has passed beyond the stage of compensation for carrying persons or property, as it may tax other money or property within its limits, a tax upon receipts for this class of carriage specifically is a tax upon the commerce out of which it arises; and, if that be interstate commerce, it is void under the Constitution. Fargo v. Stevens, 1 I. C. R. 51.

(f) The States can not be permitted, under the guise of a tax upon business transacted within their borders, to impose a burden upon commerce among the States, when the business so taxed is itself interstate commerce. Fargo v. Stevens, 1 I. C. R. 51.

(g) State law impairing right of removal to federal court, as condition of doing business, is void. Barron v. Burnside, (U. S. Sup. Ct.) 1 I. C. R. 795.

(h) A corporation is a citizen of the State by which created, so far as its right to sue and be sued in the federal courts is concerned. Barron v. Burnside (U. S. Sup. Ct.) 1 I. C. R. 295.

(i) Iowa Act of April 16, 1886, seeking to make the right of foreign corporations to transact business in that State dependent upon surrender of right to

remove causes to federal courts, is invalid. Barron v. Burnside (U. S. Sup. Ct.) 1 I. C. R. 295.

(j) A State can not regulate interstate commerce. Wabash etc. R. Co. v. People (U. S. Sup. Ct.) 1 I. C. R. 31; Western U. Tel. Co. v. Pendleton (U. S. Sup. Ct.) 1 I. C. R. 306.

(k) A State cannot constitutionally impose upon a steamship company, incorporated under its laws, a tax upon its gross receipts derived from the transportation of persons and property by sea, between different States, and to and from foreign countries. Phil. & Southern Mail S. S. Co. v. Penn., 1 I. C. R. 308.

(l) In absence of interference by Congress a State may carry on works of a local character, although they necessarily more or less affect interstate commerce. Ouachita etc. Packet Co. v. Aiken (U. S. Sup. Ct.) 1 I. C. R. 379; Gloucester Ferry Co. v. Pennsylvania (U. S. Sup. Ct.) 1 I. C. R. 382.

(m) The only state interference with the landing and receiving of passengers and freight which is permissible is confined to such measures as will prevent confusion among the vessels and collision between them, insure their safety and convenience, and facilitate the discharge or receipt of their passengers and freight. Gloucester Ferry Co. v. Commonwealth of Pa., 1 I. C. R. 382.

(n) State Legislature may prescribe conditions upon which foreign corporation may do business, unless engaged in interstate commerce. List v. Pennsylvania (Pa. Sup. Ct.,) 1 I. C. R. 784; Indiana v. Woodruff Sleeping & Parlor Coach Co. (Sup. Ct. Ind.) 1 I. C. R. 798; Stockton v. Baltimore etc. R. Co. (U. S. C. Ct. N. J.) 1 I. C. R. 411. Cited in Barron v. Burnside (U. S. Sup. Ct.) 1 I. C. R. 295.

(o) Congress can confer upon a state corporation powers not contained in its original charter. Stockton v. Baltimore etc. R. R. Co. (U. S. C. Ct. N. J.) 1 I. C. R. 411.

(p) In the pursuit of business authorized by the Government of the United States, and under its protection, corporations of other States cannot be prohibited or obstructed by any State. Stockton v. Baltimore & N. Y. R. R. Co., 1. I. C. R. 411.

(q) Arkansas Act, 1885, February 27, prohibiting greater charge by a carrier for transportation of freight than specified in bill of lading, and imposing a penalty for refusal to deliver on payment or tender of charges as shown in such bill, is not special legislation, nor a regulation of interstate commerce, but within police power of State. Little Rock & F. S. R. Co. v. Hanniford (Sup. Ct. Ark.) 1 I. C. R. 580.

(r) The Arkansas Act of February 27, 1885, prohibiting any railroad company in the State from charging a greater sum for the transportation of freight than is specified in the bill of lading, and imposing a penalty for refusal to deliver freight on payment or tender of the charges due as shown by the bill of lading, is general and uniform in its operation upon all within the class to which it applies, and therefore is not within the constitutional prohibition against special legislation. Little Rock & Fort Smith R. Co. v. Hanniford, 1 I. C. R. 580.

(s) Arkansas Act, 1885, February 27, prohibiting greater charge than specified in bill of lading, and imposing a penalty for refusal to deliver on payment or tender of charges as shown in such bill, is within police power of State. Little Rock & F. S. R. Co. v. Hanniford (Sup. Ct. Ark.) 1 I. C. R. 580.

(t) Said Act is within the police power of the State and is not an attempt to regulate interstate commerce, within the meaning of the clause of the Federal Constitution vesting in Congress exclusive power to regulate commerce among the States. Little Rock & Fort Smith R. Co. v. Hanniford, 1 I. C. R. 580.

(u) Louisiana Constitution, §236, providing that a foreign corporation shall have a place of business and an agent upon whom service may be made within the State, is void as a restriction on navigation. New Orleans & M. Packet Co. v. James (U. S. C. C. La.) 1 I. C. R. 599.

(v) The provision of article 236 of the Louisiana Constitution, which provides that no foreign corporation shall do business in that State without having one or more places of business, and an authorized agent or agents in the State upon whom process may be served, is null and void, as being an attempt on the part of the State to interpose a restriction on navigation, and therefore in conflict with the Act of Congress approved February 18, 1793 (1 Stat. at L. 305). N.

Orleans & Memphis Packet Co. v. James, 1. I. C. R. 599.

(w) State statute which conflicts with common law exercise of powers of Congress over commerce must give way to supremacy of national authority. Smith v. State of Alabama (U. S. Sup. Ct.), I. C. R. 804.

(wa) Short road used as means of conducting interstate traffic in coal by companies owning connecting interstate roads is subject to Act to Regulate Commerce. Hech v. E. Tennessee, V. & G. R. Co., 1 I. C. R. 775.

(x) The Statute of Alabama requiringlocomotive engineers to be examined and licensed is not a regulation of interstate commerce, and does not therefore contravene the Constitution of the United States, and is valid. Smith v. State of Alabama, 1 I. C. R. 804.

(y) Such statute is properly an Act of legislation, within the power reserved to the State to regulate the relative rights and duties of persons within its territory, intended to secure for public safety of person and property. Smith v. State ofAlabama, 1 I. C. R. 804.

(z) Such statute, so far as it affects transactions of commerce among the States, does so indirectly, incidentally and remotely, and not so as to burden or impede them; and in the particulars in which it touches those transactions at all it is not in conflict with any enactment of Congress on the subject, nor contrary to any intention of Congress to be presumed from its silence. Smith v. State of Alabama, 1 I. C. R. 804.

(aa) Any legislation of a State, although in pursuance of an acknowledged power reserved to it, which conflicts with the actual exercise of the power of Congress over the subject of commerce, must give way before the supremacy of the national authority. Smith v. State of Alabama, 1 I. C. R. 804.

(bb) The fee to be paid by an applicant for his examination is not a provision for raising revenue, but is only an equivalent for the service rendered, and is not a tax or burden upon transportation. Smith v. State of Alabama 1 I. C. R. 804.

(cc) State may exercise its police power, even when it incidentally operates upon commerce. Smith v. State of Alabama (U. S. Sup. Ct.) 1 I. C. R. 806.

(dd) State quarantine laws do not derive validity from their adoption by Congress. Smith v. State of Alabama (U. S. Sup. Ct.), 1 I. C. R. 807.

(ee) State laws prohibiting manufacture of intoxicating liquors are valid police regulations. Bowman v. Chicago & N. W. R. Co. (U. S. Sup. Ct.) 1 I. C. R. 825

(ff) State possesses power to adopt police regulations, Bowman v. Chicago & N. W. R. So. (U. S. Sup. Ct.) 1 I. C. R. 825.

(gg) State cannot under cover of exerting its police powers substantially prohibit or burden interstate commerce. Cited in Bowman v. Chicago & N. W. R. Co. (U. S. Sup. Ct.) 1 I. C. R. 832.

(hh) Prohibiting driving or conveying of certain cattle into State between certain days in each year is void as regulation of commerce, and is not legitimate exercise of police power. Cited in Bowman v. Chicago & N. W. R. Co. (U. S. Sup. Ct.) 1 I. C. R. 832.

(ii) Under police power, State may prohibit spread of crime or pauperism or disturbance of the peace; it may exclude from its limits convicts, paupers, idiots and lunatics, as well as persons afflicted with contagious diseases. Cited in Bowman v. Chicago & N. W. R. Co. (U. S. Sup. Ct.) 1 I. C. R. 832.

(jj) State law requiring master of vessel engaged in foreign commerce to pay certain sum to state officer on account of each passenger brought from a foreign country is void. Cited in Bowman v. Chicago & N. W. R. Co. (U. S. Sup. Ct.) 1 I. C. R. 836.

(kk) State statute requiring locomotive engineers to be licensed is not regulation of interstate commerce. Cited in Bowman v. Chicago & N. W. R. Co. (U. S. Sup. Ct.) 1 I. C. R. 840. S. P. in Smith v. Alabama (U. S. Sup. Ct.) 1 I. C. C. 804.

(ll) The Alabama Act of Jan. 15, 1887 (Ala. Acts 1886-1887, p. 36, §5, subd. 10), which exacts a license fee from itinerant dealers in fruit trees, etc., is an attempted regulation of commerce between the States, and hence in conflict with the Federal Constitution, and therefore void. State v. Agee (Ala.) 2 I. C. R. 21.

(mm) The New Jersey Act of March 22, 1886 (P. L. 1886, p. 107,) rendering penal the sale of oleomargarine colored

with annotto, is valid as applied to a sale made in that State by the agent of the manufacturer in Indiana, although the package sold here was that which had been sent by the manufacturer from Indiana to that State for sale. State, Waterbury, v. Newton (N. J.) 2 I. C. R. 63. But see the recent case of Leisy v. Hardin (U. S. Ct.) 3 Interstate Com. Rep. 2 I. C. R. 36.

(nn) Laws passed by the individual States, under the general authority over internal concerns, may incidentally affect foreign and interstate commerce, without conflicting with the Constitution of the United States, provided they do not discriminate against such commerce and are not inconsistent with the Acts of Congress. State, Waterbury v. Newton, 2 I. C. R. 63.

(oo) Complainant attacked rates on fruit from Flemington, N. J., to New York as unreasonable. The traffic originates in New Jersey, and is destined to New York; but the delivery by the defendants to the consignees is made at Jersey City, N. J., and the rates of defendants are made not to New York but to Jersey City. HELD, traffic is not interstate and the Commission has no jurisdiction, complaint dismissed. New Jersey Fruit Exchange v. C. R. R. Co. of N. J., 2 I. C. C. 84.

(pp) The traffic originates in the State of New Jersey, and is destined to the City of New York; but the delivery by the defendants to the consignees is made at Jersey City in New Jersey, and the rates of defendants are made not to New York but to Jersey City. Under these facts the traffic, so far as defendants' conduct of it is concerned is not interstate, and the Commission has no jurisdiction over their rates. New Jersey Fruit Exchange v. Central R. Co. of New Jersey, 2 I. C. R. 84.

(qq) State legislation as to qualifications, duties, and liabilities of employes on railway trains engaged in interstate commerce, to provide against accidents on trains while within the State, is valid in the absence of legislation on that subject by Congress, Nashville, C. & St. L. R. Co. Alabama (U. S. Sup. Ct.) 2 I. C. R. 238.

(rr) The statute of a State requiring owners of vehicles using the streets of a city to pay an annual license, and providing that the license moneys be placed to the credit of the street-repairing fund of the public treasury of said city, is not repugnant to U. S. Const. art. 1, §8, cl. 3 (the Interstate Commerce Clause), when enforced upon owners who are nonresidents of the State and not engaged in any business in the State, for vehicles used by them upon such streets in interstate transportation and in prosecution of interstate commerce. Such license fees being intended by the statute for the repair of the streets, their enforced payment must be regarded as compensation for the advantages and facilities afforded to such transportation; and the requirement of license is not a restraint or other form of regulation of interstate commerce. Bogart v. State (Ohio C. P.) 2 I. C. R. 297.

(ss) Where the state board of railroad commissioners publish, for the length of time required by law, a notice that a schedule of rates will go into effect on a certain day, and the secretary of the commission, on receipt of a telegram from certain railroads asking an extension of time, grants the extension and publishes the following week notice of such change, the commission, on the application of the railroads to restrain the further publication of the notice, cannot urge that the publication is complete, and that the extension of time was unauthorized. Chicago & N. W. R. Co. v. Dey (C. C. S. D. Iowa). 2 I. C. R. 325.

(tt) Giving railroad commissioners power to fix rates is not an unlawful delegation of legislative power. Chicago & M. W. R. Co. v. Dey (C. C. S. D. Iowa). 2 I. C. R. 325.

(uu) The authority conferred upon the railroad commissioners by the Iowa Act of April 5, 1888 (Laws 22d Gen. Assem. chap. 28), to make and put in effect a schedule of rates for railroad transportation within the State, is not an unconstitutional delegation of legislative power. Chicago & Northwestern R. Co. v. Dey, 2 I. C. R. 325.

(vv) The provision of said Act making the commissioners' schedule prima facie evidence that the rates fixed thereby are reasonable, is not an infringment of the constitutional guarantees of the right to trial by jury and against deprivation of property without due process of law. Chicago & Northwestern R. Co. v. Dey, 2 I. C. R. 325.

(ww) State legislation which deprives the owners of a railroad line within the State of all compensation from their

business, cannot be upheld on the grounds that the company is a foreign corporation; that it is permitted simply as an act of grace to do business in the State; and that it can abandon its business therein if found unremunerative. Chicago & Northwestern R. Co. v. Dey, 2 I. C. R. 325.

(xx) Nor can such legislation be upheld on the ground that the railroad affected thereby is an interstate road, and that its deficiency of revenue may be made up by receipts from interstate commerce or by traffic in other States; or on the ground that a future increase of business may render the prescribed rates remunerative. Chicago & Northwestern R. Co. v. Dey, 2 I. C. R. 325.

(yy) The State of Texas has the right to prohibit and interfere with a contract in restraint of competition, some of the parties to which are corporations created by the State, although it regulates charges upon freight carried to and fro between Texas and other States. This agreement, being illegal as to some, is illegal as to all. Gulf, C. & S. F. R. Co. v. State (Tex.) 2 I. C. R. 335.

(zz) Where the probable effect of putting in force a schedule of rates prepared by the state board of railroad commissioners, under Iowa Act of April 5, 1888, would be to destroy all dividends from the operation of the roads, and the Act provides for treble damages to any shipper injured by an overcharge, the preliminary injunction should be granted. Chicago & N. W. R. Co., v. Dey. (C. C. D. Iowa), 2 I. C. R. 325.

(3a) Iowa Code, §4059, making the owner of Texas cattle which have not been wintered north liable for any damages from allowing them to run at large and to spread Texas fever, does not conflict with the paramount authority of Congress to regulate interstate commerce. Kimmish v. Ball (U. S. Sup. Ct.) 2 I. C. R. 407.

(3b) The South Carolina Railroad Commission has no jurisdiction of a complaint for charges unlawfully made by a railroad partly in North Carolina for transportation which was partly in the latter State, although it was for part of the original transportation by connecting lines between points both in South Carolina, such transportation being interstate commerce. Sternberger v. Cape Fear & Y. V. R. Co. (S. C.) 2 I. C. R. 426.

(3c) The Railroad and Warehouse Commission of Minnesota has no authority to prescribe rates for transportation by common carriers in another State. It cannot fix the rates for carriage between two points within Minnesota, over a route extending across a neighboring State. Such power is vested exclusively in Congress. State v. Chicago, St. P. M. & O. R. Co. (Minn.) 2 I. C. R. 519.

(3d) Where a tariff of freight and passenger rates has been established by the railroad commissioners and the railroad company and the commissioners differ as to whether such rates, considered as a whole, will prove remunerative to the company, and there is room for a difference of intelligent opinion on the question, the courts cannot interfere or substitute their judgment for that of the commissioners; but the tariffs as fixed by the commissioners must, in so far as the courts are concerned, be left to the test of experiment. Pensacola & Atlantic R. Co. v. State of Florida, 2 I. C. R. 522.

(3e) The effect of the provision of the Railroad Commission Statute, that the schedules of rates fixed by the commissioners shall, in any action brought in the courts of this State against a railroad company, be deemed and taken as sufficient evidence that the rates fixed therein are just and reasonable rates for the transportation of passengers and freights and cars, is not to make such schedules conclusive as against judicial injury, but is to provide a new mode of proving the reasonableness and just character of the rates fixed by the commissioners, and make the schedules competent and adequate evidence of the correctness of the action of the commissioners in the absence of countervailing proof that they have exceeded their powers, or abused their discretion and invaded some right of the railroad company. Pensacola & Atlanta R. Co. v. State of Florida, 2 I. C. R. 522.

(3f) The enforcement of a tariff of freight and passenger rates which will not pay the expenses of operating a railroad,—HELD, upon the pleadings, to show an abuse of the discretion given to railroad commissioners by the statute authorizing them to prescribe reasonable and just rates of freight and passenger transportation, and to amount to a taking of the railroad company's property without just compensation. Pensacola & Atlantic R. Co. v. State of Florida, 2 I. C. R. 522.

(3g) State legislation compelling electric wires in the streets of a city to be placed under the surface of the streets, although such streets, being letter carrier routes, are all post roads, is an exercise of police power, and is not an unlawful attempt to regulate commerce or an invasion of the rights of a telegraph company as a business agency of the general government under the Act of Congress of July 24, 1866 (U. S. Rev. Stat. title 65), to operate its lines on "any post road of the United States." Western Union Telegraph Co. v. Mayor of New York, 2 I. C. R. 533.

(3h) A state statute prohibiting the sale of dressed meats within the State, unless the animals have been inspected by a state officer within twenty-four hours before slaughter, is unconstitutional as an invasion by the State of the domain of Congress to regulate interstate commerce, and as a discrimination against the citizens of other States. Swift v. Sutphen (C. C. N. D. Ill.) 2 I. C. R. 656.

(3i) The Mississippi Statute of March 2, 1888, as settled by the Supreme Court of that State, applies solely to commerce within the State; and this court must accept as conclusive such construction of the Statute of the State by its highest court. Louisville, N. O. & T. R. Co. v. State of Mississippi, 2 I. C. R. 801.

(3j) There is a commerce wholly within the State, which is not subject to the constitutional provision, and a distinction between commerce among States and between the citizens of a single State, conducted within its limits. Louisville, N. O. & T. R. Co. v. Mississippi (U. S. Sup. Ct.) 2 I. C. R. 801.

(3k) A person who has received the benefit of a special rate which unlawfully discriminates in his favor cannot complain because, for the return shipment, he is charged the same as the general public. Elvey v. Illinois C. R. Co. (Com.) 2 I. C. R. 804.

(3l) The proviso in the first section that the provisions of the act shall not apply to the transportation of passengers or property, as to the receiving, delivery, storage, or handling of property, wholly within one state, and not shipped to or from a foreign country from or to any state or territory as aforesaid, that is, by continuous carriage or shipment, only excludes from regulation the purely internal commerce of a state, that which is confined within its limits, which originates and ends in the same state. Mattingly v. Pennsylvania Company, 2 I. C. C. 806, 812.

(3m) A State has no power to interfere by seizure or any other action, to prevent the importation and sale of goods by a foreign or nonresident importer. Leisy v. Hardin (U. S. Sup Ct.) 3 I. C. R. 36.

(3n) A state statute imposing a charge of a cent a pound for inspection upon fresh meats intended for sale at places 100 miles and more from the place of slaughter is unconstitutional, because it imposes an unreasonable and unnecessary burden upon an important article of trade between the States. Re Rebman 3 I. C. R. 126.

(3na) A license tax assessed, under the Pennsylvania Act of June 7, 1879 (P. L. 112, 120), by the auditor general of that State, against a railroad company which is a corporation of Virginia, for keeping an office in Philadelphia for the use of its officers, stockholders, agents, and employes, is unconstitutional as a tax upon interstate commerce, when the company is engaged in interstate commerce. Norfolk & W. R. Co. v. Pennsylvania (U. S. Sup. Ct.) 3 I. C. R. 178.

(3o) A state statute prohibiting the sale of dressed meats within the State unless the animals have been inspected by a state officer within twenty-four hours before slaughter, is unconstitutional as an invasion by the State of the domain of Congress to regulate interstate commerce, and as a discrimination against the citizens of other States. Minnesota v. Barber (U. S. Sup. Ct.) 3 I. C. R. 185.

(3p) The charter of the Minneapolis & Cedar Valley Railroad Company, §9, giving power to the directors of that company to make rules as to rates of toll, does not constitute an irrepealable contract with that company that it shall have the right for all future time to prescribe its rates of toll, free from all control by the Legislature of the State. Chicago, M. & St. P. R. Co. v. Minnesota, Minnesota R. & W. Com. (U. S. Sup. Ct.) 3 I. C. R. 209.

(3q) A railroad corporation takes its charter containing a provision as to rates, subject to the general law of the State and to such changes as may be made in such general law, and subject to future constitutional provisions and

future general legislation, in the absence of any prior contract with it exempting it from liability to such future general legislation. Chicago, M. & St. P. R. Co. v. Minnesota, Minnesota R. & W. Com. (U. S. Sup. Ct.) 3 I. C. R. 209.

(3r) Exemption from future general legislation, either by a constitutional provision or by an Act of the Legislature, does not exist unless it is given expressly, or unless it follows by an implication equally clear with express words. Chicago, M. & St. P. R. Co. v. Minnesota, Minnesota R. & W. Com. (U. S. Sup. Ct.) 3 I. C. R. 209.

(3s) The power to regulate a carrier's rates is not a power to destroy, and limitation is not the equivalent of confiscation. Chicago, M. & St. P. R. Co. v. Minnesota, Minnesota R. & W. Com. (U. S. Sup. Ct.) 3 I. C. R. 209.

(3t) The grant of power by a charter to the directors of a railroad company, to make needful rules and regulations touching the rates of toll and the manner of collecting the same, does not deprive the State of its general authority itself to regulate the rates of toll to be collected by the company. Chicago, M. & St. P. R. Co. v. Minnesota, Minnesota R. & W. Com. (U. S. Sup. Ct.) 3 I. C. R. 209.

(3u) Where no hearing is provided for, no summons or notice to a carrier, before a railroad commission has found what it is to find and declared what it is to declare as to rates to be charged, and no opportunity provided for the company to introduce witnesses before the commission, there is not the semblance of due process of law. Chicago, M. & St. P. R. Co. v. Minnesota, Minnesota R. & W. Com. (U. S. Sup. Ct.) 3 I. C. R. 209.

(3v) A law which allows a railroad commission to establish rates for railroads which are final, without issue made or inquiry had as to their reasonableness, and forbids the courts to stay the hands of the commission if the rates established by it are unreasonable and unequal, conflicts with the Constitution of the United States, because it deprives a company of its rights to a judicial investigation by due process of law, and substitutes therefor, as an absolute finality, the action of a railroad commission, which is not clothed with judicial functions and does not possess the machinery of a court of justice. Chicago, M. & St. P. R. Co. v. Minnesota, Minnesota R. & W. Com. (U. S. Sup. Ct.) 3 I. C. R. 209.

(3w) If a carrier is deprived of the power of charging reasonable rates for the use of its property, and such deprivation takes place in the absence of a judicial investigation, it is deprived of the use of its property, and, in effect, of the property itself, without due process of law and in violation of the Constitution of the United States. Chicago, M. & St. P. R. Co. v. Minnesota, Minnesota R. & W. Com. (U. S. Sup. Ct.) 3 I. C. R. 209.

(3x) The provision in a statute that a railroad company organized thereunder may charge for transportation such reasonable rates as may from time to time be fixed by the corporation or prescribed by law, and a provision that no company shall demand an unreasonable price, do not constitute such a contract with the corporation as to the fixing of rates that the Legislature is deprived of power to regulate those charges. Minneapolis E. R. Co. v. Minnesota (U. S. Sup. Ct.) 3 I. C. R. 224.

(3y) Even if a statute imposing a license fee for the privilege of buying certain produce in a particular county to be shipped out of it may be void as an interference with interstate commerce so far as it applies to produce purchased to be shipped out of the State, it is valid in its application to produce intended for shipment to places within the State. Rothermel v. Meyerle (Pa.) 3 I. C. R. 315.

(3z) A statute requiring the payment of a license fee for the privilege of purchasing certain kinds of produce in a certain county, to be shipped out of it, which fee is greater in the case of nonresidents of the county than of residents, is not obnoxious to U. S. Const. art. 4, §2, entitling citizens of each State to all the privileges and immunities of the citizens of the several States. Rothermel v. Meyerle (Pa.) 3 I. C. R. 315.

(4a) The police power of the State cannot be exercised over the interstate transportation of subjects of commerce. Com. v. Chesapeake & O. R. Co. (Lynchburg Corp. Ct.) 3 I. C. R. 398.

(4b) A state statute imposing a charge of a cent a pound for inspection upon fresh meat intended for sale at places 100 miles and more from the place of slaughter is unconstitutional because

it imposes an unreasonable and unnecessary burden upon an important article of trade between the States. Re Rebman (C. C. E. D. Va.) 3 I. C. R. 485.

(4ba) A state inspection law, so called, which is in fact a law taxing articles of interstate commerce for the benefit of the state treasury, is unconstitutional. Re Rebman (C. C. E. D. Va.) 126, Aff'd in U. S. Sup. Ct., 3 I. C. R. 485.

(4c) The sale of oleomargarine in original packages as imported from another State cannot be prohibited or interfered with by state statute. Re Gooch (C. C. D. Minn.) 3 I. C. R. 530.

(4d) A license tax cannot be upheld as an inspection law in respect to goods brought from another State, when the amount of the tax is in excess of that required for the purpose of inspection, and the proceeds are applied to other uses. American Fertilizing Co. v. North Carolina Bd. of Agriculture (C. C. E. D. N. C.) 3 I. C. R. 532.

(4e) A state statute prohibiting game birds to be killed for the purpose of conveying them out of the State is not an unlawful interference with interstate commerce. State of Conn. v. Geer, 3 I. C. R., 732.

(4f) One soliciting orders for goods from house to house cannot refuse to comply with the terms of a police ordinance regulating such business, which applies to all alike, on the ground that he is engaged in interstate commerce, because he is working for a person domiciled in another State and simply exhibits samples and takes orders which are filled by another agent or by express. City of Titusville v. Brennan, 3 I. C. R. 735.

(4g) Persons engaged in showing samples of goods manufactured by their principal at his residence in another State, and in taking orders for such goods, which are transmitted to the principal to be filled, cannot be compelled to pay a license tax by the State in which they are operating whether they are within its statutory definition of peddlers or not. Re Spain 3 I. C. R. 738.

(4h) Filling orders taken from house to house by an agent in another State by sending the articles in bulk to the agent to be distributed by him does not subject the latter to the payment of a license tax as a peddler when he breaks the bulk and begins the distribution. Re Spain 3 I. C. R. 738.

(4i) The Indiana statute of 1889 entitled "An Act for the Protection of the Public Health by the Promoting of the Growth and Sale of Healthy Cattle and Sheep, Making it a Misdemeanor to Sell the Same Without Inspection before Slaughter within This State, and to Authorize Cities to Appoint Inspectors,"—is in violation of the Constitution of the United States. State v. Klein (Ind..), 3 I. C. R., 573.

(4k) There is no uncertainty in a statute prescribing the penalty for unreasonable railroad charges and declaring that rates fixed by railroad commissioners as the maximum shall be prima facie reasonable, as the State is precluded from denying that the commissioners' rates are reasonable. Burlington, Cedar Rapids & N. R. Co. v. Dey, 3 I. C. R. 584.

(4j) A city ordinance prohibiting any railroad company from allowing the sale of fruit, vegetables, or perishable freight arriving in the city over its lines from cars on the tracks, from any platform, shed, or building at the depot on the grounds of the company, is, where the merchandise affected largely comes from other states, void as an interference with interstate commerce, if not based on considerations of public health or intended to prevent the crowding and obstruction of streets and public places, but solely to hinder competition between non-resident shippers and resident licensed dealers in the same line. Spellman v. New Orleans (C. C. E. D. La.), 3 I. C. R. 575.

(4l) The provision of a statute, that rates fixed by railroad commissioners shall be regarded as prima facie reasonable, is within the power of the State as to prescribing rules of evidence in all proceedings under the laws of the State. Burlington, C. R. & N. R. Co. v. Dey (Iowa), 3 I. C. R. 584.

(4m) A statute requiring freight in carload lots to be transferred without unloading unless the unloading is done without charge, and that smaller quantities shall be transferred into the cars of the connecting carrier at cost, which shall be made a part of the joint rate, does not interfere with the constitutional guaranties for the protection of the rights and properties of the carriers. Burlington, C. R. & N. R. Co. v. Dey (Iowa), 3 I. C. R., 584.

(4n) Special proceedings applicable to specified subject matter, and conformable to the rules requiring notice and the acquisition of jurisdiction, and which affect all persons alike whose property or rights come within the lawful scope of the proceedings, are prosecuted with "due process of law." Burlington, C. R. & N. R. Co. v. Dey (Iowa), 3 I. C. R. 584.

(4o) A statute giving railroad commissioners authority to fix joint rates for a railroad makes the rules thus fixed only prima facie evidence, although not expressly limiting them to that effect, where the only penalties are for charging unjust and unreasonable rates, and a former statute, which did not extend to joint rates and of which this was an amendment, expressly limited the effect of the commissioners' order as to rates to prima facie evidence. Burlington, C. R. & N. R. Co. v. Dey (Iowa), 3 I. C. R. 584.

(4p) Penalties imposed upon railroad corporations for violation of statutes are not excessive if no greater than necessary to enforce obedience to the statute, although they might appear excessive if imposed upon individuals. Burlington, C. R. & N. R. Co. v. Dey (Iowa), 3 I. C. R. 584.

(4q) A contract is invalidated by the subsequent enactment of police regulations which render its performance illegal as to one of the parties. Jamieson v. Indiana Natural Gas Co. (Ind.), 3 I. C. R. 613.

(4r) Woodcock, ruffled grouse, or quail, need not have been killed for the purpose of conveying them out of the State in order to make it an offense, under Conn. Gen. Stat. § 2546, to have such birds in possession with intent to procure their transportation out of the State. State v. Geer (Conn.), 3 I. C. R. 732.

(4s) The New York Act of 1888, as to elevators, is constitutional, as an exercise of the police power of the state; it is not a regulation of interstate commerce, and does not deprive the elevator owners of the equal protection of the laws. Budd v. State of New York, 4 I. C. R. 45.

(4t) The Legislature can fix a maximum beyond which any charge would be unreasonable, for the use of property in which the public has an interest, but cannot compel the doing of services without reward. Budd v. State of New York, 4 I. C. R. 45.

(4uv) Having the absolute power of excluding the foreign corporation, a state may impose such conditions upon permitting the corporation to do business within its limits as it may judge expedient,—such as the payment of a specific license tax, or a sum proportioned to the amount of its capital. Horn Silver Min. Co. v. New York (U. S. Sup Ct.) 4 I. C. R. 57.

(4w) A foreign corporation cannot claim a right to do business in another state, except subject to the conditions imposed by its laws. Horn Silver Min. Co. v. New York (U. S. Sup. Ct.), 4 I. C. R. 57.

(4x) The granting of the rights and privileges which constitute the franchises of a corporation may be accompanied with any such conditions as the legislature may deem most suitable to the public interest and policy. Horn Silver Min. Co. v. New York (U. S. Sup. Ct.), 4 I. C. R. 57.

(4y) A corporation being the mere creature of the Legislature, its rights, privileges, and powers are dependent solely upon the terms of its charter. Horn Silver Mining Co. v. State of New York, 4 I. C. R. 57.

(4z) A statute prohibiting the shipment out of the state of oysters taken in the waters of the state while they are in shells, and also prohibiting the taking of such oysters by any person who is not a resident of the state, is not unconstitutional as a regulation of interstate commerce. State v. Harrub (Ala.), 4 I. C. R. 99.

(5a) The enforcing of an order of railroad commissioners requiring a railroad company to conform to their schedule of rates is a matter of public right for which an action may be maintained in the name of the state. Campbell v. Chicago, M. & St. P. R. Co. (Iowa), 4 I. C. R., 203.

(5b) The details of practice and pleading may be supplied by a railroad commission which is constituted a court of record, under the inherent power of every court of record to make such rules not inconsistent with the law as is necessary to the exercise of the powers conferred upon it. Atlantic Exp. Co. v. Wilmington & W. R. Co. (N. C.) 4 I. C. R. 294.

(5c) Authority is given to the railroad commission to hear and determine complaints of unjust discriminations and preferences, under the North Carolina Railroad Commission Act, which expressly provides that if a railroad company is guilty of a violation of the rules of the commission, and after due notice of such violation does not make full recompense for the wrong or injury done, it shall incur a penalty, and also constitutes such commission a court of record. Atlantic Exp. Co. v. Wilmington & W. R. Co. (N. C.) 4 I. C. R. 294.

(5d) Investing a railroad commission with authority to make just and reasonable rules and regulations to prevent excessive charges and unjust discriminations and preferences by carriers, the reasonableness and legality of which is reviewable by the courts, is not unconstitutional as a delegation of legislative powers. Atlantic Express Co. v. Wilmington & W. R. Co., 4 I. C. R. 294.

(5e) A statute making it unlawful for any common carrier to give undue or unreasonable preference to any person, company, firm, corporation or locality does not require equal facilities to be given to express companies for carrying on business over a railroad unless it holds itself out as a common carrier of such companies. Atlantic Express Co. v. Wilmington & W. R. Co., 4 I. C. R. 294.

(5f) The business of insurance, as ordinarily conducted in this state by insurance companies organized under the legislation of other states, is not interstate commerce. William C. Phipps, State of Kansas, 4 I. C. R., 299.

(5g) Foreign insurance companies doing business in this state, that combine to control and increase the rates of insurance on property within a city in this state, violate the provision of chapter 257 of the Laws of 1889, being "An Act to Declare Unlawful Trusts and Combinations in Restraint of Trade and Products, and to Provide Penalties therefor;" and their local agents who attempt to, and do, enforce such combined rates, are subject to prosecution under the provisions of said act. William C. Phipps State of Kansas, 4 I. C. R. 299.

(5h) The provision of §4578 of the code making it a misdemeanor to run a freight train upon any railroad in this state on the Sabbath day is a regulation of internal police, and not a regulation of commerce. It is not in conflict with the Constitution of the United States, even as to freight trains passing through the state from and to adjacent states, and laden exclusively with goods and freight received on board before the trains entered this state, and consigned to points beyond its limits. Hennington v. State of Georgia, 4 I. C. R. 413.

(5i) The act of the general assembly of the state of Arkansas approved February 27, 1885, prohibiting the collection of freight in excess of that specified in the bill of lading, was not intended to give validity to stipulations in bills of lading which are the result of fraud or mistake. Baird v. St. Louis, I. M. & S. R. Co., 4 I. C. R. 422.

(5j) An original package, trade in which is protected by the Federal Constitution, is such form and size of package as is used by producers or shippers for the purpose of securing both convenience in handling and security in transportation of merchandise between dealers in the ordinary course of actual commerce. Com. v. Schollenberger (Pa.), 4 I. C. R. 488.

(5k) The sale of a package of goods, entire and unbroken as imported from another state, will be protected as interstate commerce only when the form and size of the package is that usually adopted in the trade for purpose of transportation, and not when adopted with a view to unlawful interstate retail trade. Com. & Schollenberger (Pa.), 4 I. C. R. 488.

(5l) Showing that a package of material to be used as food was made, stamped, and branded in another state, is not sufficient to show that it is an original package, trade in which is protected by the Federal Constitution, without showing further that it was in the form usually adopted in the trade for purposes of transportation. Com. v. Schollenberger (Pa.), 4 I. C. R. 488.

(5m) The fixing and enforcement by a railroad commission of unjust and unreasonable rates for transportation by railroad companies is an unconstitutional denial of the equal protection of the laws. Reagan v. Farmers Loan & Trust Co., 4 I. C. R. 560.

(5n) A tariff of railroad rates fixed by a commission, which will so diminish the earnings of a road that they will not be able to pay half the interest on

its bonded debt above the operating expenses, is unjust and unreasonable, where, without waste or mismanagement in construction or operation, the road has cost far more than the amount of stock and bonds outstanding, which represent money expended in its construction, and the rates have been voluntarily decreased by the company during ten years more than 50 per cent, while under these rates the stock representing two fifths of the value of the road has never received a dividend, and for the last three years the earnings above operating expenses have been insufficient to pay the interest on the bonded debt. Reagan v. Farmers' Loan & T. Co. (U. S. Sup. Ct.), 4. I. C. R. 560.

(5o) A schedule of rates made by railroad commissioners, being challenged as a whole, the court must either condemn or sustain it as a whole and cannot rearrange it or prepare a new schedule. Reagan v. Farmers' Loan & Trust Co., 4 I. C. R. 560.

(5p) The Texas & Pacific Railway Company is, as to business done wholly within the state, subject to the control of the state in all matters of taxation, rates, and other police regulations. Reagan v. Merchantile Trust Co., 4 I. C. R. 575.

(5q) A state law prohibiting the exaction by carriers of unreasonable rates is as applied to a contract for shipment from one state to another, an interference with interstate commerce, and cannot be so applied. Swift v. Philadelphia & R. R. Co. (C. C. N. D. Ill.), 4 I. C. R. 633.

(5r) A contract for interstate shipment does not come within a state law regulating rates, because made in that state, so that such law will introduce a new term into the contract, but its utmost effect would be to forbid a contract for an unreasonable rate and make the contract unlawful, leaving the transaction open to adjustment under the laws of the United States. Swift v. Philadelphia & R. R. Co. (C. C. N. D. Ill.), 4 I. C. R. 633.

(5s) The police power cannot be set up to control the inhibitions of the Federal Constitution, or the powers of the United States government created thereby. Brennan v. City of Titusville, 4 I. C. R. 658.

(5t) Whatever may be the reason given to justify, or the power invoked to sustain the act of the state, if that act is one which intrenches directly upon that which is within the exclusive jurisdiction of the national government, it cannot be sustained. Brennan v. City of Titusville, 4 I. C. R. 658.

(5uv) Nothing which is a direct burden upon interstate commerce can be imposed by the state without the assent of Congress. Brennan v. City of Titusville, 4 I. C. R. 658.

(5w) A state, in granting a corporate privilege to its own citizens, or, what is equivalent thereto, in permitting a foreign corporation to become one of the constituent elements of a consolidated corporation organized under its laws, may impose such conditions as it deems proper, and the acceptance of the franchise in either case implies a submission to the conditions without which the franchise could not have obtained. Ashley v. Ryan, 4 I. C. R. 664.

(5x) A state has the right to determine upon what conditions its laws as to the consolidation of corporations may be availed of. Ashley v. Ryan, 4 I. C. R. 664.

(5y) The exaction of a charge by a state for the filing of articles of consolidation of several railroad companies forming a connecting line, only one of which is a corporation of the state as a condition imposed by the state upon the taking of corporate being or the exercise of corporate franchises, constitutes no tax upon interstate commerce, or the right to carry on the same, or the instruments thereof, and its enforcement involves no attempt on the part of the state to extend its taxing power beyond its territorial limits. Ashley v. Ryan, 4 I. C. R. 664.

(5z) The law of Ohio requiring a corporation to pay the secretary of state for filing articles of agreements of consolidation of corporations a percentage on the capital stock of the new consolidated corporation created by such articles, is valid and constitutional when applied to the consolidation of foreign corporations with a domestic corporation of the state forming a continuous line of railroad through several states. Ashley V. Ryan, 4 I. C. R. 664.

(6a) The law of North Dakota, of March 7, 1891, regulating grain warehouses and the weighing and handling

of grain, etc., is constitutional. Munn v. Illinois, 94 U. S. 113 (24: 77) and Budd v. New York, 143 U. S. 517 (36: 247) followed. Brass v. State of North Dakota, 4 I. C. R. 670.

(6b) The North Dakota law of March 7, 1891, is not unconstitutional, because it is applicable to the entire state, which is agricultural and is not restricted to large cities. Brass v. State of North Dakota, 4 I. C. R. 670.

(6c) One who enters upon the business of elevating and storing the grain of other persons for profit in North Dakota, becomes subject to the statutory regulations, although he also elevates and stores his own grain in the same warehouse. Brass v. State of North Dakota, 4 I. C. R. 670.

(6d) The legislature of North Dakota, in regulating by a general law the business and charges of public warehousemen engaged in elevating and storing grain for profit, does not deny to the plaintiff in error the equal protection of the laws nor deprive him of his property without due process of law, and such statutory regulations do not amount to a regulation of commerce between the states. Brass v. State of North Dakota, 4 I. C. R. 670.

(6e) The power of railroad commissioners to make a schedule of reasonable maximum rates does not impair the obligation of the contract of a railroad company, under a statute which authorizes its board of directors to establish rates of toll from time to time, but also provides that the company's by-laws shall not be repugnant to the constitution and laws of the state. Chicago, B. & Q. R. Co. v. Jones (Ill.), 4 I. C. R. 683.

(6f) A statute changing a rule of evidence is applicable to a pending action. Chicago, B. & Q. R. Co. v. Jones, 4 I. C. R. 683.

(6g) A schedule of rates cannot be excluded from evidence under the Illinois statutes when accompanied by a regular certificate of the commissioners as to its publication on the ground that it never took effect because never published as required by statute, since the statutes make the schedule and accompanying certificate prima facie evidence that the schedule offered is a schedule of the commissioners. Chicago, B. & Q. R. Co. v. Jones, 4 I. C. R. 683.

(6h) Only transportation within the state, and that which is not a part of any continuous transportation without the state, is within the provisions of sections 1, 7, 8, and 11 of the Act of May 2, 1873, and these do not therefore affect interstate commerce. Chicago, B. & Q. R. Co. v. Jones, 4 I. C. R. 683.

(6i) Provisions in a statute as to unlawful discrimination in rates will, even if unconstitutional, not make invalid other provisions as to reasonableness of rates. Chicago, B. & Q. R. Co. v. Jones, 4 I. C. R. 683.

(6j) Making a schedule compiled by commissioners prima facie evidence that the rates therein fixed are reasonable maximum rates of charges for railroad carriage does not infringe upon the right of trial by jury. Chicago, B. & Q. R. Co. v. Jones, 4 I. C. R. 683.

(6k) There is no unconstitutional delegation of power to railroad commissioners by a statute authorizing them to fix reasonable maximum rates of charges for freight and passenger traffic, where their schedule is not final but is made merely prima facie evidence of the reasonableness of the rates established. Chicago, B. & Q. R. Co. v. Jones, 4 I. C. R. 683.

(6l) A statute prohibiting more than fair and reasonable rates by a railroad corporation, being merely declaratory of a common law rule, although penal, does not deprive the company of its property without due process of law, because the statute does not fix any limit of the rates —especially where a provision is made in the same statute for the fixing of rates by commissioners, or as a delegation of the police power of the state to grant licenses to engage in business. Chicago, B. & Q. R. Co. v. Jones, 4 I. C. R. 683.

(6m) Laws 1893, chap. 66, entitled "An act to regulate the sale and redemption of transportation tickets of common carriers and to provide punishment for the violation of the same," is not unconstitutional, either as "class legislation" granting special privileges to carriers. State v. Corbett, 4 I. C. R. 694.

(6ma) The Minnesota statute concerning the redemption of unused railroad tickets, is not void, (at least as to tickets purchased after the passage of the act) as depriving a citizen of his property "without due process of law." State v. Corbett, 4 I. C. R. 694.

(6n) A license fee of $200 for doing express business in a city of 15,000 inhabitants is not shown to be prohibitory or destructive of the business of express companies, even if it be that any judicial action could be based on such a showing. Osborn v. State (Fla.), 4 I. C. R. 731.

(6o) Foreign corporations selling through itinerant agents and delivering goods manufactured outside of the state are not, in view of the commerce clause of the United States Constitution, affected by state statutes requiring foreign corporations to file their articles of association with the secretary of state and pay a franchise fee as a condition of doing business within the state. Coit v. Sutton (Mich.), 4 I. C. R. 768.

(6p) The clause in the charter of the Union Pacific Railroad Company giving Congress power over the rates of freight to be charged thereon does not preclude the several states from interfering with such rates. Ames v. Union P. R. Co. (C. C. D. Neb.), 4 I. C. R. 835.

(6q) A reduction of 29½ per cent by the legislature in the local freight rates of a railroad is unreasonable and void, where the new rates would result in a loss on local business to more than half of the roads affected by it, and as to the other roads the earnings from local business would not be enough to pay the proportion of the interest on the bonded debt which should be paid by such business in comparison with business of other kinds. Ames v. Union P. R. Co. (C. C. D. Neb.), 4 I. C. R. 835.

(6r) The fact that the freight rates are higher in one state than in another is not of itself sufficient to justify an arbitrary reduction of them by the legislature in the former state, for the purpose of equalizing rates. Ames v. Union P. R. Co. (C. C. D. Neb.), 4 I. C. R. 835.

(6s) A state has the power to levy a charge upon a foreign telegraph company, doing business within the state and also doing interstate business, in the form of a franchise tax, but arrived at with reference to, and graduated according to, the value of its property within the state and in lieu of all other taxes, and the exercise of that power by a state statute, held by the highest judicial tribunal of the state to be a just equivalent for other taxes, does not amount to a regulation of interstate commerce, nor put an unconstitutional restraint thereon. Postal Telegraph Cable Co. v. Adams, 5 I. C. R. 1.

(6t) An impost or duty on imports or exports is not laid by a state statute requiring coal and coke boats and barges to be gauged by a state officer. Pittsburg & S. Coal Co. v. Louisiana, Charity Hospital (U. S. Sup.), 5 I. C. R. 18.

(6u) A state statute providing for gauging any coal or coke boat or barge in a port of the state, with a fee to the gauger, does not make an unconstitutional regulation of commerce. Pittsburg & S. Coal Co. v. Louisiana, Charity Hospital (U. S. Sup.), 5 I. C. R. 18.

(6v) Discrimination between states, in the transportation of coal and coke which is brought from Pennsylvania to Louisiana by boat and from Alabama by land, is not shown by regulations for gauging vessels under the Louisiana statutes. Pittsburg & S. Coal Co. v. Louisiana, Charity Hospital (U. S. Sup.), 5 I. C. R., 18.

(6w) The provisions of the act of Louisiana providing for the appointment of two gaugers of coal and coke boats, are not regulations of commerce, in conflict with the power vested in Congress over the subject, but police regulations which every state may enact although they may in some cases in a slight degree affect commerce, nor does such statute lay an impost or duty on imports or exports from other states. Pittsburg & Southern Coal Co. v. State of Louisiana, 5 I. C. R. 18.

(6x) An occupation tax may be collected by ordinary suit, if so provided in the ordinance imposing it. Western U. Teleg. Co. v. Fremont (Neb.), 5 I. C. R. 46.

(6y) A city may impose a license tax for the business of telegraphy therein, although the messages are transmitted to or from points outside of the city, if they are within the state. Western U. Teleg. Co. v. Fremont (Neb.), 5 I. C. R. 46.

(6z) A city of the above class may lawfully enact an ordinance imposing on telegraph companies a license tax of a reasonable sum per annum for the privilege of transacting the business of telegraphy within the city and the fact that the telegrams received and delivered within the city were transmitted over the lines of the telegraph companies from

other points within the state, or that the messages received by it at its office or place of business in the city were transmitted to various other places in the state, does not invalidate the tax. Western Union Telegraph Co. v. Fremont, 5 I. C. R. 46.

(7a) Nothing in interstate law, whether constitutional or statutory, offers any impediment to enforcing the statute of Georgia imposing upon telegraph companies a penalty for not transmitting messages, the message involved in the given case not having been even started to its destination, and thus the whole of the negligence by which the statute was violated having occurred within the territory and jurisdiction of the state. Western Union Telegraph Co. v. Michelson, 5 I. C. R. 236.

(7b) Kan. Laws 1881, chap. 161, as amended by Kan. Laws 1885, chap. 191, making it a misdemeanor to drive any cattle with Texas fever into the state, does not violate the interstate commerce clause of the United States Constitution, but is a legitimate exercise of the police power of the state. Rouse v. Youard (Kan. App.), 5 I. C. R. 315.

(7c) A statute imposing a license tax of $30 upon every agent for the sale of machines, with a farther tax of $10 for each additional county and each additional agent, except that manufacturers who pay to the state a tax upon capital to the amount of $30 may sell without further payment, is not unequal and un-uniform, as the requirement of equality and uniformity applies only to a direct tax upon property, and does not limit the power of the legislature as to the subjects of taxation. American Harrow Co. v. Shaffer (C. C. W. D. Va.), 5 I. C. R., 336.

(7d) One who goes upon a railway train for the sole purpose of paying an overcharge for transportation if demanded, and bringing an action for the penalty prescribed by statute, may recover the penalty for such an overcharge, under Ark. act April 4, 1887, regulating the rates of charges for carriage of passengers by railroad. Missouri P. R. Co. v. Smith (Ark.), 5 I. C. R. 348.

(7e) A railroad company is not relieved from liability for the penalty for overcharge, prescribed by Ark act April 4, 1887, § 1, regulating the rates for the carriage of passengers, by the fact that it was mistaken as to the distance for which transportation was charged, where such mistake was not induced by the person seeking to enforce the penalty or his confederates. Missouri P. R. Co. v. Smith (Ark.), 5 I. C. R. 348.

(7f) The rate of charges for carriage of passengers by railroads, fixed by the Arkansas legislature, is not necessarily unreasonable, enabling the court to declare the act fixing it unconstitutional, merely because the business and the traffic of the road to which the act applies are small and unremunerative, and under the act would be insufficient to pay the interest on the company's debts and expenses of operating the road. Missouri P. R. Co. v. Smith (Ark.), 5 I. C. R. 348.

(7g) The penalty provided by the Texas statute for the refusal of a railroad company to deliver freight on payment or tender of the charges due as shown by the bill of lading applies only to a company which has itself executed, authorized, or ratified the execution of the bill of lading. Dwyer v. Gulf, C. & S. F. R. Co. (Tex.), 5 I. C. R. 361.

(7h) The exhibition of the bill of lading at the time of the tender of the charges and demand of the goods is not a condition precedent to the recovery of a penalty, under the Texas statute, for refusal to deliver the goods, although such penalty should be inflicted only for a wilful disregard of the law. Dwyer v. Gulf, C. & S. F. R. Co. (Tex.), 5 I. C. R. 361.

(7i) A state statute providing a penalty for the refusal of a railroad company to deliver freight on payment or tender of the charges due as shown by the bill of lading is not invalid as a regulation of commerce. Dwyer v. Gulf, C. & S. F. R. Co. (Tex.), 5 I. C. R. 361.

(7j) A state has the right to prohibit a citizen from contracting within her jurisdiction, either in his own behalf or through an agent, with a foreign corporation which has not acquired the privilege of engaging in business therein. Hooper v. California (U. S. Sup.), 5 I. C. R. 610.

(7k) The right of a foreign corporation to engage in business within a state other than that of its creation depends solely upon the will of such other state. Hooper v. State of California, 5 I. C. R. 610.

(7l) The exceptions to this rule em-

brace only cases where a corporation created by one state rests its right to enter another and to engage in business therein upon the Federal nature of its business. Hooper v. State of California, 5 I. C. R. 610.

(7m) A statute requiring all railroads in the state to furnish equal but separate accommodations for whites and blacks, and requiring conductors to assign passengers to their respective places, when applied to a passenger from another state on an interstate railroad line, invades the powers conferred on Congress by the commerce clause of the Constitution. Carrey v. Spencer (N. Y. Sup. Ct.), 5 I. C. R. 636.

(7n) The prohibition of the transportation of Texas, Mexican, Cherokee, and Indian cattle through a State by railroads and steamboats, is an unconstitutional regulation of commerce; but the invalidity of a provision against transportation of the cattle does not invalidate regulations in the statute against bringing such cattle into the State or moving them from one part of the State to another. The court says that, granting that all Texas cattle have power to communicate disease to native cattle, yet this power exists only when they come in contact with the ground, and that shipping such cattle by railroad or steamboat is attended with but little, if any, danger. Grimes v. Eddy et al. 7 I. C. C. App. III.

(7o) A statute requiring each railroad within the State to cause three of its regular passenger trains each way to stop at all stations of cities or villages having more than a designated number of inhabitants is not invalid as applied to a railroad company having but one train each way not engaged in interstate commerce as a regulation of commerce between the States. The court says: Although the act in question may, and as the railroad company now conducts its trains does, affect the transportation of persons traveling through the State of Ohio from one State to another, we are of the opinion that the Act is not a regulation of commerce between States, although it might be void if Congress, with its paramount authority, should pass an Act with which this would be inconsistent. Lake Shore & Mich. Southern Ry. Co. v. St. of Ohio ex rel. George L. Lawrence, 7 I. C. C. App. XV.

(7p) A State statute providing a penalty in case a carrier refuses to deliver goods transported by it upon tender of the freight charges specified in the bill of lading is void as to interstate shipments, in so far as it conflicts with the Interstate Commerce Act of February 4, 1887, as amended by the act of March 2, 1889, requiring the publication of schedules of rates, and forbidding deviations from such schedules. Gulf Colorado & Santa Fe Ry. Co. v. Hefley, 7 I. C. C. App. XXV.

(7pa) A State statute requiring railroad companies to stop all regular passenger trains at county seats is not unconstitutional or void either as being an unreasonable regulation or as interfering with interstate commerce. The court says: It is not necessary to put it on so narrow a ground; we will say that this is not a regulation of interstate traffic, but most distinctively a regulation of local traffic, the purpose for which the train was required to stop. St. of Minn. v. Gladson, 7 I. C. C. App. XXI.

(7q) A State statute requiring all vessels using wood for fuel while navigating waters of the State to be provided with suitable fire screens does not conflict with acts of Congress or regulations of supervising inspectors, and is not an interference with interstate commerce. Burrows v. Delta Transportation Co., 7 I. C. C. App. XVIII.

(7r) An act forbidding the manufacture and sale of oleomargarine, when none is manufactured in the State, and the act is plainly aimed against that imported for sale from another State, is unconstitutional and void. Ex parte Scott 7 I. C. C. XXVII.

(7s) A State statute empowering a corporation to reclaim lands under tidewaters along the seacoast, by erecting dykes and pumping out the water from the land inclosed by them, and conferring the right of property in the lands so reclaimed, is in conflict with the power of Congress to regulate foreign and interstate commerce. Macgrane Coxe v. State of N. Y., 7 I. C. C. app. XXVIII.

(7t) A police regulation making it a public offense to buy and sell deer meat within the State, which is cut from the entire carcass brought from without the State, is not an unlawful attempt to regulate interstate commerce. The court says: It is true the enforcement of the act may indirectly or incidentally affect, to some extent, traffic in the inhibited article between the people of

this and other States, but that of itself is not sufficient to bring it within the objection that it is an unlawful interference with commerce. The right of the States under the very comprehensive police power reserved to them under our dual system of government to regulate and control their own internal affairs, including trade, to the reasonable advantage and good of their people, is conceded and upheld in all the cases in which the question, growing out of the right of the Federal Congress to regulate interstate commerce, has arisen. Petitioner imported the meat into the State, broke the original package, and put the commodity upon the market. It thereupon became property strictly subject to State regulation and control, and fell within the denunciation of the statute. Ex parte Simon Maier 7 I. C. C. App. XXVIII.

(7uv) A State may lawfully prohibit the shipment out of the State of certain kinds of fish caught within its borders. The court says: The fish had never become articles of commerce within the meaning contended for by defendant's counsel. Under the laws of the State they had, it is true, become private property, but of a qualified and limited character; one of the attached limitations being that they should not be shipped out of the State—that is, should not become the subject of interstate commerce. St. of Minn. v. Northern Pacific Express Co., 7 I. C. C. App. XXXI.

(7w) The power of Congress over commerce is not infringed by a statute requiring every railroad corporation operating a railroad "in this state" under the circumstances therein enumerated to issue mileage books at a cost not to exceed 2 cents per mile, as its provisions are applicable only to transportation between points both within the state, and not part of a through passage to or from a point in another state. Dillon v. Erie Ry Co., 7 I. C. C. App. XXXVII.

(7x) That the plaintiff's purpose in applying for a mileage book was to tender coupons in exchange for a ticket enabling him to travel from a point within to a point without the state does not effect his right to recover the penalty prescribed by N. Y. Laws 1896, chap. 835, for the refusal of a railroad company to issue to him a mileage book, although the company after issuing the book might properly refuse to accept the coupons in exchange for such ticket. Dillon v. Erie Ry. Co., 7 I. C. C. App. XXXVII.

(7y) One to whom a telegram is addressed may recover the penalty provided by a state statute for failure to promptly deliver it, although it was transmitted from another state, since the failure to deliver occurs after it has reached the state and come within its police power. Western Union Telegraph Co. v. Lark, 7 I. C. C. App. XL.

(7z) State laws prohibiting the running of railway trains on Sunday, if enacted in good faith for the preservation and protection of the health and morals of the people and without discrimination against interstate or foreign commerce, are not in conflict with the Constitution of the United States. The court says, it cannot be doubted that such laws are police regulations of the greatest utility for the physical and moral well-being of society. Neither is there any question that the statute was enacted in good faith for the preservation and protection of the health and morals of the people of the State and without any discrimination whatever against interstate or foreign commerce, and that its only effect upon such commerce would be to delay it a few hours in its journey from the point of shipment to its destination. Norfolk & Western Ry. Co. v. Commonwealth of Virginia, 7 I. C. C. App. XLII.

(8a) A train composed of empty coal cars, although destined for a point in another State to procure a load, is not engaged in transporting articles of interstate commerce so as to be beyond the control of State laws. Norfolk & Western Ry. Co. v. Commonwealth of Virginia, 7 I. C. C. App. XLII.

(8b) The interstate commerce clause of the United States Constitution does not prevent a foreign corporation which leases a railroad within the state from being subject to the police power of the state so that it may be held liable for damages caused by fire set out by not having the required spark arresters. Steuben v. Central Ry. Co. of N. J., 7 I. C. C. App. XLII.

(8c) The Texas statute requiring the carrier to feed and water live stock during the time of conveyance, and until the same is delivered to the consignee, does not apply to shipments made from that state into others. Gulf Colorado & Santa

Fe Railway Co. v. Gray, 7 I. C. C. App. XLIV.

(8d) State health officers will not be enjoined from detaining immigrant passengers at the State lines for the purpose of inspection and quarantine, although they are journeying on a through route which runs between States and into a foreign country and although passengers from noninfected countries and localities are thus detained and they have been passed by the United States officials. This ruling is placed upon the authority of decisions of the Supreme Court of the United States and upon the fact that the quarantine act of Congress of February 15, 1893, expressly recognizes the validity of State laws. Minneapolis, St. Paul and Sault Ste. Marie Ry. Co. v. Milner et al, 7 I. C. C. App. L III.

(8e) The prohibition in the United States Constitution against interference with interstate commerce is not violated by Texas act April 3, 1889, p. 87, forbidding foreign corporations to transact business within the State or to maintain any action therein without filing its articles of incorporation with the Secretary of State. Western Paper Bag Co. v. Johnson & Co., 7 I. C. C. App. LXIV.

(8f) A sale by a foreign corporation of a portion of the goods shipped into the State by it before procuring any contracts or orders for their sale and for the purpose of obtaining the advantage of a cheap freight rate is within the purview of Texas act April 3, 1889, p. 87, forbidding foreign corporations to transact business within the State without filing a certified copy of its articles of incorporation with the Secretary of State, or to maintain any action in the State unless it has filed such articles. Western Paper Bag Co. v. Johnson & Co., 7 I. C. C. App. LXIV.

(8g) The provision of N. C. Code, § 1937, making the running of engines on Sunday a misdemeanor, is a valid exercise of the police power when applied to trains running on railroad lines and engaged in interstate commerce until the passage of an act by Congress superseding the same. The court says: Although it affects interstate commerce to some extent there is nothing in its provisions which suggests a purpose on the part of the legislature to interfere with such traffic or is indicative of any other intent than to prescribe in the honest exercise of the police power a rule of civil conduct for persons within her territorial limits. Such a law is valid and must be obeyed unless and until Congress shall have passed some statute which supersedes that act by prescribing regulations for the running of trains on the Sabbath on all railway lines engaged in interstate commerce. States have the power, at least in the absence of any action by Congress, to pass laws necessary to preserve the health and morals of the people, though their enforcement may involve some slight delay and disturbance in the transportation of persons and goods through their borders. St. of N. Carolina v. Southern Ry. Co., 7 I. C. C. App. LXV.

(8ga) The provision of the Texas statute of March 4, 1891, that no contract limiting the period in which to sue to a shorter time than two years shall be valid, is not an attempt to regulate interstate commerce when applied to an interstate shipment under a contract requiring suit to be instituted within forty days after the cause of action accrued. Galveston, Harrisburg & San Antonio Ry. Co. v. Herring, 7 I. C. C. App. XLVI.

(8h) A state statute making a carrier which accepts anything for transportation to a point beyond its own route liable for its safe carriage to such point of destination, in the absence of a written contract to the contrary, and imposing upon the carrier the burden of proving even in case of such contract, that the loss or injury did not occur while the thing was in its charge, is not an unconstitutional interference with interstate commerce. Richmond & Alleghany R. R. Co. et al v. Patterson Tobacco Co. 7 I. C. C. App. LXXIII.

(8i) The various acts of the State legislatures designed to protect domestic cattle against the introduction and communication of Texas fever, are not nullified by the act of Congress of May 29, 1884, as such act is intended to operate concurrently with the statutes of several States to prevent the spread and infection of contagious diseases among the cattle. Miss. Kansas & Tex. Ry. Co. v. Haber et al. 7 I. C. C. App. LXXIII.

(8j) A State statute making it unlawful to run any freight train on Sunday is not an unconstitutional regulation of interstate commerce as applied to an

interstate train in the same way that it applies to a domestic train, in the absence of any congressional legislation on the subject. The court says: In our opinion there is nothing in the legislation in question which suggests that it was enacted with the purpose to regulate interstate commerce, or with any other purpose than to prescribe a rule of civil duty for all who on the Sabbath Day are within the territorial jurisdiction of the State. The legislature having, as will not be disputed, power to enact laws to promote order and secure the comfort, health and happiness of the people, it is within its discretion to fix the day when all labor, within the limits of the State, works of necessity and charity excepted, should cease. It is not for the judiciary to say that the wrong day was fixed, much less that the legislature erred when it assumed that the best interests of all required that one day in seven should be kept for the purposes of rest from ordinary labor. Is the admitted general power of a State to provide by legislation for the health and morals and the general welfare of its people, so fettered that it may not enact any law whatever that relates to or affects in any degree the conduct of commerce among the States? If the people of a State deem it necessary to their peace, comfort, and happiness, to say nothing of the public health and the public morals that one day in each week be set apart by law as a day when business of all kinds carried on within the limits of the State shall cease, whereby all persons of every race and condition in life may have an opportunity to enjoy absolute rest and quiet, is that result, so far as interstate freight traffic is concerned, attainable only through an affirmative act of Congress giving its ascent to such legislation? The argument in behalf of the defendants rests upon the erroneous assumption that the statute of Georgia is such a regulation of interstate commerce as is forbidden by the Constitution without reference to affirmative action by Congress and not merely a statute enacted by the State under its police power, and which, although in some degree affecting interstate commerce, does not go beyond the necessities of the case, and therefore is valid, at least until Congress interferes. Hennington v. State of Georgia, 7 I. C. C. App. LXXIII.

(8k) A State statute prohibiting the sale of game or fish during the close season is not an unlawful restriction of interstate commerce as applied to game or fish imported from other States as articles of food. The court says: The cases cited abundantly establish the doctrine that it is competent for the legislature, for the purpose of protecting game or fish, to absolutely prohibit the sale of game or fish caught during the closed season or during the entire year. The question of the right to prohibit the importation and sale of game or fish, with the same purpose, is discussed, and the right affirmed in Ex parte Maier, 103 Cal. 476. People of the St. of Mich. v. O'Neil et al, 7 I. C. C. App. LXXIV.

(81) A state has power to make it an offense to have in possession, for the purpose of transportation beyond the State, birds which have been lawfully killed within the State during the open season; and a statute creating this offense does not violate the interstate commerce clause of the Constitution. The court, after tracing the origin of the right to animals ferae naturae, says: The sole consequence of the provision forbidding the transportation of game killed within the State beyond the State is to confine the use of such game to those who own it, the people of that State. The proposition that the State may not forbid carrying beyond her limits involves, therefore, the contention that a state cannot allow its own people the enjoyment of the benefits of the property belonging to them in common, without at the same time permitting the citizens of other states to participate in that which they do not own. It was said in the discussion at bar, although it be conceded that the State has an absolute right to control and regulate the killing of game as its judgment deems best in the interests of its people, inasmuch as the State has here chosen to allow the people within her borders to take game, to dispose of it, and thus cause it to become an object of interstate commerce, as a resulting necessity such property has become the subject of interstate commerce, hence controlled by the provisions of the United States Constitution. But the errors which this argument involves are manifest. It presupposes that where the killing of game and its sale within the State are allowed it thereby becomes commerce in the legal meaning of that word. In view of the authority of the State to

affix conditions to the killing and sale of game, predicated as is this power on the peculiar nature of such property and its common ownership by all the citizens of the State, it may well be doubted whether commerce is created by an authority given by a State to reduce commerce within its borders to possession, provided such game be not taken when killed without the jurisdiction of the State. The common ownership imports the right to keep the property, if the sovereign so chooses, always within its jurisdiction for every purpose. But granting that the dealing in the game killed within the State created internal State commerce, it does not follow that such internal commerce became necessarily the subject-matter of interstate commerce. The distinction between internal and external commerce and interstate commerce is marked. Geer v. St. of Connecticut, 7 I. C. C. App. LXVIII.

(8m) The question whether a given exercise of power upon the part of the State as applied to an article of interstate commerce is really the exercise of a police power, or only a restriction of such commerce, is for the Federal courts, to be determined by the public policy of the United States rather than that of the State. Re Lazarus E. Lebolt 7 I. C. C. App. LXXVIII.

(8n) A State statute making the running of engines on Sunday a misdemeanor is a valid exercise of the police power when applied to trains running on railroad lines andengaged in interstate commerce, until the passage of an act by Congress superseding the same. The courts says: Congress is unquestionably empowered, whenever it may see fit to do so, to supersede, by express enactment on this subject, all conflicting State legislation. But until its powers are asserted and exercised, the statute under which the indictment is drawn may be enforced, and will constitute one of the many illustrations of the principle that the States have the power at least in the absence of any action by Congress, to pass laws necessary to preserve the health and morals of their people, though their enforcement may involve some slight delay or disturbance of the transportation of goods or persons through their borders. St. of N. Carolina v. Southern Ry. Co. 7 I. C. C. App. LXXXII.

(8o) A State statute imposing a tax on each ton of fertilizers to defray the expense of inspection does not violate the interstate commerce law. St. of N. Carolina. ex rel. Goodwin v. Caraleigh Phosphate & Fertilizer Works, 7 I. C. C. App. LXXXIII.

(8p) An inspection law must be fair, equal, and in no way discriminating in favor of either persons or property. Donald v. Scott et al, 7 I. C. C. App. LXXXVI.

(8q) A State statute prohibiting the transportation through the State of any Texas, Mexican, Cherokee, or Indian cattle afflicted with Texas or Spanish fever, is an attempted regulation of interstate commerce and void. Selvege v. St. Louis & San Francisco Ry. Co. 7 I. C. C. App. LXXXVI.

(8r) The interstate commerce provision of the United States Constitution is violated by a law forbidding the sale of all goods made by convict labor, including those made in the State of New York, to be labeled or branded before being exposed for sale or sold, so far as concerns goods made by convict labor in other States which are not from their nature or condition withdrawn from the class of merchandise belonging to commerce, as the police power of the State does not extend to such articles when considered in connection with interstate commerce. People of the St. of N. Y. v. Hawkins 7 I. C. C. App. CIII.

(8s) A railroad train running between two points within the same State, although carrying passengers who are to be transferred to another train of the same company which shall carry them to another State, is not exempt from a State law requiring it to stop at county seats, on the ground that this constitutes an interference with interstate commerce. Gladson v. St. of Minn., 7 I. C. C. App. CVI.

(8t) A prohibition of wagers or the sale of pools or tickets or other chance on any horse race, prize fight, or other contests outside of the State is not an unconstitutional interference with commerce. The court says: The State has a right to protect the lives and morals of its people against acts which threaten them, even though such acts can only be accomplished through some instrumentality of interstate commerce. And it might as well—indeed, with less want of force—be said that a law of this State inhibiting agencies here from procur-

ing from other States, and dissemating here, obscene literature or criminal libels upon our citizens, would be an unwarranted interference with commerce between the States. The right of the State to enact and enforce such laws, assuming they touch upon such commerce, is supported by the same principle which upholds State statutes forbidding the running of trains on Sunday. St. of Alabama v. Stripling, 7 I. C. C. CV.

(8u) A state statute fixing a penalty for detention and delay of delivery of freight which is inconsistent with the provisions of the Interstate Commerce Act is void as to interstate shipments. St. Louis Southwestern Ry. Co. of Tex. v. Carden et al (Tex. Civ. App.) 7 I. C. R. App. XXXVII.

(8v) A State statute requiring a fast mail train carrying interstate passengers and the United States mail over an interstate highway established by authority of Congress, to delay the transportation of such passengers and mails by turning aside from the direct interstate route, and running to a station 3½ miles away from a point on that route and back again to the same point, because such station is a county-seat, for the interstate travel to and from which the railroad company furnishes other and ample accommodation,—is an unconsitutional interference with and obstruction of interstate commerce and of the passage of the mails. The court said: It may well be, as held by the courts of Illinois, that the arrangements made by the company with the Postoffice Department of the United States cannot have the effect of abrogating a reasonable police regulation of the State. But a statute of the State which unnecessarily interferes with the speedy and uninterrupted carriage of mails of the United States cannot be considered as a reasonable police regulation. Illinois Central R. R. Co. v. People of the St. of Illinois, Ex rel Butler. (U. S.) 7 I. C. R. App. IXXI.

(8w) The rule of the Kansas statute that proof that cattle were brought from south of the 37th parallel of north latitude should be prima facie evidence that they were capable of imparting Texas fever, and that the persons in charge of them had knowledge or notice thereof, does not obstruct commerce. The court says that the statute is not within the meaning of the Constitution, nor in any just sense, a regulation of commerce among the States. It cannot be supposed to have been so intended, even if its validity were to depend upon the intent with which it was passed. It did nothing more than to declare as a rule of civil liability in Kansas that anyone driving, shipping, or transporting, or causing to be driven, shipped, or transported, into or through any county in that State, cattle liable to impart, or capable of communicating, Texas, splenic, or Spanish fever to domestic cattle, should be responsible in damages to any person injured thereby. It was passed in execution of a power with which the State did not part when entering the Union, namely, the power to protect the people in the enjoyment of their rights of property, and to provide for the redress of wrongs within its limits. Miss. Kans., & Tex. Ry. Co. v. Haber 8 I. C. C. App. VIII.

(8x) The Kansas statute of 1885, for the protection of domestic animals from contagious diseases, which gives a right of action to recover damages for bringing diseased cattle into contact with domestic cattle, is not a regulation of interstate commerce, but only declares a rule of civil liability, and was passed in execution of the power of the State to protect the rights of property and to provide for the redress of wrongs within its limits. Nor is such statute a regulation of commerce among the States simply because it may incidentally affect such commerce. Miss., Kans. & Tex., Ry. Co. v. Haber, 8 I. C. C. App. VIII.

(8y) The Federal Constitution does not by its own force give anyone the right to introduce into a State, against its will and without liability for damages, cattle so infected with disease as to be dangerous to domestic cattle. Miss., Kans., & Tex. Ry. Co. v. Haber, 8 I. C. C. App. VIII.

(8z) A State legislature has no power to require oleomargarine imported from another State to be discolored by pink or any other coloring matter, before it can be offered for sale. The court said: If this provision for coloring the article were a legal condition, a legislature could not be limited to pink in the choice of its colors. The legislative fancy or taste would be boundless. It might equally as well provide that it should be colored blue, or red, or black. Nor do we see that it would be limited to the use of coloring matter. It might, instead of that, provide that the article should only be sold if mixed with some

other article which, while not deleterious to health, would give out a very offensive smell. If the legislature had the power to direct that the article should be colored pink, which can only be accomplished by the use of some foreign substance which would have that effect, we do not know upon what principle it should be confined to discoloration, or why a provision for an offensive odor would not be just as valid as one prescribing the particular color. Collins v. St. of N. Hampshire, 8 I. C. C. App. X.

(9a) An importer has the right to sell oleomargarine in original packages to consumers as well as to wholesale dealers; and the exercise of this right will not be prevented by the fact that the packages are put up in such form as is suitable for retail trade. Schollenberger v. Commonwealth of Penn., 8 I. C. C. App. X.

(9b) A State cannot absolutely prohibit the introduction within its borders of an article of commerce which is not adulterated, and which in its pure state is healthful, simply because such article in the course of its manufacture may be adulterated by dishonest manufacturers for the purpose of fraud or illegal gains. Therefore, oleomargarine having been recognized as a proper subject of commerce, it cannot be excluded by the State, although inspection or analysis is difficult and burdensome. Schollenberger v. Commonwealth of Penn., 8 I. C. C. App. X.

(9c) Inspection laws are valid when they act upon articles brought from other States, if they provide for inspection in the exercise of that power of self-protection commonly called the police power. The court says: No doubt can be entertained of this where the inspection is manifestly intended and calculated in good faith to protect the public morals or public safety. And it has now been determined that this is so if the object of the inspection is the prevention of imposition on the public generally. To protect agricultural interests against spurious and low-grade fertilizers was the object of this law, which simply imposed the actual cost of inspection, necessarily varying with the agricultural condition of the various years. Patapso Quano Co. v. Board of Agriculture of North Carolina, 8 I. C. C. App. XIII.

(9d) A regulation of the price of labor by depressing, through the penalties of the criminal law, the market price of goods made by convicts, which it requires to be labeled or marked "Convict-Made," and thereby correspondingly enhancing the price of goods made by other workmen, is not a valid exercise of the police power of the legislature,—at least as applied to convict-made goods from another state. The court says: A state law which interferes with the freedom of commerce is not saved by the fact that it applies to all states alike, including the state enacting it. Interstate commerce cannot be taxed, burdened, or restricted at all by state laws, even though operating wholly within its own jurisdiction. If it is a regulation of commerce, the law relates to a subject within the exclusive jurisdiction of Congress, upon which the state has no power to legislate. It matters not whether the regulation be under the guise of a law requiring a municipal license to sell certain goods, or a health law requiring inspection of the article, or a label law, as in this case, requiring the article to be branded or labeled. When they operate as burdens or restrictions upon the freedom of trade or commerce they are invalid. This statute manifestly discriminates against the sale of goods made in a prison in the state of Ohio by a certain class of workment, and in favor of the same article when made outside a penal institution and by free labor. Trade and commerce between the states must be left free. The Constitution intended that it should be affected only by natural laws and the ordinary burdens of government imposed, through the exercise of the taxing power, equally on all property. The police power of a state cannot be used to depress the price or restrict the sale of articles of commerce, merely because they happen to be made in a prison or by a certain class of workmen, while the same articles made in some other place and by free labor are left untouched by the regulation. A citizen of this state who happens to buy goods made in a prison in Ohio has the right to put them upon the market here on their own merits; and if this right is restricted by a penal law, while the same goods in factories are untouched, such a law is a restriction upon the freedom of commerce, and the objection to it is not removed by the fact that it may have been enacted in the guise of a police regulation. People of the St. of N. Y. v. Hawkins, 8 I. C. C. App. XX.

(9e) A state law absolutely prohibiting sale or importation into the state of cigarettes or cigarette paper, in so far as it prevents importation and sale in original packages by the importer, is invalid as an interference with interstate commerce. Sawrie v. St. of Tenn., 8 I. C. C. App. XXIV.

(9f) The purchase and solicitation of wool by an agent of a foreign corporation, for shipment to other states wherein the principal business of the corporation is done, is a business pertaining directly to interstate commerce, which the foreign corporation is entitled to engage in without complying with a state statute imposing conditions upon its right to do business in the state. Machaughton v. McGirl, 8 I. C. C. App. XXVIII.

(9g) A state statute requiring as a condition of the right of a foreign corporation organized for pecuniary profits to maintain a suit or action in the courts of the state upon any demand arising out of the contract or tort, that it shall have filed its articles of incorporation in the office of the secretary of state before the contract was made or the tort committed, interferes with interstate commerce, and is void so far as it applies to sales by a foreign corporation of goods manufactured in another state and shipped into the state enacting the statute, whether the goods are sold before or after shipment. Goodman v. Miller & Co., 8 I. C. C. App. XXIX.

(9h) Restrictions on bringing sheep into the State by a statute appointing a sheep inspector and making it unlawful to bring sheep into the State without his inspection, and having the sheep dipped as provided in the statute, constitute an unnecessary and unconstitutional burden upon interstate commerce. St. of Idaho v. Duckworth, 8 I. C. C. App. XXXIX.

(9i) The non-exercise by Congress of its power to regulate commerce among the States is equivalent to a declaration that such commerce shall be free from any restrictions. St. of Idaho v. Duckworth, 8 I. C. C. App. XXXIX.

(9j) A packing company engaged in slaughtering and packing cattle, sheep, and hogs within the State with the intent to transport and sell the carcasses and products for human consumption in other States and territories, or in foreign countries, is not engaged in interstate commerce, and its business cannot be regulated by Congress, through the appointment of inspectors under the inter-state laws of the Constitution, U. S. v. Boyer, 8 I. C. C. App. XL.

(9h) The power of Congress to regulate commerce with the Indian tribes did not preclude Rhode Island from purchasing tribal lands from the Narragansett Indians whose existence had never been recognized by the United States, and who existed as an Indian tribe only in name. Re Narragansett Indians, 8 I. C. C. App. XLVI.

(91) The penalty imposed for unjust discrimination in excessive freight charges, provided by Texas Rev. Stat. 1895, arts. 4574, 4575, is not applicable to interstate shipments. Gulf, Western Texas, & Pacific R. R. Co. v. Barry, 8 I. C. C. App. XLIX.

(9m) A State statute making it unlawful to keep a place in which the business of transmitting money to be placed or bet on any horse race, etc., whether within or without the State, is permitted or carried on, or to be concerned in such business, is not an unconstitutional regulation of interstate commerce as applied to an agent of a telegraph company who keeps such place or is engaged in such business, and transmits the money to another State by telegraph. St. of Connecticut v. Harbourne, 8 I. C. C. App. L.

(9n) An ordinance imposing an occupation tax on each railroad corporation carrying or transporting freight or passengers to or from any point within the limits of the city and any point within the limits of the State, and having a depot within the city limits, expressly excepting and exempting from the levy of the tax all interstate traffic commerce or business of such corporation, does not violate the Federal Constitution as imposing a burden on interstate commerce. City of York v. Chicago, Burlington, & Quincy, R. R. Co., 8 I. C. C. App. LVI.

(9o) The requirements of Illinois act of July 1, 1879, §25, that all regular passenger trains shall stop at the railroad station of county seats to receive and let off passengers, is not, as applied to interstate trains running over tracks constructed under the authority of the State, an unlawful interference with interstate commerce. The court relies principally

upon the prior case of Chicago & A. R. Co. v. People, 105 Ill. 657, but says that the company cannot by its manner of doing business escape such control and disregard a statute of the State which seeks to regulate and control domestic concerns within the limits of the State for the public welfare and general good. Appellant's "Knickerbocker Special" is not national in its character, requiring uinformity of regulations affecting all States alike. The act is not an interference with interstate commerce, but a mere police regulation applicable only to the limits of the State of Illinois. It no more interferes with the expedition with which trains passing through the State carrying passengers from one State to another may reach their destination than does a regulation limiting the speed of trains running through a crowded thoroughfare, and, like the latter regulation, is for the public welfare. Cleveland, Cincinnati, Chicago, & St. Louis Ry. Co. v. People of the St. of Ill., ex rel. Jett., 8 I. C. C. App. LVI.

(9p) U. S. Rev. Stat. §5258, authorizing railroad companies to carry government supplies, mails, etc., from one state to another, does not prevent the State from enacting such regulations, with respect, at least, to a railroad corporation of its own creation, as are not directed against interstate commerce, and are not regulations thereof, but only incidentally or remotely affected, and are designed to promote the public convenience. Lake Shore & Mich. Southern Ry. Co. v. St. of O. ex rel. Lawrence, 8 I. C. C. App. LVIII.

(9q) The Ohio statute requiring each railroad whose road is operated within the State to cause three, each way, of its regular trains carrying passengers, if so many are run daily, Sundays excepted, to stop at a station, city, or village containing over 3,000 inhabitants long enough to receive and let off passengers, is for the public convenience, and is not a regulation of interstate commerce and unconstitutional when applied to the trains of a corporation of the State engaged in interstate commerce. Lake Shore & Mich. Southern Ry. Co. v. St. of O. ex rel. Lawrence, 8 I. C. C. App. LVIII.

(9r) The Texas act of 1882 prescribing a penalty for failure of a carrier to deliver goods in its possession on demand of the consignee, and tender of the freight specified in the bill of lading, is inoperative so far as it imposes a penalty upon a carrier engaged in interstate commerce, because it is in conflict with the act of Congress of 1887. Houston, East & West Texas Ry. Co. v. Peters & Wills, 8 I. C. C. App. LIX.

(9s) Discrimination in freight rates, in violation of the Kentucky Constitution, §218, prohibiting such discrimination, may not be justified on the ground that it was necessary in order to allow competition in a certain market, when the railway commission has refused to exclude the company from the operation of the provision. The court said: It is earnestly argued for appellant that the transportation is not under substantially similar circumstances and conditions when competition exists at one point and not at another. On the other hand, it is contended for the State that to adopt this construction is to emasculate the section and to deprive it of all practical operation and effect. The precise question thus presented was determined by this court in Louisville & N. R. Co. v. Com. 20 Ky. L. Rep. 1380, 43 L. R. A. 541, 46 S. W. 707, 20 Ky. L. Rep. 1102, 47 S. W. 210, 20 Ky. L. Rep. 1394, 43 L. R. A. 549, 47 S. W. 598, where the construction of the section adopted by the State was sustained. We are urged to overrule that case; but it was fully considered, and then reconsidered by the whole court, and we disinclined, with substantially no new light on the question, to set aside the conclusion of the court reached then after so mature deliberation. It is insisted for appellant that this construction makes it an arbitrary interference with the right of appellant to engage in competitive traffic, depriving it of its property without due process of law, denying it the equal protection of the law, impairing the obligation of its charter contract, and unlawfully interfering with interstate commerce. A railroad is only an improved modern highway. It must, of necessity, be subject to public control. To hold that only railroad men understand rates, or that they shall be allowed alone to fix the rates, and that no tribunal can review their decision as to what rates are reasonable, is to put in their hands a power dangerous to the welfare of the community, and utterly out of keeping with the doctrine that they are public agencies. If it be true that the public interests require the discrimination in

rates shown in this case, and that no injustice has really been done, it may be that, upon presentation of the facts to the railroad commission, it would allow the rates to stand. It does not appear that the appellant has presented its case to the commission. The power to determine this matter must be decided somewhere, and, the Constitution having created a special tribunal for this purpose, we cannot see that these provisions are subject to any of the objections raised by appellant. No principle of constitutional law is violated when the State, which has created these agencies for the public service, creates an impartial tribunal to prevent their great powers from being used to build up certain favored ones at the expenses of others. Louisville & Nashville R. R. Co. v. Commonwealth of Kentucky, 8 I. C. C. LXXIII.

(9t) The words "upon the same conditions" in the Kentucky Constitution, requiring all railroad companies to receive and handle freight of the same class for all purposes from and to the same points and upon the same conditions, in the same manner and for the same charges, and the same method of payment, relate solely to the process or facts of receiving and handling freight, and require the charges therefor to be the same for all persons alike, except when the freight is transported from and to different points, or is of different classes, or the cost of transporting, including savings and gains from facilities and conveniences furnished by the shipper, is different. Louisville & Nashville R. R. Co. v. Commonwealth of Ky., 8 I. C. C. App. LXXIII.

(9u) Discrimination by carriers other than in the manner expressly prohibited by §215 of the Kentucky Constitution, requiring all railway companies to receive and handle freight of the same class for all persons from and to the same points upon the same conditions for the same charges, was contemplated by §196, providing that transportation of freight and passengers by railroads shall be so regulated by general law as to prevent unjust discrimination. Louisville & Nashville R. R. Co. v. Commonwealth of Ky., 8 I. C. C. App. LXXIII.

(9v) The omission from Kentucky Statute, §820, of the proviso found in Constitution, §218, that the railroad commission may authorize a less charge for longer than for shorter distances on application by the carrier, does not make the statute inconsistent with the Constitution, as the proviso is self-executing and the statute expressly provides that the commission may exonerate a carrier from its provision even without previous application. Louisville & Nashville R. R. Co. v. Commonwealth of Kentucky, 8 I. C. C. App. LXXIV.

(9w) A quarantine regulation of the Texas live-stock sanitary commission duly promulgated, reciting reasons to believe that anthrax has or is liable to break out in Louisiana, and providing that during a certain time no animals are to be transported or driven into Texas from Louisiana, is not invalid intreference with commerce. The court says it is universally conceded that the power to pass proper quarantine is among the powers reserved to the several sovereign States of the Union. Citing Gibbons v. Ogden, 9 Wheat. 203, 6 L. ed. 71; Thorpe v. Rutland & B. R. Co. 27 Vt. 149, 62 Am. Dec. 625; Crowley v. Christensen, 137 U. S. 86, 34 L. ed. 620; Lawton v. Steele, 152 U. S. 136, 38 L. ed. 388; Slaughter-House Cases, 16 Wall, 36, 21 L. ed. 394; Patterson v. Kentucky, 97 U. S. 501, 24 L. ed. 1115; Morgan's S. S. Co. v. Louisiana Bd. of Health 118 U. S. 455, 30 L. ed. 237; Missouri, K. & T. R. Co. v. Haber, 169 U. S. 613, 42 L. ed. 878. It is often a matter of great perplexity to undertake to trace the sometimes shadowy line between the lawful exercise of the police power of the State and the conceded power of Congress to regulate commerce. However, when a statute or police regulation, such a quarantine duly promulgated by the legally constituted authority, is attacked on the ground of unconstitutionality, the burden is entirely upon the party insisting upon its invalidity to clearly point out its vice. St. Louis Southwestern Ry. Co. of Tex. v. Smith, 8 I. C. C. App. LXXXIII.

(9x) The provision for free transportation of shippers of live stock in Kan. Laws 1897, chap. 167, has no application to interstate shipments. State of Kansas v. Otis, 8 I. C. C. App. LXXXV.

(9y) An ordinance prohibiting the sale of perishable food commodities in the railway depots or landings of the city, except in unbroken packages in which they are imported into the State, does not interfere with interstate commerce. The court says: It is urged or

implied that private interests or rivalry in the business of selling food commodities dictated the ordinance. It is not for the court to ascertain the motives that may have promoted the ordinance. The inquiry is whether its declared purpose is lawful, and whether the ordinance is restricted within the scope of that purpose. The ordinance imposes no restriction on the sale of the commodities in the original package. When the transportation is completed, the articles taken from the package and offered for sale, the ordinance then operates to regulate the places of sale. It is settled that when the importation is complete, the property no longer in the original package, but removed therefrom, and mingled with the property in the State, the mass becomes subject to the police as well as the taxing power of the State. Citing Brown v. Maryland, 12 Wheat. 436, 6 L. ed. 684. St. of Louisiana v. Davidson, 8 I. C. C. App. LXXXIX.

(9z) An attempt by a municipal corporation to enforce by resolution a forfeiture of the rights of a railroad in its streets, under a contract providing for such forfeiture in case the railroad makes rates unequally discriminating against the city, is not an unconstitutional regulation of interstate commerce. The court said: Was the action of the city a law attempting to regulate interstate commerce? Plainly it was not. A railroad company has a right to make a contract with respect to interstate commerce, and to bind itself to certain rates if it chooses to do so. It bound itself here to impose no rates which were unequally discriminating against the city of Memphis. This was its duty under the interstate commerce law, if it had any power to fix rates upon such commerce, and it might contract with any person or city to do that which it was its duty to do under the law. The action of the city, therefore, was merely an attempt to enforce a contract right, and not to regulate interstate commerce, except in so far as the common carrier had lawfully bound itself to the city contractually with respect to a particular part of that commerce. Iron Mountain R. R. Co. of Memphis v. City of Memphis, 8 I. C. C. App. XCIII.

(10a) When rates established to apply between points within a single State are applied as part of combination rates on transportation between different States, such State rates, as well as the interstate rates with which they are combined, must be published at stations and filed with the Commission as provided in section 6 of the Act to Regulate Commerce. Export Rates from Pts. E. & W. of Mississippi 8 I. C. C. 185.

(10b) The Southern Railway Company in applying to complainant's interstate traffic at Macon, Ga., the storage rates prescribed by the Georgia Railroad Commission, and the Columbia, Newberry, and Laurens Railroad Company, in applying to complainant's interstate traffic at Columbia, S. C., the storage rates prescribed by the South Carolina Railroad Commission, did not violate the Act to Regulate Commerce, although such storage rates were in excess of the usual public warehouse charges in Macon and Columbia. Blackman v. Southern R. Co. 10 I. C. C. 352.

(10c) A state has jurisdiction to enact that carriers of coal therein shall provide track connections with all mines within its borders, but the power of the state in that respect arises from its authority over state commerce and does not constitute any limitation upon the exclusive power of Congress to regulate interstate commerce. Red Rock Fuel Company v. B. & O. R. R., 11 I. C. C. 438, 452.

(10d) The rates fixed by the State Commissions of South Carolina and Georgia are presumptively reasonable, but such presumption is not conclusive, and the railroad companies are entitled to show the contrary in a case involving the rates on interstate traffic. Brabham v. Atlantic Coast Line R. Co. 11 I. C. C. 464.

(10e) As Duluth, Minn., has the same coal rates to Hastings as to Superior, Wis., which latter rates are excessive, the railroad commission of Minnesota has ample authority to control the situation, and complainant should first apply to that commission. Hastings Malting Co. v. Chicago, M. & St. P. R. Co. 11 I. C. C. 675.

(10f) The Supreme Court of the United States held in Wisconsin, Minnesota & Pacific Railroad Company v. Jacobson, 179 U. S. 287, 45 L. ed. 194, 21 Sup. Ct. Rep. 115, that an order of the State commission of Minnesota directing a physical connection between two railroads of that State in pursuance of a statute of the State was a valid exercise of authority, and this Commis-

sion sees no reason why Congress may not, as it has done, exercise the same authority over a railway handling interstate traffic which the State can exercise with respect to State traffic. McRae Terminal v. Southern Ry. Co. et al. 12 I. C. C. 270.

(10g) Commission not bound by State regulation, but requires strong reasons to interfere. Farmers, Merchants & Shippers Club v. A. T. & S. F. Ry. Co., 12 I. C. C. 351.

(10h) No action taken concerning state rates to Kansas City, Mo., where voluntary reduced by railroad to correspond with rates to Kansas City, Kan., reduced by state legislature. Farmers, Merchants & Shippers Club v. A. T. & S. F. Ry. Co. 12 I. C. C. 351.

IMPORTANT CASES SINCE 1908

(10i) To fit the interstate minimum to each state would result in state regulation of interstate commerce. 1915 Western Rate Advance Case, 35 I. C. C. 497,576

(10j) The power of the state authorities to prescribe and regulate rates for the carriage of freight locally within the state is indisputable, and it is only where the proper application of those rates operates to the disadvantage or prejudice of an interstate shipper that the Commission's authority to remove discrimination should be exercised. Iowa-Dakota Grain Co. v. I. C. R. R., 40 I. C. C., 73, 75.

(10k) An assumption that a state-made rate or system of rates can not be said to cause unjust discrimination unless it is unlawful for another reason, namely, that it is so low as to deprive the carriers of their property without due process of law or to deny them the equal protection of the laws, finds no support in those sections of the Act which define unjust discrimination and undue prejudice, nor can it be justified in practice or on principle. The Commission is frequently called upon to determine whether a relation of rates is unjustly discriminatory where no question is or can be raised as to whether any of the rates involved are confiscatory. The Act gives it no authority to determine whether state-made rates are confiscatory. The position is wholly indefensible that the Commission must inquire into an issue as to which it has no jurisdiction for the purpose of determining a question as to which its jurisdiction is not complete, but exclusive. The Missouri River-Nebraska cases, 40 I. C. C. 201, 254.

(10l) The obligation placed upon the Commission by the law requires it to exercise its best judgment upon the facts placed before it and, to prescribe just and reasonable maximum rates and enter such order as shall prevent or remove undue prejudice to interstate commerce, even tho in some instances such action may incidentally affect the level of intrastate rates. Railroad Commission of La. v. A. H. T. R. Co., 41 I. C. C. 83, 122.

(10m) In a case which merely calls attention to the fact that a state rate is lower than an interstate rate on the same traffic from and to the same points, the Commission has no authority or power to condemn the state rate and take action which would be warrant to carriers to increase it to the level of the applicable interstate rate. It is only in cases where the rates prescribed by state authorities necessarily operate to unduly prefer a state over an interstate shipper, or to otherwise interfere with the proper application of rates prescribed by this Commission, that the authority of the federal law is properly to be exercised. Memphis Merchants' Exchange v. I. C. R. R. Co., 43 I. C. C. 378, 387.

(10n) The jurisdiction of the Commission over intrastate rates terminated with the relinquishment of the carriers from federal control, except under certain circumstances. Western Lime & Cement Co. v. Director General, 58 I. C. C. 508, 509.

(10o) In every case which puts in question intrastate rates the decisive factor is whether or not they affect interstate commerce injuriously to a considerable extent. If they do, they are brought under the Commission's jurisdiction and control, even though the whole rate structure of a state should be involved. Rates, Fares and Charges of N. Y. C. R. R. Co., 59 I. C. C. 290, 292.

(10p) The cost of service is only one of the elements to be considered in determining what would be a proper relationship between intrastate fares. If it does cost more to handle one character of passenger traffic than the other, it would not necessarily follow that there should be a difference in rates. Nebraska Rates, Fares, and Charges, 60 I. C. C. 305, 308.

(10q) Under section 206 (c) of the transportation act, 1920, the Commission has jurisdiction over intrastate shipments moving on and after January 1, 1918 for the period of Federal control. Central Pennsylvania Lumber Co. v. Director General, as Agent, 62 I. C. C. 99.

(10r) Where an issue of undue or unreeasonable advantage, preference, or prejudice is not involved in the proceeding, the Commission's jurisdiction to make a finding for the future as to state rates is confined to the period of federal control. D'Arcy Spring Co. v. Director General, as Agent, 62 I. C. C. 129.

(10ra) The fourth section of the interstate commerce act does not apply to intrastate shipments moving during the period of Federal control. Alaska Junk Co. v. Director General as Agent, 68 I. C. C. 616.

(10s) Rates on coal from mines at Floodwood, Ohio, to complainant's plant at that place, during Federal control, found not unreasonable as compared with rates and car earnings produced for the movement of coal and other freight between firms, industries, and team tracks at points on other lines in Ohio and adjacent States. Southern Ohio Power Co. v. Director General, as Agent, 73 I. C. C., 10.

(10t) Combination rate charged on shoddy from Plymouth, Mass., to East Cambridge, Mass., during Federal control, found unreasonable to extent that the factor from South Station, Boston, Mass., to East Cambridge, exceeded lower proportional rate subsequently established. Reparation awarded. Boston Woven Hose & Rubber Co. v. Director General, as Agent, 73 I. C. C., 13.

(10u) Rate on bituminous coal from mines in the Boonville, Ind., district to Huntingburg, Tell City, and Cannelton, Ind., during Federal control, found unreasonable as compared with rates on this traffic from and to points in Ohio and Indiana for comparable distances, and with rates on crushed stone, sand, and gravel between Indiana and Illinois points for comparable distances. Reparation awarded. Cannelton Sewer Pipe Co. v. Director General, as Agent, 73 I. C. C., 27.

(10v) Except under certain circumstances the commission's jurisdiction over intrastate rates terminated on February 29, 1920, the date of the relinquishment of the carriers from Federal control. On that date jurisdiction over such rates passed to the State authorities subject to the limitation that no rates should be reduced prior to September 1, 1920, unless approved by the commission, Following cases in 73 I. C. C.: Cannelton Sewer Pipe Co. v. Director General, as Agent, 27, 28; Chicago Sewer Pipe Co. v. Director General, as Agent, 511; Dee Clay Mfg. Co. v. Director General, as Agent, 557, 558; Indiana Board & Filler Co. v. Director General, as Agent, 73 I. C. C., 601, 602.

(10w) Contention that even if the intrastate haul of an electric line is held to be part of an interstate movement, the commission has no jurisdiction to require the establishment of joint rates as such electric line is a "street electric passenger railway" not engaged in the general business of transporting freight in addition to its passenger and express business, not sustained. In addition to the street passenger service the electric line conducts an interurban service, transports freight both in c. l. and l. c. l. quantities, and maintains freight stations. Hood Coal Co. v. M. V. T. Co., 73 I. C. C., 54, 57.

(10x) Where no undue prejudice or unjust discrimination against interstate commerce is alleged, intrastate rates are without the commission's jurisdiction. Murfreesboro Board of Trade v. L. & N. R. R. Co., 73 I. C. C., 228, 229.

(10y) The director general was not amenable to rate orders issued by State commissions during Federal control. The applicable rates on intrastate shipments were those on file with appropriate commissions. Walsh Fire Clay Products Co. v. Director General, as Agent, 73 I. C. C., 410, 411.

(10z) Contention that the commission should assume "prima facie that Statemade rates are reasonable" and that therefore the burden is upon the carriers to show the contrary. HELD, contention unsound. Walsh Fire Clay Products Co. v. Director General, as Agent, 73 I. C. C., 410, 412.

(11a) Class rates on saw logs from Vader to Helsing Junction, Wash., during Federal control, found unreasonable as compared with rates on the same traffic between other points in that vicinity for similar distances and to extent they exceeded lower commodity rate sub-

sequently established. Shipper made request for a commodity rate prior to movement, but these shipments could not await its establishment because a holding of the logs would jeapordize shipper's dam and bridge. Furthermore, it has been the uniform practice of carriers in this territory to promptly establish, on request, commodity rates under which logs could move. Reparation awarded. Clear Cedar Shingle Co. v. Director General, as Agent, 73 I. C. C., 632.

(11b) The commission is without jurisdiction to award reparation on intrastate shipments moving on and after March 1, 1920. Duluth Brewing & Malting Co. v. G. N. Ry. Co., 73 I. C. C., 637.

(11c) Rate on crushed rock, sand, and gravel, from Tempe, Ariz., to Cactus, formerly Portland, during Federal control, found not unreasonable as compared with rates on ore between other points in the same State for similar distances. Operating and other conditions affecting the ore movement are more favorable than those surrounding the transportation of the shipments here under consideration. Arizona Packing Co. v. Director General, as Agent, 73 I. C. C., 713.

(11d) With the termination of federal control at 12:01 a. m. March 1, 1920, the jurisdiction of the commission over intrastate rates passed to the state authorities subject to the limitation that no rates should be reduced prior to Sept. 1, 1920, unless approved by the commission. W. P. Fuller & Co. v. S. P. Co., 74 I. C. C., 703.

(11e) The commission has no jurisdiction over shipments originally intended for export but which are subsequently reshipped to another point in the same State and not exported, the entire movement being intrastate. Phillips & Sons Co. v. B. & S. R. R. Co., 74 I. C. C. 381.

(11f) The jurisdiction of the Commission over claims for reparation on intrastate shipments is limited to the period of Federal control, which terminated February 29, 1920. Phillips & Sons Co. v. B. & S. R. R. Co., 74 I. C. C. 382.

(11g) Section 208 (a) of the transportation act, 1920, does not confer jurisdiction upon the commission to award reparation, or to enforce the provisions of the interstate commerce act, on intrastate traffic during the guaranty period. Cannelton Sewer Pipe Co., 73 I. C. C., 27. Case Coal Co. v. C., B. & Q. R. R. Co., 74 I. C. C. 391.

(11h) Fact that a lower rate was applicable on intrastate shipments over lines not under Federal control for corresponding distances does not establish unreasonableness of rates over lines under Federal control. Empire Refineries (Inc.) v. Director General, as Agent, 74 I. C. C. 691, 692.

(11i) Complaint attacking intrastate rates on shipments moving subsequent to Federal control and during the guaranty period, dismissed for lack of jurisdiction. With the termination of Federal control at 12:01 a. m., March 1, 1920, jurisdiction over intrastate rates passed to the State authorities, subject only to the limitation that no rates should be reduced prior to September 1, 1920, unless approved by the commission. Fuller & Co. v. S. P. Co., 74 I. C. C. 703.

(11j) The commission has no jurisdiction over intrastate rates in the absence of undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand, and interstate or foreign commerce on the other, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce. Mathieson Alkali Works v. C., C. & O. Ry., 77 I. C. C. 150, 153.

(11k) Complaint alleges undue prejudice of intrastate commerce and preference of interstate commerce, which it is urged the commission has power to remove under section 13 of the act. Such prejudice is claimed to result from the application of interstate rates which are lower than the corresponding intrastate rates, but such allegation not proved. Mathieson Alkali Works v. C., C. & O Ry., 77 I. C. C. 150, 153.

(11l) Interstate switching charges assessed on numerous movements from Helena to West Helena, Ark., during Federal control, found illegal. Tariffs under which charges were collected provided that rates therein "will not apply on Arkansas State traffic," and since shipments were not interstate, lower intrastate charges were legally applicable. Reparation awarded. Helena Traffic Bureau v. Director General, as Agent, 77 I. C. C. 197.

(11m) Contention that the commission has no jurisdiction to consider overcharge claims against the director general on intrastate shipments during that part of Federal control prior to General Order No. 28 of the director general, not

sustained. Miller v. Director General, 60 I. C. C., 162; Central Pennsylvania Lumber Co. v. Director General, 62 I. C. C. 99; Owen Co. v. Director General, 64 I. C. C., 157; Terre Haute, Indianapolis & E. T. Co. v. Director General, as Agent, 77 I. C. C. 661.

(11n) Where rough rice from originating points is shipped to mills in the same State, and the clean product reshipped to points in other States, the transportation charges on the clean rice are, on this traffic, adjusted on basis of through rates from the rough rice originating points to ultimate destinations, and the shipments into the milling points become parts of interstate movements. Lake Charles Rice Milling Co. v. A. & N. Ry. Co., 77 I. C. C. 707, 708.

(11o) Application of intrastate scale on rough rice from Texas originating points to milling points in that State, when milled products moves intrastate, found not to subject millers at Lake Charles to undue prejudice; but application of intrastate scale on such rough rice to Texas mill points when milled product moves interstate, while applying higher interstate scale on rough rice from same originating points to Lake Charles, found unduly prejudicial to latter point in favor of competitive Texas mill points. Lake Charles Rice Milling Co. v. A. & N. Ry. Co., 77 I. C. C. 707, 709.

(11p) Commission is without jurisdiction to award reparation on intrastate shipments which moved during guaranty period, March 1 to September 1, 1920. United Dredging Co. v. A., T. & S. F. Ry. Co. 78 I. C. C. 365.

(11q) Railroad Commission of Texas provided that when stock cars are furnished for the transportation of watermelons, carloads, between points in Texas, such stock cars, shall, when requested by shippers, be slatted at the expense of the carriers furnishing the same or participating in the haul of the commodity, in order that the cars may be suitable for the transportation and that no transportation charge shall be based on the weight of the material used for the purpose. Carriers petitioned this Commission claiming this rule resulted in undue prejudice to interstate commerce. The charge assessed for this slatting against shippers on interstate traffic is $5 per car. Respondents rest their case upon the theory that the state regulation amounts to an obstruction to or discrimination against interstate commerce as a whole. In unslatted stock cars the melons are frequently rotted and discolored by the elements and are subject to mutilation from the outside. Although the objections to stock cars are not entirely removed by the slatting, such cars are accepted because sufficient ventilated cars are not available. HELD, collection of a charge for slatting interstate cars while collecting none on intrastate movements unduly discriminates against interstate commerce; the charge on interstate traffic unreasonable; and the unjust discrimination should be removed by noncollection of the interstate charge. In the matter of a regulation prescribed by the Railroad Commission of Texas requiring carriers to slat stock cars for transportation of watermelons in Texas, 78 I. C. C. 732.

(11r) Where state rates are not attacked as unduly prejudicial or preferential, or unjustly discriminatory, in their relation to interstate rates, the jurisdiction of the Commission over intrastate rates expired with the termination of federal control. International Harvester Co. v. C. B. & Q. R. R. 80 I. C. C. 71.

(11s) Except where intrastate rates are assailed as unduly prejudicial or preferential, or unjustly discriminatory, in their relation to interstate rates, jurisdiction of the commission over intrastate rates expired with termination of Federal control. International Harvester Co. v. C., B. & Q. R. R. Co., 80 I. C. C. 71.

(11t) Rate on burnt foundry sand from Springfield, Ohio, to St. Bernard and Lockland, Ohio, during Federal control, found unreasonable as compared with rates for comparable movements in same general territory and to extent it exceeded rate from Mechanicsburg, Ohio, a farther point, which rate was subsequently established from Springfield. Reparation awarded. American Radiator Co. v. Director General, as Agent, 80 I. C. C. 77.

(11u) Rates on mine ties from Port Matilda to River Valley, Pa., during Federal control, found unreasonable as compared with lower rate subsequently established and to extent it exceeded aggregate of intermediate rates to and from Butler, Pa. Reparation awarded.

Henderson Lumber Co. v. Director General, as Agent, 80 I. C. C. 83.

(11v) Rates on water, in tank-car loads, from Point of Rocks, Rock Springs, and Green River, Wyo., to Superior, Wyo., during Federal control, found unreasonable as compared with rates on same commodity for similar intrastate movements within States of Colorado and Illinois. Reparation awarded. Premier Coal Co. v. Director General, as Agent, 80 I. C. C. 85.

(11w) Jurisdiction of commission over intrastate rates subsequent to Federal control is prescribed by sections 3 and 13 of the act. The commission has no authority to pass upon measure of such rates except where they are shown to be prejudicial to interstate commerce, and long-and-short-haul provision of section 4 of the act does not apply thereto. Producers Refining Co. v. M., K. & T. Ry. Co., 80 I. C. C. 339, 340.

(11xy) No part of commission's duty to pass upon reasonableness of intrastate rates except in so far as they may be unlawfully prejudicial in substantial degree to persons or localities in interstate commerce. Oklahoma Corp. Comm. v. A. R. R., 80 I. C. C. 607, 617.

(11z) Exaction of an unreasonable rate on intrastate traffic is not, as such, prohibited or declared unlawful by the act. Nebraska Rates, Fares, and Charges 81 I. C. C. 290, 292.

(12a) Order of commission requiring establishment of State rates that will remove discrimination against interstate commerce can be altered or set aside only by further order of the commission or by Federal court. Nebraska Rates, Fares and Charges, 81 I. C. C., 290, 292.

(12b) Ordinarily the Commission does not have jurisdiction over intrastate rates in the absence of a showing of substantial disparity which operates as a real discrimination against and obstruction to interstate commerce. Discretion rests with the state authorities to deal with intrastate rates on general levels found by the Commission to be fair to interstate commerce. Lake Dock Coal Case, 89 I. C. C. 170, 200.

(12c) The state cannot justify unreasonably low rates for domestic transportation, considered alone, on the ground that the carrier is earning large profits on its interstate business, and on the other hand, the carrier cannot justify unreasonably high rates on domestic business on the ground that only in that way is it able to meet losses on its interstate business. Dayton-Goose Creek Ry. Co. v. United States, 44 Sup. Ct. 169.

(12d) The fact that the business carried on by a corporation is entirely interstate in character does not render the corporation immune from the ordinary processes of the courts of a state, for the requirements of effective administration of justice are paramount. Davis v. Farmers' Co-op. Equity Co. (1923) 43 Sup. Ct. 556.

(12e) The "proviso" to paragraph 17 §402, of the Transportation Act (41 Stat. 476), which provides as follows: "Provided, however, that nothing in this act shall impair or affect the right of a state, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this act"—is plain and unambiguous, and, whether construed as an independent enactment or as limitation restraining and limiting the sections preceding it, reserves to the state the right to exercise its police powers to require adequate passenger depots for intrastate passenger service. Chicago, R. I. & P. Co. v. State (Okla., 1923) 217 Pac. 147.

(12f) A state cannot by its legislation interfere with or obstruct foreign or interstate commerce. Real Silk Hosiery Mills, Inc., v. City of Portland, 294 Fed. 587.

(12g) The United States built a railroad for use in the transportation of spruce timber for war purposes only, and later conveyed title to a corporation owned by the government. Such corporation, pending completion of the road granted a permit to a third party, revocable at any time, to use a portion of the road for carrying of passengers and freight. Subsequently it revoked the permit and sold the road to complainant, which bought it for use solely as a private logging road. Oregon Public Service Commission Act (Or. L. §5829) provides that it shall not apply to "logging or other private railroads not doing business as common carriers." HELD, that the temporary use of the railroad by the licensee did not impress the property with a public use, and that the Oregon Public Service Commission was without

jurisdiction to require its operation as a common carrier. Pacific Spruce Corporation v. McCoy. 294 Fed. 711.

(12h) Under Const. Cal., art. 13, § 14, imposing an annual tax on railroad properties measured by the gross revenues earned on both intrastate and interstate business, the state, though empowered to make such classification and to place a burden on railroads greater than that placed on other property for the purpose of taxation, was not empowered to make such burden so grossly excessive or disproportionate as to constitute a burden on interstate commerce, in violation of the interstate commerce clause; a tax so oppressive being in effect a tax on interstate commerce. Atchison T. & F. Ry. Co. v. Collins Southern Pac. Co. v. Same. 294 Fed 742.

(12i) "Intrastate commerce" is that commerce which is, during its whole course of transportation, within the jurisdiction of a single state. Yohn v. United States, 280 Fed. 511.

(12j) The authority given by the Transportation Act, amending Interstate Commerce Act, §3, par 2, to require carriers to provide for the interchange of traffic between their respective lines, excludes the jurisdiction of the state Public Service Commission to make the same requirements of interstate carriers under the principle that Congress, having delegated to the Interstate Commerce Commission power to deal with the subject-matter, an exercise of like power by the state is thereby superseded. People v. Public Service Commission, (Ind. 1922), 135 N. E. 195.

(12k) When the interstate freight rates put into effect by the Interstate Commerce Commission are materially lower for the same length of haul on the same class of commodities than the intrastate rates made under the orders of the Corporation Commission, this constitutes such a discrimination that it is the duty of the Corporation Commission to remove it by readjusting the rates. Atchison, T. & S. F. Ry. Co. v. State, (Okla. 1922), 296 Pac. 236.

(12l) The state may regulate, but can do nothing which will directly burden or impede, interstate traffic of a railway company, or impair the usefulness of its facilities for such traffic. State v. Public Service Commission, (Mo. 1922), 242 S. W. 938.

(12m) While a state may require adequate local facilities even to the stoppage of interstate trains, yet when local demands are adequately met, the obligation of the railroad is performed, and the stoppage of interstate trains becomes an improper and illegal interference with interstate commerce. State v. Public Service Commission, (Mo. 1922), 242 S. W. 938.

(12n) As respects the power of a state directly to affect, regulate, or burden interstate commerce, "burden" means anything that imposes either a restrictive or onerous load upon such commerce. State of Missouri v. Kansas Natural Gas Co., 282 Fed. 341.

(12o) The power of direct regulation of interstate commerce, whether Congress has entered the field or not, cannot be and is not lodged in the state, though local interests are indirectly affected by such commerce. State of Missouri v. Kansas Natural Gas Co., 282 Fed. 341.

(12p) An intrastate rate on fertilizer material originally granted by a railroad to establish a new industry and which was less than one-half the rate prescribed by the state commission for similar hauls of the same material in the same quantities in other places, some of which are competitors in the market, to the place to which the rate in controversy was granted, is discriminatory, and the orders for its enforcement may be enjoined, regardless of whether it is unremunerative. Atlantic Coast Line R. Co. v. Trammell, 287 Fed. 741.

(12q) A carrier which had originally established a rate for transportation of two commodities between designated points which had existed for 20 years, except as affected by the horizontal increases and reductions during government control, and which had acquiesced for more than a year in an order of the state commission continuing that rate in effect, and made no showing that any considerable damage would be suffered by the refusal of a preliminary injunction, is not entitled to a preliminary injunction to restrain the enforcement of that rate by the state commission, where the answer of the Commission averred it was about to formulate a general revision of this and other rates. Atlantic Coast Line R. Co. v. Trammel, 287 Fed. 741.

(12r) Under the Georgia Code, empowering the Railroad Commission to prescribe just and reasonable rates, and

prohibiting unjust discrimination in rates, the Georgia Commission cannot order an intrastate rate which would discriminate against other intrastate rates, and the fact that the rates ordered was originally established by the railroad to promote a new industry and subsequently withdrawn, does not affect the rule. Atlantic Coast Line R. Co. v Trammell, 287 Fed. 741.

(12s) The states are free under their powers of local government to legislate so as to affect interstate commerce in a limited degree, where there is no controlling enactment by Congress on the subject. Rivera v. James Stewart & Co., 195 N. Y. S. 841.

(12t) The jurisdiction of the Interstate Commerce Commission over freight rates for transportation service between points wholly within a state, to prevent discrimination against interstate commerce, does not interfere with the jurisdiction of a state commission over intrastate rates, so long as its orders do not result in such discrimination. Akron & B. Belt R. Co. v. Public Utilities Commission, (Ohio, 1922), 138 N. E. 74.

(12u) The order made by the Interstate Commerce Commission on July 29, 1920, in a proceeding known as Ex parte 74, 58 I. C. C. 220, granting a 40 per cent. horizontal increase in freight rates, was not such a definite specific order in its application to service wholly within the state of Ohio as to preclude an inquiry concerning intrastate rates by the Public Utilities Commission of Ohio under the changed conditions existing in September, 1921. Akron & B. Belt R. Co. v. Public Utilities Commission, (Ohio 1922), 138 N. E. 74.

(12v) "A state may enact laws which in practice operate to affect commerce among the states—as providing in the legitimate exercise of its police power and general jurisdiction, for the security and comfort of persons and the protection of property; by establishing and regulating channels for commercial facilities; by the passage of inspection laws and laws to restrict the sale of articles injurious to health and morals; by the imposition of taxes upon avocations within its borders not interfering with foreign or interstate commerce or employment, or with business exercised under authority of the Constitution of the United States." Robbins v. Shelby County Taxing District, 120 U. S. 489. 7 Sup. Ct. 592, 30 L. Ed. 694. Purchase v. State, (Nebr. 1922), 191 N. W. 677.

(12w) "The power granted to congress, to regulate commerce among the states, being exclusive when the subjects are national in their character, or admit only of one uniform system of regulation, the failure of congress to exercise that power in any case, is an expression of its will that the subject shall be left free from restrictions or impositions upon it by the several states." Robbins v. Shelby County Taxing District, 120 U. S. 489, 7 Sup. Ct. 592, 30 L. Ed. 694. Purchase v. State, (Nebr. 1922), 191 N. W. 677.

(12x) In all that relates solely and peculiarly to the actual regulation of interstate commerce, the congress, and not the courts, must be applied to for relief from a rule of law which may to some appear to be obnoxious, or to obtain relief by affirmative legislation as the need of the exigency may require. Purchase v. State, (Nebr. 1922), 191 N. W. 677.

(12y) The state through the Public Utilities Commission has the power to regulate the sale of natural gas in this state by fixing a reasonable price therefor, where the gas is produced in Oklahoma, transported through pipe lines into this state, and here sold to distributing companies that in turn sell the gas to the consumers thereof in a large number of cities in this state. State v. Kansas Natural Gas. Co., (Kans. 1922), 208 Pac. 622.

(12z) Interstate Commerce Act, §5, par. 1, subds. 4, 5, as amended by Transportation Act, Feb. 28, 1920, §407, and section 15a, as added by section 422, extending powers and duties of Interstate Commerce Commission, section 1, subd. 3, as amended by section 400, and subdivisions 10, 15, 18-20, as amended by section 402, investing the Commission with powers over the changes in lines, tracks, etc., or railroads engaged largely in interstate commerce, section 1, subds. 21, 22, as amended by section 402, and section 3, subds. 3, 4, as amended by section 405, limiting extension of authority of Commission to railroads wholly within a state not operated as part of the general systems, gives power and authority over the matter of union terminal depot facilities of railroads, largely engaged in interstate commerce, to the Interstate Commerce Commission and by the act the

State Railroad Commission has been divested of power over the subject. Atchison, T. & S. F. Ry. Co. v. Railroad Commission, (Cal. 1922), 211 Pac. 460.

(13a) The right of a state to invoke the supreme law to legislate in the interest of public safety is not contravened by the interstate commerce or transportation acts. City of Durham v. Southern R. Co., (S. C. 1923), 117 S. E. 17.

(13b) The mere fixing of a rate by the Railroad Commission, when it is the same as stipulated in a prior contract between shipper and carrier, does not of itself invalidate such agreement. Alexandria & W. Ry. Co. v. Long Pine Lumber Co., (La. 1922), 93 Sou. 199.

(13c) The state, under its police power, may fix rates, and no contract of private persons can deviate therefrom though made prior to such action by the state; but, so long as such agreements do not conflict with the rates and regulations officially prescribed, and there is no discrimination, the parties may stipulate as their interest may require. Alexandria & W. Ry. Co. v. Long Pine Lumber Co., (La. 1922), 93 Sou. 199.

(13d) The discrimination in the Mississippi Code against persons beginning a new business by which damages are imposed on "all persons liable for privilege taxes who shall fail to procure the license therefor before beginning the business taxed, or who shall fail to renew, during the month in which it is due, the license on a business on which he has heretofore paid a privilege tax," is not unreasonable, and therefore does not violate the Fourteenth Amendment to the federal Constitution. Robertson v. Southeastern Express Co., (Miss. 1922), 94 Sou. 210.

(13e) The privilege tax imposed on an express company by the state law, is on the intrastate business of the company, and the commerce clause of the federal Constitution (article 1, §8, cl. 3) is not violated when the tax is collected from an express company doing both interstate and intrastate business. Robertson v. Southeastern Express Co., (Miss. 1922), 94 Sou. 210.

(13f) The State Law by which a privilege tax is imposed on each express company of $6 per mile on all first class railroad tracks, and $3 per mile on all second and third class railroad tracks over which the company operates, the classification of the railroads to be made annually by the Railroad Commission, does not violate the Fourteenth Amendment to the federal Constitution because of the omission therefrom of a provision requiring notice to be given to the companies of the time when the roads will be classified. Robertson v. Southeastern Express Co., (Miss. 1922), 94 Sou. 210.

(13g) Under the Mississippi Code providing that every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and upon the grounds of such other railroad company, with necessary and proper turnouts, sidings, switches, and other conveniences, and to exercise the right of eminent domain for that purpose, as provided in the chapter on that subject, a railroad company seeking to make a junction or connection with another may proceed in accordance with the provisions of the chapter or eminent domain in the Code. Alabama & V. Ry. Co. v. Jackson & E. Ry. Co., (Miss., 1923), 95 Sou. 733.

(13h) Where two railroads, each getting their charter rights from the state, and lying wholly within the state, and engaged in both intrastate and interstate commerce, be near and contiguous to each other, the state may lawfully authorize or require a connection or junction between them, and may exercise the right of eminent domain to condemn the necessary property, even though such property may be already devoted to a public use, and the exercise of this power is not destroyed or taken away by any act of Congress, conceding, but not deciding, that Congress has the power to assume complete control of such subject under its power to regulate interstate commerce. Alabama & V. Ry. Co. v. Jackson & E. Ry. Co., (Miss. 1923), 95 Sou. 733.

(13i) In the absence of a federal statute, the status of a person receiving interstate transportation is defined, and the liability of the carrier to him for injuries sustained in the course of such transportation is regulated by the local or state law. Nevill v. Gulf, C. & S. F. Ry. Co., (Tex. 1922), 244 S. W. 980.

(13j) The Statutes of Missouri, requiring all trains to be regularly stopped at county seats, cannot be strictly applied to interstate trains. State v. Public Service Commission, (Mo. 1923), 249 S. W. 65.

(13k) The failure of Congress to exercise its exclusive power to regulate commerce is an expression of its will that the subject shall be free for all restrictions or impositions upon it by the several states. State v. Public Service Commission, (Mo. 1923), 249 S. W. 65.

(13l) The federal Transportation Act of February 28, 1920, was not intended and does not withdraw from the state commissions having charge of the subject the power to make regulations and provisions for the establishment of stations for interstate travel, but only as relates to terminal stations and facilities where the amount involved is of such magnitude as to impose a burden on the carrier and interstate commerce, nor can it be deemed to be retroactive so as to invalidate for want of authority to make or open for review a final order of a state commission, entered in 1914, requiring the erection of a station on an intrastate road, which, because of financial stress, was not sought to be enforced until after the passage of that act. North Carolina Corporation Com'n. v. Southern Ry. Co. (N. C. 1923) 117 S. E. 563.

(13m) A finding of the State Corporation Commission as to the justness and duly compensatory character of an intrastate freight rate will be sustained by this court, where the finding is supported by substantial and satisfactory evidence. Kinney v. New Mexico Midland Ry. Co. (N. M. 1923), 214 Pac. 754.

(13n) The Fuel Administration Law, authorizing state fuel administrator to supervise and regulate receipts, sale, distribution, etc of fuel, and control allotment, apportionment, and rationing, and adopt and enforce necessary rules and orders, is not invalid, as unlawful delegation of power to make rules and orders. People v. Maynihan, 200 N. Y. S. 434.

(13o) The Fuel Administration Law, so far as it applies to deliveries by dealers after coal had arrived in their yards and was in their possession, related solely to intrastate commerce, and was not an interference with interstate commerce or in conflict with the federal Fuel Law. People v. Moynihan, 200 N. Y. S. 434.

(13p) Notwithstanding the authority as to rates of the Interstate Commerce Commission under Interstate Commerce Act, §§13, 15 (a), as respectively amended and added by Transportation act of 1920, §§416, 422, the state, through the state Commission, under Transportation Act, §208, and its sovereign power, has exclusive power and plenary control of an intrastate rate, after September 1, 1920, when the guarantee period ended, provided the rate fixed by it does not create a discrimination against interstate traffic. Lehigh & N. E. R. Co. v. Public Service Commission, (Pa. 1923), 121 Atl. 205.

(13q) Within Transportation Act of 1920, §208, providing that all rates which on February 29, 1920, are "in effect" shall continue till changed, etc., the Interstate Commerce Commission, having during the period of federal control sustained a complaint of an intrastate rate, and fixed a 25 cents per ton rate, such 25 cent rate was the one "in effect" when federal control ended; so that a finding by the state Commission that 25 cents was the fair rate after March 1, 1920, did not reduce a rate, but enforced the corrected rate. Lehigh & N. E. R. Co. v. Public Service Commission. (Pa. 1923), 121 Atl. 205.

(13r) Transportation Act of 1920, §208, providing that all rates in effect February 29, 1920, on lines of carriers subject to the Interstate Commerce Act shall continue in force till changed by state or federal authority, respectively; but prior to September 1, 1920 "no such rate * * * shall be reduced * * * unless such reduction * * * is approved by" the Interstate Commerce Commission, does not require prior conditional approval by the Interstate Commerce Commission to enable the state Public Service Commission to entertain a complaint of an intrastate rate during the six months' guarantee period, ending September 1, 1920, but the federal Commission acts as a reviewing body on the determination by the state Commission, and must approve it to make it effective. Lehigh & N. E. R. Co. v. Public Service Commission. (Pa. 1923), 121 Atl. 205.

(13s) Though Congress by the enactment of effective and operative legislation thereby supersedes state laws in conflict therewith, legislation which simply refers a matter to the Interstate Commerce Commission, vesting with it jurisdiction to complete the legislative act, is not an effective assertion of the unquestioned power until the Commission has legally exercised the legislative au-

thority so delegated to it, and though Interstate Commerce Act. §13, cls. 3 and 4, as amended by Transportation Act Feb. 28, 1920, §416, vest in the Commission the power after full hearing to remove all unjust discriminations against interstate commerce created by state statutes, the mere delegation of this power does not operate to immediately supersede all state statutes and destroyed all state power over the subject, in the absence of further action by the Commission. Atlantic Coast Line R. Co. v. Commonwealth, (Va. 1923), 118 S. E. 257.

(13t) The federal power to regulate interstate commerce is supreme, and, if a state statute or rule attempts to transcend the limited field in which the state statute or rule is operative, then to that extent it is invalid. Atlantic Coast Line R. Co. v. Commonwealth, (Va., 1923), 118 S. W. 257.

(13u) Whatever powers a state may deny to its Public Service Commission, it cannot give them power to do what the laws of the United States forbid, whether the action be called administrative or judicial. Whish v. Public Service Commission, 200 N. Y. S. 282.

(13v) When Congress exercises its exclusive powers over interstate commerce, the states cannot legislate on the subject, and the situation is covered as much by what is not done by Congress or the Interstate Commerce Commission, as by the regulations it has made, and the state has no power to fill what it may regard as a hiatus left by congress and the Interstate Commerce Commission. Whish v. Public Service Commission, 200 N. Y. S. 282.

ALL OTHER CITATIONS

S. P. Co. Steamboats on Sacramento River, 34 I. C. C. 174, 177; Shands v. S. A. L. Ry., 34 I. C. C., 214; Corp. Comm. of N. Mex. v. A. T. & S. F. Ry. Co., 34 I. C. C. 292, 298; Kempner v. M. K. & T. Ry., 37 I. C. C. 396; Zelnicker Supply Co. v. M. K. & T. Ry., 37 I. C. C. 615, 616; Alamo Iron Works v. N. Y. O. & W. Ry. Co. Unrep. Op. 2237; Blalock Hardware Co. v. Seaboard Air Line Ry. Co. (N. C. 1915) 86 S. E. 1025, 1026, 1027; Holmes & Hallowell Co. v. G. N. Ry. Co., 37 I. C. C. 627, 632, 635, 636; Through Rate to Points in Louisiana and Texas, 38 I. C. C. 153, 163, 164; La-Crosse Shippers' Asso. v. C. & N. W. Ry. Co., 38 I. C. C. 453, 455, 456; Mount Pleasant Fertilizer Co. v. N. O. & N. E. R. R. Co., 38 I. C. C. 602, 608; Danville, Va., Class and Commodity Rates, 38 I. C. C. 742, 745; South St. Joseph Live Stock Exch. v. A. T. & S. F. Ry., 39 I. C. C. 417, 418; Missouri River-Nebraska Cases, 40 I. C. C. 201, 253; Beekman Sawmill Co. v. St. L. I. M. & S. Ry. Co., 39 I. C. C. 215, 216; City of Memphis v. C. R. I. & P. Ry. Co., 39 I. C. C. 256, 263, 265, 267, 273; Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co., 39 I. C. C. 303, 311; Lumber from Michigan Points, 39 I. C. C. 367, 369, 370; Bagdad Land & Lumber Co. v. L. & N. R. R. Co., 39 I. C. C. 473; Stonega Coke & Coal Co. v. L. & N. R. R. Co., 39 I. C. C. 523, 541; Virginia-Carolina Chemical Co. v. S. A. L. Ry., 39 I. C. C. 660; Sioux City Commercial Club v. Am-Exp. Co., 39 I. C. C. 703, 719, 722; Iowa-Dakota Grain Co. v. I. C. R. R. Co., 40 I. C. C. 73, 75, 76; Illinois Grain to Chicago, 40 I. C. C. 124; Malone v. New York Telephone Co., 40 I. C. C. 185, 188; Sioux City Live Stock Exchange v. C. St. P. M. & O. Ry. Co., 40 I. C. C. 418, 420; Louisiana & Pine Bluffs Divisions, 40 I. C. C. 470, 472; R. R. Comm. of La. v. A. H. T. R. Co., 41 I. C. C. 83, 121, 124; Chattanooga Sewer Pipe & Fire Brick Co. v. S. Ry. Co., 41 I. C. C. 406, 407; Kolkmeyer v. Chicago & A. R. R. Co., (Mo. 1916), 182 S. W. 794; Tennessee Copper Co. v. S. Ry. Co., 41 I. C. C. 336, 349; Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co., 41 I. C. C. 530, 531; McCaull-Dinsmore Co. v. I. C. R. R. Co., 42 I. C. C. 257, 258; L. & N. R. Co. v. Greenbrier Distillery Co., (Ky. 1916) 187 S. W. 296; Lusk v. Atchison, (Mo., 1916) 186 S. W. 703; Chesapeake & O. Ry. Co. v. Public Service Commission (W. Va. 1916) 89 S. E. R. 844; Sandusky Portland Cement Co. v. C. & N. W. Ry. Co., 42 I. C. C. 165, 166; Blackwell Lumber Co. v. M. P. Ry. 42 I. C. C. 756 761; Pecos & N. T. Ry. Co. v. Hall (Tex., 1916), 189 S. W. 535; R. R. Commission of La. v. A. H. T. Ry. Co., 43 I. C. C. 45, 48, 49; City of Mmephis v. C. R. I. & P. Ry. Co., 43 I. C. C. 121, 123; Green v. A. & V. Ry. Co., 43 I. C. C. 662, 669; Pere Marquette R. R., and C. H. & D. Ry., 44 I. C. C. 1, 222; Business Men's League of St. Louis v. A. T. & S. F. Ry., 44 I. C. C. 308, 336, 338; Hocking Domestic Coal Co. v. K. & M. Ry., 44 I. C. C. 392, 395, 397; Board of Commerce, Lexington, Ky. v. C. N. O.

& T. P. Ry., 44 I. C. C. 407, 412; Northern Potato Traffic Asso. v. C. & A. R. R., 44 I. C. C. 426, 433; Gulf At'l. S. S. Co. v. A. C. L. R. R. 46 I. C. C. 309; C. F. A. Class Scale Case, 45 I. C. C. 254, 257; Vandalia R. R. v. Public Service Commission, 37 Sup. Ct. 93, 242 U. S. 255, 61 L. Ed. 276; C. M. & St. P. R. R. v. State Public Utilities Com., 37 Sup. Ct. 173, 242 U. S. 333, 61 L. Ed. 341; Hall v. Geiger-Jones Co., 37 Sup. Ct. 217, 242 U. S. 539, 61 L. Ed. 450; Caldwell v. Sioux Falls Stock Yards Co., 37 Sup. Ct. 224, 242 U. S. 559, 61 L. Ed. 493; Merrick v. Halsey & Co., 37 Sup. Ct. 227, 242 U. S. 568, 61 L. Ed. 498; Southern Pac. Co. v. California Adjustment Co., 237 Fed. 954; Waco, Tex., Switching, 46 I. C. C. 647, 649; Theatrical Club v. The State (Ala. 1917), 74 So. 969; Southern R. R. Co. v. Reid, 222 U. S. 424, 32 Sup. Ct. 140, 56 L. ed. 257; Chicago R. I. & P. R. Co. v. Hardwick Farmers' Elevator Co., 226 U. S. 426, 33 Sup. Ct. Rep. 174, 57 L. ed. 284, 46 L. R. I. (N. S.) 203, Sunderland Bros. v. M. P. Ry., (Neb. 1917), 162 N. W. 494; State v. American Exp. Co., (S. D. 1917), 161 N. W. 132; Western Union Telegraph Co. v. Piper, (Tex. 1917), 191 S. W. 817; P. R. Co. v. Towers, 38 Sup. 2, 245 U. S. 6, 62 L. Ed. 117; Rowland v. Boyle, 37 Sup. 57, 244 U. S. 106, 61 L. Ed.; Missouri, K. & L. Ry. of Texas v. State of Texas, 38 Sup. Ct. 178, 245 U. S. 484, 62 L. Ed. 415; Amer. Exp. Co. v. S. Dak., 37 Sup. 656, 657, 244 U. S. 617, 61 L. Ed.; Louisville & N. R. R. v. State (Ala., 1917), 76 So. 505; So. Pac. Ry. v. State, (Ariz. 1917), 165 Pac. 303; St. Louis, I. M. & S. Ry. v. State. (Ark. 1917), 197 S. W. 1; State Public Utilities Comm'n. v. Baltimore & O. S. R. R., (Ill., 1917), 118 N. E. 81; City of Dayton v. Christian Moerlein Brewing Co., (Ky. 1917), 195 S. W. 133; N. U. Tele. Co. v. Bailey, (Tex. 1917), 196 S. W. 516; E. Tex. R. R. v. R. R. Com. of Tex., 242 Fed. 300; Washington & Old Dominion Ry. v. F. S. Royster Guano Co., (Va., 1917), 94 S. E. 763; Railroad Commission of Louisiana v. A. H. T. Ry. Co., 48 I. C. C. 312, 314, 337, 360, 366, 368; Libby Lumber Co. v. G. N. Ry., 48 I. C. C. 5; Chattanooga Sewer Pipe & Fire Brick Co. v. S. Ry. Co., 48 I. C. C. 642, 646; Kansas City Millers' Club v. A. T. & S. F. Ry., 50 I. C. C. 170; Bivens Bros. v. Atlantic Coast Line R. R., (N. C. 1918) 97 S. E. 215; California Adjustment Co. v. Atchison, T. & S. F. Ry., (Cal. 1918), 175 Pac. 682; Pittsburg C. C. & St. L. Ry. v. Miller, (Ind. 1918) 119 N. E. 801; Norfolk & W. Ry. v. Public Service Com., (W. Va., 1918), 96 S. E. 62; State v. Chicago, M. & St. P. R. R. (Mo., 1918), 206 S. W. 419; In Re Pennsylvania Gas Co., 171 N. Y. S. 1028; Erie R. Co. v. Linnekogel, 248 Fed. 389; Valley & Siletz R. R. v. S. P. Co., 50 I. C. C. 223; Natchez Chamber of Commerce v. L. & A. Ry., 52 I. C. C. 105, 115; People v. Hudson River Connecting Railroad Corporation, 174 N. Y. S. 754; In re Pennsylvania Gas Co., (N. Y. 1919), 122 N. E. 260; Town of Torrgton v. C. B. & Q. R. R., 51 I. C. C. 414, 416; Herrick Refrigerator & Cold Storage Case, 46 I. C. C. 421; Heider Mfg. Co. v. C. G. W. R. R., 51 I. C. C. 713, 718; Valley & Siletz R. R. Co. v. S. P. Co., 53 I. C. C. 397; Commercial Club of Duluth v. B. F. & I. F. Ry. Co., 53 I. C. C. 85, 90; Weissbaum & Co. v. Director General, 53 I. C. C. 681, 682; Sioux City Live Stock Exchange v. C. & N. W. Ry. Co., 53 I. C. C. 166; Zelnicker Supply Co. v. Director General, 53 I. C. C. 700; Atchison, T. & S. F. Ry. v. State, (Okla, 1919), 180 Pac. 849; Chicago, R. I. & P. Ry. v. State, (Okla. 1919), 180 Pac. 246; Valley & Siletz Railroad Co. v. Director General, 53 I. C. C. 700, 701; Solvay Process Co., v. D. L. & W., 55 I. C. C. 280, 281; Charles Boldt Paper Mills v. Director General, 55 I. C. C. 331; National Fireproofing Co. v. Director General, 55 I. C. C. 485; Memphis Southwestern Investigation, 55 I. C. C. 515, 541; State of New York, Commission of Highways v. Director General, 55 I. C. C. 619; State v. Northern Pac. Ry. Co., (R. D. 1919), 172 N. W. 324, 325; Western Union Telegraph Co. v. Bowler, (Va. 1919) 98 S. E. 645; Shrader v. Steunville, East Liverpool & B. V. T. Co., (W. Va., 1919), 99 S. E. 207; Mill Creek Coal & Crove Co. v. Public Service Commission, (W. Va., 1919), 100 S. E. 557; State v. Atlantic Coast Line R. Co. (Fla., 1919), 81 So. 498; Solvay Process Co. v. D. L. & W. R. R., 55 I. C. C. 280, 281; Swift & Co. v. Director General, 55 I. C. C. 324, 325, 326; National Fireproofing Co. v. Director General, 55 I. C. C. 485; New York Commission of Highways v. Director General, 55 I. C. C. 619, 620, 621, 623; Empire Steel & Iron Co. v. Director General, 55 I. C. C. 158, 162, 191; American Smelting & Refining Co. v. L. V. R. R. 56 I. C. C. 195, 200; Illinois Coal Traffic Bureau v. Director General, 56 I. C. C. 426; Utilities Develop-

ment Corp. v. P. C. C. & St. L. R. R. 56 I. C. C. 694; Penn. Gas. Co. v. Pub. Service Comm'n. 40 Sup. Ct. Rep. 279; Vandalia Coal Co. v. Special Coal and Food Comm'n, 268 Fed. 572; Public Service Comm'n. v. New York Cent. R. Co., 183 N. Y. S. 799; Calumet & Arizona Mining Co. v. Director General, 57 I. C. C. 332, 333; LaSalle County Carbon Coal Co. v. Director General, 57 I. C. C. 367; Philadelphia Quartz Co. v. Director General, as Agent, 57 I. C. C. 632, 633; New York & Pennsylvania Co. v. Director General, as Agent, 58 I. C. C. 124, 125; Frazen v. Director General, as Agent, 58 I. C. C. 213; Harrmann Vinegar & Pickle Co. v. Director General, as Agent, 58 I. C. C. 266; Lehigh Portland Cement Co. v. Director General, as Agent, 58 I. C. C. 429, 434; Wharton Steel Co. v. Director General, 59 I. C. C. 11, 12; Alden Coal Co. v. R. I. S., 59 I. C. C. 223, 235; Rates, Fares, and Charges of N. Y. C. R. R., 59 I. C. C. 290, 291, 293, 294, 296, 298, 299; Intrastate fares within Illinois, 59 I. C. C. 350, 358, 362, 364; Philip Carey Mfg. Co. v. Director General, 59 I. C. C. 160, v. L. & A., 58 I. C. C. 610, 617; National Fuel Co. v. Director General, as Agent, 59 I. C. C. 146; Rogers-Brown Iron Co. v. Director General, as Agent, 59 I. C. C. 186; Weissbaum & Co. v. Director General, 59 I. C. C. 211, 225; Arkansas Rates and Fares, 59 I. C. C. 471, 475, 476; Wisconsin Passenger Fares, 59 I. C. C. 391, 394; Chero-Cola Bottling Co. v. Director General, as Agent, 59 I. C. C. 547; Carey Mfg. Co. v. Director General, as Agent, 59 I. C. C. 640, 641; Montana rates and fares, 60 I. C. C. 61; Ohio rates, fares and charges, 60 I. C. C. 78; In the matter of Intrastate rates within the state of Illinois, 60 I. C. C. 92; Midland Refining Co. v. Director General, 60 I. C. C. 125; L. H. Miller v. Director General, 60 I. C. C. 162, 163, 165; South Carolina fares and charges, 60 I. C. C. 290, 298; Indiana rates, fares, and charges, 60 I. C. C. 337, 342, 346; Atlantic Refining Co. v. Director General, 60 I. C. C. 355, 506; Louisiana rates, fares and charges, 60 I. C. C. 467, 476; Georgia rates, fares and charges, 60 I. C. C. 527, 534; Florida rates, fares and charges, 60 I. C. C. 551, 558; Nevada rates, fares, and charges, 60 I. C. C. 623; Illiff-Bruff Chemical Co. v. Director General, 60 I. C. C. 720, 722; Peerless Portland Cement Co. v. Director General, 61 I. C. C. 169, 171; Barrett Co. v. Director General, 61 I. C. C. 401, 402; Public Service Com. Sec. Dist. v. New York Cent. R. R. Co., (N. Y., 1920), 129 N. E. 455; Indianapolis Chamber of Commerce v. C. C. C. & St. L. Ry. Co., 60 I. C. C. 67, 76, 77; Mount Hood R. R. Co. v. Director General, as Agent, 60 I. C. C. 116; Conden Baking Co. v. Director General, as Agent, 60 I. C. C. 149; Swift & Co. v. Director General, as Agent, 60 I. C. C. 201; Wheeler & Timlin v. Director General, as Agent, 60 I. C. C. 265; South Carolina Fares and Charges, 60 I. C. C. 290, 297, 298, 304; Nebraska Rates, Fares and Charges, 60 I. C. C. 305, 313; Utah Rates, Fares and Charges, 60 I. C. C. 388, 395; Intrastate Rates within the State of Texas, 60 I. C. C. 421, 426; Ludlow Mfg. Associates v. Director General, as Agent, 60 I. C. C. 441; Robinson Clay Product Co. v. Director General, as Agent, 60 I. C. C. 499; Pittsburgh Crucible Steel Co. v. Director General, as Agent, 60 I. C. C. 503; Buick Motor Co. v. Director General, as Agent, 60 I. C. C. 669; Electric Coal Co. v. Director General, as Agent, 60 I. C. C. 683, 685; Holmes & Hallowell v. G. N. Ry. Co., 60 I. C. C. 687; Central Pennsylvania Lumber Co. v. Director General, as Agent, 60 I. C. C. 723; Meron v. Director General, as Agent, 60 I. C. C. 725; International Agricultural Corp. v. Director General, as Agent, 60 I. C. C. 726; Century Glass Sand Co. v. Director General, as Agent, 60 I. C. C. 759; Iowa Passenger Fares, and Charges, 60 I. C. C. 55; Michigan Passenger Fares, 60 I. C. C. 245; North Carolina Fares and Charges, 60 I. C. C. 362; Sincleair Refining Co. v. Director General 61 I. C. C. 18; N. Dak. rates, fares and charges, 61 I. C. C. 504; Barnett Oil & Gas Co. v. Director General, 61 I. C. C. 568, 569; Arizona rates, fares and charges, 61 I. C. C. 572; Indiana rates, fares and charges, 62 I. C. C. 648; Boddy v. Continental Inv. Co. (Ala., 1921), 88 So. 294; Western Union Teleg. Co. v. Sims (Ind., 1921), 131 N. E. 520; National Refrigerator Co. v. Southwest Missouri Light Co. (Mo. 1921), 231 S. W. 930; Lehigh Valley R. Co. v. Public Service Comm. Sec. Dist., of State of New York et al, 272 Fed. 758; National Asbestos Mfg. Co. v. Director General, as Agent, 61 I. C. C. 54; Pittsburgh Crucible Steel Co. v. Director General, as Agent, 61 I. C. C. 56; Wool Rates between North Pacific Coast Points, 61 I. C. C. 159, 163; Cairo Board of Trade v. A. T. & S. F. Ry. Co., 61 I. C. C. 219, 222; Schram Glass Mfg. Co. v. Director General, as Agent, 61 I. C. C. 435; Virginia-Carolina

Chemical Co. v. Director General, as Agent, 61 I. C. C. 473; United Paperboard Co. (Inc.) v. M. & E. R. R. Co., 61 I. C. C. 483; Steel & Tube Co. v. Director General, as Agent, 61 I. C. C. 526; Prince-Johnson Limestone Co. v. Director General, as Agent, 61 I. C. C. 602; Birdsboro Stone Co. v. P. R. R. Co., 61 I. C. C. 657; Little Cahaba Coal Co. v. Director General, as Agent, 61 I. C. C. 663 ; Swift & Co. v. Director General, as Agent, 61 I. C. C. 751; Crucible Steel Co. of American v. Director General, as Agent, 61 I. C. C. 655, 753, 754; Wausau Box & Lumber Co. v. Director General, as Agent, 62 I. C. C. 56; United Paperboard Co. (Inc.) v. N. Y. C. R. R. Co., 62 I. C. C. 59; Rowland Power Consolidated Collieries Co. v. Director General, as Agent, 62 I. C. C. 101; Weir Smelting Co. v. Director General, as Agent, 62 I. C. C. 113; Proctor & Gamble Mfg. Co. v. Director General, as Agent, 62 I. C. C.116; Dickey v. Director General, as Agent, 62 I. C. C. 223; Illinois Glass Co. v. Director General, as Agent, 62 I. C. C. 287; Wilhoit Oil Co. v. Director General, as Agent, 62 I. C. C. 313; Kansas Rates, Fares, and Charges, 62 I. C. C. 440; Lawton Refining Co. v. Director General, as Agent, 62 I. C. C. 480; Sapulpa Refining Co. v. Director General, as Agent, 62 I. C. C. 493; Sheffield Farms Co. v. Director General, as Agent, 62 I. C. C. 503; Intrastate Rates within the State of Texas, 62 I. C. C. 591; DuPont de Nemours & Co. v. Director General, as Agent, 62 I. C. C. 631; Public Service Commission of Oregon v. Director General, 62 I. C. C. 633; Indiana Rates, Fares, and Charges, 62 I. C. C. 648; Citizens Coal Mining Co. v. Director General, as Agent, 62 I. C. C. 695; Tennessee rates and charges, 63 I. C. C. 160, 172, 173; David Kaufman & Sons Co. v. Director General, as Agent, 63 I. C. C. 143, 367; Beaumont Chamber of Commerce v. Director General, as Agent, 63 I. C. C. 253; United Iron Works v. Director General, as Agent, 63 I. C. C. 310; Marble Cliff Quarries Co. v. Director General, as Agent, 63 I. C. C. 339; Laclede Steel Co. v. Director General, 63 I. C. C. 381; Swift & Co. v. Director General, as Agent, 63 I. C. C. 389; Consumers Ice Co. v. Director General, as Agent, 63 I. C. C. 413; Kline Brick Co. v. Director General, as Agent, 63 I. C. C. 439; Forsythe Leather Co. v. Director General, as Agent, 64 I. C. C. 17; Little Cahaba Coal Co. v. Director General, as Agent, 64 I. C. C. 50; Reservoir Heights Stock Ranch v. Director General, as Agent, 64 I. C. C. 57; Atlantic Refining Co. v. Director General, as Agent, 64 I. C. C. 64; Appalachian Marble Co. v. Director General, as Agent, 64 I. C. C. 67; Merchants Coal and Coke Co. v. Director General, as Agent, 64 I. C. C. 73; Railroad Commission of Louisiana v. A. H. T. Ry. Co., 64 I. C. C. 197, 248; 250; Jones v. Director General as Agent, 64 I. C. C. 221; Missouri Rates and Charges, 64 I. C. C. 233; Citizens Gas Co. v. Director General, as Agent, 64 I. C. C. 457; St. Tammany Ice and Mfg. Co. (Ltd.) v. Director General, as Agent, 64 I. C. C. 491; Ohio, Rates, Fares, and Charges, 64 I. C. C. 493, 498; Pacific Portland Cement Co. v. Director General, as Agent, 64 I. C. C. 507; Ohio and Pennsylvania Rates, Fares, and Charges, 64 I. C. C. 517; Ideal Fuel Co. (Inc.) v. Director General, as Agent, 64 I. C. C. 555; Willow River Lumber Co. v. Director General, as Agent, 64 I. C. C. 575; Mitsui & Co. v. Director General, as Agent, 64 I. C. C. 585; Indiana Rates, Fares, and Charges, 64 I. C. C. 645; Kansas Rates, Fares, and Charges, 64 I. C. C. 679, 681; Cosden & Co. v. Director General, as Agent, 66 I. C. C. 113; Ambrose v. Director General, as Agent, 66 I. C. C. 153; Union Traction Co. of Indiana v. Director General, as Agent, 66 I. C. C. 157; Citizens Coal Mining Co. v. Director General, as Agent, 66 I. C. C. 271, 273; American Agricultural Chemical Co. v. Director General, as Agent, 66 I. C. C. 277; Du Pont de Nemours & Co. v. Director General, as Agent, 66 I. C. C. 291; Florida Citrus Exchange v. Director General, as Agent, 66 I. C. C. 307; Paving Brick Co. v. Director General, as Agent, 66 I. C. C. 338; Intrastate Rates Within Illinois, 66 I. C. C. 350; In the Matter of Intrastate Rates Within Illinois, 66 I. C. C. 350; Barrett Co. v. Director General, as Agent, 66 I. C. C. 381; Natchez Chamber of Commerce v. L. & A. Ry. Co., 66 I. C. C. 386, 388; Armour & Co. v. D. L. & W. R. R. Co., 66 I. C. C. 445, 447; Minnesota By-Product Coke Co. v. Director General, as Agent, 66 I. C. C. 480, 488, 489; Iola Cement Mills Traffic Asso. v. Director General, as Agent, 66 I. C. C. 495; Albers Bros. Milling Co. v. Director General, 66 I. C. C. 593; Swift & Co. v. Director General, as Agent, 66 I. C. C. 615; Central Illinois Light Co. v. Director General, as Agent, 66 I. C.

C. 623; Ft. Wayne Corrugated Paper Co. v. Director General, as Agent, 66 I. C. C. 669; Commission of Wisconsin v. Chicago, B. & Q. R. Co., 42 Sup. Ct. 232, 234; State of New York v. United States, 42 Sup. Ct. 239; New River Lumber Co. v. Tennessee Ry. Co., (Tenn. 1922), 238 S. W. 867; Old Ben Coal Corporation v. Director General, 68 I. C. C. 584; Fairfield Lumber Co. v. Director General, 69 I. C. C. 87; In the matter of Intrastate passenger fares of the Chicago Lake Shore & South Bend Ry. Co. between points in Indiana, 69 I. C. C. 180; Oklahoma rates and charges, 69 I. C. C. 635; Lawton Refining Co. v. Director General, 73 I. C. C. 121; Walsh Fire Clay Products Co. v. Director General, 73 I. C. C. 410; Dewey Portland Cement Co. v. Director General, 73 I. C. C. 419; Carney Cement Co. v. Director General, 73 I. C. C. 735; Foster v. Director General, as Agent, 73 I. C. C. 723; M. E. Case Coal Co. v. C. B. & Q. R. R., 74 I. C. C. 391; N Clark & Sons v Director General, 74 I. C. C. 396; Southern Manganese Corporation v. Director General, 74 I. C. C. 533; Chicago Lake Shore & S. B. Ry. v. I. C. R. R., 74 I. C. C. 609; Cannelton Sewer Pipe Co. v. Director General, 74 I. C. C. 647; Falls City Mill & Feed Co. v. Director General, 74 I. C. C. 648; Hazel Atlas Co. v. Director General, 74 I. C. C. 679; Empire Refineries Inc. v. Director General, 74 I. C. C. 691; John A. Corotto v. Director General, 77 I. C. C.; 89; Ohio Box Board Co. v. Director General, as Agent, 74 I. C. C. 129, 130; Chicago-Springfield Coal Co. v. Director General, as Agent, 74 I. C. C. 131; Isgregg and Connerly v. Director General, as Agent, 74 I. C. C. 285; Hood Pottery Clay Products Co. v. Director General, as Agent, 74 I. C. C. 379; Southern Manganese Corp. v. Director General, as Agent, 74 I. C. C. 533; West Virginia Pulp & Paper Co. v. Director General, as Agent, 74 I. C. C. 551; Roxana Petroleum Corp. v. Director General, as Agent, 74 I. C. C. 605; Beaumont Chamber of Commerce v. Director General, as Agent, 74 I. C. C. 633; Hazel Atlas Glass Co. v. Director General, as Agent, 74 I. C C. 679; Brenner v. Director General, as Agent, 74 I. C. C. 681; Indiana State Farm v. Director General, as Agent, 74 I. C. C. 717; Coppes Bros & Zook v. Director General as Agent, 74 I. C. C. 754; Chicago Sewer Pipe Co. v. Director General, 77 I. C. C. 171; Central Iron & Coal Co. v. Director General, 77 I. C. C. 300; Hardy Salt Co. v. Director General, 77 I. C. C. 305; Ozark Cider & Vinegar Co. v. Director General, 77 I. C. C. 367; Kline Brick Co. v. Director General, 77 I. C. C. 420; Lackawanna Steel Co. v. Director General, 77 I. C. C. 465; Moore & Moore, Inc. v. Director General, 78 I. C. C. 31; Western Meat Company v. Director General, 78 I. C. C. 77; International Pulp Company v. Director General, 78 I. C. C. 83; Globe Cotton Oil Mills v. Director General, 78 I. C. C. 101; Sloss Sheffield Steel & Iron Co. v. Director General, 78 I. C. C. 123; California Packing Corporation v. Director General, 78 I. C. C. 190; Far West Clay Co. v. Director General, 78 I. C. C. 283; Bilrowe Alloys Co. v. Director General, 78 I. C. C. 308; Seneca Fibre Products Co. v Director General, 78 I. C. C. 311; United Dredging Co. v. A. T. & S. F. Ry., 78 I. C. C. 365; American Woolen Co. v. Director General, 78 I. C. C. 416; Pacific Rice Mills Co. v. Director General, 78 I. C. C. 459; Meigs Pulpwood Co. v. Director General, 78 I. C. C. 473; Alabama Company v. Director General, 78 I. C. C. 561; Illinois Pacific Glass Co. v. Director General, 78 I. C. C. 702; National Petroleum Association v. Director General, 78 I. C. C. 711, 712; B. J. Thorp v. Director General, 80 I. C. C. 1; Forbes Timer Co. v. Director General, 80 I. C. C. 36; Lake Charles Naval Store Co. v. Director General, 80 I. C. C. 51; Carlton Consolidated Lumber Co. v. Director General, 80 I. C. C. 303; Producers Refining Co. v. M. K. & T. Ry., 80 I. C. C. 339; Lyons Lumber Co. v. Director General, 80 I. C. C. 761; Texas Chamber of Commerce v. A. & S. Ry. Co., 77 I. C. C. 67, 69; Corotto v. Director General, as Agent, 77 I. C. C. 89; Mathieson Alkali Works v. C., C. & O. Ry., 77 I. C. C. 150, 153; Chicago Sewer Pipe Co. v. Director General, as Agent, 77 I. C. C. 171; Helena Traffic Bureau v. Director General, as Agent, 77 I. C. C. 197; Waste Resious Wood, 77 I. C. C. 448; Memphis-Southwestern Investigation, 77 I. C. C. 482, 484, 486, 487, 491; Miller v. Director General, 60 I. C. C. 162; Central Pa. Lumber Co. v. Director General, 62 I. C. C. 99; Owen Co. v. Director General, 64 I. C. C. 157; Terre Haute, Indianapolis & E. T. Co. v. Director General, 77 I. C. C. 661, New Orleans Board of Commissioners v. Director General, as Agent, 77 I. C. C. 664; Holmes & Hallowell Co. v. G. N. Ry. Co.

77 I. C. C. 683; Lake Charles Rice Milling Co. v. A. & N. Ry. Co., 77 I. C. C. 707, 708, 709; Utah Fuel Co. v. Director General as Agent 80 I. C. C. 229; Producers Refining Co. v. M., K. & T. Ry. Co., 80 I. C. C. 339, 340; Kellogg & Sons v. Director General, as Agent, 80 I. C. C. 507; Central Iron & Steel Co. v. Director General, as Agent, 80 I. C. C. 698; Arthur v. Director General, as Agent, 80 I. C. C. 707; Perry Co.. Coal Corp. v. E. St. L. & S. Ry. Co., 80 I. C. C. 711; Hocking Valley Brick Co. v. Director General, as Agent, 80 I. C. C. 743; Lyons Lumber Co. v. Director General, as Agent, 80 I. C. C. 761; Indiahoma Refining Co. v. Director General, 81 I. C. C. 287; Nebraska Rates, Fares and Charges, 81 I. C. C. 290; Sutherland Flour Mills Co. v. Director General, 81 I. C. C. 365; National Tube Co. v. Director General, 81 I. C. C. 369; Star Timber Co. v. C. & N. W. Ry., 81 I. C. C. 673; Atlas Portland Cement Co. v. C., B. & Q. R. Co., 83 I. C. C. 80; Columbia Quarry Co. v. Director General, 83 I. C. C. 173; Clay Products Co. v. Director General 83 I. C. C. 193; Carnation Milk Products Co. v. Director General, as Agent, 78 I. C. C. 44; Armour & Co. v. Director General, as Agent, 78 I. C. C. 65; Western Meat Co. v. Director General, as Agent, 78 I. C. C. 77; International Pulp Co. v. Director General, as Agent, 78 I. C. C. 83; Globe Cotton Oil Mills v. Director General, as Agent, 78 I. C. C. 101; Milwaukee Chamber of Commerce v. C., B. & Q. R. R. Co., 78 I. C. C. 110; Sloss-Sheffield Steel & Iron Co. v. Director General, as Agent, 78 I. C. C. 123; California Packing Co. v. Director General, as Agent, 78 I. C. C. 190; Maine Power Sale Co. v. Director General, as Agent, 78 I. C. C. 207; Boston Wool Trade Asso. v. Director General, as Agent, 78 I. C. C. 341; Wisconsin Dairy Products Co. v. Director General, as Agent, 78 I. C. C. 355; Willard Coal Co. v. E. K. Ry. Co., 78 I. C. C. 455; Midvale Steel & Ordnance Co. v. Director General, as Agent, 78 I. C. C. 721; Slatting Cars for Watermelons, 78 I. C. C. 732; Schwah v. Richardson, 44 Sup. Ct. 60; Davis v. A. F. Gossett & Sons (Ga., 1923) 118 S. E. 773; Liberty Highway Co. v. Michigan Public Utilities Commission, 294 Fed. 703; Southwestern Bell Telephone Co. v. Public Utilities Commission (Kan., 1924) 223 Pac. 771; Buck v. Kuykendall, State Director of Public Works, 295 Fed. 197; Mackubin v. Public Service Commission (W. Va., 1924) 121 S. E. 731; American R. Co. of Porto Rico. v. South Porto Rico Sugar Co., 293 Fed. 671; Commonwealth v. Philadelphia & R. Coal & Iron Co. (Pa., 1924) 123 Atl. 315; Texas & P. Ry. v. Graham, (Tex., 1924) 257 S. W. 642 (State Shipment); Spitzer v. The Annette Rolph (Ore. 1924) 223; Pac. 253; International Harvester Co. v. C., B. & Q. R. R. Co., 80 I. C. C. 71; American Radiator Co. v. Director General, as Agent, 80 I. C. C. 77; Henderson Lumber Co. v. Director General, as Agent, 80 I. C. C. 83; Brown's Tract Lumber Co. v. Director General, as Agent, 80 I. C. C. 111; Terre Haute Paper Co. v. Director General, as Agent, 80 I. C. C. 221; Carlton Consolidated Lumber Co. v. Director General, as Agent, 80 I. C. C. 303; Oklahoma Corp. Comm. v. A. R. R., 80 I. C. C. 607, 617, 618; Ohio-Michigan Coal Cases, 80 I. C. C. 663, 690; Arlington Silver Mining Co. v. Director General, as Agent, 80 I. C. C. 753; Crookston Gas Co. v. G. N. Ry. Co., 81 I. C. C. 128, 130; Nebraska Rates, Fares and Charges, 81 I. C. C. 290, 292; Standard Portland Cement Co. v. Director General, as Agent, 81 I. C. C. 357; National Tube Co. v. Director General, as Agent, 81 I. C. C. 369; National Petroleum Asso. v. Director General, as Agent, 81 I. C. C. 487; International Paper Co. v. Director General, as Agent, 81 I. C. C. 549; St. Clair Brick Co. v. Director General, as Agent, 81 I. C. C. 567; Tovrea & Co. v. Director General, as Agent, 81 I. C. C. 583; Muncie Sand Co. v. Director General, as Agent, 81 I. C. C. 594; Indiana Power Co. v. P. C. C. & St. L. R. R. Co., 81 I. C. C. 601; Northern Pac. Ry. Co., 250 U. S., 135; Southern Arizona Traffic Asso. v. Director General, as Agent, 81 I. C. C. 609; Pittsburgh Crucible Steel Co. v. Director General, as Agent, 81 I. C. C. 659; Tidal-Western Oil Corp. v. W. F. & N. W. Ry., 83 I. C. C. 51; Atlas Portland Cement Co. v. C., B. & Q. R. R. Co., 83 I. C. C. 80; Homer Furnace Co. v. Director General, as Agent, 83 I. C. C. 468; Connecticut Mfrs. Asso. v. Director General, as Agent, 83 I. C. C. 563; Scott Manger & Miller v. Director General, 87 I. C. C. 409; Seneca Fibre Products Co. v. Director General, 87 I. C. C. 521; Wood Iron and Steel Co. v. Director General, 87 I. C. C. 643; Hoosier Lime Co. v. Director General, 87 I. C. C. 718; Crushed Stone from Thorn-

ton, 87 I. C. C. 759; Newport Mining Co. v. Director General, 88 I. C. C. 17; Northwestern Clay Mfg. Co. v. R. I. S. Ry., 88 I. C. C. 131; Gottlieb Bertsch Co. v. Director General, 88 I. C. C. 177; Iroquois Pulp & Paper Co. v. G. & J. Ry., 88 I. C. C. 255; Utah-Idaho Co. v. Director General, 88 I. C. C. 283; Alexander Milling Co. v. Director General, 88 I. C. C. 677; Republic Iron & Steel Co. v. Director General, 88 I. C. C. 691; Keystone Roofing Mfg. Co. v. Director General, 88 I. C. C. 707.

STATION FACILITIES

See Facilities and Privileges §16½; Passenger Fares and Facilities §13.

IMPORTANT CASES SINCE 1908

(a) The criterion of a place being a public station is the offer and capacity adequately to serve, without discrimination. St. Louis (Cupples Station) Terminal Regulations, 40 I. C. C. 425, 430.

(b) Commission held in a former case that it would not assume authority to outlaw any common carrier by rail at common law, as modified by constitutional or statutory authority, and thus put it out of business or deny its use to the public, so long as it is willing to hold itself out as a common carrier and perform its functions as such, and must hold the same opinion with respect to a necessary instrumentality of that service. St. Louis Terminal Regulations, 40 I. C. C. 425, 431.

STATUTE OF LIMITATIONS

See Claims I; Loss and Damage §13½; Reparation §7.

STATUTES

CASES 1887-1908

(a) An Act being general and uniform in its operation, upon all persons coming within the class to which it belongs, is not special. Cited in Little Rock & F. S. R. Co. v. Hanniford (Sup. Ct. Ark.) 1 I. C. R. 580, 581.

(aa) There is no common law of the United States distinct from the common law of England as adopted by the several States, each for itself, applied as its local law, and subject to such alteration as may be provided by its own statutes. Cited in Smith v. Alabama (U. S. Sup. Ct.) 1 I. C. R. 808.

(b) The Memphis & Little Rock Railroad Company as reorganized by the purchasers in 1877 at the sale under mortgage foreclosure, is a lawful corporation of Arkansas, was not the same corporation as that chartered by the Legislature in 1853, but was a new corporation subject to the Constitution and laws in force when it came into existence. Dow v. Beidelman (U. S. Sup. Ct.) 2 I. C. R. 56.

(c) The words "right of way," in a grant to a railroad company, describe the tenure, and not the land, granted. Atlantic & P. R. Co. v. Lesueur (Ariz.) 2 I. C. R. 189.

(ca) The fact that statutory regulations of internal commerce are such as to preclude the literal enforcement of preexisting contracts does not affect their validity, or make them, in a constitutional sense, laws impairing the obligation of contracts. Such a consequence is often a necessary result of any considerable change in the general laws, and must be submitted to as such. Kentucky & Indiana Bridge Co. v. L. & N. R. R., 2 I. C. C. 102, 112.

(cb) The Alabama statute disqualifying persons who are color-blind from certain service on railroads, and providing for their examination, and providing a fine upon any company employing any person for such service without a certificate from examiners, is not invalid as a regulation of commerce or as depriving any person of property without due process of law. Nashville, C. & St. L. R. Co. v.Alabama (U. S. Sup. Ct.) 2 I. C. R. 238.

(cc) Requiring a railroad company to pay fees for examining persons for certain railroad service does not deprive them of property without due process of law. Nashville, C. & St. L. R. Co. v. Alabama (U. S. Sup. Ct.) 2 I. C. R. 238.

(d) The party to whom or for whose benefit a right or privilege is given by statute may waive or surrender it in whole or in part, if he does not thereby destroy the rights and benefits conferred upon or flowing to another in or from said statute or other legal or equitable source. Northern P. R. Co. v. Raymond (Dak.) 2 I. C. R. 321.

(da) An Act making a railroad commissioners schedule prima facie evidence that the rates fixed thereby are reasonable is not an infringment of the constitutional guaranties of the right to trial

by jury and against deprivation of property without due process of law. Chicago & N. W. R. Co. v. Dey (C. C. S. D. Iowa), 2 I. C. R. 325.

(db) No privileges or immunities of citizens are affected by Iowa Code, §4059, making owners of Texas cattle liable for allowing them to run at large and spread Texas fever. Kimmish v. Ball (U. S. Sup. Ct.), 2 I. C. R. 407.

(e) Congress has express power to exercise exclusive legislation over the District of Columbia; but in creating the District of Columbia a body corporate for municipal purposes, Congress could only authorize it to exercise municipal powers. Stoutenburgh v. Hennick (U. S. Sup. Ct.) 2 I. C. R. 409.

(f) A statute will not be presumed to have been intended by the Legislature to have any extraterritorial force, where such intention would make it unconstitutional. Stanley v. Wabash, St. L. & P. R. Co. (Mo.) 3 I. C. R. 176.

(g) U. S. Const. 14th amend. §1, declaring that no State shall "deny to any person within its jurisdiction the equal protection of the laws," does not prohibit a State from imposing such conditions upon foreign corporations as it may choose, as a condition of their admission within its limits. Norfolk & W. R. Co. v. Pennsylvania (U. S. Sup. Ct.) 3 I. C. R. 178.

(h) Corporations are not citizens, within the meaning of U. S. Const. art. 4, §2, cl. 1, declaring that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." Norfolk & W. R. Co. v. Pennsylvania (U. S. Sup. Ct.) 3 I. C. R. 178.

(i) A law which, as construed by the Supreme Court of the State, allows a railroad commission to establish rates for railroads which are final, without issue made, or inquiry had, as to their reasonableness, and forbids the courts to stay the hands of the commission if the rates established by it are unequal and unreasonable, conflicts with the Constitution of the United States. Chicago M. & St. P. R. Co. v. State of Minn. 3 I. C. R. 209.

(j) Where no hearing is provided for, no summons or notice to the company, before the commission has found what it is to find and declared what it is to declare, and no opportunity provided for the company to introduce witnesses before the commission there is not the semblance of due process of law. Chicago M. & St. P. R. Co. v. State of Minn. 3 I. C. R. 209.

(k) Courts must uphold a statute, unless it is so plainly and palpably in conflict with the Constitution as to leave no doubt or hesitation in the judicial mind as to its invalidity. Burlington, C. R & N. R. Co. v. Dey (Iowa) 3 I. C. R. 584.

(l) The justice and policy of statutes are not matters for the consideration of courts. Burlington, Cedar Rapids & N. R. Co. v. Dey 3 I. C. R. 584.

(m) Where a statute is suspectible of conflicting and doubtful construction, that construction should be adopted which supports it in all its parts. Burlington, C. R. & N. R. Co. v. Dey, (Iowa) 3 I. C. R. 584.

(n) There is no uncertainty in a statute prescribing the penalty for unreasonable railroad charges, and declaring that rates fixed by railroad commissioners as the maximum shall be prima facie reasonable, as the State is precluded from denying that the commissioners' rates are reasonable. Burlington, C. R. & N. R. Co. v. Dey (Iowa) 3 I. C. R. 584.

(na) A statute requiring freight in carload lots to be transferred without unloading unless the unloading is done without charge, and that smaller quantities shall be transferred into the cars of the connecting carrier at cost, which shall be made a part of the joint rate, does not interfere with the constitutional guaranties for the protection of the rights and property of the carriers. Burlington, Cedar Rapids & N. R. Co. v. Dey 3 I. C. R. 584.

(o) The New York law of 1888 regulating the fees for elevating and discharging grain by elevators, fixing maximum charges therefor, and also limiting the charge for trimming or shoveling to the leg of the elevator and for trimming when loaded, to the actual cost thereof, —is a proper exercise of the police power of the state. Bud v. New York (U. S. Sup. Ct.) 4 I. C. R. 45.

(p) The legislature can fix a maximum beyond which any charge would be unreasonable for the use of property in which the public has an interest, but cannot compel the doing of services with-

out reward. Budd v. New York (U. S. Sup. Ct.) 4 I. C. R. 45.

(q) A foreign corporation cannot claim a right to do business in another state, except subject to the conditions imposed by its laws. Horn Silver Mining Co. v. State of New York, 4 I. C. R. 57.

(r) The Legislature may adopt any mode to arrive at the sum which it will exact as a condition of the creation of the corporation or of its continued existence. Horn Silver Mining Co. v. State of New York, 4 I. C. R. 57.

(s) Having the absolute power of excluding the foreign corporation, the state may impose such conditions upon permitting the corporation to do business within its limits as it may judge expedient, such as the payment of a specific license tax, or a sum proportioned to the amount of its capital. Horn Silver Mining Co. v. State of New York, 4 I. C. R. 57.

(sa) The granting of the rights and privileges which constitute the franchises of a corporation, may be accompanied with any such conditions as the Legislature may deem most suitable to the public interests and policy. Horn Silver Mining Co. v. State of New York, 4 I. C. R. 57.

(t) The title of "An Act to Regulate the Planting and Taking of Oysters in the Waters of the State" is sufficient to cover provisions against the taking of oysters by nonresidents, and the transportation out of the state by any person of oysters in shells. State v. Harrub (Ala.) 4 I. C. R. 99.

(ta) A statute denying the right of a corporation of another state to bring an action within the state until it has filed its articles of incorporation therein is inoperative as to an action brought for the purchase price of goods sold within the state by commercial agents or drummers, as this constitutes interstate commerce. Bateman Bros v. Western Star Milling Co. 4 I. C. R. 260.

(u) Investing a railroad commission with authority to make just and reasonable rules and regulations to prevent excessive charges and unjust discriminations and preferences by carriers, the reasonableness and legality of which is reviewable by the courts, is not unconstitutional as a delegation of legislative power. Atlantic Exp. Co. v. Wilmington & W. R. Co. (N. C.) 4 I. C. R. 294.

(ua) The word "trade," as defined by this court in the case of Re Pinkney, 47 Kan. 89, does not mean interstate commerce, nor was such a meaning within the contemplation of the court at the time the decision was rendered. William C. Phipps v. State of Kansas, 4 I. C. R. 299.

(v) The provision of S. C. Act Dec. 24, 1892, §25, subd. 2, that any servant agent, or employe of a railroad or express company or other carrier, who shall remove any intoxicating liquors from any railroad car, vessel, or other vehicle of transportation, at any place other than the usual and established stations or places of business of such carriers within an incorporated city or town where there is a dispensary, shall be punished,—is not a valid exercise of the police power of the state, since it singles out one class of persons from the whole community for prosecution and punishment in contravention of S. C. Const. art. 1, §12, providing that no person shall be liable to any other punishment or subjected in law to any other restrictions or disqualifications in regard to any personal rights, than such as are laid on others under like circumstances. Re Lanford (C. C. D. S. C.), 4 I. C. R. 437.

(w) A statute must be read in the light of all general laws upon the same subject in force at the time of its passage. United States v. Trans-Missouri Freight Asso. (C. C. App. 8th C.) 4, I. C. R. 443.

(x) Words which have acquired a well-understood meaning by judicial interpretation must be presumed to be used in that sense in a subsequent statute, unless the contrary clearly appears. United States v. Trans-Missouri Freight Asso. (C. C. App. 8th C), 4 I. C. R. 443.

(y) Common-law terms used in an Act of Congress creating an offense without defining the terms may be interpreted by the common law. United States v. Trans-Missouri Freight Asso. (C. C. App. 8th C.), 4 I. C. R. 443.

(z) A section of a statute prescribing penalties, and another section declaring the effects as evidence of rates fixed by commissioners, may be dropped as invalid without affecting the validity of the remainder of the statute, where

it appears that its prime object was the establishment of rules for the operation of railroads and the regulation of their rates, which can be fully accomplished irrespective of the invalid sections. Reagan v. Farmers' Loan & T. Co. (U. S. Sup. Ct.) 4 I. C. R. 560.

(aa) The fixing and enforcement by a railroad commission of unjust and unreasonable rates for transportation by railroad companies is an unconstitutional denial of the equal protection of the laws. Reagan v. Farmers' Loan & T. Co. (U. S. Sup. Ct.) 560, 578; Reagan v. Mercantile Trust Co. (U. S. Sup. Ct.) 4 I. C. R. 575, 577.

(bb) Outside of the Interstate Commerce Act there is no law of the United States as a distinct sovereignty, imposing any restraint upon the imposition by a carrier of unreasonable rates. Swift v. Philadelphia & R. R. Co. (C. C. N. D. III) 4 I. C. R. 633.

(cc) The regulation of the fees for elevating and discharging grain by elevators does not deprive the owner of his property without due process of law, —at least where the charges are not shown to be unreasonable. Budd v. New York (U. S. Sup. Ct.) 4 I. C. R. 45; Brass v. North Dakota, Stoeser (U. S. Sup. Ct.) 4 I. C. R. 670.

(dd) A statute changing a rule of evidence is applicable to a pending action. Chicago, B. & Q. R. Co. v. Jones (Ill.) 4, I. C. R. 683.

(ee) Provisions in a statute as to unlawful discrimination in rates will, even if unconstitutional, not make invalid other provisions as to reasonableness of rates. Chicago, B. & Q. R. Co. v. Jones (Ill.) 4 I. C. R. 683.

(ff) There is no unconstitutional delegation of power to railroad commissioners by a statute authorizing them to fix reasonable maximum rates of charges for freight and passenger traffic, where their schedule is not final, but is made merely prima facie evidence of the reasonableness of the rates established. Chicago, B. & Q. R. Co. v. Jones (Ill.) 4 I. C. R. 683.

(gg) A statute prohibiting more than fair and reasonable rates by a railroad corporation, being merely declaratory of a common-law rule, although penal, does not deprive the company of its property without due process of law, because the statute does not fix any limit of the rates,—especially where a provision is made in the same statute for the fixing of rates by commissioners. Chicago, B. & Q. R. Co. v. Jones (Ill.) 4 I. C. R. 683.

(hh) The Minnesota act to regulate the sale and redemption of transportation tickets of common carriers, and to provide punishment for the violation of the same, is not unconstitutional as "class legislation" granting special privileges to carriers. State v. Corbett (Minn.) 4. I. C. R. 694.

(ii) A statute prohibiting the sale of tickets except by licensed agents is not —at least as to tickets purchased after the passage of the Act—void as depriving citizen of his property "without due process of law." State v. Corbett (Minn) 4 I. C. R. 694.

(jj) No delegation of the police power of the state to grant licenses to engage in a business is made by a statute allowing the sale of tickets only by agents licensed by the carrier. State v. Corbett (Minn.) 4 I. C. R. 694.

(kk) The word "owner," as used in the Minnesota act regulating the sale of carriers' tickets, includes all those who operate a railroad or steamboat in the transportation of passengers,—as, for example, lessees, receivers, and the like. State v. Corbett (Minn.) 4 I. C. R. 694.

(ll) The United States government cannot demand that a contract, affecting property upon which it has a lien, and which is valid when made shall be annulled in toto upon the subsequent passage of a statute rendering some of its provisions not involving the others invalid. Union Pacific R. Co. v. United States, 4 I. C. R. 705.

(mm) The prohibition contained in U. S. Const. 14th amend. against discrimination by a state because of race or previous condition of servitude, though securing to citizens certain fundamental rights as against state action, does not secure the joint and common enjoyment of such rights. Anderson v. Louisville & N. R. Co. (C. C. D. Ky.) 4 I. C. R. 764.

(nn) A statute requiring separate cars or compartments to be furnished white and colored passengers upon railroads is valid as a proper exercise of the police power of the state, when confined to the intrastate commerce of the state, and not applying to interstate

commerce. Anderson v. Louisville & N. R. Co. (C. C. D. Ky.) 4 I. C. R. 764.

(oo) The Kentucky statutes requiring all railroad companies to furnish separate coaches or compartments for colored and white passengers does not violate U. S. Const. 14th amend. prohibiting discrimination by a state because of race or previous condition of servitude, as it prohibits any discrimination in the quality, convenience, or accommodations in the cars and compartments set apart for the different classes of passengers. Anderson v. Louisville & N. R. Co. (C. C. D. Ky.) 4 I. C. R. 764.

(pp) The Kentucky statute requiring all companies operating railroads within the state to provide separate cars or compartments for white and colored passengers is so broad as to embargo all passengers, including those whose passage commences or ends in other states, and is void as an interference with interstate commerce. Anderson v. Louisville & N. R. Co. (C. C. D. Ky.) 4 I. C. R. 764.

(qq) A classification of railroads as those which have been in operation for a certain length of time and those which have been recently built and limiting the rates which may be charged on the old roads, is not an arbitrary classification denying such roads the equal protection of the laws, nor does it make the statute invalid as class legislation. Ames v. Union P. R. Co. (C. C. D. Neb.) 4 I. C. R. 835.

(rr) A state statute requiring every person selling nursery stock grown in another state to file with the secretary of state an affidavit and bond of $2,000, and exhibit to every purchaser a certificate from the secretary, is unconstitutional as depriving citizens of other states dealing in a sound article of commerce produced therein, of the valuable privilege and immunity enjoyed by the citizens of the state, that every person shall be presumed honest and innocent of wrong. Re Schechter (C. C. D. Minn.) 4 I. C. R. 849.

(ss) The remedy by injunction against combinations and conspiracies to obstruct or destroy interstate commerce, given by the act of Congress of July 2, 1890, §1, is within the power of Congress. United States v. Elliott, 5 I. C. R. 148.

(tt) Laws 1894, chap. 698, providing that all convict-made goods outside of the state and imported into it shall, before exposure for sale, be marked "Convict Made," violates the provision of the Federal Constitution conferring on Congress the power to regulate commerce between the states. State of New York v. Hawkins, 5 I. C. R. 228.

(uu) Requiring the products of convict labor to be branded or labeled is unconstitutional, if its effect is to restrict the sale of articles in which property rights have already vested. State of New York v. Hawkins, 5 I. C. R. 228.

(vv) The provisions of Laws 1881, chap. 161, as amended by Laws 1885, chap. 191, are not an intrusion on the interstate commerce clause of the Constitution of the United States, but a legitimate exercise of the police power. Ranse v. Yanard, 5 I. C. R. 315.

(ww) A state statute providing a penalty for the refusal of a railroad company to deliver freight on payment or tender of the charges due as shown by the bill of lading is not invalid as a regulation of commerce. Dwyer v. Gulf, C. & S. F. R. Co., 5 I. C. R. 361.

(xx) The known and settled construction of laws by courts of the state from which they are taken is presumed to be adopted with the adoption of the laws. Brown v. Walker (U. S. Sup.) 5 I. C. R. 369.

(yy) Corporations are not "citizens" within the meaning of U. S. Const. art. 4, §2, providing that the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states. People, Parke, v. Roberts (N. Y. Sup. Ct.) 5 I. C. R. 462.

(zz) Every reasonable construction must be resorted to, in order to save a statute from unconstitutionality. Hooper v. State of California, 5 I. C. R. 610.

(3a) The 14th Amendment does not guaranty the citizen the right to make within his state, either directly or indirectly, a contract, the making whereof is constitutionally forbidden by the state. Hooper v. State of California, 5 I. C. R. 610.

(3b) Where Congress has expressly enumerated special classes of persons or things that may be exempted and excepted from the operation of general provisions, the Commission can not enlarge excepted classes by mere construction, and include in them persons or things not thus expressly named. Re Free Trans-

portation of Newspaper Employees, 12 I. C. C. 15.

ALL OTHER CITATIONS

Liberty Highway Co. v. Michigan Public Utilities Commission, 294 Fed. 703; Chicago, R. I. & P. Ry. Co. v. State (Okla., 1923) 217 Pac. 147; Delaware & Hudson Co. v. United States (Interstate Commerce Commission, Intervener), 295 Fed. 558; Minneapolis, St. P. & S. S. M. Ry. Co. v. Railroad Commission (Wis., 1924) 197 N. W. 352.

STEVEDORING

IMPORTANT CASES SINCE 1908

(a) Stevedoring is an auxiliary service. In re Wharfage Facilities at Pensacola, 27 I. C. C. 252, 258.

STOCKHOLDERS

See Common Carrier §5.

STOCK PILE

IMPORTANT CASES SINCE 1908

(a) Defendant transported coal, during Federal control, from mines on its lines to complainant's plant and subsequently furnished cars, power, and crew for intraplant movement over plant tracks from stock pile to point of use. Contention that commission has jurisdiction over charge for intraplant movement under section 206 (c) of the transportation act, 1920, in that service performed should be considered as secondary delivery not separable from line haul, not sustained. Line-haul movement was definitely ended by delivery and unloading upon complainant's stock pile. Grasselli Chemical Co. v. Director General, as Agent, 81 I. C. C. 562, 564.

STOCK YARD COMPANIES

See Live Stock Shipments.

CASES 1887-1908

(a) Carriers cannot make the yards of a certain company their exclusive stock depot at a certain place, there being other stock yards near by charging lower rates. Keith v. Kentucky Cent. R. Co. 1 I. C. R. 316, 601.

(b) Conveyed in Burton stock cars, rates for Burton Stock Car Co. v. Chicago, B. & &. R. Co. 1 I. C. R. 329.

(c) The defendant railroads are not justified by the plea of public convenience, in making the yards of the Covington Stock Yard Company their exclusive live stock depot at Covington, thus enabling such stock yard company to exact payment of those who are not its customers, for the privilege of passing stock to and from the cars, there being yards owned by other persons near to and on the same switch with the Covington Stock Yards, where the public may be suitably served at lower rates than the rates of the Covington Company. Keith v. Kentucky Central R. R. Co. 1 I. C. R. 601.

(d) The proprietors of such other yards have a right to be rivals of the Covington Company, and such of the public as desire to patronize such other yards have the right to do so and to have their stock shipped on equal terms and for like charges as those who patronize the Covington yards. Keith v. Kentucky Central R. R. Co. 1 I. C. R. 601.

(ef) Carriers cannot make the yards of a certain company their exclusive stock depot at a certain place, there being other stock yards near by charging lower rates. Keith v. Kentucky Cent. R. R. Co. 1 I. C. R. 601.

(fa) Complainant alleged unjust discrimination in that defendants compel all cattle shipped by or consigned to complainants to pass to and from the cars through the Covington stock yards and to pay therefor, although complainants have convenient stock yards of their own. HELD, the defendant railroads are not justified by the plea of public convenience, in making the yards of the Covington Stock Yard Company their exclusive livestock depot at Covington, thus enabling such stock yard company to exact payment of those who are not its customers, for the privilege of passing stock to and from the cars, there being yards owned by other persons near to and on the same switch with the Covington Stock Yards, where the public may be suitably served at lower rates than the rates of the Covington Company. The proprietors of such other yards have a right to be rivals of the Covington Company, and such of the public as desire to patronize such other yards have the right to do so and to have their stock shipped on equal terms and for like charges as those who patronize the Covington yards. The legal duty of carriers is not fully discharged by receiving and discharging livestock at a depot, access to which must be purchased. Keith v. Kentucky Central R. R., 1 I. C. C. 601.

(fb) That the yard of a stock-yard

company is located in two States, and that the company does business in both, does not make its business interstate so as to prevent its regulation by the state or one of the States. Cotting v. Kans. City Stockyards Co. 7 I. C. C. App XCIX.

(g) Complainant attacked as unjustly discriminatory and unreasonable terminal charge of $2 assessed at Chicago by the Union Stock Yards and Transit Company, not absorbed by the carriers but passed on to the shippers. Livestock delivered to Chicago is necessarily delivered for marketing at the yards of the Union Stock Yards & Transit Company. In reaching its destination, carloads of livestock pass over the tracks of that company, which connect the various lines of the defendants with its yards. For many years the Transit Company has given the use of its tracks for this purpose, and the defendants have performed the service of moving without charge. Beginning June 1, 1894, the stock yards imposed a trackage charge upon each car moving in or out. Thereupon the various defendants agreed to and did impose and collect a terminal charge of $2 per car for the switching of all cars of livestock to the stock yards, in addition to the regular Chicago rate. HELD, that upon the circumstances of this case, the defendants might reimburse themselves for the trackage charge imposed by the Transit Company but that they ought not to exact any compensation for their services which they previously rendered gratuitously, and that the imposition of more than $1 per car as such terminal charge on livestock was in violation of section 1 of the act. Cattle Raisers' Asso. of Texas v. Ft. W. D. C. R. Co., 7 I. C. C. 513.

(h) Defendant common carriers undertake to carry livestock through different states to the Union Stock Yards in Chicago, and until delivery is made at such yards the livestock is interstate commerce and subject to the act. Cattle Raisers' Asso. of Texas v. Ft. W. & D. C. R. Co., 7 I. C. C. 513, 539.

(i) The defendant, the Union Stock-Yards & Transit Company, having the option under its charter of becoming a common carrier or not, elected to and did become such carrier for dead freight to and from lines of other carriers in the city of Chicago, but it did not so elect to engage in the carriage of live stock between such lines and its stock-yards in Chicago. It imposes a trackage charge on other defendants for the use of its tracks in the transportation of live stock to and from the stock-yards, and such transportation is conducted wholly by such other defendants. HELD, That the Stock-Yards Company is not a common carrier engaged in the transportation of live stock within the meaning of section 1 of the Act to Regulate Commerce, and is therefore not subject to regulation in this proceeding. Cattle Raisers' Association v. Fort Worth & D. C. R. Co., 7 I. C. C. 513.

(j) Live stock shipped to Chicago is necessarily delivered for marketing at the yards of the Union Stock-Yards & Transit Company. In reaching its destination, carloads of live stock pass over the tracks of that company, which connect the various lines of the defendants with its yards. For many years the Union Stock-Yards & Transit Company has given the use of its tracks for this purpose, and the defendants have performed the service of moving without charge. Beginning June 1, 1894, the stock-yards imposed a trackage charge upon each car moving in or out. Thereupon the various defendants agreed to and did impose and collect a terminal charge of $2 per car for the switching of all cars of live stock to the stock yards in addition to the regular Chicago rate. HELD, that upon the circumstances of this case the defendants might reimburse themselves for the trackage charge imposed by the Union Stock-Yards & Transit Copmany, but that they ought not to exact any compensation for their services which they previously rendered gratuitously, and that the imposition of more than $1 per car as such terminal charge on live stock was in violation of section 1 of the Act to Regulate Commerce. Cattle Raisers' Association v. Fort Worth & D. C. R. Co., 7 I. C. C. 513.

(k) A corporation authorized by its act of incorporation to construct stock-yards, connect them with the various lines of railway entering the city of Chicago, and either lease such connecting tracks for the transportation of livestock and other freight between the railways and the stockyards, or transport live-stock and other freight over such connecting line itself, which elects to transport dead freight and furnish its own motive power and crews, but imposes a trackage charge on the railroad com-

panies for the transportation of livestock over its track,—is not subject as to such livestock to the provisions of the Act to Regulate Commerce, which applies only to "common carriers engaged in the transportation of passengers or property." Cattle Raisers' Asso. v. Fort Worth & D. C. R. Co. 7 I. C. C. 513.

(l) Live stock shipped to Chicago with the understanding that it is to be delivered at the Union Stock-Yards in such city is subject to the provisions of the Act to Regulate Commerce until it is delivered at such yards. Cattle Raisers' Asso. v. Fort Worth & D. C. R. Co. 7 I. C. C. 513.

(m) The imposition by a stock-yard company of a trackage charge for the use by a railroad companies of tracks leading to its yards, after the free use of such tracks for many years, will authorize the railroad companies to impose a terminal charge for the delivery of the stock, but not in excess of the trackage charge. Cattle Raisers' Asso. v. Fort Worth & D. C. R. Co. 7 I. C. C. 513.

(ma) Defendants filed petition for rehearing, alleging error in the conclusions set forth in the report and opinion of the Commission, wherein, it was held that a terminal charge of $2.00 per car imposed by defendant carriers at Chicago for delivery of live stock at the Union Stock Yards in that city is unreasonable and unjust and that exaction of more than $1.00 per car for such service is unlawful, under section one of the Act to Regulate Commerce. HELD, Upon hearing of the parties and reconsideration of the record, that there was no error in the original determination; and, further, that the charge complained of and any charge for the terminal service at Chicago in excess of $1.00 per car constitutes undue prejudice to Chicage under section three of the statute. Cattle Raisers' Association v. Fort Worth & D. C. R. Co., 7 I. C. C. 555a.

(n) A commission agent who sells cattle at their place of destination, which are sent from another state to be sold, is not engaged in interstate commerce; nor is his agreement with others in the same business, as to the commissions to be charged for such sales, void as a contract in restraint of that commerce. Hopkins v. U. S. 8 I. C. C. App. XVIII.

(o) A by-law of a stock exchange, which regulates the commission to be charged by members of that association for selling live stock, is not a restraint upon interstate commerce. Hopkins v. U. S., 8 I. C. C. App. XVIII.

(p) The business of buying and selling live stock at stock yards in a city by members of a stock exchange as commission merchants is not interstate commerce, although most of the purchases and sales are of live stock sent from other states, and the members of the stock exchange are employed to sell by letter from the owners of the stock in other states, and send agents to other states to solicit business, and advance money to the cattle owners, and pay their drafts and aid them in making the cattle fit for market. Hopkins v. U. S. 8 I. C. C. App. XVIII.

(q) An agreement among persons engaged in the common business, as yard traders, of buying at a city stock yard cattle which come from different states, that they will form an association for the better conduct of their business, and that they will not transact business with other yard traders who are not members, or buying cattle from those who also sell to yard traders who are not members of the association, is not a violation of the act of July 2, 1890, to protect trade and commerce against unlawful restraints and monopolies. The court said: We are not called upon to decide whether the defendants are or are not engaged in interstate commerce, because, if it be conceded they are so engaged, the agreement is not one in restraint of that trade, nor is there any combination to monopolize or attempt to monopolize such trade within the meaning of the act. Anderson v. U. S. 8 I. C. C. App. XVIII.

(r) A combination of commission merchants at stock yards, by which they refuse to do business with those who are not members of their association, is not subject to the act of Congress of July 2, 1890, to protect trade and commerce. The court says: The business of defendants is primarily and substantially the buying and selling, in their character as commission merchants, at the stock yards in Kansas city, live stock which has been consigned to some of them for the purpose of sale, and the rendering of an account of the proceeds arising therefrom. The sale or purchase of live stock as commission merchants at Kansas City is the business done, and its character is not altered because the

larger proportion of the purchases and sales may be of live stock sent into the state from other states or from the territories. Where the stock came from, or where it may ultimately go after a sale or purchase procured through the services of one of the defendants at the Kansas city stock yards, is not the substantial factor in the case. The character of the business of the defendants must be determined by the facts occurring at that city. Hopkins v. U. S. 8 I. C. C. App. XVIII.

(s) The business of agents in soliciting consignments of cattle to commission merchants in another state for sale is not interstate commerce; and a by-law of a stock exchange restricting the number of solicitors to three does not restrain that commerce. Hopkins v. U. S. 8 I. C. C. App. XVIII.

(t) The fact that a state line runs through stock yards, and that sales may be made of a load of stock in the yards which may be partly in one state and partly in another, does not make the business of selling stock interstate commerce. Hopkins v. U. S. 8 I. C. C. App. XVIII.

(u) The business of commission merchants at certain stockyards, receiving for immediate sale live stock shipped from different states, and, if the market at such yards is not satisfactory, reshipping it to another market, does not cease to be the subject of interstate commerce when the stock is unloaded into the stockyards, and is not a mere local instrumentality in aid of commerce, where such commission merchants by solicitors and advertisements reach out over states and territories and gather stock in for sale and slaughter, and their rules and regulations cover the entire business and extend over the whole field of operation. The court says; "The business of defendants is more than personal services; it is not merely a local instrumentality in aid of commerce. Defendants are active promoters and frequently interested parties in this immense traffic. They reach out over many states and territories by their solicitors and advertisements, and gather in for sale and slaughter millions of sheep and hogs, and their rules and regulations cover the entire business and extend over the whole field of operation." U. S. v. Hoppins, 8 I. C. C. App XXII.

(v) A stock-yards company performing the duties of a mixed traffic, interstate and local, is such an incident to commerce as may be restricted in its charges by state legislation, in the absence of congressional action. Cotting v. Kansas City Stock Yards Co., 8 I. C. C. App. XXXI.

(w) The passing of stock to and from over the state line, in stockyards located upon the boundary between two states, for convenience in feeding or handling, does not of itself impress the traffic with the character of interstate commerce. Cotting v. Kansas City Stock Yards Co., 8 I. C. C. App XXXI.

(x) By its original decision herein the Commission declared that a terminal charge of $2.00 per car on live stock for delivery to the Union Stock Yards in the City of Chicago was unlawful, and further that any such charge exceeding $1.00 per car would be unlawful, and continued the case for proof of damages to injured parties. The decision of the United States Supreme Court upon the petition to enforce the regulating order of the Commission (Interstate Commerce Commission v. Chicago, B. & Q. R. Co., et al., 186 U. S. 320, 46 L. ed. 1182, 22 Sup. Ct. Rep. 824) in general sustained the view of the Commission but dismissed the proceeding on account of a reduction in the through rate which had been made from certain territory not described in the record before it, which reduction amounted to more than the terminal charge and authorized the Commission to take further proceedings to correct any unreasonableness in the rate resulting from the additional terminal charge as to any territory to which such reduction did not apply. The reduction referred to took place in 1896 and the $2.00 terminal charge has been imposed by defendants since June 1, 1894. It follows that as to all shipping territory the defendants have, between June 1, 1894, and the date of the through rate reduction in 1896, unlawfully exacted $1.00 per car on live stock as the terminal charge in Chicago, and that in respect to the territory in which the reduction in through rate did not apply defendants have always since June 1, 1894, collected an excessive charge in Chicago to the amount of $1.00 per car. That branch of the case relating to reparation was properly held open pending determination of the other branch, and the decision of the Supreme Court

in the case for enforcement of the regulating order of the Commission constitutes no bar to submission of proof before and action by the Commission upon the question of reparation. Cattle Raisers' Asso. v. C., B. & Q. R. Co., 10 I. C. C. 83.

(y) No estoppel arises out of the decree of the Supreme Court in this matter with reference to further proceeding and investigation by the Commission as to the legality of the terminal charge for the future. The Commission is not functus officio, for the court expressly states that the Commission still has a duty to perform as to that branch of the proceeding, and the mere use by the Supreme Court in its decree of the word "commencing" with reference to further proceedings is not construed to require the formal institution of an entirely new proceeding. The case will therefore stand re-opened for further investigation and order, with leave to complainant and intervener to show to what territory the through rate reduction of 1896 applied, and if it appears that there was territory to which such reduction did not apply and from which no reduction has been made, defendants will be allowed to show, since conditions may have changed subsequent to the making of the original order, that the through rate from that territory is reasonable and just notwithstanding the addition of the terminal charge of $2.00 per car in Chicago. Cattle Raisers' Asso. v. C. B. & Q. R. Co., 10 I. C. C. 83.

(z) It was conclusively determined by the decision of the United States Supreme Court (Interstate Commerce Commission v. Chicago, B. & Q. R. Co., et al., 186 U. S. 320, 46 L. ed. 1182, 22 Sup. Ct. Rep. 824) that the addition of the $2.00 terminal charge in Chicago on live stock from territory to which the above mentioned reduced through rate applied was not illegal, and it is now thereupon held that any subsequent advance in rates from that territory must be a matter for independent inquiry in a new proceeding. Cattle Raisers' Asso. v. C. B. & Q. R. Co., 10 I. C. C. 83.

(za) Complainant attacked terminal charge of $2 per car assessed by defendants at Chicago, Ill., on livestock for delivery to the Union Stock Yards, as unlawful. In 7 I. C. C. 513, the Commission found this charge to be unreasonable to extent it exceeded $1 per car and awarded reparation. The decision was appealed to the Supreme Court and that body in 186 U. S. 320, found the charge of $2 per car not unlawful, and requested the Commission to take further proceedings in the matter. The case will therefore stand reopened for further investigation and order, with leave to complainant to show to what territory the through rate reduction of 1896 applied, and if it appears that there was territory to which such reduction did not apply and from which no reduction has been made, defendants will be allowed to show, since conditions may have changed subsequent to the making of the original order, that the through rate from that territory is reasonable and just notwithstanding the addition of the terminal charge of $2 per car in Chicago. Cattle Raisers' Asso. of Texas v. C. B. & Q. R. R., 10 I. C. C. 83.

(aa) A railroad company does not violate the Act to Regulate Commerce in making and carrying out an exclusive contract with a stock yards company for the exclusive delivery to that company of live stock in the city of Louisville, although in carrying out such contract it refuses to deliver to another railroad company, for delivery to a competing stock yards, live stock consigned to such competing stock yards. Railroad Commission of Kentucky v. Louisville & N. R. Co., 10 I. C. C. 173.

(bb) Defendant is party to a contract with the Bourbon Stock Yards Company for the exclusive delivery of live stock in the city of Louisville only to the yards of that company, and when livestock coming over its lines is consigned to the Central Stock Yards, a competitor of the Bourbon Yards, at Louisville, defendant refuses to transfer such live stock to the Southern Railway for delivery to the Central Yards. The defendant ought, in fair consideration of all interests, to deliver to the Southern Railway live stock so consigned to the Central Yards, but the question raised for determination is whether the Commission can by its order require this to be done. Decisions of Federal courts cited and applied and HELD: (1) That defendant in making and carrying out its exclusive contract with the Bourbon Stock Yards Company is not acting in violation of the Act to Regulate Commerce; (2) That the Act to Regulate Commerce does not confer upon

the Commission authority to make an order affirmatively requiring a railway carrier to deliver carloads of interstate freight to a connecting carrier; (3) That upon the facts of this case it is not unlawful discrimination between commodities for the defendant to deliver carloads of dead freight to the Southern Railway for consignees in Louisville and to refuse delivery of livestock to the Southern Railway at Louisville when consigned to the Central Stock Yards. (4) That the Commission has no regulating authority beyond that conferred by the terms of the Act to Regulate Commerce and its jurisdiction does not extend to enforcing provisions in the Constitution of the State of Kentucky. Railroad Commission of Kentucky v. L. & N. R. Co., 10 I. C. C. 173.

(cc) A railroad company does not violate the Act to Regulate Commerce by making and carrying out an exclusive contract with a stock yards company, by which it delivers all live stock transported by it to the yards of such stock company. Railroad Commission of Kentucky v. Louisville & N. R. Co., 10 I. C. C. 173.

(dd) Section seven of the Act to Regulate Commerce is not violated by a railroad company in making and carrying out an exclusive contract with a stock yards company for the exclusive delivery to that company of live stock in the city of Louisville, although in carrying out such contract it refuses to deliver to another railroad company for delivery to a competing stock yards, live stock consigned to such competing stock yards. Railroad Commission of Kentucky v. Louisville & N. R. Co., 10 I. C. C. 173.

(ee) It is not an unlawful discrimination between commodities, for the defendant railroad company to deliver carloads of dead freight to the Southern Railway for consignees in Louisville, and to refuse to deliver livestock to the same railway at Louisville consigned to a particular stock yards, where the defendant railroad company is under a contract with a competing stock yards company to deliver all live stock to such company. Railroad Commission of Kentucky v. Louisville & N. R. Co., 10 I. C. C. 173.

(ff) Excluding the territory covered by the reduction of 1896, which is described in the findings, livestock rates to Chicago participated in by defendants were on May 31, 1894, reasonable compensation for the service performed, including delivery at the Union Stock Yards in Chicago. At all times since that date such rates have been, and now are, sufficiently high to include a delivery at the stock yards as such delivery was made prior to June 1, 1894. While since that time there have been advances and reductions from some points, they have been about equal, averaging probably less than one cent per 100 pounds and the great majority of rates remain the same as they were on May 31, 1894. These scattered reductions, as well as the advances, applied variously, some on cattle, some on sheep and others on hogs. No change in the rate has been made to offset the addition of the terminal charge in Chicago of $2.00 per car, or with any reference to such charge. The imposition of any such terminal charge, except in so far as the cost of delivery in Chicago has been increased by the trackage charge paid by defendants to the Stock Yards Company, since June 1, 1894, is unreasonable. Such increased cost of delivery, that is to say, such trackage charge, is fairly estimated for all the defendants at one dollar per car. Citing and applying Interstate Commerce Commission v. Chicago, Burlington & Quincy R. Co., 186 U. S. 320, 46 L. ed. 1182, 22 Sup. Ct. Rep. 824, HELD: First: that delivery to the Union Stock Yards prior to June 1, 1894, was included in the rate and was in no sense a gratuity; Second: That outside of the excluded territory, a terminal charge for delivery to the Union Stock Yards in Chicago of one dollar per car is reasonable and defendants' terminal charge of two dollars per car, exacted since June 1, 1894, is unreasonable; Third: That the case be retained for further proceedings in the matter of reparation. Cattle Raisers' Asso. v. Chicago, B. & Q. R. Co., 11 I. C. C. 277.

(gg) Where the livestock rates to Chicago participated in by defendants constitute a reasonable compensation for the services performed, including delivery at the Union Stock Yards in Chicago, the imposition of a terminal charge of $2 per car is unreasonable. Cattle Raisers' Asso. of Texas v. Chicago, B. & Q. R. Co., 11 I. C. C. 277.

(hh) Outside the excluded territory a terminal charge for delivery to the

Union Stock Yards in Chicago of $1 per car is reasonable. Cattle Raisers' Asso. of Texas v. Chicago, B. & Q. R. Co., 11 I. C. C. 277.

(ii) Complainant attacked as unreasonable terminal charge of $2.00 assessed by defendants for delivery of livestock at the Union Stock Yards, Chicago. In 7 I. C. C. 513 the Commission found this charge unreasonable to extent it exceeded $1.00, which was approved by the Supreme Court of United States in 186 U. S. 320. No change was made in the rate to offset the addition of the terminal charge in Chicago or with any reference to such charge. HELD: Reparation should be awarded on shipments moving since the publication of the $2 charge. Cattle Raisers' Asso. of Texas v. C. B. & Q. R. R., 11 I. C. C. 277.

(jj) A railroad company may maintain its livestock depot at a particular point, although it neither builds nor repairs nor insures the stock pens into which the stock is unloaded, and does not hire or control the men who do the unloading; and whether the Union Stock Yards at Chicago have been, in railroad phraseology or in legal definition the depot of defendants is immaterial, for they were, and still are, in fact the point to which the stock is transported and unloaded under the shipping contract of defendants. Cattle Raisers' Asso. of Texas v. C. B. & Q. R. R., 11 I. C. C. 277.

(kk) The present terminal charge for delivery of live stock at the Union Stock Yards in Chicago, amounting to about $2 per car, is unjust and unreasonable; and a reasonable charge would be $1 per car for such terminal services. Cattle Raisers' Asso. of Texas v. Missouri, K. & T. R. Co., 11 I. C. C. 296.

(ll) Complainant attacked the terminal charge of $2 per car imposed by defendants for the delivery of carloads of livestock at the Union Stock Yards at Chicago, Ill. This matter has been before the Commission in one form or another for the last ten years. HELD: The Commission sees no reason for reversing its former opinions, rate attacked unreasonable to extent it exceeded $1 per car. Cattle Raisers' Asso. v. C. B. & Q. Ry., 12 I. C. C. 507.

IMPORTANT CASES SINCE 1908

(mm) Complainant is engaged in the city of Baltimore in conducting an abattoir for slaughtering live stock. It owns a side track connecting its plant with the P. B. & W. R. R., a part of the Pa. R. R. This side track has been in existence 20 years and has been used for the delivery of all classes of freight except live stock. In 1891, the Union Stock Yards Co. was organized, which took over the business of the Colverton and Claremont Stock Yard in Baltimore. Prior to that the complainant had established its plant on a piece of land purchased from the Claremont Co. and adjacent thereto. The consolidated company had yards situated about two miles from the yard of complainant. The defendants entered into a contract with the Union Stock Yards whereby they agreed to make "the said stock yards their live stock depot for Baltimore and vicinity and shall deliver at said yard all the live stock which may be transported over their line . . . . destined to the Baltimore market . . ." Defendants claim they had a right to agree to deliver at one stock yards exclusively in Baltimore. Complainant's live stock was unloaded at the Union Stock Yards and then driven through the streets of Baltimore by complainant two miles to their yard, at considerable expense and annoyance. Shipments by complainant and its tenant over the side track amounted to from 50 to 60 carloads a year. If live stock was delivered at its yard complainant estimated it would receive 15 carloads a week. HELD: The refusal of defendants to deliver to the side track of complainant's live stock consigned thereto was unreasonable and a violation of the law. Ordered that such delivery be hereafter made. Baltimore Butchers Live Stock Co. v. P. B. & W. R. R. Co., 20 I. C. C. 124.

(nn) A stock yard company is not a common carrier and if its tariff is part of a scheme devised by shippers to secure under pretense of common carriage allowances otherwise illegal, the tariff should be cancelled Atchison, Topeka & Santa Fe Ry. Co. v. Kansas City Stock Yards Co., 33 I. C. C. 92, 98.

(oo) A contract, entered into by a carrier to make a particular stockyards its sole terminal for delivery and receipt of live stock, in common with all other contracts, must be disregarded if in any way it transgresses or conflicts with any provision of the act. Nashville Abatoir,

Hide & Melting Asso. v. L. & N. R. R. Co., 40 I. C. C. 134, 141.

(pp) As the services of unloading and loading at the Chicago stock yards are part of the transportation of live stock, the collection of separate charges therefor from shippers, in addition to the rates to and from the stockyards, found an unlawful and unreasonable practice. Reparation awarded. Live Stock Loading and Unloading Charges, 58 I. C. C. 164, 167.

(qq) Among the amendments to section 15 of the interstate commerce act enacted in the transportation act, 1920, is one providing that the unloading and reloading services at public stockyards shall be performed without extra charge to the shipper, consignee, or owner. Indianapolis Chamber of Commerce v. Big Four, 60 I. C. C. 67, 75.

(rr) Among the amendments to section 15 of the interstate commerce act enacted in the transportation act, 1920, is one providing that the unloading and reloading services at public stockyards shall be performed without extra charge to the shipper, consignee or owner. Indianapolis Chamber of Commerce v. Big Four, 60 I. C. C. 67, 75.

(ss) Refusal of carriers to unload ordinary live stock from their cars into stock pens adjacent to packing plants of complainants, or to make an allowance for unloading such shipments, while, pursuant to section 15, paragraph (5) of the act, performing the service of loading at point of origin or unloading at destination such live stock shipped from or to public stockyards, without charge in addition to line-haul charges, not shown to violate the act. Omaha Packing Co. v. A. T. & S. F. Ry. Co., 66 I. C. C. 44.

(tt) The Commission must assume that Congress legislated on the subject of the duties of common carrier by railroad concerning the receipt and delivery of live stock with full knowledge of the law as declared by the Supreme Court in Covington Stock-Yards Co. v. Keith, 139 U. S. 128, and therefor with the knowledge and purpose that public stockyards would be open to all shippers and consignees as the terminals of the carriers. Omaha Packing Co. v. A., T. & S. F. Ry. Co., 66 I. C. C. 44, 51.

(tta) Section 15, paragraph (5) of the act, clearly refers to some service distinquishable from that involved in moving cars to or from public stock yards It is the delivery of inbound traffic into suitable pens for which no extra charge shall be made, and no additional charge can lawfully be made on live stock having been received and loaded at the yards. There is no inhibition against assessment of charges for service performed by a common carrier in hauling the loaded cars to or from a point of interchange with another carrier having the line haul. Omaha Live Stock Exc. v. C. M. & St. P. Ry. Co., 69 I. C. C. 692.

(uu) Following Omaha Packing Co, 66 I. C. C. 44, charges in addition to line-haul charges, for unloading and reloading en route ordinary live stock destined to private stockyard adjacent to packing plant of complainant, situated at Cactus, Ariz., while unloading and reloading such shipments destined to public stockyards without charge in addition to line-haul rates, found to result in undue prejudice to complainant in favor of competitors whose packing plants are adjacent to public stockyards. Arizona Packing Co. v. A. E. R. R. Co., 74 I. C. C. 223.

(vv) Since the normal course of business at the stockyards is for cattle received by shipments from other states to be sold at the yards either to packers or to buyers, who will ship either the products or the stock itself principally to other states, the sale of the stock as it comes into the yards is a transaction necessary to the uninterriupted flow of interstate commerce, and therefor a part of such commerce, so that the Packers and Stockyards Act of 1921, authorizing the regulation of such sales, and by title 1, §2, par. (b), providing that a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in the live stock and meat-packing industries, was within the power of Congress to regulate interstate commerce. Stafford v. Wallace, 42 Sup. Ct. 397.

(ww) In the receipt of live stock by rail and in their delivery by rail for shipment to other states the stockyards are interstate commerce agencies. Stafford v. Wallace, 42 Sup. Ct. 397.

(xx) The various stockyards of the country are public utilities to promote the flow of commerce from the ranges and farms to the consumers, and conduct a

business affected by a public use subject to regulation by legislative action. Stafford v. Wallace, 42 Sup. Ct. 397.

(yy) The acts of stockyards and live stock commission men, which Congress would have power to punish as a conspiracy to burden interstate commerce, it has power to prevent by regulation; the reasonable fear by Congress that such acts will probably and more or less constantly be used in conspiracies against interstate commerce serving the same purpose as the intent to obstruct interstate commerce in the conspiracy. Stafford v. Wallace, 42 Sup. Ct. 397.

(zz) Under Packers and Stockyards Act, 1921, sec. 316, making applicable to suits for injunction against the orders of the Secretary of Agriculture the same procedure, original and appellate, provided in Act Oct. 22, 1913, for suits for injunction against the orders of the Interstate Commerce Commission, which latter act gives a direct appeal to the Supreme Court from the granting or refusing of an interlocutory injunction, a direct appeal to the Supreme Court may be taken from the refusal of an interlocutory injunction against orders under the Packers and Stockyards Act. Stafford v. Wallace, 42 Sup. Ct. 397.

(3a) If the Packers and Stockyards Act of 1921 is unconstitutional, prosecutions for the severe penalties imposed by that act for violations of the orders of the Secretary of Agriculture thereunder, before opportunity can be given to test validity, may be enjoined by equity. Stafford v. Wallace, 42 Sup. Ct. 397.

(3b) It was a question for Congress, and not for the courts, to decide the nature of the evils present and threatening in the stockyards industry, and to take such steps by legislation within its power as it deemed proper to remedy them, but the courts in interpreting the Packers and Stockyards Act, in order to determine its validity, can consider the conditions under which Congress acted. Stafford v. Wallace, 42 Sup. Ct. 397.

ALL OTHER CITATIONS

United States v. Union S. & T. Co., 192 Fed. 330, 341; U. S. v. Union Stock Yards & T. Co., 33 Sup. Ct. 83, 88; 226 U. S. 286; State v. Kansas City Stock Yards Co. of Mo. (Kans., 1915), 145 Pac. 831; A. T. & S. F. Ry. Co., v. Kansas City Stock Yards Co., 33 I. C. C. 92, 98, 99, 100, 101; Cattle Raisers' Stockyards Assn. v. E. P. & S. W. Co., 37 I. C. C. 284; Guyton & Harrington Mule Co. v. L. & N. R. R., 50 I. C. C. 546, 552; Live Stock Loading and Unloading Charges, 58 I C. C. 164, 166, 167, 168; Intrastate Fares within Illinois, 59 I. C. C. 350, 362; Omaha Packing Co. v. A. T. & S. F. Ry. Co., 66 I. C. C. 44, 49.

STOP OVERS

See Passenger Fares and Facilities §13½.

STOPPAGE IN TRANSIT

See Express Companies §34; Facilities and Privileges, §15.

CASES 1887-1908

(a) A carrier is not compellable by law to give to the merchants of a town on its line the privilege of shipping their goods from the point of purchase to their own locality and again from thence to the place at which the goods may be sold by them at the same rate which would have been charged had there been but one shipment from the point of purchase to the point of ultimate delivery. Crew v. R. & D. R. R. Co., 1 I. C. R. 703.

(b) If, in the cases of shipments under a through bill of lading and a thru rate, the privilege of stoppage in transit at an intermediate point and trying the market there, and, if it be found unsatisfactory, of reshipping on to the point of original destination at the balance of the through rate, be lawful, the granting of it to one locality and denying of it to another under substantially similar circumstances, would be an unjust discrimination against the latter. Commercial Club of Omaha v. C. R. I. & P. R. Co., 6 I. C. C. 647, 677.

(c) Stopping a commodity in transit for treatment or reconsignment is in the nature of a special privilege which the carrier may concede, but which the shipper, under the present state of the law, cannot demand as a matter of lawful right; but carriers may not unjustly discriminate between markets or individuals in the granting of such privileges. St. Louis Hay & Grain Co. v. Mobile & O. R. Co., et al., 11 I. C. C. 90.

(d) The privilege of stopping hogs in transit shipped from western points

to the east in order that they may be sorted and reconsigned under the thru rate from point of origin cannot be enforced against carriers in favor of a single point or shipper in the absence of lawfully established tariffs making such privilege open to the public at large. R. R. Shiel & Company v. I. C. R. R., 12 I. C. C. 211, 214

IMPORTANT CASES SINCE 1908

(e) Proposed rule under which shipper is required to execute agreement for stoppage of goods in transit, and where shipper is unknown or irresponsible, the agent must require one or more sureties to sign with him, found justified Such rules indefinite as to number of sureties required, reposes too much arbitrary power in agents to decide who is or is not "responsible," compliance therewith might require considerable time and result in loss of right to stop because of delivery at destination, and, terms of agreement are inconsistent with recogniiton by respondent of any duty to obey the order to stop. Stoppage of Goods in Transit, 66 I. C. C. 423.

(f) Failure of defendants to accord arrangements for trying the market on live stock at East St. Louis, Ill., when originating at southwestern points and destined to St. Louis, Mo., while according such arrangements at other public markets, found not unduly prejudicial. To accord such service at East St. Louis would involve a back haul, while at such other markets the arrangement applies only in connection with traffic destined beyond where the transit point is in direct line of movement between point of origin and final destination. St. Louis Independent Packing Co. v. C. & A. R. R. Co., 73 I. C. C. 459, 465.

ALL OTHER CITATIONS

Streever Lumber Co. v. C. M. & St. P. Ry. Co., 34 I. C. C. 1, 2; Stopping of Car in Transit to Complete Loading, 36 I. C. C. 130, 132, 134, 135, 136; Swift & Co. v. M. & O. R. R., 39 I. C. C. 701; Stoppage in Transit of Farm Wagons, 3 I. C. C. 731; Paper Transit Rules at New England Ports, 41 I. C. C. 395; Interstate Packing Co. v. C. & N. W. Ry. Co., 42 I. C. C. 189, 192; Squire & Co. v. A. S. R. R., 44 I. C. C. 509; Sheldon v. Chicago B. & Q. R. R., (Ia., 1918) 169 N. W. 189; Galigher Machinery Co. v. B. & O. S. W. R. R., 50 I. C. C. 488; Swift & Co. v. United States, 255 Fed. 291; Mercantile Lumber Co. v. I. C. R. R. Co., 53 I. C. C. 663, 667; Allen v. L. V. R R. Co., 53 I. C. C. 33; De Laval Separator Co. v. A. & R. R. Co., 57 I. C. C. 668, 676; St. Louis Independent Packing Co. v. C. & A. R. R. Co., 73 I. C. C. 459; Apperson Brothers Automobile Co. v. L. E. & W. R. R. Co., 81 I. C. C. 392.

STORAGE

I. CONTROL AND REGULATION
- §1. Jurisdiction of Commission.

II. CHARGES
- §2. Reasonableness and discrimination in general.

III. TARIFFS AND CONSTRUCTION
- §3. In general.

CROSS REFERENCES

See Car Ferries; Export Rates and Facilities VI; Express Companies §35; Facilities and Privileges §14, §16 ; Stoppage in Transit; Storage in Transit.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Jurisdiction of Commission.

CASES 1887-1908

(a) The business of elevating grain is a business charged with a public interest, and those who carry it on occupy a relation to the community analogous to that of common carriers, and may be controlled by public legislation for the common good. Budd v. New York (U. S. Sup. Ct.), 4 I. C. R. 45.

(b) The imposition by railroad companies of storage charges on some consignees, and not upon others, is prohibited by the Act to Regulate Commerce, §2, the intent of which is to prevent discrimination between individuals. American Warehousemen's Asso. v. Illinois C. R. Co., 7 I. C. C. 556.

IMPORTANT CASES SINCE 1908

(c) A storage company at Memphis is not subject to the Commission's jurisdiction. Pine Bluff Traffic Bureau v. L. & N. R. R. Co., 37 I. C. C. 218, 224.

(d) Reasonableness of insurance premiums paid by the carrier for the shippers' account for property stored by the carrier in a public warehouse pending acceptance by consignee is not within the jurisdiction of the Commission. Cottonseed Products Co. v. St. L. S. F. Ry. Co., 53 I. C. C. 574, 577.

(e) Storage of property transported is a transportation service only to the extent that storage is necessarily incidental to transporting such property, and the term has been used in section 1 of the interstate commerce act in that limited sense. Guaranty Claim of Central Elevator & Warehouse Co., 72 I. C. C. 169, 176.

(f) If the carrier is shown to have been negligent in failing to place shipments in public storage, the Commission has no jurisdiction to award damages resulting therefrom. Claims for such damages are cognizable by the courts. Huffman Bros. Motor Co. v. N. Y. C. R. R. Co., 74 I. C. C. 672.

ALL OTHER CITATIONS

Brey v. Penn. R. R. Co., 16 I. C. C. 497, 500, 501; Western Classification Case, 25 I. C. C. 442, 445; Michigan Steel Boat Co. v. M. C. R. R. Co., 32 I. C. C. 576; Red Cedar Shingle Mfrs. Asso. v. M. & St. L. R. R. Co., Unrep. Op. A-880; Valley & Siletz R. R. Co. v. S. P. Co., 53 I. C. C. 397; Weissbaum & Co. v. Director General, 53 I. C. C. 681, 682; Raymond Hadley Corporation v. Boston & M. R. R., 174 N. Y. S. 442; Barber & Co. v. C. C. C. & St. L. Ry., 51 I C. C. 194; Armour & Co. v. B. & A. R. R., 71 I. C. C. 244, 247; Peterson Co. v. A. T. & S. F. Ry., 51 I. C. C. 401; Ira S. Perrine v. Oregon Short Line R. R., 52 I. C. C. 400, 402; Aetna Explosives Co. v. P. C. C. & St. L. R. Co., 53 I. C. C. 707; Harlem Feed & Grocery Co. v. Director General, 60 I. C. C. 652.

II. CHARGES.

§2. Reasonableness and Discrimination in General.

See Warehousing.

CASES 1887-1908

(a) A charge by railroad companies for storage on some consignees, and not on others, is also prohibited by the Act to Regulate Commerce, §3, providing generally against undue preferences between shippers. American Warehousemen's Asso. v. Illinois C. R. R. Co., 7. I. C. C. 556.

(b) The So. Ry. Co., in applying to complainant's interstate traffic at Macon, Ga., the storage rates prescribed by the Georgia Railroad Commission, and the C., N. & L. R. Co., in applying to complainant's interstate traffic at Columbia, S. C., the storage rates prescribed by the South Carolina Railroad Commission, although such storage rates were in excess of the usual public warehouse charges in Macon and Columbia, does not violate the Act to Regulate Commerce. Blackman v. Southern R. Co., 10 I. C. C. 352.

(c) The Southern Railway Company in applying to complainants' interstate traffic at Macon, Ga., the storage rates prescribed by the Georgia railroad commission; and the Columbia, Newberry, & Laurens Railroad Company in applying to complainants' interstate traffic at Columbia, S. C., the storage rates prescribed by the South Carolina railroad commission, did not violate the Act to Regulate Commerce, although such storage rates were in excess of the usual public warehouse charges in Macon and Columbia. Blackman v. Southern R. Co., 10 I. C. C. 352.

(d) Complainant attacked storage charge of defendant on freight while in its freight warehouse at Macon, Ga., as unreasonable in that it exceeded the charge that would have been exacted had the freight been in public warehouse. HELD: Inasmuch as the freight warehouse and public warehouse are not used for similar purposes, and the storage charge was exacted primarily for the expeditious movement of freight, charge attacked not unreasonable, complaint dismissed. Blackman v. Southern Ry. 10 I. C. C. 352.

(e) A railroad freight depot and a public storage warehouse are not used for similar purposes, and the charge for storage in the railroad depot may properly be made higher than the public warehouse charge with the object of compelling the expeditious removal of freight. Blackman v. Southern Ry., 10 I. C. C. 352, 358.

(f) There is nothing to prevent the consignee, should he wish to do so, from removing goods from a depot to a public warehouse, where they would be subject to regular warehouse rates; but this transfer would involve drayage charges. The railways are not in the warehouse business, all their depot space being required for current business, and the storage rules and tariffs are adjusted with the object of securing freedom from blockade. Blackman v. Southern R. Co., 10 I. C. C. 352, 357.

IMPORTANT CASES SINCE 1908

(g) Carriers, voluntarily furnishing storage in cars are entitled to reasonable compensation beyond the cost of service. In Re Demurrage Charges, 25 I. C. C. 314, 324.

(h) While carriers may provide by definite tariff provisions free from undue discrimination, for the advancement of storage or transfer charge, the Commission is without authority to compel them to do so. Western Classification Case, 25 I. C. C. 442, 445.

(i) The storage of commodities outside of cars for the convenience of shippers while markets are being sought is not properly a carrier's function. It would be impossible for the carrier to provide such facilities for all commodities, or even for all shippers of any commodity. Reconsignment and Storage of Lumber and Shingles, 27 I. C. C. 451, 456.

(j) Carriers' storage charges are intended to prevent the accumulation and congestion of freight by inducing prompt removal from the carriers' premises. They are not ordinarily imposed for profit. The charges imposed by public warehouses, therefore afford no fair criterion of the reasonableness of a carrier's charges, nor is the value of the service rendered conclusive. The accomplishment of the purpose intended is the primary consideration. Cleveland Salt Co. v. Pennsylvania Co., 34 I. C. C. 638, 639.

(k) Storage charges should be collected monthly as they accrue, and other charges at the time the service is performed. Iron Ore Rate Cases, 41 I. C. C. 181, 210.

(l) A carrier is not entitled to assess storage charges for the time during which it may have been in default in giving notice of a failure of the consignee to accept a shipment and is not entitled to assess charges for the time subsequent to the giving of notice where it had refused to make delivery to consignee except upon payment of charges which it was not entitled to collect. Toch Bros. v. C. of G. Ry., 41 I. C. C. 368, 369.

(m) In order to prevent overcharges and discriminations under the pretext of aditional services, Congress enacted in section 1 that the entire body of such services, many of them, according to the theory of the common law, separable from the carrier's service as carrier, should be included within the single term "transportation" and be subject to the provisions of the Act respecting reasonable rates and the like. And by section 6 no carrier may extend "any privileges or facilities," save as these have been duly specified. But the primary duty of a carrier is to carry. And it is not the duty of a carrier, as such, to furnish storage beyond the reasonable time necessary for unloading or removal. American Paper & Pulp Asso. v. B. & O. R. R. Co., 41 I. C. C. 511, 512.

(n) Storage charges should cease on the date the order of the shipper is tendered to the rail carrier, or on the date the ship's permit to load is received by such carrier. It is to be remembered that the shipper must secure the ship captain's permit to load before he orders his shipment to ship side, and in case of through billed shipments the ship's permit to load is given the rail carrier's representative. If there is any delay in delivery to ship side after the receipt of the permit, or the order of the shipper, it is due to the neglect of the rail carrier to complete the transportation its tariffs and rates provide for. Any rule or practice that continues storage charges after the tender to the rail carrier by the shipper of an order to move his shipments to ship side, or after receipt by the rail carrier of the vessel's permit to load, is unreasonable. Export Freight Free Time, 47 I. C. C. 162, 177.

(o) It is no part of the carrier's duty to furnish cars for storage or warehouse purposes. Newman Lumber Co. v. G. & S. I. R. R., 49 I. C. C. 340, 341.

(p) Demurrage and storage charges are not assessed primarily for revenue purposes, but in part, at least, as a penalty to promote release and fullest use of equipment, tracks, and terminal houses, and the measure of such charges may not fairly be determined by the charges made by public warehouses. Barber & Co. v. C. C. C. & St. L. Ry., 51 I. C. C. 194, 196.

(q) Storage entails aditional expense and disadvantages which do not attach to through shipments, including switching, detention of inbound equipment, absorption of outbound switching charges, and expenses of accounting and readjustment of revenues, while carriers render substantially the

same service as on local traffic, both inbound and outbound. Northern Potato Traffic Asso. v. G. N. Ry. Co., 58 I. C. C. 360, 364.

(r) Charges imposed by commercial warehouses afford no fair test of the reasonableness of storage charges imposed by common carriers. Kalamazoo Tank & Silo Co. v. Director General, as Agent, 60 I. C. C. 418, 419.

(s) A vessel on which space engaged was commandeered by government while shipments in transit. While efforts was being made to secure space on other vessels, shipments unloaded and stored in order to release equipment. Demurrage and storage charges assessed found not illegal, unreasonable, or unduly prejudicial, as governing tariff did not limit the causes which may contribute to failure of a vessel to make its scheduled sailing. Dodge Bros. v. Director General as Agent, 62 I. C. C. 689.

(t) The right of Storage exists independent of statute and can not be added to or curtailed by anything in the carrier's tariffs. Space Rental Charges on Cotton, 66 I. C. C. 121, 123.

(u) A railroads function is to move traffic. The furnishing of storage is not a primary function. The free time provided for loading, unloading, and reconsignment has been fixed as the reasonable time within which cars should be released and made available for further movement. The shipper has no inherent right to detain a car beyond the free time and thus prevent it from being used for transportation by other shippers. Car shortages have resulted in incalculable loss in the past both to the carriers and the shipping public as a whole, and when it appears that shippers detain cars for purposes other than those necessary for proper transportation the carriers are justified in taking steps to prevent such abuses. American Wholesale Lumber Asso. v. Director General 66 I. C. C. 393, 407.

(v) The furnishing of storage is not a primary function of the railroads. American Wholesale Lumber Asso. v. Director General, as Agent, 66 I. C. C. 393, 407.

(w) Storage charges imposed by commercial warehouses affords no fair test of the reasonableness of storage charges imposed by common carriers. Dashields & Co. v. Director General 73 I. C. C. 225, 227.

(x) Storage charges on that portion of shipments of fruits and vegetables taken from cars for display purposes and placed in carriers' Bolton station, Baltimore, Md., found not unreasonable or otherwise unlawful. Tariff provided that "Freight, received for delivery or held to complete a shipment or for forwarding directions, if stored in or on railroad premises, is subject to storage rules." Bolton station is a facility used as an incident to its transportation service, and shipments were stored "in or on railroad premises." Dashields & Co. v. Director General, as Agent, 73 I. C. C. 225.

(y) Charges for ground storage on a car demurrage basis have been sustained by the commission in many cases. The underlying principle is that such charges are imposed, not primarily to produce revenue, but to accomplish a specific purpose, such as the prompt removal of the freight from the carrier's premises. If the purpose is reasonable and the charges are no higher than necessary to accomplish it, the charges are reasonable. Kidston & Co. v. D. L. & W. R. R. 74. I. C. C., 135, 139.

(z) Complainant attacked as unreasonable and unjustly discriminatory charges of $1,125 for storing at Chicago, Ill., from August 12, 1920, to Dec. 17, 1921, three automobies from Elkhart, Ind., to Chicago, consigned to itself notify Bush Auto Co. Car was placed for unloading August 2, 1920, notice of arrival sent. On August 11, 1920, the automobiles were unloaded by defendant and stored in a building adjoining its unloading platform. Applicable tariff provided storage rates of 4 cents per 100 pounds for first five days, and $2 per car per day thereafter. The building in which the storage took place was erected especially to care for automobile traffic and the space utilized in storing these cars was needed for current shipments. HELD, charges attacked not unreasonable or unjustly discriminatory, complaint dismissed. Huffman Brothers Motor Co. v. N. Y. C. R. R., 74 I. C. C., 671.

(aa) Railroad ordinarily engaged in the storage of goods only as an incident to transportation and their storage charges are usually so fixed as to afford not only compensation for space used but also an incentive to promote removal of goods from their premises. Huffman Brothers Motor Co. v. N. Y. C. R. R., 74 I. C. C. 671, 672.

(bb) The reasonableness of charges made by railroads for storage can not be measured by the charges made by commercial warehouses. Huffman Brothers Co. v. N. Y. C. R. R., 74 I. C. C., 671, 672.

(cc) Charges for ground storage on a car-demurrage basis have been sustained by the commission in various cases. The underlying principle is that such charges are imposed, not primarily to produce revenue, but to accomplish a specific purpose, such as the prompt removal of the freight from the carriers' premises. If the purpose is reasonable and the charges are no higher than necessary to accomplish it, the charges are reasonable. Kidston & Co. v. D., L. & W. R. R. 74 I. C. C. 139.

(dd) The reasonableness of charges made by railroads for storage can not be measured by the charges made by commercial warehouses. Huffman Bros. Motor Co. v. N. Y. C. R. R. Co., 74 I. C. C. 672.

(ee) Railroads ordinarily engage in the storage of goods only as an incident to transportation and their storage charges are usually so fixed as to afford not only compensation for space used but also an incentive to prompt removal of goods from their premises. Huffman Bros. Motor Co. v. N. Y. C. R. R. 74 I. C. C. 672.

(ff) Carload shipment unloaded by consignee, at carrier's request, and stored on right of way. Storage charges accrued. HELD, Since tariff provided that "where c. l. freight is unloaded by carrier for purpose of releasing needed equipment, storage charge will be same as would have accrued under car-demurrage rules had freight remained in car," demurrage charges were applicable. Shipment was unloaded by consignee instead of by carrier, but at carrier's request. Reparation awarded. General Petroleum Corp. v. Director General, as Agent, 80 I. C. C. 53.

(gg) Carriers may impose such storage charges as will compel the removal of freight from their premises, subject, however, to the limitation that the charges must not be unreasonable or otherwise unlawful. General Petroleum Corporation v. Director General, 80 I. C. C. 53, 54.

(hh) Whether or not a sum urged by complainant as reasonable ground-rental charge is adequate, such sum affords no fair test of reasonableness of storage charges imposed by carrier. One element of difference is that in instance of storage on rented ground property would be in custody and at risk of owner. General Petroleum Corp. v. Director General, as Agent, 80 I. C. C. 53, 54.

(ii) Shipments delivered by carrier in destination city at station other than that specified in routing instructions. Consignee notified of arrival and shipments subsequently stored in carrier's warehouse. Consignor requested storage in public warehouse but did not surrender order notify bills of lading or secure carrier by idemnity bond until after storage charges accrued, when delivery made to another party designated. HELD: While consignor might have insisted on delivery to station as routed storage charge accrued not because of misdelivery but because of customer's failure to accept. Storage charges assessed pending surrender of order notify bills or indemnity bond by party holding title to goods, not in violation of the act. Vim Motor Truck Co. v. Director General, as Agent, 80 I. C. C. 72.

(jj) It is well settled that the reasonableness of storage charges assessed by a carrier may not fairly be determined by the charges made by public warehouses. Vim Motor Truck Company v. Director General, 80 I. C. C. 72, 74.

(kk) Reasonableness of storage charges assessed by a carrier may not fairly be determined by charges made by public warehouses. Vim Motor Truck Co. v. Director General, as Agent, 80 I. C. C 72, 74.

(ll) Contention that storage charges were inapplicable in that carrier had not procured disposition orders, in accordance with its practice, after giving notice of arrival, not sustained. Regardless of what practice of delivering carrier may have been with respect to procuring disposition orders, failure to procure such orders in absence of tariff requirement, after notice of arrival given in accordance with governing tariff, does not affect time when storage charges accrue. Charges are governed by applicable tariffs and not by practice of carriers. Quaker Oats Co. v. Director General, as Agent, 80, I. C. C. 75.

(mm) A railroad had no right to carry on a storage business, but can only store cars and merchandise as inciden-

tal to its duty to transport. Bessemer & L. E. R. Co. v. Ford Collieries Co. (Pa. 1922), 116 Atl. 802.

ALL OTHER CITATIONS

Storage Charges in Central Freight Ass'n Territory, 28 I. C. C. 372; Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 658; New England Investigation, 27 I. C. C. 639, 658; Parry & Co. v. P. R. R. Co., 29 I. C. C. 559; Storage Charges in C. F. A. Territory, 28 I. C. C. 372, 374; New Orleans Storage Rules and Regulations, 28 I. C. C. 605, 607; Molasses Rates from Mobile, 28 I. C. C. 666, 672; Husikamp Bros. Co. v. C. & N. W. Ry. Co., Unrep. Op. A278; American Hay Co. v. C. V. Ry. Co., 29 I. C. C. 659; International Agr. Corp. v. A. & W. P. R. R. Co., 32 I. C. C. 199, 201; Michigan Steel Boat Co. v. M. C. R. R., 32 I. C. C. 576, 677; Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 281; Milwaukee Produce & Fruit Exch. v. C. & N. W. Ry. 35 I. C. C. 33, 35; Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 56; Eastern Fruit Growers Asso. v. B. & O. R. R. Co., 33 I. C. C., 343, 345; Plymouth Coal Co. v. L. V. R. R., 36 I. C. C. 140, 141; Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 56, 57, 58; Plymouth Coal Co. v. D. L. & W. R. R. Co., 36 I. C. C. 76, 77, 78; Commercial Exch. of Philadelphia v. Pa. R. R., 38 I. C. C. 320, 322, 323; Baltimore Chamber of Commerce v. B. & O. R. R. Co., 38 I. C. C. 326; Levering Bros. v. P. B. & W. R. R. Co., 38 I. C. C. 349, 350; Ennis, Brown Co. v. A. T. & S. F. Ry., 39 I. C. C. 209; New York Storage, 40 I. C. C. 265, 267; Pittsburgh & Ohio Mining Co. v. B. & O. R. R. Co., 40 I. C. C. 408, 409; American Paper & Pulp Asso. v. B. & O. R. R. 41 I. C. C. 506, 511, 513; Export Grain Case 42 I. C. C. 523, 524, 530, 541; In re Arlington Hotel Co., 98 Atl. (Del. 1916) 186; Roy & Roy Mill Co. v. B. & M. R. R., 44 I. C. C. 523, 524; Flour Storage, 46 I. C. C. 295, 296; Sheip Manufacturing Co. v. B. & O. R. R., 45 I. C. C. 408, 410; Baltimore Chamber of Commerce v. B. & O. R. R., 45 I. C. C. 40, 47; Famechon Co. v. C. B. & Q. R. R., 45 I. C. C. 598; Western Transit Co. v. Leslie & Co., 37 Sup. Ct. 133; Bush v. Cole (Ark. 1917), 194 S. W. 24; Brooklyn E. Dist. Terminal v. Central R. Co., 162 N. Y. S. 911; Panhandle & S. F. Ry. v. Hubbard, (Tex., 1916), 190 S. W. 793; Blum & Popper v. B. & M. R. R., 49 I. C. C. 107, 108; Youngblood v. C. R. R. of N. J., 50 I. C. C. 217; Barnum-Richardson Co. v. C. N. E. Ry., 50 I. C. C. 263; Dakota Monument Co. v. Director General, 59 I. C. C. 101, 103, 104, 191, 193; R. A. Cade, Inc. v. Pennsylvania 60 I. C. C. 151; Harlem Feed & Grocery Co. v. Director General, as Agent, 60 I. C. C. 542; Manufacturers Export Cleaning House v. Director General, 61 I. C. C. 85; Vim Motor Truck Co. v. Director General, as Agent, 64 I. C. C. 588; Waters v. Becker, (Wisc. 1921), 186 N. W. 167; Caldwell Shipping Co. (Inc.) v. Director General, as Agent, 74 I. C. C. 704; Hendee Mfg. Co. v. Director General, 89 I. C. C. 38.

III. TARIFFS AND CONSTRUCTION.

See Tariffs.

§3. In general.

CASES 1887-1908

(a) Upon investigation of alleged unlawful practices of carriers in granting free storage of freights and other specified privileges to shippers. HELD, that charges made by carriers for transportation and terminal services, and all rules and regulations which in any wise change, affect or determine the aggregate compensation paid therefor, are required by the statute to be shown upon their published rate schedules and under such requirements it is the duty of all carriers subject to the act to so publish and thereupon enforce each and every of their charges, rules and regulations concerning the storage of freights, diversion of cars to shippers use, distribution of freight in part lots, reconsignment of freight and all kindred concessions or privilege without due publication thereof in such schedules. That in view of the very general allowance in various forms of some or all of the privileges involved, a general order directed to all carriers subject to the act should be issued. American Warehousemen's Asso. v. I. C. R. Co., 7 I. C. C. 556.

(b) Carriers may be required by the Interstate Commerce Commission, by a general order, to state in their tariffs what free storage facilities will be allowed and the terms and conditions under which they will be granted, under the Act to Regulate Commerce, §1, providing that all charges for storage of property transported shall be reasonable and just, and §6, providing that the schedules printed as aforesaid shall state separately the "terminal charges" and any

rules or regulations which "in any wise affects or determine" any part of the aggregate of such rates and charges. American Warehousemen's Asso. v. Illinois C. R. Co. 7 I. C. C. 556.

(c) Carriers are very generally extending privileges of storage to particular shippers without any mention of them in their published tariffs. It seems clear that in such a situation the Commission may, by a general order, require carriers to state in their tariffs what free storage is granted and the terms and conditions under which it will be granted. American Warehousemen's Asso. v. I. C. R. Co., 7 I. C. C. 556, 592.

(d) By section 1 of the law, storage is named as a service in connection with transportation, and the charges therefor are required to be reasonable and just. The schedule of rates required by section 6 of the act to be printed, posted and filed with the Commission should state, among other terminal charges, the rules and regulations, if any, of the carrier in relation to storage. Pennsylvania Millers' State Asso. v. P. & R. R. Co., 8 I. C. C. 531, 559.

(e) Storage rates and regulations enforced by common carrier subject to the Act must be published at their stations and filed with this Commission. Blackman, v. Southern Ry., 10 I. C. C. 352, 359.

(f) The Southern Railway Company in applying to complainants' interstate traffic at Macon, Ga., the storage rates prescribed by the Georgia Railroad Commission, and the Columbia, Newberry & Laurens Railroad Company in applying to complainants' interstate traffic at Millers' Asso. v. P. & R. R. Co. 8 I. C. Columbia, S. C., storage rates prescribed by the South Carolina Railroad Commission did not violate the Act to Regulate Commerce, although such storage rates were in excess of the usual public warehouse charges in Macon and Columbia. Blackman v. Southern R. Co. 10 I. C. C. 352.

IMPORTANT CASES SINCE 1908

(g) An exception in a tariff providing that certain commodities may be stored free in case the owners secure permission from the proper officer of the carriers is objectionable inasmuch as it is left to the discretion of the officer as to whether the privilege shall be enjoyed, and the exception should be made more definite by providing that the check of the carrier may designate, without distinction, space for the storage of such commodities, pending shipment thereof to the extent that such space is available. Storage Charges in Central Freight Ass'n Territory, 28 I. C. C. 372, 375.

(h) Off track storage by a carrier at destination in its warehouse or otherwise, is controlled by the tariff in effect at the time such storage begins. Roy & Roy Mill Co. v. B. & M. R. R., 44 I. C. C. 523, 524.

(i) Charges at point short of billed destination found unauthorized and unlawful, as carriers contracted to make delivery specified in bill of lading on through shipments from point of origin to destination. Reparation awarded. Ulary v. P. R. R. Co., 58 I. C. C. 439.

(j) The carrier's liability to the owner is the same when the property remains out of doors as when placed in the freight house, and the Commission does not feel warranted in requiring a carrier to publish rules which give the shipper an alternative of directing whether his property shall be stored on the station platform or right of way, or in the freight house. Dakota Monument Co. v. Director General, 59 I. C. C. 101, 104.

(k) Due to a strike of lightermen, carriers refused to accept order for delivery of export shipment to steamship. On day steamer arrived second order was tendered for delivery to another steamship, and was accepted subject to delay. HELD: Storage charges accruing not found unreasonable or unlawful as complainant gave orders for different delivery and carriers would have been without authority to act upon first order even if accepted. Cade (Inc.) v. P. R. R. Co., 60 I. C. C. 151.

(l) Failure of carrier to notify complainant of arrival of a shipment, consigned to itself in care of a warehouse company, in time to comply with tariff requirements necessary to secure the application of joint rate from origin to ultimate destination, resulted in the loss of that privilege. HELD: As complainant made arrangement with warehouse company for receipt and storage of the shipment, he recognized that company as his agent and delivery to the warehouse constituted delivery to complainant. Scattergood & Co. v. Director General, as Agent, 60 I. C. C. 155.

(m) On shipments unloaded by consignee or at consignee's request by the

carrier, charges under a tariff rule providing for assessment of storage charges on basis of demurrage rules while shipments in cars and storage charges after unloading, found legally applicable. Refund of overcharges directed. Harlem Feed & Grocery Co. v. Director General, as Agent, 60 I. C. C. 652.

(n) Demurrage and storage charges on cars specifically ordered to public delivery tracks but held in storage yard because public delivery tracks occupied, found to have been illegally assessed. Tariffs made no provisions for constructive placement of cars ordered to public delivery tracks and there were no other tracks available to consignee upon which delivery could have been made as contemplated by the tariff rules. Refund directed. Schule's Pure Grape Juice Co. (Inc.) v. Director General, as Agent, 63 I. C. C. 129.

(o) Storage of property transported is a transportation service only to the extent that storage is necessarily incidental to transporting such property, and the term has been used in section 1 of the interstate commerce act in that limited sense. Guaranty Claim of Central Elevater & Warehouse Co., 72 I. C. C., 169, 176.

(p) Tariff rule provided for assessment of storage charges equivalent to demurrage charges on property stored on the ground unless written request is made to have the property unloaded. Charges exacted on such basis for the detention of shipments received at New York, N. Y., and Philadelphia, Pa., for export, found not unreasonable or otherwise unlawful. Shippers failed to make request for unloading as required by the rule, and defendants themselves unloaded the freight. Kidston & Co. v. D., L. & W. R. R. Co., 74 I. C. C. 135.

(q) Tariff provided storage charge of $10 per car for each day that a car is held for reconsignment after expiration of free time. After arrival of shipment at original destination, reconsignment order was given. Subsequently second reconsignment was directed. Contention of carrier that inasmuch as it received second instructions before executing original order, the car was held for the latter reconsignment during the entire period, HELD: Demurrage and penalty charges found inapplicable as detention was occasioned by carrier's failure to promptly comply with original order. Reparation awarded. Central Wisconsin Supply Co. v. C., C., C. & St. L. Ry. Co., 74 I. C. C. 485.

(r) Complainant attacked storage charges on iron pipe which remained on the carriers premises at Pico, Calif., during the period from Oct. 1, 1919 to Jan. 21, 1920, as unreasonable. Pico is on the L. A. & S. L., about 10 miles east of Los Angeles. Pipe was unloaded the day following arrival at request of carriers agent who sought the prompt release of the car. The storage charges as assessed were applicable to carload freight unloaded in or on railroad premises. HELD, storage charges attacked unreasonable to extent they exceeded those applicable on carload traffic, reparation awarded. General Petroleum Corporation v. Director General, 80 I. C. C. 53.

(s) Contention that storage charges were inapplicable in that carrier had not procured disposition orders, in accordance with its practice, after giving notice of arrival, not sustained. Regardless of what practice of delivering carrier may have been with respect to procuring disposition orders, failure to procure such orders in absence of tariff requirements, after notice of arrival given in accordance with governing tariff, does not affect time when storage charges accrue. Charges are governed by applicable tariffs and not by practice of carriers. Quaker Oats Co. v. Director General, as Agent, 80 I. C. C. 75.

(t) Regardless of what the practice of the delivering carrier may have been with respect to procuring disposition orders, the failure to procure such orders in the absence of tariff requirements, after notice of arrival is given in accordance with the governing tariff, does not affect the time when storage charges accrue. In other words, charges are governed by the applicable tariffs and not by the practice of the carriers. Quaker Oats Co. v. Director General, 80 I. C. C. 75, 76.

(u) The tariffs and rules of plaintiff railway company filed with the Interstate Commerce Commission provided under head "Storage" that carload shipments of explosives or other dangerous articles should be subject to both demurrage and storage charges, while another rule provided that on less than carload shipments of the more dangerous explosives unloaded in or on railroad

premises 25 cents per 100 pounds should be charged for storage for each day of 24 hours in which the articles were held in excess of the free time, while on carload shipments $5 per day, in addition to the regular demurrage charges, should be collected. Less charges were prescribed for the storage of the less dangerous and relatively safe explosives. HELD, that under the rules, the railroad company could, where gasoline was stored in tank cars on siding, collect both demurrage charges and storage; the rule being different as to less than carload lots unloaded on the railroad premises. Pittsburg, C. C. & St. L. Ry. v. Freedom Oil Works, 247 Fed. 573.

ALL OTHER CITATIONS

Dumee, Sons & Co. v. P. & R. Ry. Co., 26 I. C. C. 33, 34; New Orleans Storage Rules and Regulations, 28 I. C. C. 605, 607; International Agricultural Corp. v. A. & W. P. R. R. Co., 32 I. C. C. 199, 201; Levering Bros. v. P. B. & W. R. R., 38 I. C. C. 349; N. P. C. & H. R. R. Co., v. Frederick Leyland & Co. (Mass., 1916) 111 N. E. 285, 286; Sharon Steel Hoop Co. v. Pa. R. R., 42 I. C. C. 495; In re Arlington Hotel Co., 98 Atl. (Del., 1916) 186, 187; Atlantic Pebble Co. v. Lehigh Valley R. Co., 98 Atl. (N. J., 1916), 410; Moore Stave Co. v. C. of G. Ry., 51 I. C. C. 170; Peterson Co. v. A. T. & S. F. Ry., 51 I. C. C. 401; Youngblood, Inc. v. C. R. R. of N. J., 50 I. C. C. 217; Barnum Richardson Co. v. C. N. E. Ry., 50 I. C. C. 262; Raymond Hadley Corporation v. Boston & M. R. R. 174 N. Y. S. 342; Low Chemical Co. v. P. M. R. R. 51 I. C. C. 1; Aetna Explosives Co. P. C. C. & St. L. R. R. Co., 53 I. C. C. 707; Space Rental Charges on Cotton, 66 I. C. C. 121, 123; Philips & Sons Co. v. B. & A. R. R. Co., 74 I. C. C. 381; Caldwell Shipping Co., Inc., v. Director General, as Agent, 74 I. C. C. 704; West Virginia Pulp & Paper Co. v. Director General, 78 I. C. C. 57; General Petroleum Corp. v. Director General, as Agent, 80 I. C. C. 53; Vim Motor Truck Co. v. Director General, as Agent, 80 I. C. C. 72; Republic of France v. Director General, as Agent, 81 I. C. C. 174, 179.

STORAGE IN TRANSIT

See Storage.

IMPORTANT CASES SINCE 1908

(a) Ordinarily, where storage in transit is accorded, the through rate from point of origin to ultimate destination in effect at the time the shipment originated is applied. Perishable Freight Investigation, 56 I. C. C. 449, 567.

(b) Complaint alleges that certain rules, regulations, and charges applied by defendants on carload shipments of potatoes from Minnesota, North Dakota, South Dakota and Wisconsin to points in western trunk line territory were violative of various provisions of the Act. The shipments were stored in transit at St. Paul, Minneapolis, or Minnesota Transfer and charges were collected at the through rates applicable from points of origin to final destination plus a storage in transit charge of 3c per 100 lbs. In addition, a car rental charge of $5 per car for each movement to and from the storage point was assessed on shipments which moved in refrigerator or other insulated cars during the period from October 15 to April 15, in each year. Where the shipment moved inbound in a box car and outbound in a refrigerator or other insulated car, or vice versa, but one rental charge was attacked as illegal wherever assessed on railroad owned cars on the ground that the tariffs provided for its application only on private cars. The tariffs do not distinguish between rail owned and privately owned cars, but applies alike to both. The tariffs referred to have been used in connection with each other and have been looked to by shippers and carriers for years as authority for the rental charges on potatoes in refrigerator or insulated cars, whether private or railroad ownership, and so far as appears their meaning has not heretofore been questioned. HELD, the rental charge of $5 per car was and is legally applicable on refrigerator or other insulated cars. Complainant also contends that if any rental charge was applicable it was unlawful for defendants to assess it on both movements; that is, into and out of storage. The item naming the rental charge reads: "$5 per car per trip. A trip is one continuous running trip from the time car is loaded to the end of its journey, where it is unloaded and released. The use of the car, either into or out of the storage point, is wholly independent of the subsequent or prior movement, as the case may be. For each separate use of a car the carrier is entitled, under the tariff, to make a separate charge. It is also alleged that the exaction of a car rental charge in addition to the storage

in transit charge on shipments of complainants members, while no such rental charge is applied on competitors shipments from Colorado and Utah which are stored in transit and subsequently move to the destination territory here involved, is unjustly discriminatory and unduly prejudicial. It does not appear, however, that the defendant carriers prior to federal control were responsible for the more favorable treatment accorded the Colorado and Idaho shippers or that they could remedy the situation by any reasonable act of their own, and the evidence is not sufficient to warrant a definite conclusion on the question presented during federal control. The reasonableness of the 3c storage in transit charge was also brought in issue. Originaly no charge was made for this storage, when a charge of $2 per car was published. Three years later a rule permitting free stoppage was again published, and the storage period extended from 60 days to six months. That rule remained in effect for one month, when a storage charge of 1.5c per 100 pounds was proposed. That charge was suspended and found justified in 35 I. C. C. 497 and 37 I. C. C. 114. On March 15, 1917, the present charge of 3c was established. A 3c charge is provided by various western lines for transit services on potatoes and onions at Minneapolis and St. Paul, Sioux City, Iowa, Chicago, and Peoria, Ill., and numerous other points. On apples from the north Pacific coast the charge at various storage points is and for some time has been 5c per 100 lbs. HELD, storage in transit charge not unreasonable. Complaint dismissed. Northern Potato Traffic Asso. v. G. N., 58 I. C. C. 360.

(c) Storage in transit entails additional expense and disadvantages which do not attach to through shipments, including switching, detention of inbound equipment, absorption of outbound switching charges in certain instances, and the expense of accounting and readjusting revenues, while the carriers render substantially the same service as on local traffic, both inbound and outbound. Northern Potato Traffic Asso. v. G. N., 58 I. C. C. 360, 364.

(d) Respondents propose to cancel their charge for storage in transit at intermediate points on the P. & R., the C. of N. J., and the N. W., of carload shipments of apples moving in the direction of the Atlantic Seaboard via regularly established routes. The charges now applicable on shipments stored in transit at intermediate points are based on the through rates from points of origin to final destination plus a storing in transit charge of 7c per 100 pounds. Cancelation of the storage charge would result in the application of combination rates to and from the storage points which are higher. The arrangement which respondents seek to cancel is part of the general system of storage in transit in effect on apples in official and western classification territories. The transit provision under suspension was first made effective as food conservation measure. Similar services had been accorded for a number of years by lines in western classification territory to and including Chicago, and by the Erie and New York Central in trunk line territory. The arrangement in question is restricted to apples in boxes, barrels or crates, moving outbound within one year from the date of freight bill on the inbound movement. The average revenue per car under the 7c charge is about $30. No evidence was offered by respondents bearing upon the reasonableness of the combination rates which would result from the proposed cancelation, or to show that the charge of 7c is not a reasonable maximum charge for the service in question. HELD proposed schedules have not been justified, and they should be canceled. Transit rules and regulations on fresh apples, 60 I. C. C. 333.

(e) Proposed increased charge for storage in transit in the eastern and western groups of apples and pears, moving in transcontinental traffic, found not justified. Only justification offered is that the proposed charge should have been increased to basis sought following Increased Rates, 1920, 58 I. C. C. 220, but as the time limitation prescribed in that case had expired prior to the filing and effective date of the suspended schedules, justification of the increase must be based upon other foundations. Storage Charges on Apples and Pears, 64 I. C. C. 627.

(f) Respondents proposed to cancel the storage in transit arrangements at Minnesota Transfer, Minn., and certain other points, on import traffic moving from the Pacific coast ports to points south of the Ohio and Potomac rivers and east of the Mississippi river, leaving in effect on such traffic when stored in transit combination rates higher than

the joint import commodity rates applying from the ports to ultimate destinations. In 68 I. C. C. 572, the proposed schedules were not found justified. Respondents petitioned for rehearing. About 60% of the import traffic is stored at Minnesota Transfer. The outbound movement is usually less carload and the less carload rates are applied from the port to final destination. The applicable import commodity rate is blanketed to all points east of the Colorado common points and in connection therewith the transit arrangement would continue to be available except to the southeastern territory here considered. The storage at Minnesota Transfer is of great advantage to transcontinental carriers and also to shippers. Nothing in the record justifies a like consideration of domestic traffic. No evidence was presented by respondents as to the quantum of the combination of carload rates to Minnesota Transfer and less carload rates beyond which would result on this traffic if the proposed schedules were allowed to become effective. HELD, respondents have not justified the cancellation. Storage rules at Minnesota Transfer, 78 I. C. C. 265.

(g) Proposed transit arrangement for storage of cement at Davenport, Iowa, found not justified. Such action would be followed at other important points, and carrier competition would lead to establishment of similar arrangements on such scale as to undermine existing rate structure. There is no substantial demand for transit on this commodity, and, on contrary, a large majority of cement manufacturers and many carriers are opposed to it. Rules for Storing and Stacking Cement, 78 I. C. C. 693.

(h) Complainant attacked defendants' failure to permit a stop in transit on cement silo staves from Peoria, Ill., to Wisconsin destinations, for the purpose of partial unloading, while according such stop on wooden silo staves moving in the same destination territory as unduly prejudicial. Commodity rates are applicable on cement silo staves, minimum 60,000 pounds. Because of this minimum it is desirable to ship enough staves in one car for two silos. The rates to Wisconsin points on wooden silo staves are somewhat higher than on cement staves, but the minimum is one half that on cement staves. Wooden silo staves are permitted to stop carload shipments in transit at points in Wisconsin for partial unloading at a charge of $6.30 per car in addition to the rate. Competition in the scale of cement and wooden staves is very keen in Wisconsin. HELD, refusal to permit partial unloading on cement silo staves is unduly prejudicial. Michigan Silo Company v. C. & N. W. Ry., 88 I. C. C. 467.

(i) Respondent, Rock Island, proposed to establish rules under which cement, in carloads, might be stopped in transit at Davenport, Iowa, stored, sacked, and reshipped within six months at a charge of 2.5c per 100 pounds over the through rate. In 78 I. C. C. 693, the Commission found the suspended schedules not justified. Case was reopened on petition of respondents. Cement generally moves in carloads direct from manufacturer to point of consumption. It accumulates at the plants during the late fall and winter, and moves in much greater volume during the remainder of the year. As compared with through movements, shipments taking transit require two additional services equivalent to terminal service, and involve the incident delay. Twice instead of once empty cars must be provided, and twice instead of once empty cars are returned to the carrier. Considered from an operating standpoint, and without reference to car supply at the time of the two separate movements, transit is wasteful of equipment. The justification for the proposed arrangement is that the shipment is nearer its destination. The gain in time would not be great. It may be that from the standpoint of the larger users of cement this saving would be material, and may determine the source from which his cement should be ordered. But it does not follow that, to respondent and to the shipping public generally, the saving would justify the use for the through transportation of two cars in the separate movements instead of one. Under present conditions the Commission does not believe that the national railway system as a whole, or the western carriers considered collectively can afford to divert to the cement traffic the additional cars, or to give to it the additional transportation service, that transit on that commodity would require. The transit service under consideration would result in little or no operating economy to respondent and in the substantial impairment of its service to shippers, including shippers of cement. HELD, suspended schedules not justified.

Rules for storing and sacking cement, 88 I. C. C. 662.

ALL OTHER CITATIONS

Storage-in-Transit Rules at Minnesota Transfer, 78 I. C. C. 265, 266, 269.

STORE DOOR DELIVERY

See Facilities and Privileges §14½.

STREET RAILROADS

See Electric Lines.

IMPORTANT CASES SINCE 1908

(a) Where a railroad company granted a right of way to a public service railway company to operate street cars across a plaza giving access to the railroad company's ferries, the public service company could not fence its right of way as a regulation of the plaza in the right of the railroad company, which, while having a right to reasonably regulate the plaza, could not exclude local carriers awaiting passengers from the ferry, when it appears that the fence would have such effect. Public Service Ry. Co. v. Weehawken Tp., (N. J. 1922), 119 Atl. 90.

STRIKES

See Demurrage §10⅝.

CASES 1887-1908

(a) While every man has ordinarily the legal right to stop work and quit his employment whenever he chooses to do so, in the absence of a contract obligating him to continue for a definite time, no man has a legal or moral right while continuing in the employment of another to refuse to do the work he is employed and engages to do. Re Charge to Grand Jury (No. 1) (D. C. S. D. Cal.) 4 I. C. R. 777.

(b) Boycotts are unlawful though unaccompanied by violence or intimidation. Thomas v. Cincinnati, N. O. & T. P. R. Co., (C. C. S. D. Ohio) 4 I. C. R. 788.

IMPORTANT CASES SINCE 1908

(c) Complainants alleged that, due to default by carrier, occasioned by a strike among its freight handlers, at New York, N. Y., complainants were subjected to the payment of unreasonable and discriminatory charges on certain interstate shipments destined to the carrier's piers 28 and 29, New York, but received at Jersey City, N. J., and thence drayed by consignees to their places of business. The placement of shipments having been rendered impossible by the strike, the carriers requested consignees to accept delivery in Jersey City, agreeing to assume the drayage charges to New York. HELD: (1) That the carrier defaulted in its obligation to make delivery at piers 28 and 29, of shipments consigned to New York and (2) that the drayage by consignees from Jersey City to New York was in lieu of a transportation service which should have been rendered by defendant. Reparation to be awarded. Natl. League of Com. Merchs. v. Penn. R. R., 49 I. C. C. 85.

SUBSTITUTION OF TONNAGE

See Facilities and Privileges, §15, §20.

IMPORTANT CASES SINCE 1908

(a) Tariffs permitting privileges in transit should recognize the obvious fact that loss of wheat at the milling, cleaning, or drying point will result and should not permit a shipment from said point of a weight equal to the weight of the raw material shipped into such point, since the local shipper at the transit point may be adding new material to the shipment to defeat the thru rates. In Re Substitution of Tonnage at Transit Points, 18 I. C. C. 280, 288.

(b) A local shipper at a point where transit privileges are allowed should not be permitted to ship out from the transit point a shipment equal in weight to that received at the transit point for the purpose of enabling such local shipper to be placed on an equal footing with his competitors at the point of origin and the point of destination. In Re Substitution of Tonnage at Transit Points, 18 I. C. C. 280, 289.

(c) Shippers at points enjoying transit privileges on wheat were accustomed to blend different kinds and grades of wheat received from different points of origin and at varying rates and to dispose of a portion of the flour made therefrom in the local market at the transit point. They then shipped out the remainder on the bills of lading which would give them the lowest thru rate from point of origin to point of destination. HELD: The local supply and local disposition should be kept separate from the transit supply and product by the carrier; the billing should be properly canceled for all local disposition; proper and frequent check should be made of grain and product and billing on hand; and billing in excess of

grain and product on hand should be canceled, the oldest billing being selected for that purpose. In Re Substitution of Tonnage at Transit Points, 18 I. C. C. 280, 290.

(d) The practice by jobbers of sending forward to retailers from transit points mixed carloads of various commodities as transit of solid carloads of such commodities is not unlawful where there is no local supply at the transit point, the billing is cancelled on all tonnage disposed of locally and the tonnage and billing on hand are checked at reasonably frequent intervals, and billing in excess of tonnage on hand is canceled, selecting for such cancelation the oldest billing, but in so far as there may be local supply of any of the commodities sent forward on this transit arrangement, the carrier must look out that substitution of the local supply is not made to complete the deficiency caused by local consumption. In Re Substitution of Tonnage at Transit Points, 18 I. C. C. 280, 291, 292.

(e) Where jobbers at transit points in shipping to dealers make up mixed carloads of grain received in part on transit rates and in part on non-transit rates, the shipments represent the average of the various shipments received, and corresponding billing should be canceled by the carrier instead of permitting the entire mixed carload to be charged against a solid carload from which it could not properly be produced. In Re Substitution of Tonnage at Transit Points, 18 I. C. C. 280, 292.

(f) Makers of mixed feed milled together at a transit point a number of grains and sometimes cottonseed meal and molasses, producing what was practically a new commodity from various substances, some received upon transit rates and others secured either locally or upon non-transit rates. The cars of the mixture thus produced were forwarded from the transit point in solid cars of grain. HELD: The practice was improper and should be forbidden where there is such a process of manufacture and such a loss of identity of the inbound commodity that the shipment forwarded may be said to be a new creation. In Re Substitution of Tonnage at Transit Points, 18 I. C. C. 280, 292.

(g) Certain tariffs provided that non-transit commodities (such as stone, grit, or molasses) might be added to transit commodities (such as grain or seeds) at transit points, and a weight of the mixture equal to the weight of the inbound transit commodities forwarded as product. HELD: The tariff was unlawful in that a less-than-carload lot of the non-transit commodity went forward at a lower rate than the less-than-carload rate properly applicable, and even lower than the carload rate from the transit point proper. In Re Substitution of Tonnage at Transit Points, 18 I. C. C. 280, 292.

(h) Mixed feeds and like products must go forward from the transit points in amounts containing at least the carload minimum weights of transit commodities taking the transit rates, and with the proper local rate (either carload or less-than-carload as the weight may be) imposed upon the non-tran- commodites in the mixture. This rule must be followed wherever the non-transit property added is sufficient in amount to form a really calculable portion of the mixture. A like rule must be applied where the dealer desires to include a load of non-transit grain or other commodity in a carload of grain or other property. If the transit portion of the shipment is to move upon the balance of a carload rate is must be of itself not less than the carload minimum in weight, and the non-transit tonnage in the car must be charged with the proper local rate. In Re Substitution of Tonnage at Transit Points, 18 I. C. C. 280, 293.

(i) At certain transit points the price of commodities was frequently dependent upon the expense bill for the inbound shipment furnished by the seller, a higher price being paid if such bill was peculiary valuable for outbound shipment. HELD: The additional price paid in consideration of expense bills of a certain character amounted to a purchase of the bills and the practice should be prevented by the carriers. In Re Substitution of Tonnage at Transit Points, 18 I. C. C. 280, 293.

(j) Under transit privileges at Memphis, Tenn., the rates for the transportation of cotton to that city were higher than net rates, a refund being given upon proof of shipment of a like weight of cotton via the line of the same carrier. Expense bills for inbound shipments were held by the cotton factors or commission merchants representing the

growers. Expense bills for outbound shipments were held by the buyers representing the consumers. No refund could be secured without the presentation of the expense bills for each movement. The result was that many expense bills were sold by the buyers to the factors for an amount equal to one-half of the refund to be gained. Some factors remitted the refund to their principals; some were able to remit only a portion through having to buy out-bound expense bills. Other factors retained the refunds, leaving their principals to pay the gross rates to Memphis. HELD: The entire system was unsatisfactory and should be cured by the installation of a system of flat rates. In Re Substitution of Tonnage at Transit Points, 18 I. C. C. 280, 294.

(k) Dealers at certain transit points frequently have billing in hand without having an equivalent amount of the commodity represented by the same. The practice was to retain the billing until a non-transit supply of the commodity could be secured, and then to send the non-transit supply forward upon the transit bill. HELD: The practice was unlawful. To be absolutely lawful the cancellation of billing should be automatic, so that when the commodity represented by the billing is disposed of, either locally or to a non-transit point or to a transit point, the inbound billing covering it should be canceled. In Re Substitution of Tonnage at Transit Points, 18 I. C. C. 280, 294.

(l) Outbound shipments from transit points at balances of through rates made before the receipt of the inbound shipments depended upon for the transit privilege are unlawful. In Re Substitution of Tonnage at Transit Points, 18 I. C. C. 280, 294.

(m) Billing covering the commodity disposed of should be canceled to prevent substitution of tonnage at transit points. In Re Substitution of Tonnage at Transit Points, 18 I. C. C. 280, 294.

(n) The Northwestern transit tariffs provided that upon receipt of grain at the transit point the through rate to the final destination should be paid and that such destination should be indicated. The rates to various milling points between Minneapolis and Chicago were higher than those from Minneapolis to Chicago. Shippers had the grain delivered to the milling point and there paid the Minneapolis to Chicago rate. They were then able to secure oats from a transit point enjoying a different rate and forward them, or forward oats from a non-transit point, or refrain altogether from completing the transit transaction. HELD: The practice was unlawful. In Re Substitution of Tonnage at Transit Points, 18 I. C. C. 280, 295.

(o) A tariff providing for the forwarding at a transit point of agricultural implements, vehicles, etc., as the transit of inbound shipment of logs, is improper. In Re Subsitution of Tonnage at Transit Points, 18 I. C. C. 280, 296.

(p) The Commission will not undertake to frame a code of transit rules governing privileges at transit points. The traffic officials of the carriers have the duty and responsibility under the law of initiating rates. In Re Substitution of Tonnage at Transit Points, 18 I. C. C. 280, 296.

(q) On account of the abuses incident to the present privilege at transit points accorded by carriers, the Commission refuses to suspend its rule of June 25, 1908, providing that while it is not expected the identity of each carload of grain, lumber, etc., can or will be preserved, it is unlawful to substitute at the transit point or forward under the transit rate, tonnage or Commodities that do not move into that point upon that rate. In Re Substitution of Tonnage at Transit Points, 18. I. C. C. 280, 296.

(r) It is the duty of shippers to submit to all necessary policing of their shipments if they desire to enjoy transit privileges. They may also fairly be required to certify that shipments offered by them are entitled to go forward upon the transit rates. In Re Substitution of Tonnage at Transit Points, 18 I. C. C. 280, 297.

(s) Certifications by the shippers do not excuse carriers from determining for themselves and at their peril that shipments carried at other than the regular local rates from the point of shipment are entitled to exceptional or transit rates. They will not be allowed to put in transit privileges either through competition with each other or through the desire to hold local rates up to the highest possible point, without taking entire responsibility for the results of such

privileges and the uses made of the same. In Re Substitution of Tonnage at Transit Points, 18 I. C. C. 280, 297.

(t) It is impractical to preserve the identity of inbound and outbound lumber at a yarding-in-transit point. Sondheimer Co. v. I. C. R. R. Co., 20 I. C. C. 606, 608.

(u) The records of the transit house, in so far as they are subject to the tariff rules, are railroad records, as defined in section 20 of the Act, and are subject to the control and inspection of both the carriers and the Commission. The Transit Case, 24 I. C. C. 340, 351.

(v) An order of the Commission relating to the policing of transit privileges was applicable to all tonnage upon which transit privileges were or are claimed, on or after its date. Transit Case, 25 I. C. C. 130, 134.

(w) The only limitation on substitution of tonnage is that one article or commodity cannot be substituted for an entirely different one. The Transit Case, 26 I. C. C. 204, 209.

(x) Considering all the testimony, the Commission believes that the fabricators are correct in their assertion that unless substitution is allowed they will not be able to lawfully take advantage of the fabrication-in-transit service. Under the circumstances of this case, respondents should change their transit rules and regulations so as to specifically provide for substitution of material drawn from the lines of different carriers and different rate territories. They should further provide proper accounting and provisions for the cancellation of inbound billing to cover outbound shipments, local consumption, waste of shrinkage; frequent checking of unfabricated and fabricated material and billing on hand; and the cancellation of billing in excess of the fabricated and unfabricated material on hand, requiring the use of the oldest billing for that purpose. These rules should be made uniform in respondents' tariffs. All of these things should be planned and executed with such deliberation and care as will avoid the creation of other unjust discriminations, and with such a degree of supervision and effective policing that resort to unlawful practices may be impossible. Fabrication-in-Transit Charges, 29 I. C. C. 70, 89.

(y) The Commission considered the reasonableness of regulations requiring shippers of grain at St. Louis, Mo., to surrender expense bills covering inbound shipments to obtain benefit of reshipping rates to central freight association and trunk line territories. There were no joint through rates from local Missouri points to these destinations, and the through rate, made up of the interstate rate to St. Louis plus the rate beyond was higher than the intrastate rate to St. Louis plus the rate beyond. In order to insure allocation of the interstate rate where grain was subsequently shipped out on the reshipping rate, carriers required unloading at St. Louis, and the surrender of expense bills complained of, defendants maintaining that the reshipping rate was a part of a through rate to which the shipper was entitled only where he had paid that part applicable for the haul to St. Louis. There was no commodity rate on the tariff in question, but while there was no class rate on grain to central freight association territory, there was to trunk line territory. HELD: That the regulation was reasonable on shipments to trunk line territory, but shipments to central freight association territory were entitled to move out on the reshipping rate regardless of point of origin or of rate on inbound shipments. Directed that case be reopened and heard with South-Western Missouri Miller's Club v. C. & A. R. R. C., Docket No. 66662, on notice. Merchants Exchange of St. Louis v. B. & O. R. R. Co., 30 I. C. C. 700.

(z) It will be assumed that a carrier will not permit unlawful substitution of grain under a proposed rate any more than under an existing rate. Export Rates on Grain and Grain Products, 31 I. C. C. 617, 621.

(aa) It would be unlawful to require cancellation of inbound billing on shipments made outbound under local rates. Merchants Exchange of St. Louis v. B. & O. R. R. Co., 34 I. C. C. 341, 359.

(bb) Limitation of 12 months upon expense bills to be used with respect to lumber handled in transit at Newport, Tenn., not found unreasonable. Spiegle & Co., v. S. Ry., 34 I. C. C. 448, 450.

(cc) Sorting contemplates a substitution of tonnage. Interstate Packing Co. v. C. & N. W. Ry. Co., 42 I. C. C. 189, 194.

(dd) The dressing of poultry changes

its character precisely as dressed meats are made to differ from live stock. If the character of the inbound commodity was not changed in transit, then with equal force it could be maintained that outbound shipments of lumber manufactured from logs or milled grain products represent in character the inbound raw materials. Transit rights must be specifically authorized by tariff provision; they can not be inferred. Swift & Co. v. C. B. & Q. R. R., 50 I. C. C. 233, 234.

(ee) It is the duty of shippers to aid the carriers in their effort properly and effectually to police transit service. Forked Deer Milling Co. v. I. C. R. R., 50 I. C. C. 573, 574.

(ff) The duty of the inspection bureau to police transit rates arises primarily from the obligation of the carriers to collect the legally published charges and not from any legal obligation to the shipper. Forked Deer Milling Co. v. I. C. R. R., 50 I. C. C. 573, 574.

(gg) The assumption that under a transit tariff, a constant flow of grain in and out of the elevator in contemplated and that a through movement is therefore provided for would require the carriers to furnish during times of car shortage 100 per cent of cars required, to the exclusion of other shippers of traffic originating at Chicago. Armour Grain Co. v. Director General, 57 I. C. C. 398, 403.

(hh) While it can not be said that the holding of grain in the elevators was, during the entire time, for the benefit of the shipper, the sending of the grain to the elevator and the unloading therein was for his benefit and on his orders, and but for this method of handling there would have been no interruption of the through transportation, no taking of possession by the shipper and no demurrage would have accrued. The grain having been unloaded into the elevator, the complainants were thereafter in the same position as other shippers from Chicago, and, when the benefit of holding the grain ceased, were no more entitled to immediate movement than were other shippers. Amour Grain Co. v. Director General, 57 I. C. C. 398, 403.

(ii) Any mixed feed that contains non-transit commodities in excess of 20 per cent of its total weight is not properly to be considered a grain product. It is a new commodity which is entitled to movement from the transit point only on the specific rates from that point. Atlas Cereal Co. v. C. B. & Q., 59 I. C. C. 702, 703.

(jj) Complainants alleged they were subjected to rates which are illegal, unjust, unreasonable, unjustly discriminatory and unduly prejudicial in that they are required in the use of proportional rates to surrender inbound freight bills showing that the grain originated at points beyond the market points, whereas their competitors at Mississippi River crossings are allowed the benefit of outbound rates on the certificate plan which did not require the surrender of freight bills covering inbound grain but simply required a certificate from the shipper that the grain originated beyond. The rate applicable on complainants shipments would be the rate in effect at the time shipments of grain left country point of origin while rates on the grain of its competitors would be the rate in effect at time shipments left the market point. The proportional rate tariffs almost uniformly include joint through rates, and generally speaking, do not require surrender of the inbound freight bills. In some the specific requirement is made, but most of them apply on shipments originating beyond. Many of these tariffs are somewhat definite in terms but they have always been understood as affording opportunity to bring grain in from country stations at the local rate, store it for a period usually not exceeding a year, and then ship it out at the proportional or reshipping rate which was in effect on the date of shipment from the country station, as shown on the inbound freight bill surrendered when the shipment is tendered for transportation outbound. In other words, these proportional rates, except when applied on continuous through shipments, have been treated in exactly the same manner as transit services in connection with joint through rates. It is manifest that movement of grain through Kansas City and Omaha must either be upon through rates, or upon the sums of the local rates to and from those points. Complainants must treat these movements of grain through their markets as through movements or as local movements to and from their markets. There is no middle ground. In order to hold this grain in storage at the markets and then forward it out

on the proportional rates they must have tariff authority. To properly police this, it is necessary that inbound billing be surrendered in order to determine whether the rate applicable outbound is the proportional rate or the remainder of the through rate from point of origin to destination. There have been several increases in grain rates during the last five years. In every instance these terminal markets and the interior transit points have made outbound shipments on the basis of the rates in effect at the time of original shipment. They had and used the advantage of the lower rate. Now that the change has been downward, and the earlier rates have been reduced, the same principle applies but the advantage has shifted to the carrier. It is no answer to say that the grain now in storage exceeds that in store at the time the increases were made. The principle remains the same. From St. Louis, Cairo, Memphis, Cincinnati, Louisville and some other competitive grain markets, local rates not conditioned on prior movement, or proportional or reshipping rates conditioned on a prior movement whch is evidenced only by the filng of a certificate, apply to certain points in southwestern Mississippi Valley, southeastern and Carolina territories. There grain can move out of storage at the present lower rates, while the complaining markets must still pay the higher outbound rates which were in effect when the grain left the country station. It is clear that the maintenance by defendants at St. Louis and other markets of different rules, is unduly prejudicial to complainants. There is but one way of determining the date when the shipment originated at the country point, and that is by surrender of inbound freight bills. The certificate plan does not furnish this information and is open to abuse. HELD: The practice of furnishing inbound freight bills as proof of the grain originating beyond in use by complainants is not unreasonable but the requirements under the certificate plan are unduly prejudicial to compainant and those markets should be required to surrender the inbound freight bills in the same manner as now prevails at the Missouri River. Kansas City Board of Trade v. A. T. & S. F. Ry., 69 I. C. C. 185.

ALL OTHER CITATIONS

In Re Substitution of Tonnage at Transit Points, 18 I. C. C. 280, 296, 297; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 174; Henderson & Barkdull v. St. L. I. M. & S. Ry., 18 I. C. C. 514, 515; Lesser v. Georgia Ry., 18 I. C. C. 478, 480; The Transit Case, 24 I. C. C. 340, 351; Deeves Lumber Co. v. A. & V. Ry. Co., 25 I. C. C. 42, 43; Saginaw Milling Co. v. M. C. R. R. Co., 33 I. C. C. 25, 29; Maley & Wertz v. L. & N. R. R. Co., 36 I. C. C. 657, 659; Melrose Milling Co. v. G. N. Ry. Co., 43 I. C. C. 741, 743; Haley-Neeley Co. v. C. B. & Q. R. R., 44 I. C. C. 763, 764; American Creosoting Co. v. Director General, 61 I. C. C. 145, 149.

SUSPENDED RATES

See Advanced Rates §1 (4); Interstate Commerce Commission §11; Long and Short Hauls §15; Tariffs §1½.

IMPORTANT CASES SINCE 1908

(a) Original hearing involved increases in rates which were not justified and existing rates were ordered to be kept in effect for a two-year period. At the expiration of such period the formerly proposed increases do not go into effect automatically, but the increased rates must be lawfully published, and same would then be subject to suspension again. Stonega Coke & Coal Co. v. L. & N. R. R. Co., 39 I. C. C. 523, 535.

(b) Contention that the Commission's suspension power is limited to an increase in rates previously on file and subject to its jurisdiction and that it has no authority to suspend the port-to-port rates, New Orleans to New York, under investigation, is without merit. Cotton from New Orleans, 49 I. C. C. 751, 752.

(c) It is not an answer to say, that the proper tariff notations were not made because the tariffs themselves were suspended. Suspension proceedings would be of little value if carriers could, without changes in tariffs, accomplish what the suspended tariffs proposed to do. Guyton & Harrington Mule Co. v. L. & N. R. R., 50 I. C. C. 546, 550.

ALL OTHER CITATIONS

R. R. Comm. of La. v. A. H. T. Ry. Co., 43 I. C. C. 45, 48; Edmond v. G. & S. S. Ry. Co., 43 I. C. C. 164, 166.

SUSPENSION OF RATES

See Advanced Rates §1 (4); Interstate Commerce Commission §11; Reduced Rates §2.

SWITCH TRACKS AND SWITCHING

I. CONTROL AND REGULATION
§1. In general.
§2. Jurisdiction of Commission.
II. ABSORPTION OF SWITCHING.
§3. In general.
III. DISCRIMINATION AND REASONABLENESS OF CHARGES.
§4. In general.
§4½. Contracts for sidetracks.
§5. Incidental services.
§6. Reciprocal switching.
§7. Right to connection.
§7½. Switching for other carriers.
§8. Validity of regulations.
§9. Reparation.
§9a. Secondary switching.
§9½. Switching reclaims.
§10. Tariffs and publication.
§11. Team tracks and sidetracks.
IV. PROCEDURE AND EVIDENCE.
§12. In general.
§12a. Evidence.
V. SWITCHING DISTRICT.
§13. In general.
§14. Lateral branch lines.

CROSS REFERENCES

See Absorption of Charges; Allowances §8 (5); Cars and Car Supply §30; Common Carrier; Private Sidings; Proportional Rates; Reconsignment; Side Tracks; Sidings and Spur Tracks; Tap Lines: Terminal Facilities.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. In General.

CASES 1887-1908

(a) Where a corporation which is under no legal obligation to do so, voluntarily contracts to switch cars over its tracks between two or more railroads, for which service it collects a certain switching charge for switching the cars, loaded or empty, but charges no traffic rates on the freight transported, or transferred, in the cars, such corporation, in the performance of such service, assumes none of the responsibilities of a common carrier, but only those of a switchman. In respect to cars or traffic, thus handled, such corporation can only be regarded as a switchman, or transfer company; and it is no more a common carrier of interstate commerce, or traffic, within the provisions of the law, than a city transfer company, which checks a passenger's baggage at the hotel where it is received, and carries it, for an agreed compensation, to the station of the railway, over which it is to be transported into another state. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(b) A corporation which, being under no legal obligation to do so, voluntarily contracts to switch cars over its tracks, between two or more railways, for which service it collects a certain switching charge for switching the cars, loaded or empty, but charges no traffic rates on the freight transported or transferred in the cars in the performance of such service,assumes none of the responsibilities of a common carrier, but only those of a switchman. Ken. & I. Bridge Co. v. Louisville & N. R. Co., (C. C. D. Ky.). 2 I. C. R. 351.

(c) Commission may locate industrial switch. Weleetka Light & Water Co. v. Ft. S. & W. R. R. Co., 12 I. C. C. 503.

(d) Jurisdiction retained pending agreement between parties as to location of switch track. Weleetka Light & Water Co. v. Ft. S. & W. R. Co., 12 I. C. C. 503.

IMPORTANT CASES SINCE 1908

(e) The obvious conclusion to be drawn is that if a switching service were a use of terminal facilities against which an owning carrier was then secured, it is equally a use of such facilities which can now be required in cases coming within the provisions of the amended section 3. Hasting Commercial Club, v. C. M. & St. P. Ry., 69 I. C. C. 489, 496.

(f) Paragraph R. Section 3 of the Act applies to the opening of terminals by requiring a switching arrangement as well as by requiring a physical use. Port Arthur Chamber of Commerce v. T. & F. S. Ry., 73 I. C. C. 361, 363.

(g) Paragraph (4) of section 3 of the Act applies to the opening of terminals by requiring a switching arrangement

as well as by requiring a physical use. Port Arthur Chamber of Commerce v. T. & F. S. Ry. Co., 73 I. C. C. 361, 362, 363.

(h) Respondent urges that to require it to maintain its present switching arrangement would be to deny to it the long haul on traffic which it is entitled to receive from connecting lines, in contravention of the provisions of paragraph (4), section 15, of the act. HELD: Schedules proposing to cancel present charges make no distinction between competitive and noncompetitive traffic, and the provisions of the paragraph referred to can not be construed to limit the commission's jurisdiction to prevent a carrier from canceling switching charges which have been in effect for many years, especially in view of the other and more specific provisions of the act. Team Track Switching at Argentine, 73 I. C. C. 367, 370, 371.

(i) The provisions of paragraph (4), Practice of the C. R. R. Co. of N. J., construed to limit the Commission's jurisdiction to prevent a carrier from canceling switching charges which have been in effect for many years, especially in view of the other and more specific provisions of the act. Team Track Switching at Argentine, 73 I. C. C. 367, 371.

(j) And the effect upon interstate commerce of requiring under state authority that an interstate carrier move purely local freght between private spurs in the same city is so indirect and consequential that it cannot be said to deprive the carrier of rights secured by the commerce clause of the federal constitution. L & N. R. R. Co. v. Hidgon, 34 Sup. Ct. 948; 234 U. S. 592; 58 L. ed. —.

ALL OTHER CITATIONS

West End Improvement Club v. O. & C. B. R. & B. Co., 17 I. C. C. 239, 244; State v. M. P. R. Co., 81 Neb. 15, 21; 115 N. W. 614; Dixie Cotton Oil Co. v. St. Louis Iron Mountain & Southern Railway Co., 27 I. C. C. 295; Railroad Commission of Arkansas v. St. L. I. M. & S. Ry. Co., 24 I. C. C. 293, 295; Chicago, R. I. & P. Ry. Co., v. State, 157 Pac. (Okla. 1916) 1039; St. L. I. M. & S. Ry. v. Clark Pressed Brick Co., (Ark., 1917); 192 S. W. 382; United Verde Extension Mining Co. v. Director General, 68 I. C. C. 271.

§2. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisduction of Commission.

IMPORTANT CASES SINCE 1908

(a) The Commission has no power to order the installation of a sidetrack; its function goes to determining questions concerning switch connections with existing sidetracks. Ralston Townsite Co. v. M. P. Ry. Co., 22 I. C. C. 354, 355, 356.

(b) So the Commission has no jurisdiction to order a physical connection where one carrier is not a "lateral branch line." Morris Iron Co. v. B. & O. R. R. Co., 26 I. C. C. 240, 243.

(c) The Commission has authority to require a railroad to construct a spur track to a dock of a steamship company and to determine the terms upon which such connecting track shall be operated. In Re Wharfage Facilities at Pensacola, 27 I. C. C. 252, 260.

(d) The Commission has no authority, in the absence of a showing of discrimination, to require a carrier to absorb the switching charge of another. Du Pont de N. P. Co. v. Penn. R. R., 50 I. C. C. 203, 204.

(e) Whenever a particular delivery service-spotting at some place of unloading within a plant properly may be construed as the equivalent of either of these two services (typical team track delivery or shunting of a car upon a siding of a shipper clear of the main track) and the rendition of such service practical, the Commission may compel a carrier to perform such service with its own equipment as part of its legal obligation as to delivery of carload traffic. As the magnitude of the service becomes greater than the equivalent of team track delivery or simple switching delivery, the demand on the carrier for its performances tends to exceed what may be regarded as a proper delivery service under transportation rates. Whitaker-Glessner Co. v. B. & O., 63 I. C. C. 47, 56.

(f) In view of the parenthetical clause in paragraph (4) of section 15 of the Act, the limitation put upon the commission's authority to establish through routes and joint rates does not apply where the commission finds it to be in the public interest to require one carrier to afford another carrier the use of its terminals. Port Arthur Chamber of Com-

merce v. T. & F. S. Ry. Co., 73 I. C. C. 361, 363.

(g) Respondent urges that to require it to maintain its present switching arrangement would be to deny to it the long haul on traffic which it is entitled to receive from connecting lines in contravention of the provisions of paragraph (4), section 15, of the act. HELD: Schedules proposing to cancel present charges make no distinction between competitive and noncompetitive traffic and the provisions of the paragraph referred to can not be construed as limiting the commission's jurisdiction to prevent a carrier from canceling switching charges which have been in effect for many years, especially in view of the other and more specific provisions of the act. Team Track Switching at Argentine, 73 I. C. C. 367, 370, 371.

(h) The provisions of paragraph (4), section 15, of the Act can not be construed to limit the commission's jurisdiction to prevent a carrier from canceling switching charges which have been in effect for many years especially in view of the other and more specific provisions of the act. Team Track Switching at Argentine, 73 I. C. C. 367, 371.

(i) The establishment of the switching charge sought might very well result in the short hauling of defendant to many points reached by its own rails. This the Commission is precluded from doing under the provisions of section 15 of the Act. David Lipton's Sons Co. v. Pennsylvania R. R. Co., 81 I. C. C. 93, 95.

(j) Under paragraph (3), section 3 of the Act which requires that all carriers shall, according to their respective powers, afford all reasonable, proper, and equal facilities for interchange of traffic between their respective lines, the commission has power to deal with issue of establishment of switch connections between rail carriers and to make affirmative order in premises if warranted by the record. Pittsburgh & West Virginia Ry. Co., v. L. E., A. & W. R. R., 81 I. C. C. 333, 334

(k) Defendant transported coal, during federal control, from mines on its line to complainant's plant, and subsequently furnished cars, power, and crews for intraplant movement over plant tracks from stock pile to point of use. Contention that commission has jurisdiction over charge for intraplant movement under section 206 (c) of Transportation Act, 1920, in that service performed should be considered as secondary delivery not separable from line haul, not sustained. Line-haul movement was definitely ended by delivery and unloading upon complainant's stock pile. Grasselli Chemical Co. v. Director General, as Agent, 81 I. C. C. 562, 564.

(l) The question whether the switching of carload freight by a carrier on industrial spur track is an additional service for which it is entitled to make a charge over and above the line-haul rate, or is merely a substituted service in lieu of a substantially similar terminal service included in the line-haul rate, but not rendered, is a question of fact to be determined according to the actual conditions of operation, and manifestly one upon which it is the province of the Commission to pass. Interstate Com. Com. v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 814, 818; 58 L. ed. —; 234 U. S. —.

(m) The power of the Commission does not extend to ordering switch connectons wherever it sees fit, but is limited to a certain class of lines among which are those dependent upon and incident to the main line—feeders, such as may be built from mines or forests to bring coal, ore or lumber to the main line for shipment, and does not apply to independent roads parallel to or competing with steam roads and working on a different plan. U. S. v. B. & O. S. W. R. R. Co., 33 Sup. Ct. 5, 6; 226 U. S. 14.

(n) The findings of the Commission that certain industrial spur tracks in a certain city constitute a part of a carrier's terminals, and that under the conditions there exisiting the receipt and delivery of goods on such spurs was a like service as compared with the receipt and delivery of goods at team tracks and freight sheds, are conclusions of fact which, if based upon the evidence, are not open to review. Interstate Com. Com. v. A. T. & S. F. Ry. Co. 34 Sup. Ct. 814, 819; 58 L. ed. —; 234 U. S. —.

(o) Track connections between different carriers are not within exception from Interstate Commerce Commission's jurisdiction. People ex rel. New York Cent. R. Co. v. Public Service Commis-

sion of New York, Second Dist. 233 N. Y. 133, 135 N. E. 195.

ALL OTHER CITATIONS

West Texas Fuel Co. v. T. & P. Ry. Co., 15 I. C. C. 443, 446; General Electric Co. v. N. Y. C. & H. R. R. R. Co., 14 I. C. C. 237, 242; U. S. v. B. & O. S. W. R. R. Co., 33 Sup. Ct. 5, 6; 226 U. S. 14; Consolidated Pump Co. v. L. S. & M. S. Ry. Co., 27 I. C. C. 519; Detroit Switching Charges, 28 I. C. C. 494, 496; Waverly Oil Works Co. v. P. Ry. Co., 28 I. C. C. 621, 625, 630; B. A. & A. R. R. Co. v. B. & S. R. R. Corp., 31 I. C. C. 583, 586; Switching at Galesburg, Ill., 31 I. C. C. 294, 297; Seattle Chamber of Commerce v. G. N. Ry. Co., 30 I. C. C. 683, 690; L. & N. R. Co. v. United States, 216 Fed. 672; Louisville & N. R. Co. v. United States, 227 Fed. 258, 271; Mutual Wheel Co. v. N. C. & St. L. Ry., 40 I. C. C. 612, 613; Cincinnati Switching Absorption, 44 I. C. C. 353, 354; I. & S. W. Ry. Co., v. C. B. & Q. R. R., 42 I. C. C. 399, cited and followed; K. C. & M. Ry. v. St. L. & S. F. R. R., 46 I. C. C. 464, 466; Switching Absorptnon, 47 I C. C. 583, 588; Western Cement Rates, 48 I. C. C. 201, 252; Montana v. P. C. C. & St. L. Ry., 48 I. C. C. 728, 729; DuPont de Nemours Powder Co. v. P. R., 50 I. C. C. 203, 204; Sheldon Axle & Spring Co. v. L. V. R. R. Co., 53 I. C. C. 43, 44; Virginia Coal & Fuel Co. v. N. & W., 55 I. C. C. 61, 64; Pittsburgh & L. E. R. Co. v. South Shore R. Co. (Pa., 1919), 107 Atl. 680; Seaboard Air Line Ry. Co. et al v. United States et al, 41 Sup. Ct. 24; Interchange Switching at Wichita, 61 I. C. C. 205, 206.

II. ABSORPTION OF SWITCHING.

See Absorption of Charges §3.

§3. In General.

CASES 1887-1908

(a) Complainant attacked a switching charge on coal at Kansas City, as unreasonable. In the transportation of coal by defendant to Kansas City, consignees desire delivery on the lines of other carriers which assess switching charge of $3 per car. At one time defendant absorbed said switching charge in its transportation charge, later discontinued the practice, and subsequently resumed it. Complainants contend that inasmuch as defendant indulged in the practice and after discontinuance resumed it that it has committed itself to the unreasonableness of requiring shippers to at any time pay said switching charge and therefore reparation is asked for switching charges paid during the period when defendant required that such charges should be paid by shippers. The unreasonableness of the charge of $3 per car for the service performed is not attacked, and no substantial showing is made as to the difference in commercial conditions which may have obtained at the different times. HELD: To support the contention of complainants in these cases would be to say that transportation charges must in every instance remain at a fixed figure or be reduced by the carrier at the peril of being called to respond in damages on all charges that have before that time been collected under the rates so reduced. It is admitted that no discrimination as between shippers was indulged in in the application of the tariff charges and no showing is made that the tariff charges were unjust or unlawful. Complaint dismissed. J. H. Leonard v. C. M. & St. P. Ry., 12 I. C. C. 492, 493.

(bc) Reparation for switching charges for delivery of coal at Kansas City in lines of other carriers, paid during interval when carrier discontinued its practice of absorbing said switching charge and its transportation charge, denied, the reasonableness of the charge of $3 per car not being attacked, and no substantial showing being made as to the difference in commercial conditions which may have obtained at the different times Leonard v. C. M. & St. P. R. R. Co., 12 I. C. C. 492.

IMPORTANT CASES SINCE 1908

(d) In cases where traffic moves from the same points of origin, and the switching charge is absorbed in the one case and not in the other, there is a violation of section 2, as the existence of competition in the one case and not in the other does not constitute a substantial dissimilarity of circumstances and conditions. Richmond Chamber of Commerce v. S. A. L. Ry. Co., 30 I. C. C. 552, 558.

(e) By the amended act carriers may be compelled to make connection with spur tracks built by shippers or with a lateral line of railroad and to operate such switch tracks at a reasonable compensation therefor. Second Industrial Railways Case, 34 I. C. C. 596, 602.

(f) The absorption of switching charges is not in contravention of law. Columbia Gold Min. Co. v. O. W. R. R. & Nav. Co., 35 I. C. C. 42, 43

(g) Where the delivery service within a switching district is substantially the same in either instance, the line-haul carrier is receiving a greater compensation from one shipper than from another for a like service when it absorbs the switching charges of one switching line and not those of another. Richmond Cham. of Com. v. S. A. L. Ry., 44 I. C. C. 455, 466.

(h) The practice of certain carriers serving Richmond of absorbing switching charges only when the switching line competes with the line-haul carrier, while refusing to absorb such charges when the switching line does not compete with the line-haul carrier, constitutes undue discrimination within section 2 when the switching service is substantially similar. Richmond Chamber of Commerce v. S. A. L. Ry., 44 I. C. C. 455, 461, 467.

(i) It does not appear that coal and coke are competitive with other traffic moving into Richmond, and the absorption of switching charges upon certain traffic and not upon other traffic is not in itself unduly discriminatory. Richmond Chamber of Commerce v. S. A. L. Ry., 44 I. C. C. 455, 467.

(j) The practice of southern lines of absorbing switching charges only when the switching line actually competes with the line-haul carrier on traffic to or from industries at Richmond under substantially similar circumstances and conditions as defined in section 2 is unlawful. Richmond Chamber of Commerce v. S. A. L. Ry., 44 I. C. C. 455, 467.

(k) When the absorption of a switching charge subsequently to January 1, 1910, was the voluntary act of the carrier, and its cancellation had the effect of increasing the transportation charges, the burden of proof is upon the carrier to justify such increased charges. Consolidation Coal Co. v. C. & O. Ry. Co., 60 I. C. C. 763, 767.

(l) If carriers absorb switching charges for one shipper, they must do the like for all other similarly situated and entitled to like treatment. Ridge Coal Mining Co. v. M. P. R. R. Co., 62 I. C. C. 259, 262.

(m) In the absence of unjust discrimination or undue prejudice a carrier can not be compelled to absorb the switching charges of a connecting line. Hunt Helm Ferris & Co. v. C. & N. W. Ry., 68 I. C. C. 283, 284.

(n) In a proceeding to determine the propriety of switching charges by carriers, the Commission must consider them as though they were charged for by the railroad rendering the service and paid for by the shippers. Reciprocal Switching at Kansas City, Mo.-Kas., 68 I. C. C. 591, 596.

(o) Proposal of the A. T. & S. F. to cancel the switching charges between its team tracks at Argentine, Kans., and connecting lines at Kansas City, Mo.-Kans., leaving in effect higher local rates, found not justified. Present arrangement is clearly practicable and is shown to be in the public interest; carrier has not shown that its ability to handle its own business is substantially impaired by the existing arrangement, nor that charges therefor are not compensatory; and the circumstances are somewhat analogous to those where the commission has declined to permit carriers to maintain a prohibitive charge for hauling traffic from connecting lines to their own team tracks. Team Track Switching at Argentine, 73 I. C. C. 367.

(p) Proposed nonabsorption by the Kansas City Southern of the switching charges on traffic to and from the power house of the Kansas City Rys. Co. at Second and Locust Streets, Kansas City, Mo., found justified. The extension of the freight business of the Kansas City Rys. Co., actual and prospective, did not change the intraplant nature of operations performed by it at its power house, which service is in excess of the Kansas City Southern's legal obligation with respect to delivery. Nonabsorption of Switching Charges, 73 I. C. C. 376.

(q) Findings in previous reports, 58 I. C. C. 92, and 62 I. C. C. 226, affirmed. Practice of the C. R. R. Co. of N. J., in absorbing charges of the East Jersey R. R. and Term. Co. on traffic to and from independent industries served by, and reached only over the rails of the terminal company, while refusing to absorb charges on such traffic of complainant, who controls that company, not shown discriminatory or unduly prejudicial. Circumstances and conditions are similar in so far as the line haul is con-

cerned, but a differentiation is apparent when the Commission examines the facts with regard to the traffic after the line haul or the greater part thereof is completed. Tide Water Oil Co. v. Director General, as Agent, 73 I. C. C. 528.

(r) The commission may not enter an order requiring the absorption of switching charges unless it is found that the nonabsorption results in a violation of the Act. To determine this question it must be found that the circumstances and conditions affecting the service at the point where such absorption is refused are substantially similar to those affecting the service at other points with which comparison is made. Tide Water Oil Co. v. Director General, as Agent, 73 I. C. C. 528, 529.

(s) Increased through rates on traffic to and from points on the Northampton & Bath R. R., resulting from the cancellation by trunk-line carriers of the joint rates, under which the switching charges of the N. & B. were absorbed, found to have been justified as to cement and not unreasonable, but as to other traffic found unjust and unreasonable to extent they exceeded rates to and from the junctions. Reparation awarded. Atlas Portland Cement Co. v. N. & B. R. R. Co., 73 I. C. C. 687.

(t) Respondent proposed to cancel a tariff rule providing for the absorption of switching charges of the Pennsylvania for the movement from Croxton, N. J. to certain industries on that line at Jersey City, N. J., in connection with interstate shipments. The proposed cancellation would increase the total charges about $55 per car. No one appeared for the respondent and no evidence was offered in support of the increased charges. HELD: Suspended schedules not justified. Absorption of Charges between Croxton and Jersey City, N. J., 74 I. C. C. 329.

(u) Complainant attacked refusal of the D. L. & W., and L. V., and B. R. & P., to absorb switching charges of Erie at Buffalo, N. Y., on transit grain as unduly prejudicial. Original report, 55 I. C. C. 587. HELD: Reparation awarded based on original report. Globe Elevator Co. v. Director General, 74 I. C. C. 591.

(v) Where a carrier holds itself out to carry traffic to and from a certain point, it must reach that point either over its own facilities or through those of others; where two carriers join in the publication of joint rates and establish through rates via junctions where their rails do not meet, there is a holding out to the public of intermediate carriage between their respective lines which must be protected. The general practice is for the intermediate switching road to file a tariff naming its switching charge, and this charge is absorbed by one or other of the line haul carriers under appropriate tariff provisions. Intermediate Switching Charges at Peoria, Ill., 77 I. C. C. 43, 47.

(w) Absorption of switching charge which results in lower total transportation charges from more distant point to point where property is delivered than total charge from or to an intermediate point. HELD: While constituting violation of fourth section of act, such departure protected by commission's general fourth section order No. 5 of March 20, 1911. Conf. Ruling 304 (d). Montrose Oil Refining Co. v. St. L. S. F. Ry. Co., 78 I. C. C. 572, 573.

(x) Upon further hearing, former report, 62 I. C. C. 705, finding failure of defendants to provide for absorption of charges for inter-changing inbound traffic at Downington, and provide charges for inter-changing outbound traffic, not unreasonable, discriminatory, or unduly prejudicial, affirmed. Failure to provide for interchange of outbound traffic is not shown to prejudice Downington, in comparison with Coatesville, Pa., and other points where such arrangements are maintained, and to require such interchange would compel carriers to short haul themselves. Miller Paper Co. v. P. R. R. Co., 80 I. C. C. 314.

(y) Failure of carriers to absorb switching charges on grain and products accorded transit at Detroit, Mich., while providing for absorption of such charges at Buffalo, N. Y., and Chicago, Ill., found not unreasonable or unduly prejudicial to Detroit, due to dissimilarity of conditions prevailing at Buffalo and Chicago, notably the greater volume of traffic. Aggregate through rates resulting therefrom found not unreasonable. Detroit Board of Trade v. W. Ry. Co., 80 I. C. C. 717.

(z) Allegation that carrier has violated section 6 of the act through assessing and collecting without tariff authority switching charges on transit grain, predicated upon failure to state in tar-

iff naming transit provisions the charges in connection therewith, not sustained. Tariff carrying rates of carrier contains general provision that switching charges at any point will be added to through rate unless provision is made for absorption. This is in accordance with requirements of rule 10 (a) of Tariff Circular 18-A. Detroit Board of Trade v. W. Ry. Co., 80 I. C. C. 717, 723.

(aa) Charge for movement within Kansas City, Kans., switching district was published in tariff naming line-haul rates, and was added to Kansas City rates in constructing charge on complainant's shipments. Tariffs of line-haul carriers provided for absorption of switching charges at Kansas City. HELD: Service rendered rather than class of tariff in which charge for intradistrict movement was published determines character of such charge. Charges assessed found illegal to extent they exceeded rates to Kansas City and reparation awarded. Butcher v. Director General, as Agent, 83 I. C. C. 359.

(bb) Fact that charge for switching service is published in tariff naming line-haul rates, and in amount per net ton rather than a charge per car, makes it none the less a switching charge and subject to absorption rules of line-haul carriers. Butcher v. Director General, as Agent, 83 I. C. C. 359, 360.

(cc) Switching charges may be absorbed on some commodities and not on others if this difference in treatment does not place an undue burden on other traffic. Detroit Board of Trade v. W. Ry., 88 I. C. C. 413, 415.

(dd) A carrier has the right to absorb switching charges on traffic from competitive points and to refuse to absorb similar charges on traffic from noncompetitive points. Detroit Board of Trade v. W. Ry., 88 I. C. C. 413, 415.

(ee) The practice of three carriers as to traffic from points south of Richmond, whereby each absorbed, for shipments from competitive points only, switching charges to industries in Richmond on the lines of such carriers and similarly located with regard to the interchange tracks of the three carriers, but refused to absorb the switching charge on deliveries to similarly located industries on noncompetitive lines. HELD: A violation of Interstate Commerce Act, §2, being a like and contemporaneous service of a like kind of traffic under similar circumstances and conditions. Seaboard Air Line Ry. Co., et al. v. United States, et al., 41 Sup. Ct. 24.

ALL OTHER CITATIONS

Curtis Bros. & Co. v. S. P. Co., 23 I. C. C. 372, 373; Deeves Lumber Co. v. C. & N. W. Ry. Co., 19 I. C. C. 482, 483; Minneapolis Threshing Machine Co. v. C. St. P. M. & O. Ry. Co., 17 I. C. C. 189, 190, 192; Milwaukee Falls Chair Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 217, 218; Brown v. B. & M. R. R., 27 I. C. C. 47, 53; Lumber Rates from Memphis and Other Points to New Orleans, 27 I. C. C. 471, 487; Casey-Hedges Mfg. Co. v. C. of G. Ry. Co., 26 I. C. C. 63, 64; Coal Rates on the Stony Fork Branch, 26 I. C. C. 168, 173; Farrar Lumber Co. v. N. C. & St. L. Ry., 25 I. C. C. 22, 25; National Lumber Exporters' Asso. v. K. C. S. Ry. Co., 25 I. C. C. 78, 84; Dierke & Sons Lumber Co. v. M. P. Ry. Co., 24 I. C. C. 205; Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. 93, 103; Waverly Oil Works Co. v. P. R. Co., 28 I. C. C. 621, 627, 631; Richmond Chamber of Commerce v. S. A. L. Ry. Co., 30 I. C. C. 552, 556; Seattle Chamber of Commerce v. G. N. Ry. Co., 30 I. C. C. 683, 691; Switching at Baltimore, Md., 30 I. C. C. 581, 584; Lorillard Co. v. P. R. R. Co., Unrep. Op. A-556; Gravel and Sand Switching charges at Chicago, 32 I. C. C. 291, 296; Great Western Oil Refining Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-937; Rates on Hay to Chicago, 34 I. C. C. 150; Stopping cars in Transit to Complete Loading, 36 I. C. C. 130, 131; Lorain & Southern R. R. Case, 37 I. C. C. 497; Chestnut Ridge Ry. Case, 37 I. C. C. 558, 562; Nat'l Dock and Storage Warehouse Co. v. B. & M. R. R., 38 I. C. C. 643, 647, 650, 656; Chicago, West Pullman & Southern R. R. Case, 37 I. C. C. 408, 415; In re Muncie & Western R. R. Co., 38 I. C. C. 510, 514, 515; Lucke & Co. v. Wabash R. R., 39 I. C. C. 517; Good v. G. N. Ry. Co., 42 I. C. C. 347; Sunderland Bros. v. K. C. T. Ry., 42 I. C. C. 427; Brick from Michigan City, Ind., 42 I. C. C. 509, 512; New Orleans Terminal Allowances, 42 I. C. C. 748, 755; Cincinnati Switching Absorption, 44 I. C. C. 353, 354; Drayage Absorption, 43 I. C. C. 472, 474; Consumers Co. v. M., St. P. & S. S. M. Ry. Co., 43 I. C. C. 561, 563; Chamber of Commerce of Milwaukee v. C., M. & St. P. Ry. Co., 43 I. C.

C. 725, 726; Lumber from Texas Points, 44 I. C. C. 275, 276; Richmond Cham. of Com. v. S. A. L. Ry., 44 I. C. C. 455, 459, 460, 465; Sunderland Bros. Co. v. C. G. W. R. R., 45 I. C. C. 113; Wood & Son v. Erie R. R., 45 I. C. C. 587, 589; Globe Grain Milling Co. v. L. A. & S. L. R. R., 46 I. C. C. 645, 646; Gray Lumber Co. v. M. & O. R. R., 47 I. C. C. 20; Milwaukee Switching Absorption, 47 I. C. C. 41; New Era Milling Co. v. A. T. & S. F. Ry., 47 I. C. C. 67; Switching Absorptions, 47 I. C. C. 583, 586, 587, 588; Crown Willamette Paper Co. v. A. T. & S. F. Ry., 49 I. C. C. 613, 614; Bath & Co. v. F. W. & R. G. Ry., 51 I. C. C. 129; Kaw River S. & M. Co. v. A. F. & S. F. Ry., 51 I. C. C. 350, 355; Seaboard Air Line Railway Co. v. United States, 249 Fed. 368; Toledo Switching Absorption, 50 I. C. C. 18; Ottawa Coal & Supply Co. v. D. T. & I. R. R., 50 I. C. C. 87, 88; Ball Bros. Glass Mfg. Co. v. C. C. C. & St. L. Ry., 51 I. C. C. 418, 422; California Canneries Co. v. S. P. Ry., 51 I. C. C. 500, 503; Pennsylvania Co. v. United States, 257 Fed. 261; Portsmouth Association of Commerce v. S. A. L., 55 I. C. C. 377, 388, 391; Globe Elevator Co. v. Director General, 55 I. C. C. 587; Butterfield Co. v. N. O. & N. E., 55 I. C. C. 741, 743; U. S. of America v. Belt Line R. R., 56 I. C. C. 121, 123; United States v. B. L. R. R., 56 I. C. C. 121; Texas Co. v. Director General, 57 I. C. C. 48, 51; Cuyhoga Valley Ry. Co. v. Director General, 57 I. C. C. 660; United States Cast Iron Pipe and Foundry Co. v. Director General, 57 I. C. C. 677, 683; Absorption of Switching Charges at Coeur d'Alene, 60 I. C. C. 275; National Spring & Wire Co. v. Director General, 60 I. C. C. 564; Switching and Absorption at Minneapolis, 61 I. C. C. 646; Absorption of Switching Charges at Toledo, O., 62 I. C. C. 30; Ridge Coal Mining Co. v. M. P., 62 I. C. C. 259, 262; Hillsborough Mills v. Boston & M. R. R. (Mass., 1921) 269 Fed. 816; Oregon Short Line R. Co. v. American Smelting & Refining Co., 269 Fed. 898; Leavenworth Chamber of Commerce v. Director General, 62 I. C. C. 697; Miller Paper Co. v. P. R. R., 62 I. C. C. 705, 708; Absorption of Switching Charges at Fort Worth, 61 I. C. C. 73; Swift & Co. v. Ft. W. & D. C. Ry. Co., 61 I. C. C. 77; Switching and Absorption at Minneapolis, 61 I. C. C. 646; Tidewater Oil Co. v. Director General, as Agent, 62 I. C. C. 226; Lafayette Gravel Co. v. C. & E. I. R. R. Co., 62 I. C. C. 927, 932; Absorption of Switching Charges at Toledo, O., 64 I. C. C. 8, 9; Silica Sand Producers Asso. v. C. B. & Q. R. R. Co., 63 I. C. C. 217, 219; Illinois Brick Co. v. Director General, as Agent, 64 I. C. C. 273; Terminal Charges on Grain at Texas Ports, 64 I. C. C. 629; West Coast Grocery Co. v. Director General, 66 I. C. C. 679; Intermediate Switching at Toledo, O., 69 I. C. C. 146; Boston Wool Trade Association v. Director General, 69 I. C. C. 282; Providence Fruit & Produce Exchange v. Rhode Island Co., 69 I. C. C. 422; Omaha Livestock Exchange v. C. M. & St. P. Ry., 69 I. C. C. 690; Croxton and Jersey City, 74 I. C. C. 329; Detroit Board of Trade v. W. Ry. Co., 80 I. C. C. 717; Ice, Carloads, from Illinois, Iowa, Michigan, Minnesota and Wisconsin to points in the Chicago Switching District, 81 I. C. C. 30; Switching Charges on Grain, 80 I. C. C. 717; Nonabsorption of Switching Charges on Fish, 81 I. C. C. 113; Absorption of Charges, 81 I. C. C. 181; Bancroft & Sons Co. v. Director General, 87 I. C. C. 421; Barber Asphalt Co. v. L. & N. R. R., 88 I. C. C. 307; International Harvester Co. v. N. Y. C. R. R., 88 I. C. C. 368.

III. DISCRIMINATION AND REASONABLENESS OF CHARGES.

See Discrimination; Reasonableness of Rates.

§4. In General.

CASES 1887-1908

(a) Defendant's railroad connects at Janesville, Wisc., with the C. M. & St. P. Ry. Complainant is a merchant doing business at that point and having coal yards on the line of the latter road, but receiving shipments from points on the line of the defendant road, and his financal responsibility is not questioned in this proceeding. Carriers operating in that section of the country are members of a car service association, which has established a rule requiring the payment of demurrage charges when cars are retained by shippers more than 48 hours after receiving notice that such cars are in position to unload, and the rule is set forth by the carriers in their bills of lading. HELD: That the action of defendant in refusing, after payment of freight and offer of customary switching charges, to switch two carloads of

coal to the connecting line for delivery at the coal yard of complainant on such line unless he promised in advance to pay any demurrage charges that might be made regardless of whether they were just or legally enforcible, was unreasonable notwithstanding complainant had previously refused to pay demurrage charges on other cars switched to his siding, which he had failed to unload within the time prescribed by the rule, and defendant by retaining the coal in its possession and demanding such promise from complainant as a condition precedent to the performance of its duty as a common carrier subjected the complainant to unlawful prejudice and disadvantage. Complainant is entitled to reparation for injuries sustained in consequence of such refusal and neglect of defendant. Macloon v. C. & N. W. R. Co., 3 I. C. C. 711.

(b) The custom of railroads to furnish switch tracks for the use of certain of its customers upon which freight is delivered free of charge, does not justify free delivery by carts to all parts of one city and a refusal of like service for other cities under substantially similar conditions; nor does a prohibition of the delivery by carts require a prohibition of the tracks. Interstate Commerce Commission v. Detroit, G. H. & M. R. Co., 4 I. C. R. 722.

(b) No such undue preference or unjust discrimination as would warrant an order of relief or for reparation is shown under complainant's claim that he was subjected to an unreasonable disadvantage by refusing him a private switch and providing his competitor in the coal business with one, thereby compelling him to unload coal at an inconvenient point near the outskirts of the town, where it appeared that complainant really desired to use a passing siding of defendant for the purpose of unloading his coal. Parks v. Cincinnati & M. Valley R. Co., 10 I. C. C. 47.

(c) Discrimination in supplying with private switch, and denying like facility to complainant. Parks v. Cincinnati & M. Valley R. Co., 10 I. C. C. 47.

(d) Defendant's tracks in Providence, R. I., are so located that competitors of complainant occupying places of business abutting on its Canal Street Yard are able to unload carloads of fresh meat directly into their warehouses; and the privilege of unloading meat in that yard was formerly accorded to complainant, whose store house is across the canal and about 300 feet from the railroad; but such privilege to complainant was recently withdrawn. Denial of such privilege entails the hauling of complainant's meat from another yard about half a mile distant, and damages his business from $20 to $100 per car. HELD: That complainant is thereby subjected to undue prejudice. Miner v. New York, N. H. & H. R. Co., 11 I. C. C. 422.

(da) An unlawful discrimination is made between complainant and other more favored shippers, which amounts to undue and unreasonable preference by defendant, where defendant declines to permit a side-track connection between its line and a switch or side track to complainant's coal mine in the Fairmont District of West Virginia, for the purpose of receiving interstate shipments of coal from its mine, while at the same time it provides and maintains side track connections for other mines in that district from which large quantities of coal are shipped to interstate destinations, and controls, through ownership of capital stock, large coal mining enterprises in the Fairmont District. Red Rock Fuel Co. v. Baltimore & O. R. Co., 11 I. C. C. 438.

(e) The enactment of Congress in section three of the Act that the carriers affected thereby shall not subject persons, localities or description of traffic to undue prejudice or unreasonable disadvantage, or give any undue or unreasonable preference or advantage to persons, localities or kinds of traffic in any respect whatsoever applies to discrimination in facilities or instrumentalities of shipment or carriage, and while the Commission has no authority to order a carrier to put in side track connections, or to prescribe the terms or conditions relating to the construction of such connections, its jurisdiction does extend to any case of wrongful prejudice resulting from discrimination in the provision of such facilities or instrumentalities of shipment or carriage, including side track connections. Red Rock Fuel Co. v. B. & O. R. R., 11 I. C. C. 438, 451.

(f) Right of carrier to dictate as to business conducted from and along a siding connected with its lines denied, except in so far as may be reasonable

with regard to commodities the transportation of which are attended by such risk and danger to life and property. Barden & Swartout v. Lehigh Valley R. Co., 12 I. C. C. 103.

(g) The Commission does not think that a carrier can reserve to itself, or exercise, the right to determine as to what commodities shall or shall not be moved over a switch connection and dealt in by a dealer who is located upon a siding which is connected with carrier's line by such switch, except in so far as is necessary and proper to afford protection to life and property against the handling or storage of dangerous commodities, such as explosives or highly inflammable liquids. Barden & Swartout v. L. V. R. R., 12 I. C. C. 194, 195.

(h) Complainant attacked as unreasonable switching charges collected at Kansas City on shipments of grain. After the arrival, and usually after sale, of grain transported in carloads by defendant to Kansas City, owners direct delivery to points on the lines of other carriers which assess a switching charge which defendants collects for and pays to said carriers. Complainant contended that defendants published rate on grain to Kansas City includes delivery at any point in Kansas City desired by shipper, whether on the line of defendant or on the lines of any other carrier. HELD: The Act in specific terms provides that a common carrier shall not be required to give the use of its tracks to another carrier engaged in like business; that in the absence of tariff provisions to the contrary, the transportation rate shown in a carrier's tariff on a certain commodity to a given point is understood to include delivery only to industries or unloading points located upon its own rails; that if consignee or owner of shipment desires delivery to point located on the line of another carrier he must pay the lawful charge for such service. Complaint dismissed. Laning Harris Coal & Grain Co. v. A. T. & S. F. Ry., 12 I. C. C. 479.

(i) After the arrival, and usually after sale, of grain transported in carloads by defendant to Kansas City, owners direct delivery to points on the lines by other carriers who assess a switching charge which defendant collects for and pays to said other carriers. Complainant alleges that defendant's published rate on grain to Kansas City includes delivery at any point in Kansas City desired by shipper, whether on the line of defendant or on the lines of any other carrier, and that the switching charge is therefore unlawful and unreasonable. HELD, That the act in specific terms provides that a common carrier shall not be required to give the use of its tracks or terminal facilities to another carrier engaged in like business; that in the absence of tariff provisions to the contrary, the transportation rate shown in a carrier's tariff on a certain commodity to a given point is understood to include delivery only to industries or unloading points located upon its own rails; that if consignee or owner of shipment desires delivery to point located on the line of another carrier he must pay the lawful charge for such service. Complaint dismissed. Laning-Harris Coal & Grain Co. v. A. T. & S. F. Ry. Co. 12 I. C. C. 479.

IMPORTANT CASES SINCE 1908

(j) General statements on the part of the representative of a railroad testifying on its behalf, that it is felt by the company that the cost of conducting its terminals has so materially increased that it must have more revenue to put the road on a basis justifying the cost incurred in performing the switching service in question, furnishes no justification for an advance in switching charges. Detroit Switching charges, 28 I. C. C. 494, 497.

(k) Section 2 is primarily directed against discrimination between shippers located in the same community. It is aimed to put all shippers within a switching district upon a substantial equality. It provides that where a carrier receives from any person a greater compensation for any service rendered in the transportation of passengers or property than it receives from any other person for doing for him a "like contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and condition, such common carrier shalll be deemed guilty of unjust discrimination," a discrimination which is prohibited and declared to be unlawful. Under this section it is settled that the competition of rival carriers as such does not constitute substantially dissimilar circumstances to justify a difference in treatment. Richmond Chamber of Commerce v. S. A. L. Ry., 44 I. C. C. 455, 464.

(l) Where industries are situated

within the switching district of the same city and are substantially equidistant from the respective interchange tracks, the service which the line-haul carrier renders is like service within section 2. Richmond Chamber of Commerce v. S. A. L. Ry., 44 I. C. C. 455, 466.

(m) In determining the amount of the switching charge it is proper to consider the value of the service rendered and the facilities used, and the circumstance that the terminal carrier has been deprived of the line haul. The charge properly may be adequate for the terminal service considered by itself, but its actual or possble absorption by a competing line furnishes no criterion of what is a reasonable charge. In a proceeding to determine the propriety of switching charges absorbed by carriers, the Commission must consider them as though they were to be charged for by the railroad rendering the service, and paid for by the shipper. Switching Absorptions, 47 I. C. C. 583, 587.

(n) A carrier is not excused from its legal duty of placing complainants upon an equality of rates and an equality of service with their similarly circumstanced competitors by its own voluntary act of constructing and maintaining switch tracks serving such competitors' plants. Westport Stone Co. v. C. C. C. & St. L Ry., 48 I. C. C. 637, 639.

(o) Carriers are within their rights in establishing reasonable territorial limits for the operation of their switching engines and giving industries within those limits the benefit of any resulting economies. Charges to points without the switching limits may not only be higher for the greater distance, but for the different character of service, where more expensive. Such charges should not, however, exceed what is sufficient properly to recompense the carrier for the service rendered. New Bedford Board of Commerce v. Director General, 55 I. C. C. 320, 323.

(p) One carrier having elected to open its terminals to another carrier at class rates and perform the switching service must expect to perform such service at a charge which is reasonable. Thatcher Manufacturing Co. v. Director General, 57 I. C. C. 244, 246.

(q) Charges for service of delivery from one carrier to another should not exceed the line-haul rate by more than 2 cents per 100 pounds. Thatcher Mfg. Co. v. Director General, 57 I. C. C. 244, 247.

(r) There is no requirement of law that the rate shall be the same to all points of delivery in the same district, even when the district is all embraced within the municipal limits of one city instead of comprising two separate municipalities. St. Louis Chamber of Commerce v. B. & O. R. R. Co., 57 I. C. C. 639, 647, 648.

(s) In making a general separation of the expenses chargeable to interchange and interior plant switching the engine hour will usually be found a safer guide than number of cars handled. Illinois Northern Ry., 61 I. C. C. 629, 633, 634.

(t) Shipments delivered to complainant's private siding by P. & R. were switched by the Pennsylvania to another private siding, both within the switching limits of Williamsport, Pa., for which latter service the Pennsylvania assessed a class rate. Lower switching charge in effect but tariff provided that "this charge not applicable from or to tracks of connecting line." Contention that complainant's private siding should be considered an interchange track of the carriers held not sustained, and since shipments were switched from a private siding and not from tracks of a connecting carrier, lower switching charge legally applicable. Refund of overcharges directed. Central Pennsylvania Lumber Co. v. Director General as Agent, 62 I. C. C. 99.

(u) Where the question in issue is whether a charge was just and reasonable, it is immaterial, so far as this question is concerned, whether the service be designated a line haul or switching movement if the charge was on file with the Commission as a legal charge. Swift & Co. v. Director General, as Agent, 63 I. C. C. 389, 390.

(v) The burden of proof rests upon carriers to justify proposed increased through charges resulting from a reduction in the amount of switching charges they will absorb even though they need not have increased the amount of such absorption by more than a certain per cent under Increased Rates, 1920, 58 I. C. C., 220. Absorption of Switching Charges at Toledo, Ohio, 64 I. C. C. 8, 9.

(w) Shipments were handled under regular billing, in trains subject to or-

ders of train dispatchers. Movements performed necessitated the crossing of one or more river bridges and considerable switching and back hauling. Point involved is not shown in governing tariffs as a point within the switching limits and rate from and to that point is published as a transportation charge, HELD: Service found to be a line haul and not a switching movement. Hilb & Bauer v. Director General, as Agent, 66 I. C. C. 279, 280.

(x) Because of accumulation of barges alongside vessel, delivery from car float to vessel could not be made. Cars were floated to float bridge adjacent to pier and thence moved along tracks and out upon the pier for delivery, for which service a class rate was assessed. HELD: Extra movement to float bridge and beyond amounted to a reconsignment. Charges assessed found unreasonable to extent they exceeded those provided in a local switching tariff for similar movements to cold storage warehouses, plus a reconsignment charge. Reparation awarded. Armour & Co. v. Director General, as Agent, 66 I. C. C. 760.

(xa) Carriers whose rails do not connect at interchange points may join in the establishment of through routes and joint rates, and may employ a switching line to effect transfer of traffic between their rails. The extent to which each shall partcipate in compensating the switching line under such an arrangement between the employing carriers. In the absence of agreement to the contrary, it would not seem unfair that the expense should be shared equally. Minneapolis & St. Louis R. R. Co. v. P. & P. U. Ry. Co. 68 I. C. C. 412, 417.

(y) Complainant attacked rates charged on lumber and forest products, carloads, between industries on different lines in Washington, D. C., as unreasonable and unduly prejudicial. Complainants only grievance is in respect of rates between the delivery yards in Washington of the Pennsylvania and the Baltimore & Ohio. Complainant sometimes has occasion to transfer cars from the delivery yard of one road to that of the other, rate charged being joint sixth class rate of 12.5c governed by official classification. HELD, rate attacked unjust and unreasonable to extent it exceeded 8c per 100 pounds, reparation awarded. W. A. Wimsatt v. B. & O. R. R. 69 I. C. C. 554.

(z) Rates on coal from various producing regions to the Chicago switching district, higher to some deliveries than to Chicago itself found not unreasonable or unduly prejudicial, but rates to points just beyond the district, based on the combinations to and from Chicago, found unduly prejudicial to extent they exceeded the rates to Chicago by certain differentials. Relationship of rates prescribed. Chicago Coal Merchants Asso. v. Director General, as Agent, 73 I. C. C. 161.

(aa) Proposal of the A., T. & S. F. to cancel the switching charges between its team tracks at Argentine, Kans., and connecting lines at Kansas City, Mo.-Kans., leaving in effect higher local rates, found not justified. Present arrangement is clearly practicable and is shown to be in the public interest; carrier has not shown that its ability to handle its own business is substantially impaired by the existing arrangement nor that charges therefor are not compensatory; and the circumstances are somewhat analogous to those where the commission has declined to permit carriers to maintain a prohibitive charge for haulng traffic from connecting lines to their own team tracks. Team Track Switching at Argentine, 73 I. C. C., 367.

(bb) Respondent urges that to require it to maintain its present switching arrangement would be to deny to it the long haul on traffic which it is entitled to receive from connecting lines, in contravention of the provision of paragraph (4), section 15, of the act. HELD, schedules proposing to cancel present charges make no distinction between competitive and noncompetitive traffic, and the provisions of the paragraph referred to can not be construed as limiting the commission's jurisdiction to prevent a carrier from canceling switching charges which have been in effect for many years, especially in view of the other and more specific provisions of the act. Team Track Switching at Argentine, 73 I. C. C., 367, 371.

(cc) Contention that transportation service was a switching movement and that increases in switching charges were not contemplated by General Order No. 28 of the director general. HELD, whether or not charges assessed were authorized by that order, the fact is that they were published and were the applicable charges, and it is immaterial, so far as the issue of their justness and

reasonableness is concerned, whether the movement be designated a switching or line-haul service. Minnesota Steel Co. v. Director General, as Agent, 73 I. C. C., 571, 573.

(dd) Charges of $5 per car, plus 1 cent per 100 pounds, assessed on stone from complainant's quarry near Mankato, Minn., to its plant at that point, during Federal control, found unreasonable to extent they exceeded charge of $6 per car subsequently established. Such $6 charge also was made applicable from a quarry where complainant now obtains its stone, involving a longer haul and greater transportation service. Reparation awarded. Carney Cement Co. v. Director General, as Agent, 73 I. C. C., 735.

(ee) In 61 I. C. C., 646, the Commission found that the M. & St. L., and R. T. C. Co., of Minneapolis had not justified proposed increased charges for switching interstate carload shipments at Minneapolis, St. Louis Park and Hopkins, Minn., but found reasonable and just charges for these services. HELD, upon further consideration respondents have justified a charge at Minneapolis of $6 per car for switching all commodities except grain and grain products, between industries on respondent's lines and interchange tracks with connecting carriers. Switching and Absorption at Minneapolis, 74 I. C. C., 116.

(ff) Where cost studies appear to be the result of an earnest endeavor to determine the cost of a switching service they are entitled to some weight in arriving at a reasonable charge. Switching and Absorption at Minneapolis, 74 I. C. C. 116.

(gg) Cost is only one of the elements to be considered in arriving at reasonable charge. Charges at other points where the transportation conditions are substantially similar may serve as a guide. Switching & Absorption at Minneapolis, 74 I. C. C. 116, 119.

(hh) Switching charges on shipments delivered to and received from complainant's packing plant at Cactus, Ariz., while delivering to competitive plants at Phoenix without addition to line-haul rates, found not unreasonable, discriminatory, or unduly prejudicial. There are no other industries at Cactus nor is there an established switching yard at that point, and deliveries to complainant's plant are made by road-haul engines. Services rendered at Cactus are essentially dissimilar from those rendered within the switching limits of Phoenix. Arizona Packing Co. v. Director General, as Agent, 74 I. C. C. 387.

(ii) Contention that a carrier's team tracks are its private terminals for the accommodation of its traffic and the shippers it serves, and their use may not be required for the traffic of foreign lines, HELD: Where carrier permits the use of such tracks and performs the switching service out of which a complaint arises, the commission may determine whether or not the switching charge was unreasonable. Oakes Co. v. M. St. P. & S. S. Ry. Co., 77 I. C. C. 95.

(jj) Fact that connecting rail lines furnish cars to a switching line while the Mississippi-Warrior River barge line does not furnish cars is not a justification for rail carriers assessing higher switching charges on the barge line's traffic. U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 360, 361.

(kk) If the average switching service performed on traffic received from or delivered to the Mississippi-Warrior River barge line is more expensive than the average switching service performed on traffic received from or delivered to rail lines, corresponding higher switching charges in the former case are justified. U. S. War Dept. v. A. & S. Ry. 77 I. C. C. 361.

(ll) Fact that short-haul movement from point within a switching district to a point without is analogus to switching service within the district, is not controlling in determining whether or not line haul charges collected are illegal. Western Meat Co. v. Director General, as Agent, 78 I. C. C. 77, 79.

(mm) Bills of lading are mere incidents of service which in no wise determine its character as line haul or switching. Western Meat Co. v. Director General, as Agent, 78 I. C. C. 77, 80.

(nn) When assessment of a switching charge in connection with transit results in greater aggregate compensation to carrier than sum of intermediate rates, it can not be considered that section 4 has thereby been violated, for services performed are not the same in the two instances. Transit involves an additional service on part of carrier for which separate charge may be made; the switching charge is an additional expense incident to transit service.

Switching Charges on Grain 80 I. C. C. 720, 721.

(oo) Whether a particular movement should be treated as a line haul or switching service is not dependent upon the manner of publishing the charges but rather upon the nature of the service itself. Absorption of charges between Croxton and Jersey City, N. J., 81 I. C. C. 181, 183.

(pp) Reasonableness of charge during Federal control for use of motive power, cars, and crew in intraplant movement over plant track found not within commission's jurisdiction under section 206 (c) of transportation act, 1920. Such intrastate transactions were no more within purview of that act, than they would now be if a State line were crossed in a similar intraplant movement. Furnishing of cars, locomotive, and crew did not make act performed a service of common carriage merely because owner was a common carrier. Movement was part of operation of complainant's plant, which defendant was under no legal duty to perform, and charge therefor was matter of contract. Grasselli Chemical Co. v. Director General, as Agent, 81 I. C. C. 562.

(qq) Proposed designation of track on which warehouses of protestant is located, at Perry, Fla., as "house, team or dray tracks," to deny protestant right to continue to have its interstate c. l. traffic switched by respondent from or to its warehouse when such shipments are from or to a connecting carrier found not justified. Siding was originally constructed for exclusive use of protestant and south portion has been so used for approximately 18 years. Real reason for proposed change is to compel protestant to route its shipments over line of respondent. Switching at Perry, Fla., 83 I. C. C. 23.

(rr) Proposed increased charge for switching ferry cars in the Boston, Mass., district to level of c. l. switching charge, found not justified. While service rendered in switching ferry cars and c. l. shipments between same points can hardly be differentiated, there is no line-haul revenue incident to movement under c. l. switching charge proposed while ferry-car movements are in all instances incident to line-haul movement over respondent's line. Proposed charge also compares unfavorably with ferry-car charges at various other New England points. Switching Charges on Ferry Cars, 83 I. C. C. 68.

(ss) Fact that charge for switching service is published in tariff naming line-haul rates, and in amount per net ton rather than as charge per car, makes it none the less a switching charge and subject to absorption rules of line-haul carriers. Butcher v. Director General, as Agent, 83 I. C. C. 359, 360.

(tt) An order of the Interstate Commerce Commission, requiring that certain railroad companies which had entered into an agreement for a reciprocal switching should cease to maintain a practice whereby they refused to switch interstate competitive traffic to and from the tracks of another road on the same terms as interstate noncompetitive traffic, while interchanging both kinds of traffic, on the same terms with each other, and that they should establish rates for such other road, which should not be different from those maintained with respect to similar shipments from their respective tracks, is not invalid as requiring the parties to the switching agreement to give the use of their tracks and terminal facilities to the third road within the proviso of Interstate Commerce Act, §3, that common carriers shall not be required to give the use of their tracks or terminal facilities to another carrier engaged in like business. Louisville & N. R. Co. v. United States, 227 Fed. 258, 259, 271.

ALL OTHER CITATIONS

C. W. & V. Coal Co. v. C. B. & Q. R. R. Co. 23 I. C. C. 13, 16; Pierce v. P. & L. E. R. R. Co., 23 I. C. C. 89, 90; Standard Oil Co. v. I. T. R. R. Co., 23 I. C. C. 369; Curtis Bros. & Co. v. S. P. Co., 23 I. C. C. 372, 373; Merchants' & Mfrs. Ass'n. v. P. R. R. Co., 23 I. C. C. 474, 478, 479; In Re Wharfage Charges of the Galveston Wharfage Co., 23 I. C. C. 535, 546; Alan Wood Iron & Steel Co. v. P. R. R. Co., 22 I. C. C. 540, 545; In Re Transportation of Sugar, 22 I. C. C. 558, 563; Southern California Sugar Co. v. S. P. L. A. & S. L. R. R. Co., 19 I. C. C. 6, 11; Pierce Co. v. N. Y. C. & H. R. R. R. Co., 19 I. C. C. 579, 581; Utica Traffic Bureau v. N. Y. O. & W. R. R. Co., 18 I. C. C. 168, 170, 171; West Texas Fuel Co. v. T. & P. Ry. Co., 17 I. C. C. 491, 493, 494; West Texas Fuel Co. v. T. & P. Ry. Co., 15 I. C. C. 443, 447; Banner Grain Co. v. G. N. Ry. Co. (Minn., 1912), 137 N. W. 161; Block-Pollak Iron Co. v. C. & N. W. Ry. Co.,

Unrep. Op. 520; East Dubuque Supply Co. v. I. C. R. R. Co., 28 I. C. C. 425, 427; People's Fuel & Supply Co. v. G. T. W. Ry. Co., 27 I. C. C. 24, 30; Brown v. B. & M. R. R., 27 I. C. C. 47 53; In re Advances on Coal Within Chicago Switching District, 27 I. C. C. 71, 72; Dixie Cotton Oil Co. v. St. L. I. M. & S. Ry. Co., 27 I. C. C. 295; New England Investigation, 27 I. C. C. 560, 575; Coal Rates on the Stony Fork Branch, 26 I. C. C. 168, 172; Southwestern Mo. Millers' club v. S. L. & S. F. R. R., 26 I. C. C. 245, 253; Public Service Commission of Washington v. N. P. Ry. Co., 26 I. C. C. 272; May Bros. v. Y. & M. V. R. R., 26 I. C. C. 323, 328; Switching Charges at Sheffield, Minn., 26 I. C. C. 475, 476, 477; Texas Mill & Elevator Co. v. C. R. I. & P. Ry. Co., 26 I. C. C. 94; Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 26 I. C. C. 638, 649; In re Wharfage Charges at Galveston, 26 I. C. C. 695, 700, 704; Farrar Lumber Co. v. N. C. & St. L. Ry. Co., 25 I. C. C. 22, 25; Spiegle v. S. Ry. Co., 25 I. C. C. 71, 75; North Fork Channel Coal Co. v. A. A. R. R. Co., 25 I. C. C. 241, 245; Gilmore & Co. v. C. & N. W. Ry. Co., 25 I. C. C. 403, 405; Alan Wood Iron & Steel Co. v. P. R. R. Co., 24 I. C. C. 27, 30; Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 180; Dierks & Sons Lumber Co. v. M. P. Ry. Co., 24 I. C. C. 205; Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co., 24 I. C. C. 220; R. R. Com. of Arkansas v. St. L. I. M. & S. Ry. Co., 24 I. C. C. 292; Slider v. S. Ry. Co., 24 I. C. C. 312, 313; Bahrenburg, Bros. & Co. v. A. C. L. R. R. Co., 24 I. C. C. 561, 568; Casassa v. P. R. R. Co., 24 I. C. C. 629; In re Advances on Ice, 24 I.C.C. 629, 660; Nixon & Knox v. C. & G. Ry. Co., Unrep. Op. A-22; Standard Oil Co. v. I. C. R. R. Co., Unrep. Op. A-97; Buffalo, Rochester & Pittsburgh Ry. v. Pennsylvania Co., 29 I. C. C. 114, 118; Alexandria, Va., Switching Charges, 29 I. C. C. 381; Bottsford & Barrett v. P. R. R. Co., 29 I. C. C. 469; American Brake Shoe & Foundry Co. v. B. Ry. of C., 28 I. C. C. 350; East Dubuque Supply Co. v. I. C. R. R. Co., 28 I. C. C. 425, 427; Traffic Bureau of Nashville, Tenn., v. L. & N. Ry. Co., 28 I. C. C. 533; Waverly Oil Works v. P. Ry. Co., 28 I. C. C. 621, 624; Chicago Switching Charges, 28 I. C. C. 677; Switching at Baltimore, 30 I. C. C. 581, 583; Switching at Arcade, N. Y., 30 I. C. C. 501; Penn. Co. v. United States, 214 Fed. 445; Switching at Galesburg, Ill., 31 I. C. C. 294, 300; Jefferson Milling Co. v. B. & O. R. R. Co., 31 I. C. C. 547, 548; B. A. & A. R. R. Co. v. B. & S. R. R. Corp., 31 I. C. C. 583, 585; National Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 692; Seattle Chamber of Commerce v. G. N. Ry. Co., 30 I. C. C. 683; Cady Lumber Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-590; Alderman & Sons Co. v. A. C. L. R. R. Co., Unrep. Op. A-548; U. S. Button Co. v. C. R. I. & P. Ry. Co., 32 I. C. C. 149, 151; Baltimore Switching Charges, 32 I. C. C. 376, 379; Merchants' & Manufacturers' Asso. v. P. R. R. Co., 32 I. C. C. 434; Hughes Creek Coal Co. v. K. & M. Ry. Co., 31 I. C. C. 10, 13, 14; Buffalo, Attica & Arcade R. R. Co. v. B. & S. R. R. Corp., 31 I. C. C. 538, 585; Weatherford Chamber of Commerce v. M. K. & T. Ry. Co., 31 I. C. C. 665, 666; Price Iron & Steel Co. v. I. H. B. R. R. Co., Unrep. Op. A-731; Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 279; Proportional Commodity Rates Between Kerper and Wilson, Ohio, Unrep. Op. A-893; City of Nashville v. L. & N. R. R. Co., 33 I. C. C., 76, 82, 84, 90; Financial Relations, Etc., L. & N. R. R. Co., 33 I. C. C. 168, 202; Westbound Transcontinental Refrigeration Charges, 34 I. C. C., 140, 144; Switching charges at Alexandria, Ind., 35 I. C. C. 494; Switching Charges at South Omaha, Nebr., 36 I. C. C. 198, 203; Coal Reparation Cases at Chicago, 36 I. C. C. 226; City Ice & Supply Co. v. C. & N. W. Ry., 36 I. C. C. 514; Switching Charges at Ridge Farm, Ill., Unrep. Op. 2179; Terminal Freezing & Heating Co. v. P. R. R. Co., Unrep. Op. 2183; LaRue v. D. M. & N. Ry. Co. Unrep. Op. 2191; Hooker Lime Stone Co. v. N. C. & St. L. Ry., Unrep. Op. 2225; Louisville & N. R. Co. v. United States, 227 Fed. 258, 259, 271; Indiana Northern Railway Case, 37 I. C. C. 491, 494; Nashville Switching, 40 I. C. C. 474, 482; Settle & Co. v. A. G. S. R. R. Co., 39 I. C. C. 592, 595; Bartlett Hayward Co. v. B. & O. R. R. Co., 40 I. C. C. 151, 155; Mutual Wheel Co. v. N. C. & St. L. Ry., 40 I. C. C., 612; Northhampton & Bath R. R. Co. Case 41 I. C. C. 68, 73, 74; Divisions of Joint Rates for Transportation of Stone, 41 I. C. C. 321, 328; Union Lumber Co. v. G. C. & S. F. Ry., 41 I. C. C. 411; Lamb-Fish Lumber Co. v. I. & M. V. R. R., 41 I. C. C. 440; Moore Stave Co. v. M. L. & T. R. R. & S. S. Co., 41 I. C. C. 47; Minneapolis Civic & Commerce Ass'n v.

Chicago, M. & St. P. Ry. Co., (Minn., 1916) 158 N. W. 817; Independent Brewing Asso. v. C. M. & St. P. Ry. Co., 42 I. C. C. 129; Newton Engineering Co. v. C. M. & St. P. Ry. Co., 42 I. C. C. 337; Switching Charges at South Omaha, Nebr., 42 I. C. C. 371, 373, 374; Sunderland Bros. Co. v. K. C. Terminal Ry. Co., 42 I. C. C. 427, 428; Kaw River Sand & Material Co. v. A. T. & S. F. Ry. Co., 42 I. C. C. 504; Macey Co. v. P. M. R. R. Co., 42 I. C. C. 593, 597; Pomeroy Salt Asso. v. H. V. Ry. Co., 42 I. C. C. 627, 630, 631; Louisville Board of Trade v. L. & N. R. R., 40 I. C. C. 697; Isbell Co. v. C. N. R. R., 42 I. C. C. 724; Consumers Co. v. M. St. P. & S. Ste. M. Ry., 43 I. C. C. 561; Johnstown, Pa., Switching, 43 I. C. C. 654, 660; A. C. & Y. Ry. v. B. & O. R. R., 44 I. C. C. 305, 307; Toledo Switching, 46 I. C. C. 293; Alabama Packing Co. v. A. G. S. R. R., 46 I. C. C. 335; Sunderland Bros. Co. v. C. G. W. R. R., 45 I. C. C. 113, 114; Toledo Switching, 46 I. C. C. 293, 294; Alabama Packing Co. v. A. G. S. R. R., 46 I. C. C. 335, 341, 342; Kansas City & Memphis Ry. Co. v. St. L. & S. F. R. R., 46 I. C. C. 464, 465; Globe Grain & Milling Co. v. L. A. & S. L. R. R., 46 I. C. C. 645, 646; Waco, Tex., Switching, 46 I. C. C. 647, 649; Price Iron & S. Co. v. G. T. W. Ry., 47 I. C. C. 215, 216; The New York Harbor Case, 47, I. C. C., 643, 725; Crushed Rock from Pixleys, Mo., 48 I. C. C. 577, 580; Cummings Sand & Gravel Co. v. Minneapolis & St. L. Ry., (Iowa, 1918), 166 N. W. 354; Westport Stone Co. v. C. C. C. & St. L. Ry., 48 I. C. C. 637, 641; Camp Logan (Houston), Tex., Rates, 49 I. C. C. 389, 391; Huron Milling Co. v. P. M. R. R., 49 I. C. C. 558; Woolf Milling Co. v. B. & O. R. R., 49 I. C. C. 678, 680; Illinois Brick Co. v. C. & E. I. R. R., 49 I. C. C. 590; Crown Willamette Paper Co. v. A. T. & S. F. Ry., 49 I. C. C. 613; Du Pont de N. P. Co., v. Penn. R. R., 50 I. C. C. 203, 204; Babcock Bros. Lumber Co. v. G. F. & A. Ry., 49 I. C. C. 661; Ottawa Coal & S. Co. v. D. T. & I. R. R., 50 I. C. C. 87; Toledo Switching Absorption, 50 I. C. C. 18; Ottawa Coal & Supply Co. v. D. T. & I. R. R., 50 I. C. C. 87, 88; Yeakel Fuel Co. v. O. W. R. R. & N. Co., 51 I. C. C. 449; Natl. Matl. Castings Co. v. P. & L. E. R. R., 51 I. C. C. 537, 543; Tioga Tanning Co. v. Preston R. R. Co., 52 I. C. C. 252; Stielow Bros. Co. et al. v. C. & N. W. Ry., 52 I. C. C. 339, 342; Strasburg Steam Flouring Mills v. S. Ry. Co. 53 I. C. C. 52, 56; Advances on Coal within Chicago Switching District, 53 I. C. C. 442, 449; The Kaw River Sand & Material Co. v. A. T. & S. F. Ry., 53 I. C. C. 28; Sheldon Axle & Spring Co. v. L. V. R. R., 53 I. C. C. 43; Proctor & Gamble Co. v. Director General, 53 I. C. C. 365; Kaw River Sand & Material Co., v. A. T. & S. F. 55 I. C. C. 683; Utilities Development Co. v. P. C. C. & St. L., 56 I. C. C. 694, 696, 697; Matthiessen & Hegeler Zinc Co. v. C. B. & G. Ry., 57 I. C. C. 173; Thatcher Manufacturing Co. v. Director General, 57 I. C. C. 244, 246; Chicago, M. & St. P. Ry. Co. v. Frye & Co., (Wash. 1919), 186 Pas. 668; Portsmouth Asso. of Commerce v. S. A. L. Ry., 55 I. C. C. 377, 391; National Tube Co. v. L. T. R. R., 55 I. C. C. 469, 481; Kickapoo Sand & Gravel Co. v. Director General, 55 I. C. C. 657; Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 185, 190; Perishable Freight Investigation, 56 I. C. C. 449, 503; U. S. Cast Iron Pipe & Foundry Co. v. Director General, 57 I. C. C. 442; Groton Iron Works v. N. Y., N. H. & H. R. R. Co., 57 I. C. C. 704; Badger Lumber Co. v. A. T. & S. F., 58 I. C. C. 97, 103; Norfolk-Portsmouth Switching, I. & S. Docket No. 1167, 58 I. C. C. 144; Switching on Coal at Springfield, Ill., 58 I. C. C. 728; Pittsburgh Plate Glass Co. v. Director General, 58 I. C. C. 81; Increased Rates, 1920, 58 I. C. C. 220, 243; Switching Rates on Coal at Elkhorn City, Ky., 58 I. C. C. 298, 301; Summit Sand & Gravel Co. v. C., T. H. & S. E. Ry. Co., 58 I. C. C. 371; Lake Erie & Ft. Wayne R. R. Co., 58 I. C. C. 558, 560; Chicago Short Line Ry. Co., 58 I. C. C. 561, 566; Manufacturers Junction Ry. Co., 58 I. C. C. 666, 670; Lakeside & Marblehead R. R. Co., 58 I. C. C. 671, 675; Bay Terminal R. R. Co., 58 I. C. C. 680, 683; Switching on Coal at Springfield, Ill., 58 I. C. C. 728; Atlantic Refining Co. v. Director General, 58 I. C. C. 109; Switching charges within Chicago district, 59 I. C. C. 125; Rogers-Brown Iron Co. v. Director General, 59 I. C. C. 186, 189; Switching Rates on Coal at Elkhorn City, Ky., 58 I. C. C. 298; Summit Sand & Gravel Co. v. C. T. H. & S. E., 58 I. C. C. 371; Intermediate Switching at Appleton, Wis., I. & S. Docket No. 1180, 58 I. C. C. 691; Lehigh Portland Cement Co. v. Director General, 59 I. C. C. 51; Holly Ridge Lumber Co. v. Director General, 60 I. C. C. 120, 121; Riverton Lime Co., Inc. v. Director General, 60 I. C. C.

123; Lion Coal Co. v. Utah Ry., 60 I. C. C. 674; Farmers Fuel Co. v. Director General, 60 I. C. C. 715; Interchange Switching at Wichita, 61 I. C. C. 205, 206; Merchant Shipbuilding Corp. v. P. R. R., 61 I. C. C. 214, 217; Diversion and reconsignment rules, 61 I. C. C. 385, 391; Crucible Steel Co. of America v. Director General, 61 I. C. C. 655, 753; Switching coal and coke at Harrisonburg, Va., 61 I. C. C. 667; Rowland Power Consolidated Colleries Co. v. Director General, 62 I. C. C. 101; Proctor & Gamble Mfg. Co. v. Director General, 62 I. C. C. 116; Condon Baking Co. v. Drector General, as Agent, 60 I. C. C. 149; Switching and Absorption at Paris, 60 I. C. C. 210; Absorption of Switching Charges at Coeur d'Alene, 60 I. C. C. 275; Allegheny Steel Co., v. Director General, as Agent, 60 I. C. C. 575; Lion Coal Co. v. U. Ry. Co., 60 I. C. C. 674, 681; Consolidation Coal Co. v. C. & O. Ry. Co., 60 I. C. C. 763; Miller Paper Co. v. P. R. R. 62 I. C. C. 705, 708; St. Louis, San Francisco Ry. Co. v. State et al. (Okla., 1921), 198 Pac. 73; Pequest Co. v. Director General, 61 I. C. C. 16; Absorption of switching charges at Fort Worth, Texas, 61 I. C. C. 73, 76; Schram Glass Mfg. Co. v. Director General, 61 I. C. C. 435; Switching between industries and connecting lines at Mason City, 61 I. C. C. 479; Steel & Tube Co. v. Director General, 61 I. C. C. 526; Switching between Big Four incline tracks and connections at Cairo, Ill., 61 I. C. C. 535; Switching and Absorption at Minneapolis, 61 I. C. C. 646; Swift & Co. v. Director General, as Agent, 61 I. C. C. 751; Absorption of Switching Charges at Toledo, 62 I. C. C. 30, 31; Central Pennsylvania Lumber Co. v. Director General, as Agent, 62 I. C. C. 99; Allegheny & South Side Ry. Co. v. Director General, as Agent, 62 I. C. C. 248, 252; Illinois Glass Co. v. Director General, as Agent, 62 I. C. C. 287; Illinois Steel Co. v. Director General, as Agent, 62 I. C. C. 349; Citizens Coal Mining Co. v. Director General as Agent, 62 I. C. C. 695; Leavenworth Chamber of Commerce v. Director General, 62 I. C. C. 705, 709; David Kaufman & Sons Co. v. Director General, 63 I. C. C. 143; Sioux City Brick & Tile Co. v. Director General, 63 I. C. C. 211; Beaumont Chamber of Commerce v. Director General, 63 I. C. C. 253; Switching arrangements at Mobile, 63 I. C. C. 279; Marble Cliff Quarries Co. v. Director General, 63 I. C. C. 339; Laclede Steel Co. v. Director General, 63 I. C. C. 381; Forsythe Leather Co. v. Director General, 64 I. C. C. 17, 19; Whitaker-Glessner Co. v. B. & O. R. R. Co., 63 I. C. C. 47, 53; Chicago Sand & Gravel Producers v. Director General, 64 I. C. C. 37; Silica Sand Producers Asso. v. C. B. & Q. R. R. Co., 63 I. C. C. 217, 219; Commodity Rates on Brick from Danville to Bronson, Ill., 63 I. C. C. 277; Koenig Coal Co. v. H. V. Ry. Co., 63 I. C. C. 392; Kline Brick Co. v. Director General, as Agent, 63 I. C. C. 439; Missouri Portland Cement Co. v. Director General, as Agent, 64 I. C. C. 243; Interchange Switching at Topeka, Kans., 64 I. C. C. 259; Illinois Brick Co. v. Director General, as Agent, 64 I. C. C. 273 278, 280; Philip Carey Mfg. Co. v. Director General, 64 I. C. C. 292; Citizens Gas Co. v. Director General, as Agent, 64 I. C. C. 457, 459; Switching between connection lines and C. & E. I. team track at Chicago, Ill., 64 I. C. C. 500; Edwards & Bradford Lumber Co. v. Director General, as Agent, 64 I. C. C. 503, 505; Switching Charges at Attica, N. Y., 64 I. C. C. 582, 584; Boldt Glass Co. v. Director General, as Agent, 64 I. C. C. 619, 620; Indiana Rates, Fares, and Charges, 64 I. C. C. 645; American Creosoting Co. v. Director General, 66 I. C. C. 54; Southern Hardwood Traffic Asso. v. Director General, 66 I. C. C. 67; Citizens Coal Mining Co. v. Director General as agent, 66 I. C. C. 271; Armour & Co. v. D. L. W. R. R. 66 I. C. C. 445; West Coast Grocery Co. v. Director General, as Agent, 66 I. C. C. 679; Stewart Sand Co. v. A. T. & S. F. Ry., 68 I. C. C. 111; Minneapolis & St. Louis R. R. Co. v. P. & P. U. Ry. Co., 68 I. C. C. 412; Glencoe Lime & Cement Co. v. Director General, 69 I. C. C. 243; Boston Wool Trade Asso. v. Director General, 69 I. C. C. 282; Switching Charges in Kansas and Missouri, 68 I. C. C. 548; Western Brick & Supply Co. v. Director General, 69 I. C. C. 551; East St. Louis Co. v. Director General, 69 I. C. C. 557; Swift & Co. v. Director General, 69 I. C. C. 695; A. W. Hillebrande Co. v. Director General, 69 I. C. C. 740; Southern Ohio Power Co. v. Director General, 73 I. C. C. 10; Newton Coal Co. v. Director General, 73 I. C. C. 33; Team Track switching at Argentine, 73 I. C. C. 367; Increases Switching Charges at Jamestown, N. Y., 74 I. C. C. 120; Missouri Portland Cement Co. v. Director General, 74 I. C. C. 308; Switching and Absorption at Minne-

apolis, 74 I. C. C. 116, 119; Increased Switching Charges at Jamestown, 74 I. C. C. 120; St. Louis Chamber of Commerce v. Director General, as Agent, 74 I. C. C. 308, 324, 325, 326; Limestone from Illinois Points, 74 I. C. C. 345; Mississippi Iron Co. v. N. W. Ry. Co., 74 I. C. C. 369; Arizona Packing Co. v. Director General, as Agent, 74 I. C. C. 387; Barnsdall Refining Co. v. A., T. & S. F. Ry. Co., 74 I. C. C. 530; Hazel Atlas Glass Co. v. Director General, as Agent, 74 I. C. C. 679; Holly Ridge Lumber Co. v. Director General, 77 I. C. C. 167; Swift & Co. v. Director General, 77 I. C. C. 167, 189; Terre Haute Indianapolis & E. T. Co. v. Director General, 77 I. C. C. 658; New Orleans Board of Commissioners v. Director General, 77 I. C. C. 664; Switching between K. C. M. & O., and A. V. I. R. at Wichita, 78 I. C. C. 536; Midvale Steel & Ordinance Co. v. Director General, 78 I. C. C. 721; Lincoln Chamber of Commerce v. Director General, 80 I. C. C. 33; Utah Fuel Co. v. Director General, 80 I. C. C. 229; American Farm Federation v. A. & R. Ry., 80 I. C. C. 232; Miller Paper Co. v. P. R. R. Co., 80 I. C. C. 314; Switching at Clinton, 78 I. C. C. 533; Clay Grain Co. v. A., T. & S. F. Ry. Co., 78 I. C. C. 539; Cord and Pulp Wood to Canton, 78 I. C. C. 593; Midvale Steel & Ordinance Co. v. Director General, as Agent, 78 I. C. C. 721, 723; Cramp & Sons v. Director General, 80 I. C. C. 341; Switching charges on grain in the Rosedale, Kas., section of the Kansas City Switching District; Central Iron & Steel Co. v. Director General, 80 I. C. C. 698; David Lupton's Sons Co. v. Pennsylvania R. R., 81 I. C. C. 93; Switching Charges at Peoria, 77 I. C. C. 43; Oakes v. M., St. P. & S. S. M. Ry. Co., 77 I. C. C. 93, 95; Holly Ridge Lumber Co. v. Director General, as Agent, 77 I. C. C. 167; Helena Traffic Bureau v. Director General, as Agent, 77 I. C. C. 197; U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 317, 360, 361; Kline Brick Co. v. Director General, as Agent, 77 I. C. C. 420; Lackawanna Steel Co. v. Director General, as Agent, 77 I. C. C. 465; Terre Haute, Indianapolis & E. T. Co. v. Director General, as Agent, 77 I. C. C. 658; New Orleans Board of Commissioners v. Director General, as Agent, 77 I. C. C. 664; Reduced Rates, 1920, 77 I. C. C. 675; Utah Fuel Co. v. Director General, as Agent, 80 I. C. C. 229; Switching Charges on Grain, 80 I. C. C. 601; Switching Charges on Grain, 80 I. C. C. 720, 721; Tidal Western Oil Corporation v. W. F. & N. W. R. Co., 83 I. C. C. 51; Cramp & Sons v. Director General, 83 I. C. C. 55; Carnegie Steel Co. v. Director General, as Agent,, 80 I. C. C. 269; Switching Charges on Grain, 80 I. C. C. 601; Texas Chemical Co. v. G. H. & S. A. Ry. Co., 81 I. C. C. 371; Dow Co. v. G. N. Ry. Co., 81 I. C. C. 649; Cramp & Sons Co. v. Director General, as Agent, 83 I. C. C. 55; East Bay Water Co. v. Director General, as Agent, 83 I. C. C. 238; Switching at Station in North Dakota, 83 I. C. C. 731; Missouri Portland Cement Co. v. Director General, 88 I. C. C. 492; Trackage Charges at St. Louis, 88 I. C. C. 693.

§4½. Contracts for Sidetracks.

See Sidetracks; Trackage Contracts.

CASES 1887-1908

(a) No such undue preference or unjust discrimination as would warrant an order of relief or for reparation is shown under complainant's claim that he was subjected to an unreasonable disadvantage by refusing him a private switch and providing his competitor in the coal business with one, thereby compelling him to unload coal at an inconvenient point near the outskirts of the town, where it appeared that complainant really desired to use a passing siding of defendant for the purpose of unloading his coal. Parks v. Cincinnati & M. Valley R. Co. 10 I. C. C. 47.

(aa) Complainant made application under section 1 for an order requiring the defendant to construct and maintain a switch track connecting its main line at Weleetka, Ind. T. At the hearing defendant definitely offered to construct such part of the switch track as the complainant might wish it to construct. After this connection is completed defendant is willing to repay the cost to the complainant by making it a definite allowance of $2 for each car placed upon the switch track by the defendant, excluding however, such cars as may be switched there by defendant from the lines of competing carriers in Weleetka. HELD, a switch track should be connected. Weleetka Light & Water Co. v. Ft. S. & W. Ry., 12 I. C. C. 503.

(b) While settlements for advancement made by shippers for the construction of switch tracks may be based on the number of carload shipments, repayments must not be made out of the rate, but out of availabe funds at the end of

definite intervals. A copy of such contracts ought to be filed with the Commission, and when the transaction is completed a verified statement of it by a responsible officer of the company ought also to be filed here. Weleetka Light & Water Co. v. Ft. S. & W. Ry. Co., 12 I. C. C. 503.

(c) The practice of carriers of repaying advancements made by shippers for the constructions of switch tracks by making an allowance of a definite amount on each carload of freight shipped to or from their manufacturing plants is disapproved on the ground that it presents too much the appearance of a purchase of property by the carrier with transportation, this being contrary to law. While settlements may be based on the number of carload shipments, repayments must not be made out of the rate but out of available funds at the end of definite intervals. A copy of such contracts ought to be filed with the Commission and when the transaction is completed a verified statement of it by a responsible officer of the company ought also to be filed here. Weleetka Light & Water Company v. Ft. S. & W. Ry., 12 I. C. C. 503, 505.

IMPORTANT CASES SINCE 1908

(d) Complainant alleges that defendants have severally made numerous leases for the use of railroad property and contracts for the construction, maintenance and use of industrial sidetracks containing clauses limiting their liability for loss and damage caused by fire from locomotives operating over such tracks. These liability clauses are attacked as unjust, unreasonable ,unduly prejudicial and otherwise unlawful. As a result of negotiations there was submitted to the Commission by complainant and defendant the proposal that certain liability clauses be approved. The Commission at that time inclined to the view that it was without jurisdiction, under Section 1 of the act. The liability clauses complained of do not involve the question of rates, nor the matter of facilities to be furnished by the railroad carrier for the transportation of property under its obligation as a common carrier. It does not follow as a matter of law that the present practices of defendant are unduly prejudicial because they are not uniformly the same in all parts of the country and as to all shippers. HELD, the Commission has no jurisdiction and complaint dismissed. National Industrial Traffic League v. A. & R., 61 I. C. C. 120.

§5. Incidental Services.

See Additional Charges and Services; Refrigeration §3; Special Rates and Services; Spotting; Tap Lines §4.

IMPORTANT CASES SINCE 1908

(a) The additional cost of receiving or delivering carload freight on industrial tracks does not necessarily imply that the service is accessorial for which an addition may be made to the line-haul rate, or that it is other than a mere substitute for teamtrack receipts and deliveries. If cost of service were a controlling test of whether in a given case an additional service has been performed for which increased compensation may be exacted, it is evident that the terminal charge should vary as between different points in the same switching district, or even as between deliveries at the same point at different times. The fact that in switching district all carload freight is not received or delivered at the same point and in the same manner presupposes variations in the cost of service and other minor differences incident to diverse circumstances and operating conditions. Boardman & Co. v. S. P. Co., 37 I. C. C. 81, 84.

(b) So long as charge is published for placing shipments at points of unloading on private industry tracks, carriers must, upon demand, perform the service, but it does not necessarily follow that they would be under any common-carrier obligation to do the switching if no charge were published. Carriers perform services voluntarily or under stress of competition which are not within their duty as common carriers, and which they can not be required to perform in the absence of undue prejudice or unjust discrimination. Whitaker-Glessner Co. v. B. & O. R. R. Co., 47, 54, 55.

(c) Allowances to large industries have developed until in many instances they are little better than undue preferences, and represent service which the Commission would ab initio long hesitate to direct a carrier to render in effecting delivery of c. l. freight. They are frequently compelled by the fear of loss of large tonnage, deplete unnecessarily the revenues of carriers and thus tend to shift the burden of paying for such expensive deliveries from the shoulders of the recipients to other shippers

who receive only average delivery service. United States Cast Iron Pipe & Foundry Co. v. Director General, 57 I. C. C. 677, 684.

(d) Circumstances entitled to primary consideration as to whether spotting is a duty required of carriers under their line-haul rates are the extent of the service involved in a typical team-track delivery, and the extent of the service rendered in the typical switching of a car upon the siding of a shipper clear of the main track—the substitute for team-track delivery. Garey Mfg. Co. v. Director General, as Agent, 59 I. C. C. 640, 643.

(e) Refusal of defendants to perform interchange switching in complainant's plant at New Boston, Ohio, beyond the interchange tracks or to grant in lieu thereof an allowance in money found not unjustly discriminatory or unduly prejudicial to complainant in favor of its competitors for whom such service is performed, as conditions at the respective plants are substantially dissimilar. Whitaker-Glessner Co. v. B. & O. R. R. Co., 63 I. C. C. 47.

(f) On a web of interlacing plant tracks, dominated by the shipper, the carriers would not have that control over the instrumentalities of carriage which correspond with common-carrier liability for loss of or damage to the thing carried. Whitaker-Glessner Co. v. B. & O. R. R. Co., 63 I. C. C. 47, 53.

(g) So long as a charge is published for placing shipments at points of unloading on private industry tracks, carriers must, upon demand, perform the service, but it does not necessarily follow that they would be under any common-carrier obligation to do the switching if no charge were published. Carriers perform services voluntarily or under stress of competition which are not within their duty as common carriers, and which they can not be required to perform in the absence of undue prejudice or unjust discrimination. Whitaker-Glessner Co. v. B. & O. R. R. Co., 47, 54, 55.

(h) The Commission can require carriers to perform interchange switching if found to be a reasonable transportation service incident to the line haul, but it can not compel them to act as a unit, or to do the work at the convenience and to the satisfaction of shippers. It can not order carriers to make an allowance and whether a shipper shall receive an allowance in lieu of such switching service is optional with the carriers. whitaker-Glessner Co. v. B. & O. R. R. Co., 63 I. C. C. 47, 56.

(i) Proposed restriction by the Southern Ry. Co., of its receipt of coal from the L. & N. R. R. Co., to its Decatur street interchange tracks in Atlanta, Ga., on traffic consigned to industries and distributors on the Southern's belt line, found not justified. Present method appears to operate satisfactorily, and, from an economic standpoint is preferable to forcing this traffic to move the long distance around the belt line. Interchange Switching at Atlanta, 63 I. C. C. 258.

(j) Increased charges resulting from the refusal of trunk line carriers to pay an allowance to complainant or its industrial line for terminal switching and spotting to and from its plant at Pittsburgh, Pa., while performing like services without additional charge for other industries in the same district, found to have resulted in unreasonable charges but not in undue prejudice by reason of uncertainty as to whether competitors were similarly circumstanced as to operating conditions. Reparation awarded from earliest date within the period of the statute of limitations down to the date when such allowances were again restored. Oliver Iron & Steel Co. v. P. &. L. E. R. R. Co., 64 I. C. C. 447.

ALL OTHER CITATIONS

A. T. & S. F. Ry. Co. v. I. C. C., 188 Fed. 229, 239; S. P. Co. v. I. C. C., 188 Fed. 241; Curtis Bros. & Co. v. S. P. Co., 23 I. C. C. 372; Imperial Wheel Co. v. St. L. I. M. & S. R. R. Co. 20 I. C. C. 56, 58; Associated Jobbers of Los Angeles v. A. T. & S. F. Ry. Co. 18 I. C. C. 310, 322; order respecting system-line haul enjoined (Mack, J., dissenting), Pacific Coast Jobbers and Mfrs. Ass'n v. S. P. Co., 18 I. C. C. 33; General Eectric Co. v. N. Y. C. & H. R. R. Co., 14 I. C. C. 237, 242; Hollingshead & Blei Co. v. P. Co. 25 I. C. C. 38, 39; Anacostia Citizens' Assn. v. B. & O. R. R. Co., 25 I. C. C. 411; Crucible Steel Co. of America v. Director General, as Agent, 61 I. C. C. 655, 753; Lehigh Portland Cement Co. v. Director General, as Agent 62 I. C. C. 231; Illinois Steel Co. v. Director General as Agent, 62 I. C. C. 349; Mitsui & Co. v. Director General, 81 I. C. C. 489; Grasselli Chemical Co. v. Director General, 81 I. C. C. 562.

§6. Reciprocal Switching.
See Reciprocal Switching.

IMPORTANT CASES SINCE 1908

(a) Where a carrier has entered into a reciprocal switching arrangement, it must accept shipments for delivery to the extent of its capacity. Crescent Coal & Mining Co. v. B. & O. R. R. Co., 20 I. C. C. 559, 565.

(b) The ideal condition in a great city would be where all lines reciprocally absorbed switching charges, so that the rate carries with it a delivery to any point within the city limits. But it is always difficult to draw the line which bounds the district within which switching charges shall be absorbed. The industry or locality located without the district feels itself discriminated against when compelled to pay an additional charge. And the expense of making deliveries in a great city is very considerable. While the reciprocal absorption of switching charges may, and usually does, substantially offset itself between different carriers so that the actual money payment from one to the other is small, still the cost of the service must be borne by someone. Where the rate which the shipper pays to his industry is fixed without any reference to the terminal cost it is evident that he may receive an unfair advantage as compared with the industry located at some point where the expense of the terminal delivery is very much less. Thus industries located at great terminals like Detroit or Chicago may receive a greater service in proportion to what they pay than do their competitors located at country points. The tendency of this is to concentrate business, whereas it might be better on many accounts if it could be more generally diffused. Detroit Switching Charges, 28 I. C. C. 494, 496.

(c) Reciprocal switching arrangements under which all carload freight, both competitive and noncompetitive, is switched between all lines at uniform switching charges, place all the railroads entering a city in competition for the business of every shipper, and thus afford the best possible service to the public. Financial Relations, Etc., L. & N. R. R. Co., 33 I. C. C. 168, 201.

(d) Carriers should endeavor to conduct their switching operations for other carriers without loss, and charges for their services based on cost are preferable to nominal charges based on so-called reciprocity in service. But a cost basis can not fairly be adopted at one point on its lines where connecting line switching is done provided, of course, that injury results. Substantial injury resulting from such a course would clearly constitute undue prejudice. Nashville Switching, 40 I. C. C., 474, 481.

(e) A reciprocal switching arrangement between certain carriers does not justify their refusal to absorb the switching charges of another carrier, notwithstanding the smaller volume of traffic of the latter, if in fact unjust discrimination or undue prejudice is shown to result. National Spring & Wire Co. v. Director General, as Agent, 60 I. C. C. 564, 565.

(f) The fact that interchange switching rates are or are not reciprocal, is unimportant, as the so-called reciprocity theory of establishing switching charges has been condemned by the Commission. Reciprocal Switching at Kansas City, Mo.-Kans., 68 I. C. C. 591, 596.

(g) The fact that the interchange facilities are inadequate for convenient operation is not of itself a defense if through routes are shown to be necessary or desirable in the public interest Facilities for interchange exist, and if inadequate, they may be made adequate to quate, they may be made adequate to perform the service which the law requires. York Mfrs. Ass'n. v. P. R. R. Co., 73 I. C. C. 40, 50.

(h) Practice of the Pennsylvania R. R. and the Western Maryland Ry. of each extending to the other the use of its tracks to effect terminal receipt and delivery of freight at industries within a limited zone in York, Pa., while refusing to extend such use at other industries simlarly located within the city but without the zone, found to result in undue prejudice. York Mfrs. Asso. v. P. R. R. Co., 73 I. C. C., 40, 50.

(i) Arrangements sought whereby the Kansas City Southern would be required to interchange traffic with its competitor, the Southern Pacific, at Port Arthur, Tex., legally possible only through a condemnation of the terminals of the K. C. S. for use by the S. P., which has access thereto provided the traffic moves via Beaumont, Tex. HELD, prayer equivalent to establishment of a through route and joint rate embracing less than the full length of the K. C. S. and it should not be required to afford

such facilities to other roads. Port Arthur Chamber of Commerce v. T. & F. S. Ry., 73 I. C. C., 361.

(j) In original report, 61 I. C. C., 646, proposed increased interchange switching charges of the M. & St. L. R. R. and the Railway Transfer Co., at Minneapolis, Minn., were found not justified, and reasonable charges were prescribed. Upon further hearing, based upon cost studies, charges higher than those prescribed found justified and former report modified accordingly. Switching and Absorption at Minneapolis 74 I. C. C. 116.

(k) Reciprocity is a factor extraneous to the service and so indefinite, uncertain and speculative, as well as variable, that it is not entitled to weight as a reason for differentiating in switching charges. U. S. War Department v. A. & S. Ry., 77 I. C. C. 317, 360.

(l) Carriers should endeavor to conduct their switching operations for other carriers without loss, and charges for their services based on cost are preferable to normal charges based on so-called reciprocity in services. But a cost basis can not fairly be adopted at one point on a carriers lines, while a nominal charge basis is retained at all other points on its lines where connecting line switching is done, provided, of course, that injury results. Substantial injury resulting from such a course would clearly constitute undue prejudice. U. S. War Department v. A. & S. Ry. 77 I. C. C. 317, 360.

(m) Reciprocal switching charges are made without regard to the cost of the service and therefore may not be an accurate measure of a reasonable charge for a particular switching service. Oakes Co. v. M., St. P. & S. S. M. Ry. Co., 77 I. C. C. 93, 95.

(n) Reciprocal switching charges are assessed upon traffic received from or delivered to rail lines, while higher industrial switching charges are assessed on traffic from or to the Mississippi-Warrior River barge line. HELD: Reciprocity is a factor extraneous to the service and so "indefinite, uncertain, and speculative," as well as variable, that it is not entitled to weight as a reason for a differential in the charges, and the element of reciprocity, as between the rail carriers, found not to justify the difference. U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 317, 360.

(o) Defendant's refusal to switch interstate traffic from complainant's plant in Philadelphia, Pa., to Richmond Junction, in the same city, for interchange with P. & R., or to establish charge therefor, found not in contravention of the act. Present interchange facilities are ample, and through routes and joint rates thereover not shown unreasonable. Facilities at Richmond Junction are limited, and establishment of switching charge sought might result in short-hauling of defendant to points reached by its own rails. Lupton's Sons Co. v. P. R. R. Co., 81 I. C. C. 93.

(p) Complainant alleged refusal of defendants, N. Y. C., and Erie and International Ry. to effect interchange of carload freight among themselves at a point in the vicinity of the intersection of Mill Street by Transit road in Lockport, N. Y., to establish switching charges for application between such point and industrial and team track deliveries in that city, and to reciprocally absorb such charges of the respective carriers, is unreasonable, unjustly discriminatory and unduly prejudicial. The major portion of the city, called upper town is situated upon an elevation, about 100 feet above the balance of the city called lower town. The Central serves both upper and lower town. There is no switch or physical connection between the International and the Central in upper town, and there is no request for such connection. The complaint asks for the interchange of traffic between these carriers at their present switch connection at Mill Street and Transit Road in lower town. Each carrier serves only industries reached by its own rails or by rails over which it has trackage rights. No competition exists between industries in lower town on the one hand and upper town on the other. Traffic and operating difficulties which would have to be encountered in effecting interchange between defendants at lower town of traffic to or from upper town, have no parallel at the other Niagara frontier points. At present carload traffic originating on the tracks of one carrier in upper town and destined to the other carrier in upper town is moved to North Tonawanda and there switched to the other carrier for haul back to Lockport, necessitating a movement of about 15 miles each way, for which de-

fendants charge the line haul rates. Through routes and joint rates have been established between upper town and lower town and practically all points from or to which there is any substantial movement, and defendants have agreed to establish through routes and joint rates wherever there appears a reasonable demand for service under such rates. The Commission is not convinced upon this record that a requirement for interchange of traffic from or to upper town at the designated point in lower town would necessarily be in the public interest. The difficulties of operation which this traffic would have to encounter if such a requirement were made leads the Commission to the view that if interchange of this traffic is to be made at points other than North Tonawanda, as at present, it should be arranged at a point in upper town. HELD: Refusal to effect interchange of carload traffic from or to upper town, Lockport, at the point designated in lower town, not unreasonable or otherwise unlawful, complaint dismissed. Lockport Board of Commerce v. N. Y. C. R. R. 80 I. C. C. 144.

(q) Carriers brought suit to enjoin the order of the commission providing for reciprocal switching between the Pennsylvania Railroad and the Western Maryland at York, Pa. Three railroads serve York, the Pennsylvania, the Pennsylvania, and Western Maryland. York is divided into two zones by the carriers. In one, the inner zone, the Pennsylvania and Western Maryland interchange freight. The Western Maryland is not allowed to interchange freight with the Pennsylvania outside the zone but must turn its traffic over to the Pennsylvania at a junction point nineteen miles from York. The facts are briefly stated in the opinion of the Interstate Commerce Commission. "There are about 300 industries of various kinds at York. More than 100 have spur tracks connecting them with one or more carriers. There are 17 industries within the zone; of these 8 connect with the Western Maryland, 7 with the Pennsylvania and 2 with both lines. East and west of the zone, where the railroads diverge, are 8 industries, with industry tracks leading to both the Pennsylvania and Western Maryland. Also outside the zone 46 industries are reached exclusively by the various lines of the Pennsylvania, 27 by the Maryland & Pennsylvania, and 5 by the Western Maryland. During an average month the inbound and outbound traffic on the Pennsylvania and that handled in connection with the Maryland & Pennsylvania amounted to 107,613 tons and that of the Western Maryland to 23,427 tons. If reciprocal switching was established, 86,000 tons of this traffic now controlled by the Pennsylvania would be open to the competition of the Western Maryland, and 6,696 controlled by the latter would be open to the competition of the Pennsylvania." The Interstate Commerce Commission found that discrimination was practiced against the Western Maryland and ordered that it be removed without specifying by what means it should be removed. The commission found it was not in the public interest to require the use of the terminal facilities of the main line of the Pennsylvania at York and therefore the court held that under this finding, the commission could not order the practice existing between the carrier within the zone extended to the industries outside of the zone, and that therefor, the only way in which the undue discrimination could be removed was by abolishing the reciprocal switching within the zone. HELD that the industries located outside the zone suffer from a disadvantage of location which they have no right to call upon the carriers to overcome, and that the order of the commission should be enjoined. Penn. R. Co. v. U. S. 295 Fed. 523.

(r) Reciprocal switching arrangements between a carrier and three of four connecting lines, involving an exchange of traffic which varies greatly in amount, do not remove the discriminatory character, under the Act, of the practice of the first carrier to refuse to interchange carload freight with the fourth connecting line within the switching limits of a city, while performing such services in connection with the other connecting carriers within such switching limits. Pennsylvania Co. v. United States, 35 Sup. Ct. 370, 374; 236 U. S. 351; 59 L. ed. 616.

(s) The use of the tracks or terminal facilities of one carrier is not given to another carrier, contrary to the provisions of the Act, by an order of the Interstate Commerce Commission requiring a carrier to desist from its practice of refusing to interchange carload freight with one connecting carrier within the

switching limits of a city, while performing such service in connection with other connecting carriers within such switching limits, such order giving the connecting carrier no right to run its cars over the terminals of the first carrier, or to use or occupy that carrier's stations or depots for purposes of its own, and containing no requirement that the connecting carrier be permitted to store its cars in the other carrier's yards, or make use of the carrier's freight houses or other facilities. Pennsylvania Co. v. United States, 35 Sup. Ct. 370, 374; 236 U. S. 351; 59 L. ed. 616.

(t) The property of one carrier is not appropriated without compensation to the use of another carrier, contrary to U. S. Const., 5th Amend., by an order of the Interstate Commerce Commission, made under the supposed authority of the Interstate Commerce Act, requiring the first carrier to desist from its practice of refusing to interchange carload freight with one connecting carrier within the switching limits of a city, while performing such service in connection with other connecting carriers within such switching limits. Pennsylvania Co. v. United States, 35 Sup. Ct. 370, 376, 236 U. S. 351, 59 L. ed. 616.

(u) So long as two railway carriers furnish switching service to each other in their yards in a certain city on all business and to a third carrer on all except coal and competitive business, they may be compelled by the Interstate Commerce Commission, under the equal facilities requirement of the Act respecting interchange of traffic, to discontinue such discrimination against such third carrier, and to switch for it as they do for each other, since the carriers, having opened their yards for most purposes, cannot claim the protection of the proviso to that section that it shall not be construed as requiring any carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business. Louisville & N. R. Co. v. United States, 35 Sup. Ct. 696, 697, 700. 238 U. S. 1; 59 L. ed. 1177.

(v) The property of two railway carriers which are furnishing switching service to each other in their yards in a certain city on all business, and to a third carrier on all except coal and competitive business, is not taken without due process of law by an order of the Interstate Commerce Commission, made under the authority of the equal facilities requirement of the Act respecting the interchange of traffic, commanding them to discontinue such discrimination against the other carrier, and to switch for it as they do for each other. Louisville & N. R. Co. v. United States, 35 Sup. Ct. 696, 697, 700; 238 U. C. 1; 59 L. ed. 1177.

(w) Where three carriers were furnishing switching service at a terminal point to each other on all business and a fourth carrier on all business except coal and competitive business, an order of the Interstate Commerce Commission requiring the first mentioned carriers to refrain from discriminating against the fourth carrier so long as they exchange all business with each other is valid. Louisville & N. R. Co. v. United States 35 Sup. Ct. 696, 702; 238 U. S. 1; 59 L. ed. 1177.

(x) An arrangement whereby the entire switching service of each of two railroad companies over tracks separately or jointly owned by them is performed jointly by both operating as joint principals through a terminal association maintained by them as their joint agent, each switching for both itself and the other railroad, the charge therefor based on actual cost being made against the road having the transportation haul is a reciprocal switching arrangement, and constitutes a facility for the interchange of traffic between the lines of two railroads within the Interstate Commerce Act, providing that every common carrier shall, according to respective power, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates between such connecting lines; and hence the railroads doing such switching must afford equal facilities to all other lines for like interchange of traffic without discrimination. Louisville & N. R. Co. v. United States, 227 Fed. 258, 269.

(y) The duty of carriers to enter into reasonable reciprocal shipping arrangements can not be evaded by the device of some of the carriers employing a joint agency such as a terminal company to do such switching and re-

fusing to do switching for other companies since the controlling test of the Act in imposing the obligation to make such arrangement lies in the work done rather than the particular device employed or the names applied to those engaged in it. Louisville & N. R. Co. v. United States, 227 Fed. 258, 269.

(z) Where the entire switching service of two railroad companies was performed jointly by both operating as joint principals through a terminal association as joint agent and the physical conditions surrounding the interchange of traffic between such roads were not substantially different from those surrounding the interchange of traffic between the lines and those of another road not a member of the Terminals Association, and the cost of the former being the same whether the traffic was competitive or not, the refusal of such roads to switch competitive traffic to and from the third road on the same terms as the noncompetitive traffic, while interchanging both kinds of traffic on the same terms with each other, constituted an "unjust discrimination" under the Interstate Commerce Act, §3, requiring every common carrier to afford all reasonable, proper, and equal facilities for the interchange of traffic to connecting lines without discrimination, regardless of the fact that joint terminals have been constructed by the two members of the association at great expense and are maintained by them. Louisville & N. R. Co. v. United States, 227 Fed. 258, 259, 270.

ALL OTHER CITATIONS

In re Advances on Ice, 24 I. C. C. 660; Morris Iron Co. v. B. & O. R. R. Co., 26 I. C. C. 240, 244; Switching at Galesburg, Ill., 31 I. C. C. 294, 299; Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co., 30 I. C. C. 71, 73, 81; Seattle Chamber of Commerce v. G. N. Ry. Co., 30 I. C. C. 683, 692; Switching Charges at Milwaukee, Wis., 32 I. C. C. 509, 511; City of Nashville v. L. & N. R. R. Co., 33 I. C. C. 76, 83; Louisville & N. R. Co. v. United States, 227 Fed. 258, 259, 271, 272; Louisville Railroad v. United States, (D. C.) 216 Fed. 683; Louisville Board of Trade v. L. & N. R. R., 40 I. C. C. 679, 686; Pomeroy Salt Asso. Co. v. H. V. Ry. Co., 42 I. C. C. 627, 629; Richmond Cham. of Com. v. S. A. L. Ry., 44 I. C. C. 455, 461; New York Harbor Case, 47 I. C. C. 643, 721, 726; Crushed Rock from Pixleys, Mo., 48 I. C. C. 577, 580; Kaw River Sand & Material Co. v. A. T. & S. F. Ry. Co., 53 I. C. C. 28, 32; Chicago, Lake Shore & South Bend Ry. Co. v. Director General, 58 I. C. C. 647, 654; Interchange Switching at Atlanta, 63 I. C. C. 258, 262, 263; Green Fruit Auction Co.'s Elimination from industries, 68 I. C. C. 89; Hunt Helm Ferris & Co. v. C. & N. W. Ry., 68 I. C. C. 283; Switching at Mason City, Iowa, 73 I. C. C. 308; York Mfrs. Asso. v. P. R. R. Co., 73 I. C. C., 40, 50, 51; Switching at Mason City, 73 I. C. C. 308; Switching at Clinton, Okla., on the St. L. S. F. Ry., 78 I. C. C. 533.

§7. Right to Connection.

See Electric Lines VIII.

CASES 1887-1908

(a) An unlawful discrimination is made between complainant and other more favored shippers, which amount to undue and unreasonable preference by defendant of itself, where defendant declines to permit a sidetrack connection between its line and a switch or side track to complainant's coal mine in the Fairmont District of West Virginia, for the purpose of receiving interstate shipments of coal from its mine, while at the same time it provides and maintains side track connections for other mines in that district from which large quantities of coal are shipped to interstate destinations, and controls, through ownership of capital stock, large coal-mining enterprises in the Fairmont District. Red Rock Fuel Co. v. Baltimore & O. R. Co. 11 I. C. C. 438.

(b) In order for the Commission to have jurisdiction to order switch connection it is necessary that written application to the carrier therefor be made subsequent to the date upon which the amendment of June 29, 1906, giving jurisdiction in such cases, became effective. Barden & Swarthout v. Lehigh Valley R. Co., 12 I. C. C. 193.

(c) Complainants petition the Commission to require defendant to provide a switch connection to a proposed industrial siding on complainants' property in the city of Geneva, N. Y. A verbal understanding was had between complainants and defendant in 1904 for the construction of said siding and switch. Complainants refused to sign an agreement containing a stipulation that coal business should never be carried on in connection with the siding and switch, and defendant refused to make the switch connec-

tion. Complainants brought suit in court, proper service was not had, and case was abandoned. After the Act to Regulate Commerce was amended, complaint was filed with the Commission praying for an order for switch connection and for reparation on account of estimated business losses. HELD, That the Commission does not recognize the right of a carrier to dictate as to the business which will be conducted from and along a siding which is connected with its lines, excepting so far as may be reasonable with regard to commodities the transportation and storage of which is attended by much risk and danger to life and property. It is also HELD, That prior to the enactment of the amendments to the Act to Regulate Commerce, which were approved June 29, 1906, this Commission was not empowered to order such switch connection; that amendment, approved June 29, 1906, specifically requires complainants to make written applications upon the carrier for the desired switch connection; that in order for the Commission to have jurisdiction of the question it is necessary that such written application be made subsequent to the date upon which said amendment became effective. No such application has been made in this case since 1904, and the case is therefore dismissed because of lack of jurisdiction. Barden & Swarthout v. Lehigh Valley Railroad Co. 12 I. C. C. 194.

(d) Upon application for order for installation of side track from defendant's lines at Sioux Falls, S. D., to complainant's nearby coal sheds, it appearing at the hearing that defendant is willing to install such side track upon payment of actual costs thereof, and agreement by complainant that it may be removed when a proposed new station building is undertaken, no order made, but case retained awaiting action of parties. Nield v. C. St. P. M. & O. Ry. Co. 12 I. C. C. 202.

(e) Complainant, owning a railroad, about 1 mile long, from a point near the Southern Railway in McRae, Ga., to a point near the Seaboard Air Line, alleges that such railways decline to make with it physical connections at its termini: HELD, upon the facts and circumstances of the case, that as such connections are practicable, can be made without hazard to the public, and the complainant's prospective business is sufficient to justify the connections, defendants should give complainant the physical connections asked for, but they should be made at the expense of complainant. Definite order withheld pending action of defendants and taking of further testimony. McRae Terminal v. Southern Ry. Co. et al. 12 I. C. C. 270.

(f) While having the right to control the location of switch tracks to private industries in accordance with the evidence, the Commission is disposed, in recognition of the risk that arises from such interruptions of through rails, to leave the location of such tracks largely to the discretion and wisdom of the carrier. Weleetka Light & Water Co. v. Ft. S. & W. Ry., 12 I. C. C. 503, 505.

(g) Complainant, MacRae Terminal Company, applied for a physical connection with defendants. In 12 I. C. C. 270, the Commission expressed the opinion that such a connection should be ordered with both defendants, Southern Ry. and S. A. L. HELD, on account of the physical characteristics of the land and amount of traffic involved, the Commission reverses its former finding to the extent that no connection need be made with the Southern but may properly be with the S. A. L. MacRae Terminal Co. v. Southern Ry., 12 I. C. C. 545.

IMPORTANT CASES SINCE 1908

(h) An electric line is entitled to a switch connection with a steam road. Cincinnati & Columbus Traction Co. v. B. & O. S. W. R. R. Co., 20 I. C. C. 486, 494.

(i) Switch connections can be ordered by the Commission under section 1, only with a lateral branch line or with a private sidetrack. St. Louis, Springfield & Peoria R. R. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 230.

(j) Under Section 1 the Commission has no authority to require a railroad to construct a private sidetrack and that its authority is limited to requiring a carrier to make a switch connection with a private sidetrack. National Industrial Traffic League v. A. & R., 61 I. C. C. 120, 121.

(k) In an action for damages due to refusal of carrier to construct a siding and switch connection at Complainant's mine while granting the same to complainant's vendee. HELD: Damages may not properly be predicated upon the difference between the price at which the mine was sold and the price it would have brought if equipped with a siding, for the reason that the sale of the mine

was not the proximate result of the carrier's unlawful conduct. Schlicher v. Director General, 62 I. C. C. 181, 185, 186.

(l) Shipper must construct his sidetrack before the carrier is obliged to grant him a switch connection. Schlicher v. Director General, 62 I. C. C. 181, 187.

(m) Paragraph 9, section 1 of the act, makes it the duty of common carriers to construct, maintain, and operate, upon reasonable terms, switch connections with private side tracks which may be constructed to connect with their rails by shippers tendering interstate traffic for transportation, where such connection is reasonably practicable, can be put in with safety, and will furnish sufficient business to justify its construction and maintenance. Upon failure of the carriers to install and operate such a switch connection upon the shipper's written application, the Commission may make an order for it to comply with the provisions of section 1. Schlicher v. Director General, 62 I. C. C. 181, 187.

(n) Without deciding that term "transportation" in section 1 is broad enough to cover a siding and switch connection, paragraph 9 of section 1 makes it the duty of common carriers to construct, maintain, and operate switch connections with private sidetracks, but the shipper must construct his sidetrack before the carrier is obliged to grant him the switch connection. Schlicher v. Director General, 62 I. C. C. 181, 187.

(o) There is no duty on the part of a common carrer subject to the act to provide tracks off its lands to effect connection with an industry. Certain-Teed Products Corporation v. C. R. I. & P. Ry., 68 I. C. C. 260, 262.

(p) Paragraph 9 of section 1 makes it the duty of a common carrier under stated circumstances to construct, maintain, and operate, upon reasonable terms, switch connections with private side tracks which may be constructed to connect with its rails by shippers tendering interstate commerce. But this duty does not arise until the shipper has provided the side track. Certain-Teed Products Corporation v. C. R. I. & P. Ry., 68 I. C. C. 260, 263.

(q) If an industry desires a connection with a trunk line, the duty develops upon it to make arrangements for the procuring of a spur. Certain-Teed Corporation v. C. R. I. & P. Ry., 68 I. C. C. 260, 263.

(r) Authority of Interstate Commerce Commission to compel interstate carrier to make track connections is exclusive.—People ex rel. New York Cen. R. Co. v. Public Service Commission, 233 N. Y. 133, 135 N. E. 195.

(s) Under the Act as amended June 29, 1906, authorizing the Commission to order a main line to establish in proper cases a switch connection with a branch line, the application can only be made by a shipper and not by a carrier. I. C. C. v. D. L. & W. R. R. Co., 216 U. S. 531, 537, 30 Sup. Ct. 415, 54 L. ed. 605.

(t) A road is a lateral branch road within the meaning of section 1 of the Act as amended June 29, 1906, requiring the installation of a switch connection, when it is tributary to and dependent upon another for an outlet; where it is essentially a feeder, contributing traffic and capable of exchanging such traffic with the other road. It is not such where it is in effect an independent and competing line. Nor is this any less the case because it may not compete as to a portion of the territory involved. The question is to be determined according to the relation which the branch line bears to the railroad with which a switch connection is asked. This relation is one of road to road, and not of shippers or territory. A road does not have the character of a branch or lateral road as to some shippers in that territory, and not have it as to others. B. & O. S. W. R. R. Co. v. U. S., 195 Fed. 962, 967.

(u) The words "lateral branch line railroad," as used in the amendment to the Act of June 18, 1910, respecting the ordering by the Commission of switching conditions, does not refer to what the applicant railroad may become or be made by order of the Commission, but to what it already is when it applies. U. S. v. B. & O. S. W. R. R. Co., 33 Sup. Ct. 5, 6; 226 U. S. 14.

ALL OTHER CITATIONS

D. L. & W. R. R. Co. v. I. C. C., 166 Fed. 498; Merchants & Mfrs. Ass'n. v. Penn. R. R. Co., 23 I. C. C. 474, 476; Ridgewood Coal Co. v. L. V. R. R. Co., 21 I. C. C. 183; Cincinnati & Columbus Traction Co. v. B. & O. S. W. R. R. Co., 20 I. C. C. 486, 488; Associated Jobbers of Los Angeles v. A. T. & S. F. Ry. Co. 18 I. C. C. 310, 313; Reiter, Curtis & Hill v. N. Y. S. & W. R. R. Co., 19 I. C.

C. 290, 292; Winters Metallic Paint Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 587, 589; Rahway Valley R. R. Co. v. D. L. & W. R. R. Co., 14 I. C. C. 191, 193, 194; McCormick v. C. B. & Q. R. R. Co., 14 I. C. C. 611, 612; Pittsburgh, etc., R. R. Co. v. R. R. Comm., 171 Ind. 189, 219, 212, 86 N. E. 328; St. Louis, Springfield & Peoria R. R. Co. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 231; Morris Iron Co. v. B. & O. R. R. Co., 26 I. C. C. 240, 243; Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502, 505; Iowa & Southwestern Ry. Co., v. C. B. & Q. Ry. Co., 32 I. C. C. 172, 173, 175; Second Industrial Railways Case, 34 I. C. C., 596, 602; Union Lumber Co. v. G. C. & S. F. Ry., 37 I. C. C. 225; Washington & Old Dominion Ry. v. F. S. Royster Guano Co., (Va. 1917), 94 S. E. 763; Montana v. P. C. C. & St. L. Ry., 48 I. C. C. 728; Virginia Coal & Fuel Co. v. N. & W. Ry., 55 I. C. C. 61; Chicago, Lake Shore & South Bend Ry .Co. v. Director General, 58 I. C. C. 135; National Industrial Traffic League v. A. & R., 61 I. C. C. 120, 122; Schlicher v. Director General, 62 I. C. C. 181, 183, 185; Cameron Coal Co. v. M. & E. R. R. Co., 63 I. C. C. 434; Certain-Teed Products Corp. v. C. R. I. & P. Ry., 68 I. C. C. 260; Pittsburg & West Virginia Ry. Co. v. L. E. & W. R. Co., 81 I. C. C. 333; Pennsylvania R. Co. v. Public Utilities Commission (O., 1923), 141 N. E. 839; Lake Erie, A. & W. Ry. Co. v. Public Utilities Commission (O., 1923) 141 N. E. 847; Pittsburgh & West Virginia Ry. Co. v. L. E., A. & W. R. R., 81 I. C. C. 333.

§7½. Switching for Other Carriers.

See Supra §6; Reciprocal Switching.

IMPORTANT CASES SINCE 1908

(a) York, Pa., is served by the Pennsylvania, Western Maryland and Maryland & Pennsylvania. The first two do not interchange at York car load traffic destined to or originating within that city, but interchange such traffic at Hanover, Pa., about 19.5 miles from York, and at other connecting points. Complainant alleged that the Western Maryland and Pennsylvania each use the tracks of the other to receive or deliver freight at industries within a limited zone within the city; that the Pa., and M. & P., interchange traffic at York on the basis of the York rates; that certain traffic passing thru York is there interchanged between the Penn. and W. M.; that defendants interchange traffic under reciprocal arrangements with each other and with other carriers at cities near York; that defendants refuse to render similar service to all shippers at York; and that defendants practices and rates resulting therefrom are unduly prejudicial to York and certain shippers therein. The W. M., expressed willingness to provide its just proportion of adequate interchange facilities, to enter into a switching arrangement with the Pennsylvania on a reciprocal basis, and also to absorb the charges of the M. & P. Pennsylvania assumed the burden of the defense. There are two points of physical connection between the Pennsylvania and the W. & M., short switch tracks which connect the lines within the zone. No tracks have been constructed with a view to use in interchanging traffic between the two lines. The interchange tracks of the Pennsylvania are adequate but not extensive. There is no continuity of rails between the M. & P., and W. M., except over the Pennsylvania. In practice, receipt and delivery of traffic is now limited to industries located between Codorus Creek and West Market Street. The carrier which performs the line haul effects terminal receipt and delivery at industries within the zone. Although the tracks continue side by side for some distance west of Market Street, such industries are construed to be beyond the agreement. Each carrier has in the past refused to extend the arrangement to include industries without the zone, or to handle in any manner, except via Hanover or other junction points, traffic on which the other carrier has received the line haul. Under the agreement between the carriers they accord the industries within the zone all advantages which would accrue to them if there were interchange at York with mutual absorption of switching charges. All shippers within the zone can utilize the services of both the W. M., and Pennsylvania, and equally with other shippers on the Pennsylvania the service of the M. & P. Where shippers without the zone do not dray, they are practically in the same position as if located on these lines in cities 39 miles apart, but with the added disadvantage that failure to route or errors by shippers or carriers may subject them to inconvenience and expense. From the standpoint of carriage, the situation of industries inside and outside the zone is substantially similar. They apparent-

ly form parts of one business community. The advantage of the shippers within the zone results from the contract of the carriers and not from a controlling transportation difference. In this case to require the Pennsylvania to afford use of its terminal facilities by another carrier would be tantamount in practical effect to requiring a division between such carriers of traffic naturally tributary to that line. The loss to the Pennsylvania and the gain to the Western Maryland would each be considerable. There is no showing that the shippers are so inadequately served at present that the Commission is warranted, from the standpoint of the public interest, in depriving the carrier first on the ground of an important volume of the traffic originating along its line, by the direct and affirmative exercise of the power to require the Pennsylvania to share its terminal facilities with the W. M., and it is therefore unnecessary to decide as to the practicability of such an arrangement. HELD, it has not been shown to be in the public interest to require the use of the terminal facilities or main line tracks of the Pennsylvania at York by the Western Maryland. HELD, further, the practice of the Pennsylvania and the W. M., of extending the use of their tracks to each other for the purpose of terminal receipt and delivery of freight at industries in York within the zone described, is unduly preferential of shippers within the zone and subjects shippers on their line without the zone to undue prejudice and disadvantage. HELD, further, practice of the Pennsylvania in interchanging traffic with the M. & P., and switching traffic to and from its junction while refusing to interchange with the W. M., is not unduly prejudicial to the W. M. York Mfrs. Assn. v. P. R. R. Co. 73 I. C. C. 40.

(b) In 68 I. C. C. 412, the commission investigated the intermediate switching charges at Peoria and Pekin, Ill., assessed by the Peoria and Pekin Union Ry. Respondent, by schedules filed, proposed to remove the discrimination and prejudice by the establishment of charges for intermediate service on traffic to and from the Burlington and Rock Island, and proposed changes in the charges formerly proposed on traffic to and from the Peoria Railway Terminal. Since the date of its creation, respondent has materially enlarged its facilities, and now owns 26.9 miles of main line, 116.5 miles of siding and yard tracks, 39 locomotives and 11 passenger and 234 freight cars. Respondent entered into contracts with all lines reaching Peoria which are still existent, except with complainant the M. & St. L., which expired March 31, 1921. As to through traffic interchanged between tenants, excepting the Northwestern, respondent generally performs no hauling service, except such as is incidental to breaking up and making up trains in the East Peoria yard. For this service respondent charges $2.40 per car, reduced from $2.70 on Oct. 3, 1922, this charge being absorbed by the line haul carriers. Respondent receives no greater amount from an individual tenant on a car interchanged with a nontenant than it receives on a car interchanged with another tenant. Should the proposed tariffs become effective, where there are no joint rates and the combination rates break on Peoria, the charges will accrue against the traffic. The resulting increase in rates has not been justified, and this furnishes one ground for requiring the cancellation of the proposed schedules. The unbroken construction put upon the interchange services of respondent as well by its proprietors and tenants as by the respondent itself from Feb. 1, 1881, until midsummer of 1921, is consistent only with the assumption that respondent in respect of these interchange services was exclusively an agent of its tenant lines and not a common carrier. Clearly, the extent to which and the time during which the respondent acts as an agency and the extent and the time as to which it acts as a common carrier can not depend on its mere say so. HELD, the tariffs can not be accepted and the commission will institute on its own motion an investigation to the end that lawful, just, reasonable and nonprejudicial practices, rates, and charges, and divisions thereof, be established. Intermediate Switching Charges at Peoria, Ill., 77 I. C. C., 43.

ALL OTHER CITATIONS

Port Arthur Chamber of Commerce v. T. & S. F. Ry. Co., 73 I. C. C. 361.

§8. Validity of Regulations.

IMPORTANT CASES SINCE 1908

(a) The operation of a private sidetrack by a carrier is a different matter from the operation by it of the connection. If the prerequisite statutory conditions exist the connection must be

made whether desired by the carrier or not, but in undertaking a service on a spur track off of its own right of way, the carrier may attach reasonable conditions to the undertaking, and a condition requiring the owner of the spur track to indemnify it against liability for fire while operating on the spur track is not unreasonable. Imperial Wheel Co. v. St. L. I. M. & S. R. R. Co., 20 I. C. C. 56, 59.

ALL OTHER CITATIONS

Imperial Wheel Co. v. St. L. I. M. & S. R. R. Co., 20 I. C. C. 56, 58; Prahlow v. I. H. B. R. R. Co., 19 I. C. C. 572, 574; Cedar Rapids, etc., Light Co. v. C. R. I. & P. Ry. Co., 145 Ia. 528, 538, 124 N. W. 323.

§9. Reparation.

See Reparation.

CASES 1887-1908

(a) Reparation awarded for switching charges on coal at Kansas City paid during interval when switching charges were not absorbed in transportation charges. Leonard v. C. M. & St. P. R. Co., 12 I. C. C. 492.

IMPORTANT CASES SINCE 1908

(aa) In an action for damages due to refusal of carrier to construct a siding and switch connection at complainant's mine while granting the same to complainant's vendee, HELD: Damages may not properly be predicated upon the difference between the price at which the mine was sold and the price it would have brought if equipped with a siding, for the reason that the sale of the mine was not the proximate result of the carrier's unlawful conduct. Schlicher v. Director General, 62 I. C. C. 181, 185, 186.

(b) In determining the amount of damages for loss of profits resulting from failure of carrier to construct a siding and switch connection, the Commission is restricted to shipments that would have moved in interstate commerce. Schlicher v. Director General, 62 I. C. C. 181, 186.

(ba) Where the commission prescribes for the future a system of switching charges based upon a theory essentially different from that which has hitherto been followed, involving a somewhat radical reconstruction of methods and practices which have at least had the sanction of long-standing custom and which the commission has recognized as tentative and experimental, it is not prepared to say that the charges which have prevailed in the past have been unreasonable to the extent that they exceeded those found reasonable for the future. Boston Wool-Trade Asso. v. Director General, as Agent, 69 I. C. C. 309.

(c) Subsequent to movement tariff filed providing for absorption of switching charges. This is the same as a voluntary reduction in rates and no award of reparation can be made on these facts alone. Laclede-Christy Clay Products Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-105.

ALL OTHER CITATIONS

Swift Beef Co., Ltd., v. C. P. Ry. Co., Unrep. Op. A-284; Caverns Elevator Co. v. M. P. Ry. Co., Unrep. Op. A-349; Boardman Co. v. S. P. Co., 37 I. C. C. 81; Buffalo Union Furnace Co. v. L. S. & M. S. Ry., 44 I. C. C. 267, 268, 274; Hulme & Hart v. A. T. & S. F. Ry., 46 I. C. C. 665; Globe & Milling Co. v. L. A. & S. L. R. R., 46 I. C. C. 645, 646; Pennsylvania Co. v. United States, 257 Fed. 251.

§9a. Secondary Switching.

IMPORTANT CASES SINCE 1908

(a) By "secondary" switching is meant the additional switching service sometimes incident to reconsignments within switching limits after a car has been placed for delivery, and the movement of partially loaded cars to other locations for completion of loading or unloading. Boston Wool Trade Asso. v. Director General, as Agent, 282, 286, 287.

§9½. Switching Reclaims.

See Demurrage §18¼; Per Diem Charges.

IMPORTANT CASES SINCE 1908

(a) The payment of switching reclaims to industrial lines may result in preferences and advantages to proprietary industries. Undue preference of the shipper who happens to own an industrial road cannot be sanctioned in any guise. Birmingham Southern Ry. Co. v. Director General, 61 I. C. C. 551, 555.

§10. Tariffs and Publication.

See Tariffs.

IMPORTANT CASES SINCE 1908

(a) Under the provisions of section 6 of the Act all terminal privileges and facilities extended to shippers must be specifically authorized by tariff and can not be inferred. Rule 10 of Tariff Cir-

cular 18-A requires that if the charges of a switching or terminal road are to be absorbed by a connecting line the tariff of the connecting road must specifically state that its rate includes such terminal service and that the connecting road will absorb such charges of the switching road as are published and filed with the Interstate Commerce Commisson. This rule further provides that if the switching road's charges are to be added to the charges of a connecting road the tariff of such connecting road must clearly state that the shipments are subject to switching charges named in tariffs on file with the Commission. Moore Stave Company v. Morgan's Louisiana & Texas Railroad & Steamship Co. 41 I. C. C. 472, 473.

(b) The collection at transit point of switching charges of a belt line which delivered shipments to complainant for storage and to outbound carriers for movement to final destination, and which were in addition to the through rate and transit charges, found illegal. Shipments which move from a point of origin to final destination under transit arrangements are regarded as moving under a single continuous contract of carriage. Reparation awarded. Capital Warehouse Co. v. Director General, as Agent, 66 I. C. C. 683.

(c) P. & P. U., is not shown as intermediate concurring carrier in tariffs naming joint rates via Peoria, or in many instances as an originating or delivering carrier in tariffs of the tenant lines naming rates to and from Peoria. But this has no particular significance as tariff regulations do not require the concurrence of purely intermediate or terminal switching lines in tariffs of this class. Minnepalos & St. Louis R. R. Co., v. P. & P. Ry., 68 I. C. C., 412, 416.

(d) Shipments were billed to Providence, R. I. Complainant's plant located within corporate limits of Providence, but carriers assessed additional charges for the movement from Providence to its plant contending that such plant located within the switching limits of Auburn, R. I., to which shipments should have been billed. HELD, as switching limits of Providence and Auburn not described, and industries located within the respective stations not shown in the tariffs, charges for movement from Providence to complainant's siding illegally assessed. Providence rate found legally applicable and reparation awarded. Atlantic Refining Co. v. Director General, as Agent, 73 I. C. C., 143.

(f) Cars switched from dock to carrier's scale, for weighing, and returned to dock, separate switching charges to and from scale being assessed by carrier without tariff authority. HELD: Charges collected found unreasonable to extent they exceeded single switching charge which would have been applicable under tariff had cars been removed after weighing to any point in zone other than point of origin. Reparation awarded. Mitsui & Co. v. Director General, as Agent, 81 I. C. C., 489.

(g) Cars switched from dock to carrier's scale, for weighing, and returned to dock. Switching tariff provided rates for "intraplant" and "intraterminal" switching. HELD: Movement was not "intraplant" switching within definition of tariff, and was not "from one track to another," within definition of "intraterminal" switching, which contemplates movement from one plant or industry to different plant or industry. Scale track was not point of actual or constructive delivery, and mere fact that cars were stopped at scale for weighing makes that point no more a destination or "another track" than would be any point along route at which, for operating reasons, cars might be momentarily stopped. Movement herein involved was not covered by tariff. Mitsui & Co. v. Director General, as Agent, 81 I. C. C. 489.

(e) Allegation that carrier has violated section 6 of the act through assessing and collecting without tariff authority switching charges on transit grain, predicated upon failure to state in tariff naming transit provisions the charges in connection therewith, not sustained. Tariff carrying rates of carrier contains general provision that switching charges at any point will be added to through rate unless provision is made for absorption. This is in accordance with requirements of rule 10 (a) of Tariff Circular 18-A. Detroit Board of Trade v. W. Ry. Co. 80 I. C. C. 723.

ALL CITATIONS

Wabash Sand & Gravel Co. v. V. R. R. Co., 31 I. C. C. 344, 346; Fisher Mfg. Co. v. N. Y. N. H. & H. R. R., 37 I. C. C. 547; Roach & Musser Sash & Door Co. v. Adams Exp. Co., Unrep. Op. 2241; Advances on Coal within Chicago

Switching District, 41 I. C. C. 302, 308; Crane R. Co. v. Philadelphia & R. Ry. Co., (Pa., 1916) 97 Atl. 1055, 1056; Hocking Domestic Coal Co. v. K. & M. Ry., 44 I. C. C. 392, 394; Globe Grain & Mill Co. v. L. A. & S. L. R. R., 46 I. C. C. 645, 646; New Era Milling Co. v. A. T. & S. F. Ry., 47 I. C. C. 67; St. Louis, I. M. & S. Ry., v. Ft. Smith & V. B. Ry., (Ark., 1917), 191 S. W. 902; Camp Logan (Houston), Tex., Rates, 49 I. C. C. 389, 392; Pittsburgh & L. E. R. Co. v. South Shore R. Co., (Pa. 1919), 107 Atl. 680; Lion Coal Co. v. Lion Coal Co., 60 I. C. C. 674, 676; Switching and absorption at Paris, 60 I. C. C. 210; Koenig Coal Co. v. H. V. Ry. Co., 63 I. C. C. 392; Hardaway Constructing Co. v. G. S. W. & G. R. R., 68 I. C. C. 331; Helena Traffic Bureau v. Director General, as Agent, 77 I. C. C. 197; Terre Haute, Indianapolis & E. T. Co. v. Director General, as Agent, 77 I. C. C. 658; Flour Mills Co. v. Director General, as Agent, 81 I. C. C. 365; Shafer Lumber Co. v. Director General, as Agent, 83 I. C. C. 427.

§11. Team Tracks and Side Tracks.

See Sidetracks; Sidings and Spur Tracks.

CASES 1887-1908

(a) While retaining the right to control the location of switch tracks to private industries in accordance with the evidence, the Commission is disposed, in recognition of the risk that arises from such interruptions of through rails, to leave the location of such tracks largely to the discretion and wisdom of the carrier. Weleetka Light & Water Co. v. Ft. S. & W. R. R. Co., 12 I. C. C. 503.

IMPORTANT CASES SINCE 1908

(b) There is a difference between industrial and team tracks. The former are for handling of carload freight to and from such plants. The cost of construction is usually borne in part by the owners of the plants. Carload freight is switched there, regardless of whether the carrier performing the switching service participated in the line haul. Shippers have no part in the construction or maintenance of team track. They are analagous to freight depots in that they bear the same relation to carload freight that the depot does to less-than-carload freight. R. R. Com. of Arkansas v. St. L. I. M. & S. R. Co., 24 I. C. C. 292, 294.

(c) Switching to an industrial track is a service for which a regular tariff charge is frequently made by carriers, and is over tracks or spurs as to which the cost of construction is generally borne in part by owners of the plants to which they extend. Team-track delivery is a service rendered by carriers in receiving and delivering carload freight in connection with their own line business, and is over tracks owned by the carriers. It is a service for which no separate tariff charge is provided and which is analogous to freight-depot service for less-than-carload freight. Railroad Commission of Arkansas v. St. L. I. M. & S. Ry. Co., 24 I. C. C. 293, 295.

(d) "Commercial" stations are analogous to private sidings. Rates in Chicago Switching District, 34 I. C. C., 234, 236.

(e) The shipper whose warehouse is located adjoining a public team track pays no rental for use of the track and no part of cost of maintaining it, but he must pay the spotting charge; and if his warehouse or platform is on defendant's land or encroaches on the defendant's right of way he must pay a rental that is nominal except where land values are high. R. R. Com'rs. of Fla. v. F. E. C. Ry. Co., 42 I. C. C. 616, 619.

(f) The closing clause of section 3 does not mean that a carrier, if adequately paid therefor, may deny to the shipping public the use of its team tracks on strictly noncompetitive traffic to be received from or delivered to a connecting line at its terminals. To deny such service would, against public convenience, leave rail communications between widely separated sections of the same industrial centers within reach of only such shippers as are fortunate enough to secure exclusive control over industry tracks or private sidings. The statute, however, vesting the administrative body with power to determine the question of reasonableness, lays a duty upon the carriers to furnish team-track and other terminal services only to an extent that is fully responsive to the reasonable requirements of the public; and this duty is neither subordinate to nor modified by the closing clause of section 3, which is intended only to protect the carriers against the use of their terminals by others engaged in like business. Tulsa Traffic Asso. v. St. L. S. F. Ry., 49 I. C. C. 644, 647.

(g) Perhaps the most common form of delivery is the setting of a car on

team tracks of the carrier, where it may be conveniently unloaded, usually by the consignee. Another common form and substitute for team-track delivery is the switching of a car to the private siding of a consignee whose place of business is contiguous to the trunk line, clear of the main tracks. United States Cast Iron Pipe and Foundry Co. v. Director General, 57 I. C. C. 677, 682.

(h) In testing the extent of a carrier's legal obligation as to delivery of c. l. freight, the extent of the service involved in a typical team-track delivery or in the typical shunting of a car upon a siding of a shipper clear of the main track—the substitute for team-track delivery—are entitled to primary consideration. United States Cast Iron Pipe & Foundry Co. v. Director General, 57 I. C. C. 677, 683.

(i) Wherever a delivery service properly may be construed as the equivalent of team track or simple switching delivery, and the rendition of such service is practical the Commission may compel a carrier to perform such service with its own equipment as part of its legal obligation as to delivery of c. l. traffic. As the magnitude of the service becomes greater than the equivalent of team-track or simple switching delivery the demand on the carrier for it's performance tends to exceed what may be regarded as a proper delivery service under transportation rates. United States Cast Iron Pipe & Foundry Co. v. Director General, 57 I. C. C. 677, 683.

(j) Shipments delivered to complainant's private siding by P. & R. were switched by the Pennsylvania to another siding, both within the switching limits of Williamsport, Pa., for which latter service the Pennsylvania assessed a class rate. Lower switching charge in effect but tariff provided that 'this charge not applicable from or to tracks of connecting line." Contention that complainant's private siding should be considered an interchange track of the carriers held not sustained, and since shipments were switched from a private siding and not from tracks of a connecting carrier, lower switching charge legally applicable. Refund of overcharges directed. Central Pennsylvania Lumber Co. v. Director General, as Agent, 62 I. C. C. 99.

(k) Respondent, South Georgia Ry., proposed to amend its switching and absorption tariff by designating the track on which the warehouse of the Perry Grocery Company at Perry, Fla., is located as "house, team or dray tracks". Respondents tariff provides for assessment of a switching charge of $2.25 per car on all carload traffic destined to, or originating at, warehouses or industries located on its rails, within switching limits, which traffic has been or will be transported by connecting lines, and also for the absorption of a like charge on traffic transported by it in either direction, when destined to or originating at warehouses or industries located on connecting lines within switching limits. The above rules do not apply on traffic to or from dray or team tracks. For a number of years protestants warehouse has been treated by respondent as not being on dray or team tracks. The track not only serves protestants warehouse but the northern portion is used as a house or team track by respondent. It would appear that the real reason for the proposed change is to compel protestant to route its shipments over the line of respondent. HELD, proposed schedules not justified. Switching at Perry, Fla., 83 I. C. C. 23.

ALL CITATIONS

Los Angeles Switching Case, 234 U. S. 294; Bill of Lading, 52 I. C. C. 671, 715; National Industrial Traffic League v. A. & R., 61 I. C. C. 120, 123; Schlicher v. Director General, 62 I. C. C. 181.

IV. PROCEDURE AND EVIDENCE.

See Procedure Before Commission.

§12. In general.

IMPORTANT CASES SINCE 1908

(a) In a proceeding to determine the reasonableness of switching charges, it is immaterial that proceedings were instituted solely from complainant's desire to recover charges which have accrued through an intermediate carrier's failure to observe consignee's instructions as to delivery. Bottsford & Barrett v. P. R. R. Co., 29 I. C. C. 469, 671.

(b) A general finding by the Commission with respect to switching rates in a certain city, is no justification for proposed increased rates in a particular case, which increased rates the law requires the respondent to show are just and reasonable. Switching at Baltimore, 30 I. C. C. 581, 584.

(c) Where interest and taxes are borne by the tenant lines, those items can not be disregarded in determining the reasonableness of the switching charges.

R. R. Comm. of La. v. A. H. T. Ry. Co., 48 I. C. C. 312, 580.

(d) Carrier that performs a switching service, the entire charge for which is absorbed by the line-haul carrier, is not a necessary party to a proceeding involving the reasonableness of the rate under which the absorption is made. Finding in DuPont de Nemours Powder Co. Case, 43 I. C. C. 227, reversed. DuPont de Nemours Powder Co. v. P. R. R., 50 I. C. C. 203.

(e) Switching charges differ from line haul rates in that they are ordinarily not graded in accordance with either the value of the commodity moved or the distance of movement. Boston Wool Trade Association v. Director General, 69 I. C. C. 282, 294.

(f) It is evident that a policy with respect to switching charges which adds to flexibility and convenience in the use of the transportation facilities serving an industrial center will also create conditions favorable to its growth and prosperity. Boston Wool Trade Association v. Director General, 69 I. C. C. 282, 295.

(g) Switching costs can probably be ascertained with approximate accuracy only through a system of accounts designed for the purpose and maintained over a considerable period of time. Boston Wool Trade Association v. Director General, 69 I. C. C. 282, 299.

(h) The Commission has already expressed the opinion that there is little reason for grading switching charges as line haul rates are graded, in accord with distance hauled or the value of the commodity transported. Boston Wool Trade Association v. Director General, 69 I. C. C. 282, 301.

(i) A stated rate per car will spread the burden of switching costs, on the whole, more equitably than a stated rate per ton. Boston Wool Trade Association v. Director General, 69 I. C. C. 282, 304.

(j) In making a general separation of the expense chargeable to interchange and interior plant switching the engine hour will usually be found a safer guide than cars handled. Moshassuck Valley R. R. Co. v. N. Y. N. H. & H. R. R., 69 I. C. C. 368, 373.

ALL OTHER CITATIONS

Consumers Co. v. C. & N. W. Ry., 36 I. C. C. 259.

§12a. Evidence.

See Evidence.

IMPORTANT CASES SINCE 1908

(a) Increased charges for switching at Kansas City, Mo.-Kans., proposed by the St. Louis-San Francisco Ry., Missouri Pacific R. R., and Kansas City Southern Ry., found not justified. Cost studies submitted by carriers were based upon a formula agreed upon after conference, but the volume of business during the test period was subnormal and a considerable portion of the costs included in the studies is more or less constant and varies but little with the volume of business. Furthermore, operating costs should be coming down, and certain road-haul rates have been reduced. Reciprocal Switching at Kansas City, 68 I. C. C. 591.

(b) The work of making and breaking up trains and the arrangement of cars in a train in station order are road and not switching services. Reciprocal Switching at Kansas City, 68 I. C. C. 600.

(c) Engine hour basis found to be a safer guide than number of cars handled for making a separation of cost of interchange and plant switching. Aluminum Co. v. M. T. R. R. Co., 69 I. C. C. 119, 123.

(d) It is obviously dangerous to predicate conclusions as to cost of switching upon cost figures for short test periods which may or may not reflect average conditions. Boston Wool Trade Asso. v. Director General, as Agent, 69 I. C. C. 282, 298.

(e) It costs substantially less to deliver a car received in line-haul movement to a connecting carrier than it does to deliver it at a private siding. The movement from the break-up yard to the point of connection is usually simple as compared with the movement to the siding, and in the former case the expense of moving out the empty car is also saved. Boston Wool Trade Asso. v. Director General as Agent, 69 I. C. C. 300.

(f) The most expensive switching operation is undoubtedly the so-called intraterminal movement, where a car is switched from a point of origin to another point of destination in the switching district, the movement being complete in itself as distinguished from a movement to or from a connecting line. Such movement is usually complicated and also requires the switching in of

the empty car for loading and a similar switching out after unloading. Boston Wool Trade Asso. v. Director General, as Agent, 69 I. C. C. 300.

V. SWITCHING DISTRICTS.

§13. In general.

IMPORTANT CASES SINCE 1908

(a) Carriers are within their rights in establishing reasonable territorial limits for the operation of their switching engines and in giving industries within those limits the benefit of any resulting economies. New Bedford Board of Commerce v. Director General, 55 I. C. C. 320, 322.

(b) A contention that assessment of switching charges in addition to line-haul rate against shippers taking delivery on public team tracks, and absorption of such charges in the case of industries served by private tracks results in undue prejudice. HELD, rate adjustment within Chicago district is exceedingly complex and ordinary prudence dictates that the Commission should not prescribe a change in this adjustment or require a reduction in any specific rate therein, except after careful examination of all the facts, both as regards the rate itself and also its relation to the general adjustment. Silica Sand Producers Asso. v. C., B. & Q. R. R. Co., 63 I. C. C. 217, 219.

(c) Where a carrier held itself out to perform switching deliveries at a city, and did not in its tariff limit or describe the district in which the switching was to be performed, the logical interpretation of the tariff is that such deliveries were to be made anywhere on its lines within the city and not merely to some undefined section or portion of the city. Koenig Coal Co. v. H. V. Ry. Co., 63 I. C. C. 392.

(d) It does not necessarily follow from the failure of a carrier to name any switching boundaries in a tariff which subsequently became effective that the boundaries named in the former tariff were not intended. It might be as forcefully argued to the contrary that by the tariff which subsequently became effective carrier did not intend to abandon the switching limits as theretofore designated and extend its switching district to coincide with the incorporated limits of the city. Koenig Coal Co. v. H. V. Ry. Co., 63 I. C. C. 392, 394.

(e) The limits of Chicago switching district, determined under the Lowery tariffs many years ago as the result of prolonged conference and negotiation between carriers and shippers should not be reconstructed by the Commission on the record in the instant case. Illinois Birck Co. v. Director General, as Agent, 64 I. C. C. 273, 278.

(f) Charges on shipments reconsigned from Angora to Pascal and Fifty-second Street, within the corporate limits of Philadelphia, Pa., assessed under a tariff rule which provided that cars placed and reforwarded without being unloaded, to points outside switching limits would be subject to rate from point of reshipments plus reconsignment charges, found unreasonable to extent they exceeded charges based upon a rule which provided that such shipments forwarded to points within switching limits would not be subject to reconsignment charges but would be subject to switching or local rate in addition to rate from point of origin to billed destination. Reparation awarded. Newton Coal Co. v. Director General, as Agent, 73 I. C. C., 33.

(g) The commission has recognized the advantages accruing to the public as well as to the carriers from the establishment of switching districts, but the proximity of points just beyond such districts can not be ignored when the question of through rates to the latter points comes up for consideration. This is particularly true when there is a substantial competition between the points within and without the districts. Chicago Coal Merchants Asso. v. Director General, as Agent, 73 I. C. C., 161, 172, 173.

(h) Rates on coal and limestone from Missabe Junction, Minn., to Steelton, Minn., both within the corporate limits of Duluth, Minn., as increased by the Director General under General Order No. 28, and subsequently reduced pursuant to a freight-rate authority, found not unreasonable as compared with rates prescribed in other cases between other points for similar distances. Minnesota Steel Co. v. Director General, as Agent, 73 I. C. C., 571.

(i) Shipments were billed to Providence, R. I. Complainant's plant located within corporate limits of Providence, but carriers assessed additional charges for movement from Providence to its plant, contending that such plant was located within the switch limits of Auburn, R. I., to which shipments should have been billed. HELD, as switching limits of Providence and Auburn not de-

scribed, and industries located within the respective stations not shown in the tariffs, charges for movement from Providence to complainant's siding illegally assessed. Providence rate found legally applicable and reparation awarded. Atlantic Refining Co. v. Director General, as Agent, 73 I. C. C., 143.

(j) Complainant attacked switching charges on numerous carloads from Helena to West Helena, Ark., as illegal. West Helena is at the end of a spur track of the M. P., which leaves the main line at a point within the yard limits of Helena. The distance between the two points, is 7 miles. Charged at $5, $6.50, $7 or $9 per car, depending on the commodity and the date of movement applicable on interstate traffic. The intrastate distance tariff named $4 per car prior to June 25, 1918 and $5 thereafter. The switching limits at Helena were not defined in the tariffs. However, it is not essential to the application of switching rates that this be done. West Helena is within the Helena yard limits and has always been treated as within the Helena switching district. The movement clearly was a switching service within the switching limits of Helena. HELD, charges attacked illegal to extent they exceeded $4 prior to June 25, 1918 and $5 thereafter, reparation awarded. Helena Traffic Bureau v. Director General, 77 I. C. C. 197.

(k) Where tariffs do not define the switching limits, such limits must be determined by the area within which the carriers actually render switching service. Helena Traffic Bureau v. Director General, 77 I. C. C. 197, 198.

(l) It is not essential to the application of switching rates that switching limits be defined in tariffs. Where tariffs do not define the switching limits, such limit must be determined by the area within which carriers actually render switching service. Helena Traffic Bureau v. Director General, as Agent, 77 I. C. C. 197, 198.

(m) The line marking limits of a switching district must, of course, be drawn somewhere, but where it should be drawn must depend on each case upon facts developed, including extent of industrial district, relative mileages and transportation conditions, and commercial competition. Sand from Points in Kansas, 78 I. C. C. 687, 691, 692.

ALL OTHER CITATIONS

Utilities Development Corp. v. P. C. C. & St. L. R. R. 56 I. C. C. 694, 696, 697; Boston Chamber of Commerce v. Director General 59 I. C. C. 73, 77; Helena Traffic Bureau v. Director General, as Agent, 77 I. C. C. 197, 198; Tacoma Traffic & Transp. Bureau v. N. P. R. Co., 87 I. C. C. 507; Omaha Utilities District v. Director General, 88 I. C. C. 331.

§14. Lateral Branch Lines.

See Branch Lines.

IMPORTANT CASES SINCE 1908

(a) A policy with respect to switching charges which adds to flexibility and convenience in the use of the transportation facilities serving an industrial center will also create conditions favorable to its growth and prosperity. The determination of the reasonable limits of a switching district presents difficulties, and it may be that in some cases such districts have been unduly enlarged and extended. Boston Wool Trade Asso. v. Director General, as Agent, 69 I. C. C. 295.

ALL OTHER CITATIONS

Cameron Coal Co. v. M. & E. R. R. Co., 63 I. C. C. 434; Great Lakes Dredge & Dock Co. v. Director General, as Agent, 68 I. C. C. 274, 276.

TAILBOARD DELIVERY

See Facilities and Privileges §14¾.

TANK CARS

See Cars and Car Supply §10; §17; Demurrage §10; Minimums §10.

TAP LINES

I. CONTROL AND REGULATION.
§1. Definition of tap line.
§1½. Suspension.
§2. Jurisdiction of Commission.
§3. Test of status.
(1) In general.
(2) Effect of incorporation.
§4. When plant facility.
§5. Scope of tap line investigation.
II. POWERS AND DUTIES.
§6. When common carriers.
§6½. Amount of allowances.
§7. Legality of divisions, allowances or practices.
§8. Passes to officers.
§8½. Amendments.
§9. Right to allowances.
III. THROUGH ROUTES AND JOINT RATES.
§10 Right in general.
IV. TARIFFS AND CONSTRUCTION.
§11. In general.

§12. Reparation.
§12½. Per Diem Reclaims.
V. PROCEDURE AND PLEADING
§13. In general.

CROSS REFERENCES

See Allowances; Common Carrier; Divisions; Industrial Railroads; Spotting; Switch Tracks and Switching II.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Definition of tap line.

CASES 1887-1908

(a) Logging roads, or tap lines, to which the defendant grants allowances from its published rates, are not common carriers, but such tap lines are the private properties of mill owners, and the allowances are therefore unlawful. Central Yellow Pine Asso. v. I. C. R. R., 10 I. C. C. 506, 545.

IMPORTANT CASES SINCE 1908

(aa) A tap line to be entitled to share in the division of joint rates, must be a common carrier, and not a mere plant facility. St. Louis Southwestern Ry. Co. v. S. H. Bolinger & Co., 279 Fed. 564.

(b) Originally it was usual to refer to all the rails used in a lumber mill operation as a "Logging Road," but since the practice of making allowances to the lumber companies west of the Mississippi River has crept in, the rails leading from the mill to or through the timber, and usually to a logging camp or company town, have come to be known as the main line or "tap line". The spurs rediating into the forest from the point or from other points along the main line are now usually referred to as the "logging road." The Tap-Line Case, 23 I. C. C. 277, 285.

§1½. Suspension.

See Suspension of Rates.

§2. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

CASES 1887-1908

(a) The commission has power to prevent abuses of industrial lines in division of through rates. McRae Terminal R. Co. v. Southern R. Co., 12 I. C. C. 270.

IMPORTANT CASES SINCE 1908

(aa) Because the conclusion is reached that a tap line railroad is a common carrier and therefore entitled to participate in joint rates, it does not follow that divisions of joint rates may be made with it at the will of the carriers and without the power of the Commission to control the same. Industrial Railways Case, 32 I. C. C. 129, 131.

(b) The division of through rates between trunk line railways and tap lines as prescribed by the Interstate Commerce Commission is not necessarily arbitrary because, while classifying all service rendered by the tap lines for distances up to three miles from junction points as switching, and allowing for this a division of $2 and $3 a car, allowances for all distances above three miles are based upon mileage. O'Keefe v. United States, 36 Sup. Ct. 313, 316.

(c) In view of the rates voluntarily fixed by a terminal railway, a finding by the Commission that an absorption by a trunk line of the terminal railway's charges to the extent of $4.50 per car was unlawful as tending to give a preference or rebate to its controlling stockholder, which was also the largest shipper, held not subject to attack as being so unreasonably low as to deprive the terminal railway of its property without compensation. Manufacturers' Ry. Co. v. United States, 38 Sup. Ct. 383.

(d) Under the Interstate Commerce Act, §15, providing that a shipper render a service connected with the transportation can receive, only a just allowance therefor, and authorizing the Commission to determine a reasonable charge as the maximum to be paid by the carrier for the services rendered, the amount which a lumber company is entitled to receive from a carrier for services in switching cars from its mill to the carrier's main line and in weighing them is a question within the jurisdiction of the Commission, and on which its determination is conclusive, unless set aside on direct attack. Finkbine Lumber Co. v. Gulf & S. I. R. Co., 269 Fed. 933.

ALL OTHER CITATIONS

Tap-line Case, 23 I. C. C. 549, 561, 650; B. & G. N. R. R. v. A. T. & S. F. Ry. Co., 24 I. C. C. 161; L. & N. R. R. Co. v. M. St. P. & S. S. M. Ry. Co., 24 I. C. C. 639, 643; C. V. & N. Ry. Co. v. M. St. P. & S. S. M. Ry. Co., 24 I. C. C. 634; McCloud River Lumber Co. v. S. P. Co., 24 I. C. C. 89, 94; L. & P. Ry. Co. v. United States, 209 Fed. 244; sustained, 34 Sup. Ct. 748, 234 U. S.; 58 L. ed.; Industrial Railways Case, 29 I. C. C. 212, 243; The Tap Line Case, 31 I. C. C. 490.

§3. Test of Status.

(1) In general.

See Allowances §10; §11; Common Carrier §1; Transportation I.

IMPORTANT CASES SINCE 1908

(a) Whether a tap line is a common carrier cannot be determined by mere ownership. Tap-line Case, 23 I. C. C. 277, 292.

(b) In deciding whether industrial railways may enter into joint rate arrangements with trunk lines, it must be determined with respect to each of the lines, first, whether the instrumentality performing the service is a bona fide common carrier; second, whether the service which it performs between the point of interchange with the trunk line and point of placement on the line of the industrial road is plant service or public transportation; third, whether a charge should be made for such service in addition to the line-haul rate applicable to or from. In determining these questions there is to be considered the large economic problem whether part of the money paid to the trunk line carriers for public transportation service is to be used to defray the expense of particular shippers in conveying their traffic to and from the terminals of the trunk line carrier. Second Industrial Railways Case, 34 I. C. C. 596, 600.

(c) Tap lines, when incorporated under state authority as common carriers and holding themselves out to the public as common carriers, are not devices to secure unlawful advantages for the proprietary lumber companies, but in fact and in law sustain the relation of common carriers toward the public. Davis Bros. Lumber Co. v. C. R. I. & P. R. R., 46 I. C. C. 501, 504.

(d) In determining whether a railroad company is a common carrier, evidence concerning fences surrounding the plants of a car company and a large part of such railroad company's tracks material only in so far as it bears upon the good faith of the offer to carry for the public and the ability of the public to accept such offer. P. A. & McK. R. R. R. Co. v. Director General, 57 I. C. C. 1. 4.

(e) It does not necessarily follow that all railroads complying with the laws and regulations governing common carriers become common carriers by virtue of such compliance alone, although it may be not without significance. Wyandotte Terminal Ry. 62 I. C. C. 1, 5.

(f) It is the right of the public to use a roads facilities and to demand service of it rather than the extent of its business which is the real criterion determinative of its character. Sun Co. v. Director General, 68 I. C. C. 11, 14.

(g) It is the right of the public to demand and use the carrier, rather than the extent of the tonnage it carries, that is the real criterion of whether it is a common carrier. Divisions of the Brimstone Railroad & Canal Co., 68 I. C. C. 375, 386.

(h) The fact that the same corporation indirectly controls two of the roads and owns the larger portion of the ore shipped over them demands a strict interpretation of any standard of reasonableness which is adopted, although the right of the roads to earn a fair return upon the property devoted to public use is not questioned. Adriatic Mining Co. v. C. & N. W. Ry., 78 I. C. C. 611, 619.

ALL OTHER CITATIONS

Adriatic Mining Co. v. C. & N. W. Ry., 78 I. C. C. 611, 619; Tap-line Case, 23 I. C. C. 277, 298; Stonego Coke & Coal Co. v. L. & N. R. R. Co., 23 I. C. C. 17, 23; Blakely Southern R. R. Co. v. A. C. L. R. R. Co., 26 I. C. C. 344, 350; Industrial Railways Case, 32 I. C. C. 129, 130; Indiana Northern Ry. Case, 37 I. C. C. 491; In Re Muncie & W. Ry., 38 I. C. C. 510; P. A. & McK. R. R. R. Co., v. Director General, 57 I. C. C. 1, 4; Wyandotte Terminal Ry., 62 I. C. C. 1, 5; North American Co. v. St. Louis & S. F. R. Co., 288 Fed. 612; Hawkins & Sons v. Director General, as Agent, 80 I. C. C. 225, 227; Apperson Brothers Automobile Co. v. L. E. & W. R. Co., 81 I. C. C. 392, 393; Mobile & O. R. Co. v. Southern Sawmill Co. (Mo., 1923), 251 S. W. 434; Attorney Carlin Co. v. Hines (Ohio, 1923), 140 N. E. 99.

§3 (2). Effect of Incorporation.

See Common Carrier §1.

IMPORTANT CASES SINCE 1908

(a) The mere fact of incorporation can not transform a plant facility into a common carrier, and while the extent to which the public uses the facilities of a railroad is not controlling, there must be some appreciable use of the railroad by the public or else the holding out to carry for all is merely an empty form. In the matter of the Inland Railway Company, 78 I. C. C. 59, 64.

ALL OTHER CITATIONS

The Tap-line Case, 23 I. C. C. 277, 291, 292; Star Grain & Lumber Co. v. A. T. & S. F. Ry. Co., 17 I. C. C. 338; Central Coal & Coke Co. v. M. & L. R. R. 27 I. C. C. 40; In Re Cancellation of Joint Rates on Coal on the C. Z. & G. R. R., 27 I. C. C. 353; Joint Rates with the Washington Western Ry., 27 I. C. C. 630; Blakely Southern R. R. Co. v. A. C. L. R. R. Co., 26 I. C. C. 344, 349; L. & N. R. R. Co. v. M. St. P. & S. S. M. Ry. Co., 24 I. C. C. 639, 643; McCloud River Lumber Co. v. S. P. Co., 24 I. C. C. 89, 94; Consolidated Fuel Co. v. A. T. & S. F. Ry. Co., 24 I. C. C. 213, 217; Chippewa Valley & Northern Ry. Co. v. M. & St. P. & S. Ste. M. Ry. Co., 24 I. C. C. 634; Manufacturers' Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100, 104.

§4. When plant facility.

See Infra §6; Allowances §12; §12 (2); Common Carrier; Transportation I.

IMPORTANT CASES SINCE 1908

(a) With few exceptions, the tap lines in the lumbering regions in the southwest are purely plant facilities. Tap-line Case, 23 I. C. C. 277, 297.

(b) Where the industrial line acts only in the capacity of a plant facility and not a common carrier, the trunk lines need not, in the absence of unjust discrimination, make any allowance so long as they are ready to perform the switching wherever by custom and general usage the line-haul rate covers that service. Therefore an allowance in excess of the cost to the trunk line of switching to and from the plant would be unlawful. By granting more the trunk lines would in that measure be depleting their revenues. The allowance is further limited in that it may not exceed the reasonable cost to the industry of performing the service. C. W. P. & S. R. R. Case, 37 I. C. C. 408, 414.

(c) Where access to certain plant railways by the public may be obtained only through the permission of the controlling industry, the holding out is not genuine. National Tube Co. v. B. & O. & O. R. R. 50 I. C. C. 489, 492.

(d) That the plant is surrounded by a fence, is of no special or controlling importance; without a fence it would still be a plant. National Tube Co. v. B. & O. R. R., 50 I. C. C. 489, 492.

(e) It is questionable, even if the proprietary industry permit ingress to its plant and the use of its plant property and facilities for public transportation purposes, whether the industrial railway's facilities could be considered as being reasonably accessible to the public, where its tracks and facilities within the plant inclosure were arranged and laid out for the benefit and to meet the requirements of the industry; and the record conclusively shows that the industrial railway is operated for the convenience of the industry and not in any degree for the convenience of the public. Natl. Tube Co. v. B. & O. R. R., 50 I. C. C. 489, 493.

(ea) Complainant contended it should receive compensation out of the through interstate rates for switching service performed by it. Complainant owns and operates a railroad, trackage 7,060 feet, not separately incorporated, under authority of its general charter. The hold tracks are used as interchange tracks, and are directly connected with the Belt Line at Indianapolis, Ind., over which all of the trunk lines having terminals at Indianapolis are reached. Inbound cars are delivered by the belt line on the hold tracks within the plant enclosure, and outbound cars are taken by it from the same tracks. The service performed by complainant consists of switching with its own locomotive and crew, loaded and unloaded cars from and to the hold tracks to and from convenient points of placement, the average haul being about 300 feet. At Plant B complainant maintains four or five tracks but does not operate a locomotive. Spotting of cars at that plant in connection with through interstate shipments is performed by the connecting carrier without charge in addition to the line haul rate. HELD, complainant operates its plant tracks as a plant facility and is not a common carrier under the act; and the trunk lines need not, in the absence of unjust discrimination or undue prejudice, make any allowance to complainant for services performed by it in connection with the transportation of through interstate shipments. American Hominy Co., 63 I. C. C. 319.

(f) The Commission investigated concerning rates, rules and practices of the Inland Railway Company handling salt from Saltair, Utah., and other points on the line to interstate destinations. The water from Great Salt Lake is

pumped to a settling pond south of the Inland tracks. It remains there until the brine reaches a density of about 25% salt. It is then run into so-called investing ponds, north and south of the tracks in the vicinity of Crystal. The water is drained off, the salt is plowed and gathered into piles each containing from 600 to 800 tons. This crude salt constitutes the supply for the salt company. Some is shipped out in bulk as roasting stock or crude stock, and the rest is put through a milling process at the salt works and shipped as ice cream, No. 2, table No. 1, or dairy salt, or in compressed blocks. The line from Salt Lake City to Saltair Beach is known as the Salt Lake Garfield & Western. Prior to 1907 the Garfield performed all switching at the ponds and at the refinery. In 1907 the salt company built tracks connecting its refinery with the salt ponds, and the Garfield used these in hauling the crude salt to the refinery. For its services the Garfield received out of the joint rates a division of 5c per 100 pounds to Salt Lake City, but nothing was paid the salt company for the use of its tracks. In 1910 the salt company purchased an oil burning locomotive and performed its own switching between the ponds and the refinery. For its services the salt company received 50% of the revenue accruing to the Garfield, not covered by tariff provision. The Inland was incorporated in March 1916 and it acquired the railway tracks, right of way, rolling stock and other railway property of the stock company. The cars are used exclusively in the handling of the salt from the ponds to the refinery. It handles no mail, express, or passenger business and does not handle less carload business. Such shipments consigned to the salt company are unloaded from cars of the Garfield at Saltair Junction. The Inland serves no shippers other than the salt company. While it holds itself out as a common carrier, the record shows that since it began operations the only traffic it has handled in addition to that of the salt company consisted of two cars of junk shipped by two employees of the salt company. The Inland publishes no tariffs of its own but concurs and is shown as a participating carrier in other lines traffic. No shipping order, bill of lading or waybill is issued for the movement from the ponds to the refinery. While the control of the Inland by the salt company is not direct, the facts strongly support the conclusion that the Inland and the salt company represent but one enterprise and that operation of the Inland is in the exclusive interest of the salt company. The separate incorporation of the Inland obviously did not change the status of the operations theretofore conducted by the salt company. HELD, the Inland Ry. Company is not a common carrier, but a plant facility of the salt company, is not entitled to a division of joint rates, but it is not unlawful for the Garfield to pay it reasonable allowance for performing as its agent any portion of the transportation service beyond Saltair Junction customarily included in the interstate line haul rates which they do not elect to do for themselves. In the matter of the Inland Railway Company, 78 I. C. C. 59.

ALL OTHER CITATIONS

Tap-line Case, 23 I. C. C. 277, 289, 549, 560; Kaul Lumber Co. v. C. of Ga. Ry., 20 I. C. C. 450; Fathauer Co. v. St. L. I. M. & S. R. R. 18 I. C. C. 517, 519; Star Grain & Lumber Co. v. A. T. & S. F. Ry. Co., 17 I. C. C. 338, 345; Crane Iron Works v. Central R. R. Co. of N. J., 17 I. C. C. 514, 518, 520; Joint Rates with the Washington Western Ry., 27 I. C. C. 630, 634; Industrial Railways Case, 29 I. C. C. 212, 223, 237; In re Muncie & Western R. R. Co., 30 I. C. C. 434; (Can. Ry. Comm., 1914), The Essex Terminal Railway, File No. 24129; Second Industrial Railway Case, 34 I. C. C. 596, 601; Babcock Bros. Lumber Co. v. G. F. & A. Ry., 49 I. C. C. 661; Virginia Portland Ry. Co., 49 I. C. C. 332; Central R. R. Co. of Indianapolis, 49 I. C. C. 359; Kaw River S. & M. Co. v. A. T. & S. F. Ry., 52 I. C. C. 350; Pennsylvania Railroad Co. v. United States, 236 U. S. 351, 35 Sup. Ct. 370, 59 L. Ed. 616; Louisville & N. R. R. Co. v. United States 238 U. S. L. 25 Sup. Ct. 696, 59 L. Ed. 1177; Louisville & N. R. R. Co. v. United States, 242 U. S. 60, 37 Sup. Ct. 61, 61 L. Ed. 152; Seaboard Air Line Ry. Co. v. United States, (Va. 1918), 249 Fed. 368, 373; National Tube Co. v. B. & O. R. R., 50 I. C. C. 489, 491, 493, 495, 503; American Smelting & Refining Co. v. L. V. R. R., 56 I. C. C. 195, 196; Warren & Ouachita Valley Ry., 58 I. C. C. 397; Wyandotte Terminal R. R. Co., 62 I. C. C. 1, 5; Allegheny & South Side Ry. v. Director General, 62 I. C. C. 248; U. S. Gypsum Co. v. C. & P. C. R. R., 61 I. C. C. 117; Whitaker-Glessner v. B.

& O., 63 I. C. C. 47; Empress Coal Co. v. C. W. R. R. & N. Co., 69 I. C. C. 618; Natchez, Columbia & Mobile R. R. Co., 74 I. C. C. 123.

§5. Scope of tap line investigation.

IMPORTANT CASES SINCE 1908

(a) Complainant alleged that because of orders in 23 I. C. C. 277, 31 I. C. C. 490 and supplemental orders of April 7, 1919, and Sept. 8, 1920, defendants have failed and refused to allow it reasonable and just divisions of the joint rates on the lumber traffic originating on its line. The question is not whether the present divisions are fair, but whether there have been such changes in the circumstances and conditions surrounding the ownership, control, and operation of complainant as would warrant the Commission in finding that there is no longer reason, in the public interest, for imposing limitations upon the divisions which it may receive out of the joint lumber rates. Complainants line extends from Prescott, Ark., to Highland, Ark., 33 miles, connecting with the M. P., at Prescott and with M. D. & G., at Tokio 4 miles from Highland. Including Prescott and Tokio there are 10 stations on the line with total population of 7,000. At the time of decisions in The Tap Line Cases, supra, complainant and the Ozan Lumber Company were owned and controlled by the same interests. Now the holders of a majority of the stock of the lumber company hold all the outstanding stock of the railroad. Territory which complainant serves with its own rails is now devoted largely to agricultural pursuits. It is evident that while the particular timber owned by the lumber company in 1912 has been cut, it has secured other timber which complainant transports from the forest to mill. There still exists substantial community of interest between complainant and the Ozan-Graysonia Lumber Company and complete control of the former by the majority stockholders of the latter. HELD, it is clearly the Commissions duty to retain full control over complainants divisions of joint rates on lumber, complaint dismissed. Prescott & Northwestern R. R. Co. v. M. P. R. R., 68 I. C. C. 487.

(b) The Commission has consistently refused to release any tap line from the application of the orders in the Tap Line case in the absence of complete separation of such tap line from the control of any lumber company in active operation and service by it. Prescott & Northwestern R. R. v. M. P. R. R., 68 I. C. C. 487, 490.

(c) Upon further hearing, petition of Natchez, Columbia & Mobile R. R. Co., seeking release from application of the commission's orders in The Tap Line case, 31 I. C. C., 490, denied. The commission has consistently refused to release any tap line from the application of such orders in the absence of complete bona fide separation of the interests controlling the railroad company from the interests controlling the lumber company, and there has been no such separation in the instant case. The principles announced in the original Tap Line case, 23 I. C. C., 277, still apply. Natchez, Columbia & Mobile R. R. Co., 74 I. C. C. 123.

ALL OTHER CITATIONS

Tap-line Case, 23 I. C. C. 549, 550.

II. POWERS AND DUTIES.

§6. When Common Carriers.

See Supra §4; Common Carriers §7½; Industrial Railroads.

CASES 1887-1908

(a) A railroad chartered by the State of Tennessee owns a short road wholly in that State, but never owned any rolling stock nor operated its road. The road was used and operated as a means of conducting interstate traffic in coal by companies owning connecting interstate roads. HELD, 1. That the short road is one of the facilities and instrumentalities of interstate commerce, and, as such, is subject to the provisions of the Act to Regulate Commerce. 2. In respect to ownership, corporate control, the authority or means of its construction. 3. As one of the "instrumentalities of shipment or carriage" it must be accessible to all interstate shippers on equal and reasonable terms. The public cannot be deprived of this right by the separate or joint action of defendants. 4. The traffic in question is interstate traffic. The companies conducting it use this short road as a facility to such traffic. They cannot be permitted to use it for purposes of discrimination between mine owners on its line. 5. The claim for pecuniary damages presents a case at common law, in which defendants are entitled to a jury trial. Heck v. Tennessee, Va., & Ga. R. Co., 1 I. C. R. 775.

IMPORTANT CASES SINCE 1908

(b) If there is a holding out as a common carrier for hire, and if there is an ostensible and actual movement of traffic for the public for hire, the status of a common carrier exists, whether the holding out is by a company or by an individual. But such a holding out and the existence of an actual traffic is not conclusive in all cases. Where the holding out is in furtherance of a plan to secure unlawful advantages and the alleged carrier is able to pick up some traffic that is incidental to that purpose it must be regarded simply as a cloak or device to effect unlawful results. The Tap-line Case, 23 I. C. C. 277, 292.

(c) A tap line recognized as a common carrier by the Commission must itself recognize its obligations as such by conforming its accounting method to the requirements of the Commission, by filing annual reports and lawful tariffs, by obeying the hours of service law and the safety-appliance acts so far as they are applicable, and otherwise fulfilling the obligations and duties imposed by the Act on carriers engaged in interstate commerce. Any omission of its duty in this regard will be regarded as tending to show that the claim of the tap line to be a common carrier is a mere device to justify allowances or divisions. The Tap-line Case, 23. I. C. C. 277, 295.

(d) No tap line that is, in fact, a common carrier engaged in interstate commerce may haul the logs to the mill of the proprietary company free of charge. A free service is inherently unlawful. Nor may a trunk line set up a milling-in-transit privilege with a common carrier tap line by which the lumber rate is extended back through the mill point to the tree in the forest, unless it pursues the same course with respect to forests on its own line as such practice would otherwise grant an unlawful preference. The Tap-line Case, 23 I. C. C. 277, 297, 298.

(e) If an industrial railway is a common carrier, it is entitled to all rights and subject to all limitations provided in the Act. Industrial Railways Case. 32 I. C. C. 129, 133.

(f) Trunk lines are not obliged to absorb the switching charges of common-carrier industrial lines. The Commission may, however, require carriers to remove unjust discrimination occasioned by the absorption of switching charges in certain instances and not in others, under like circumstances and conditions. The Commission may also where the facts justify such a course, require trunk lines to establish joint rates with connecting industrial lines lower than the combination on the junction point of the trunk line and the industrial line and may fix the divisions to be accorded the industrial line. C. W. P. & S. R. R. Case, 37 I. C. C. 408, 415.

(g) Mere fact of financial or corporate relationship between an industry and a common-carrier industrial railroad does not alone justify a trunk line in according the controlling industry less favorable treatment than that given independent industries served by the industrial railroad. Tidewater Oil Co. v. Director General, as Agent, 62 I. C. C. 226, 227.

(h) Former report 62 I. C. C. 1, the Wyandotte Terminal Railroad Company was found not to be a common carrier subject to the act. rehearing held. It files tariffs with the Commission, now owns 2.35 miles of main and spur tracks on the Wyandotte divisions and 4.53 miles of main and spur tracks on the Ford division. There is no physical connection except through the rails of the terminal at Wyandotte or Ford, Mich., between the D. T. & I. or the Shore Line, which uses the Ironton tracks, and the M. C. In order to effect interchange between these lines, it is necessary that an overhead switching service be performed by the Terminal. For this service the Terminal assessed its published rates. The Terminal maintains the only public team track in Ford, which has a poplation of about 4,000. No less car load freight is handled. HELD, Wyandotte Terminal Railroad Company is a common carrier subject to the act and may lawfully receive divisions or absorptions of its switching charges. Wyandotte Terminal Railroad Company, 68 I. C. C. 346.

(i) Natchez Columbia & Mobile R. R., was a party to the original Tap Line case, 23 I. C. C., 27, and in 31 I. C. C., 490, the commission found petitioner to be a common carrier, prescribed the maximum absorptions and divisions that might be paid by trunk lines to such connecting carriers out of their joint interstate rates on lumber and forest products. This proceeding was reopened on application that it be dismissed as a par-

ty to The Tap Line case and be relieved from the force and effect of the orders therein. The question raised is not that of the reasonableness of the present divisions, but whether there have been such changes in the circumstances and conditions surrounding the ownership, control and operation of petitioner as would warrant the commission in finding that reasons no longer exist, in the public interest, for imposing obligations upon the divisions that it may receive out of joint interstate rates on lumber and forest products. The petitioner is operated in all respects as a regular railroad. It maintains physical connection and interchanges traffic on interline way bills with the I. C., at Norfield and the N. O. G. N., at Tilton. Exclusive of logs, which comprise the major portion of the freight, 74 per cent of its tonnage is traffic of the Denkmann Lumber Co. and 26 per cent is that of the general public. Forest products, however, constitute from 96 per cent to 98 per cent of its total freight tonnage. Release from The Tap Line case has been granted only in those instances where there has been shown a complete and bona fide separation of interests in this case. HELD, petition must be denied. Natchez Columbia & Mobile R. R. Co., 74 I. C. C., 123.

(j) Upon petition of the South San Francisco Belt Ry., proceedings were had for the purpose of determining whether it should be excluded from the findings in the original report in Reduced Rates, 1922, 68 I. C. C. 676. Petitioner connects with the S. P., at South San Francisco, maintains 3.08 miles of tracks, its longest haul being 1.4 miles average about 1 mile. Practically all its service consists of switching carload freight between its interchange with the S. P., and the South San Francisco Union Stock Yards and six other industries located on petitioners tracks. Its only source of revenue is its charges for switching. Up to December 1920 its charge was $2.50 per car, subsequently it became $3.50 per car, this charge being usually absorbed by the trunk line carriers. No protest or objection has been made by any industry located on petitioners tracks, or by the carriers which absorb petitioners switching charges, to the granting of its petition. HELD, it should be excluded from the report shown. Reduced Rates, 1922, 77 I. C. C. 675.

ALL OTHER CITATIONS

Blakely Southern R. R. Co. v. A. C. L. R. R. Co., 26 I. C. C. 344, 350; L. & P. Ry. Co. v. United States, 209 Fed. 244, 249; affirmed, 234 U. S. 1, 34 Sup. Ct. 741; 58 L. ed; Joint Rates with Birmingham Southern R. R. Co., 32 I. C. C. 110; Second Industrial Railways Case, 34 I. C. C. 596; Car Spotting Charges, 34 I. C. C., 609, 619; O'Keefe v. United States, 36 Sup. Ct. 313, 317; Johnstown & Stony Creek R. R. Co. Case, 41 I. C. C. 46, 50; Joint Rates with the W. W. Ry., 41 I. C. C. 649, 653; Johnstown, Pa., Switching, 43 I. C. C. 654, 660; Buffalo Union Furnace Co. v. L. S. & M. S. Ry. Co., 44 I. C. C. 267, 270; Iron Ore Rate Cases, 44 I. C. C. 368, 376; Oliver Chilled Plow Works v. N. Y. C. R. R., 45 I. C. C. 356; Ohio Cut Stone Co. v. N. Y. C. R. R., 48 I. C. C. 69; Laona & Northern R. R. v. C. & N. W. Ry., 49 I. C. C. 75; Class Rates from C. R. Ry. Stations, 50 I. C. C. 152; Mfrs. Ry. Co. v. United States, 38 Sup. Ct. 383; Combs, Cass & Eastern R. R., 50 I. C. C. 221; Ball Bros. Glass Mfg. Co. v. C. C. C. & St. L. Ry., 51 I. C. C. 418, 421, 422; Owasco River Railway 53 I. C. C. 104; Jones & Laughlin Steel Co. v. P. & L. E. Ry., 53 I. C. C. 556; American Steel & Wire Co. v. N. & S. S. Ry., Co., 55 I. C. C. 353; National Tube Company v. Lake Terminal 55 I. C. C. 469; Empire & Iron Co. v. Director General, 56 I. C. C. 157, 182, 188, 189; Coal Operation Traffic Bureau v. T. R. A. of St. L. Ry., 57 I. C. C. 371; P. A. & McK. R. R. R. Co. v. Director General, 57 I. C. C. 1; Delray Connecting R. R. Co., Second Industrial Railways Case, I. & S. Docket No. 414, 57 I. C. C. 97; Mattiessen & Hegler Zinc Co. v. C. B. & Q. R. R. Co., 57 I. C. C. 173, 176; Peerless Coal Co. of Illinois v. A. T. & S. F. 57 I. C. C. 274, 280; St. Louis Troy & Eastern R. R. Co., 57 I. C. C. 371; Chicago Short Line Ry. Co., 58 I. C. C. 561; Bay Terminal R. R. Co., 58 I. C. C. 680; Wharton Steel Co. v. Director General, 59 I. C. C. 11, 21; Culver & Port Clinton R. R. Co., 58 I. C. C. 402; Oakdale & Gulf R. R. Co., 58 I. C. C. 450; Wharton Steel Co. v. Director General, 59 I. C. C. 11, 23; Empress Coal Co. v. O. W. R. R. & N. Co., 59 I. C. C. 738, 742; Jones & Laughlin Steel Co. v. Director General, 60 I. C. C. 325; Illinois Northern Ry., 61 I. C. C. 629; Pullman Railroad Co., 61 I. C. C. 637; U. S. Cast Iron Pipe & Foundry Co. v. Director General, 62 I.

C. C. 339, 343; Benwood & Wheeling Co. v. P. C. C. & St. L., 62 I. C. C. 357; National Tube Co. v. P., C. C. & St. L. R. R. Co., 61 I. C. C. 590, 598, 599; History and description of Pullman R. R. Co., 61 I. C. C. 637, 642; Interstate Fares of the C., N. S. & M. R. R., 62 I. C. C. 188, 193; Allegheny & South Side Ry. Co. v. Director General, as Agent, 62 I. C. C. 248, 249, 252; B. & W. C. Ry. Co. v. P. C. C. & St. L. R. R. Co., 62 I. C. C. 357, 361; Tionesta Valley Ry. Co., 62 I. C. C. 473, 478; Sheffield & Tionesta Ry., 62 I. C. C. 710; New Castle & Ohio River R. Co., 63 I. C. C. 305; Berlin Mills Railway, 63 I. C. C. 313, 317, 318; Aluminum Co. of America v. Massena Terminal R. R. Co., 69 I. C. C. 119; Moshassuck Valley R. R. Co. v. N. Y. N. H. & H. R. R., 69 I. C. C. 368.

§6½. Amount of Allowances.

See Allowances; Common Carriers §7½; Divisions.

CASES 1887-1908

(a) Investigation by the Commission as to divisions allowed to the Hutchison & Arkansas River R. R. This carrier owns between four and five thousand feet of railway siding adjoining one of several plants belonging to the Hutchison-Kansas Salt Co., in Hutchison, Kas. This railroad company does not own any equipment or rolling stock nor is it in Three railway companies entering any way engaged as a common carrier. Hutchison made joint tariffs with the H. & A. R. R., which, on salt shipped to Missouri River points, gave the latter 25% of the rate, but not exceeding 50c per ton. The H. & A. R. R., is controlled by officers of the Salt Company and the earnings of the railroad company are subject to that control. Since this division was allowed to the H. & A. R. R., the Salt Company has sold salt at Missouri River points at prices with which the independent salt mills in Hutchison could not compete. The declared purpose of making this joint rate with the H. & A., was to enable the salt manufacturers to meet competition from other quarters, and the division of the joint rate to the H. & A. R. R., could not have that effect unless it inured to the benefit of the salt producer. HELD, this granting the division of the rate to this socalled railroad is a mere subterfuge to give a concession in the rate, and is therefore unlawful. In the matter of the transportation of salt from Hutchinson, Kas. 10 I. C. C. 1.

(b) Defendants publish a certain rate on lumber from stations upon their lines which must be strictly observed and charged to all shippers alike, and they are not entitled, under the act, to grant a division of the rate to the owner of a lumber mill as compensation to him for the cost of bringing his logs to the mill by steam railroad, horses railroad, wagon or any other means of conveyance. Central Yellow Pine Asso. v. V. S. & P. R. R., 10 I. C. C. 193, 204.

(c) The transportation of the log to the mill by one line and the transportation of the lumber from the mill by another line may, under the circumstances of this case, be treated as in the nature of a through shipment from the point where the log is received to the point where the lumber is finally delivered, and the carrier of the lumber may by joint arrangement with the log carrier make such allowance towards the cost of moving the log as would be fairly involved in moving the lumber from the point where the log is received for carriage, provided always that the carrier of the log is a common carrier by rail; but this holding extends the application of the principle of milling in transit to the extreme limit. Central Yellow Pine Asso. v. V. S. & P. R. R., 10 I. C. C. 194, 215.

IMPORTANT CASES SINCE 1908

(d) The mere quantitative relationship between the outside and company tonnage hauled by an industrial road, in the absence of divisions in the through rate, can in itself decide little as to the reasonableness of proposed divisions to be paid to the industrial road out of through rates. The real question is whether or not the proposed tariffs, by reason of these divisions, will discriminate unjustly in favor of the industry owning the road. Joint Rates with Birmingham Southern R. R. Co., 32 I. C. C. 110, 121.

(e) In deciding as to the reasonableness of divisions to be paid to the industrial road out of through rates, it is not proper to consider only the "added cost of doing business," meaning that portion of the haulage expense, as distinct from the terminal expense, which fluctuates with the volume of the traffic, making no allowance for taxes, interest or operating expenses. If the industrial road is to be compensated at all for certain services, it should be compensated for all costs

reasonably apportionable to such services, and not merely for the added expenses that would be saved if the service were not performed. Its position as a common carrier entitles it to this. Joint Rates with Birmingham Southern R. R. Co., 32 I. C. C. 110, 121.

(f) In arriving at the amount which trunk lines may allow common-carrier industrial lines for switching the following considerations should prevail: In so far as the industrial line serves the plant in interplant switching and other purely plant service the cost of such service and the investment in facilities used exclusively to perform that service must be excluded in calculating the cost of the switching service to and from the trunk lines. The investment in facilities used both for plant service and interchange switching can only be included in the proportion that they are used in interchange switching. Interior plant switching or any other service differing radically in nature from the general work of switching cars between industries and connections should be segregated as to investment and operating costs of the industrial line so far as this may be feasible. The engine hour will usually be found a safer guide than cars handled for making this general separation. For interior plant switching the industry benefited should be charged with the allocated capital and operating costs. The remaining operating and capital costs measure the maximum which may be received net for other switching, 'either in the form of switching charges or allowances, there being a minimum charge for the shortest switching and a somewhat higher charge for the longer distance switching. From its entire business the industrial line should not earn more than a fair return on the property devoted to the public use, less reserve for accrued depreciation and including material and supplies in the investment. No abnormal divisions or allowances may in any case be made, for it is evident that, by paying or permitting more to be paid than would be just and reasonable for any service performed by the industrial line, the trunk lines may be giving the controlling industry a rebate. C. W. P. & S. R. R. Case, 37 I. C. C. 408, 415, 416.

(g) To cover cases where an industrial line is permitted to operate over the tracks of connecting lines in effecting an interchange of traffic the following general rule may be laid down, namely, that in so far as the division or allowance accorded the industrial line covers the operation over the tracks of the trunk line it may not exceed the operating and investment cost to the trunk line, had it performed the same service, by more than the proportionate share which that particular traffic should bear of the compensation paid by the industrial line for the use of the tracks. This rule must be observed whether the industrial line be a mere plant facility or a common carrier, and in switching to and from independent industries as well as to and from the proprietary industry. Where the only service over the leased track is interchange switching with the trunk line from which the tracks are leased, the trackage charges or rental paid to the trunk line should not be eliminated, and the allowance accorded should not exceed what it would have cost the trunk line to perform the same service. C. W. P. & S. R. R. Co. Case, 37 I. C. C. 408, 417.

(h) For interchange switching with the trunk line which owns the tracks the industrial line may not receive more than it would have cost the trunk line to perform the same service. If the trunk lines were to accord a higher division for the service performed over their own tracks than indicated above they would be depleting their revenues in order to enable the shipper to avail himself of the more convenient and perhaps extensive service which an industrial line can give. The implication is not intended, however, that the divisions accorded the industrial lines must necessarily equal what it would have cost the trunk line to perform the service, plus the compensation paid for the use of its tracks. The divisions should be further limited by the principles applicable where the operation is over the tracks of the industrial line. One reason for permitting an industrial line to switch over the tracks of connecting trunk lines may be that it is able to perform the service for less than it would have cost the trunk line to perform the same service. Wherever that is the case the division or allowance accorded should not exceed the operating cost of the industrial line plus interest upon whatever investment it devotes to the service in the proportion that such investment is used in interchange switching plus the proportionate share which

that particular traffic should bear of the compensation paid by the industrial line for the use of the tracks. This rule should in all cases be followed in determining the proper division or allowance to be accorded for interchange switching over leased tracks with trunk lines other than the one which owns the tracks used in performing the service. C. W. P. & S. R. R. Co., Case, 37 I. C. C. 408, 418.

(i) A reasonable allowance, if voluntarily made by the carrier, would be the cost of the service to the industry, or not greater than the approximate cost of that service to the carrier; and any greater allowance would savor of a rebate. Buffalo Union Furnace Co. v. L. S. & M. S. Ry. Co., 44 I. C. C. 267, 270.

(j) Divisions received by tap lines out of the through rate should have a proper relation to the service which they perform. N. O. & N. Ry., v. Illinois Central, 55 I. C. C. 113, 116.

(k) The law neither provides nor contemplates that short lines shall receive compensation out of line-haul rates that will yield a return upon the value of the carrier property. They are certainly not entitled to such return from that source upon the value of facilities which are not used by or open to the public generally. Wyandotte Southern Ry. Co., 61 I. C. C. 756, 760.

(l) In 57 I. C. C. 1, the Commission found complainant, Pittsburg Allegheny & McKees Rocks R. R. Co., was a common carrier and entitled to divisions of joint rates or absorption of its switching rates by roads having the line haul. Interested parties failed to agree upon divisions, and supplemental complaint was filed requesting that divisions be fixed by the Commission. Complainant is owned by the Pressed Steel Car Co., and connects at Allegheny with the Pennsylvania and Baltimore & Ohio, and at McKees Rock with the P. & L. E., and P. C. & Y. Defendant Pennsylvania lines provide by tariff for the application of the Pittsburgh district rates to the Shoen Works not on their rails but reached by complainants line, without complainants concurrence and without provision for full absorption of complainants switching charge. On the one hand, the Pennsylvania lines are bound to protect their published application of those rates until appropriately changed. On the other hand, the switching charge for the intervening service having been established by tariff, complainant is bound to collect it in full. HELD, the application of the district rates to the Shoen Works over complainants line without concurrence by complainant or proper absorption provisions is contrary to the tariff rules and unlawful. It must be discontinued, and, whatever the way in which this may be accomplished, the line haul carriers must not, in view of complainants industrial affiliations, accord to complainant out of the line haul rates more than reasonable compensation for its service. Also HELD, through rates to and from the industries are not in issue, and the Commission is not asked to prescribe through routes and joint rates. Complainant dismissed. Pittsburgh Allegheny & McKees Rocks R. R. Co. v. Director General, 69 I. C. C. 223.

(m) Complainant alleged it is a common carrier; that joint rates and charges and divisions thereof are in effect between complainant and defendants; and that the divisions are unjust, unreasonable, unduly prejudicial. The New York Dock Ry. leased from the New York Dock Co., the latter's right of way, station buildings and other properties. Its accounts are kept in accordance with regulations prescribed by the Commission and are examined by its accountants. It complies with the hours of service and safety appliance acts. It operates 10.62 miles of track on the Brooklyn water front. There is no rail connection between any two of its terminals, all interchange being accomplished by means of float bridges, flats or tugs. It handles no passenger traffic, but transports property between points on its railroad and points in New Jersey and New York, with which it has direct connection and interchanges freight with trunk lines. The dock railway files with the Commission its local and proportional tariff applicable to the transportation shipments between its terminals when through rates are not applicable. The use of these local or proportional rates has been so infrequent as to be practically negligible. HELD, the Dock Railway is a common carrier and it furnishes an important service to the public and it is efficiently operated. The Dock Railway receives a certain amount from the trunk lines for service performed by it, which amount is deducted from the through freight rate

before prorating, the balance being divided among the other interested carriers on regular divisions. About 90 per cent of the revenue of the Dock Railway is received from the trunk lines. The record shows that in none of the tariffs publishing rates to or from the terminals of the Dock Railways, with exceptions of a few, is that carrier named. As it is not named in the tariffs, it is not a party to joint rates published therein, and accordingly divisions thereof to be received by complainant can not be prescribed in this proceeding. HELD, the complainant is not a party to joint rates with the defendants, with the exception of certain rates, and the record affords no basis upon which proper divisions of such joint rates as it does participate in can be determined, complaint dismissed. The trunk lines therefore are publishing rates to and from stations which are not on their lines and which can not be reached by any line which is a party to their tariffs or by any carrier to which an allowance for service beyond the eastern terminal of the trunk lines is lawfully provided. Obviously this in in violation of the requirements of the law and regulations with respect to publication of rate schedules. New York Dock Ry. v. B. & O. R. R., 73 I. C. C. 656.

(n) A division of a joint rate accorded a tap line which is grossly disproportionate to the service rendered by the tap line is equivalent to a rebate from the trunk line to the proprietary company. Adriatic Mining Co. v. C. & N. W. Ry., 78 I. C. C. 611, 619.

(o) In 53 I. C. C. 656, the Commission found that the distance from the junctions which are determinative of the maximum divisions that the M. P., may lawfully pay to the Prescott & Northwestern R. R., and to the Ohachite & Northwestern R. R., under the order in 31 I. C. C. 490, out of the joint rates on interstate shipments of lumber and forest products from points on their lines must be measured by the direct route of movement toward final destination, rather than by the out of line movements described in the report. In order to increase their divisions the tap lines resorted to the practice of hauling the lumber to more distant interchange points, where the shipments were delivered to the M. P., either directly or through the intervention of a third line. The Commission found that this could not lawfully be a means of increasing the tap lines divisions where it resulted in an unnecessary out of line movement and a return of the shipment to the junction near the mill point before beginning the actual movement to destination. As admitted by the M. P., the sole reason for seeking to have the former findings rescinded is in order that it may secure a substantial share of the lumber traffic of these tap lines by permitting them to resort to the socalled wasteful service. The object which the M. P., desires could be secured by permitting the division for the switching movement to be made the same as the division for the line haul to the distant junction, but it would give to these tap lines divisions plainly excessive for the switching service and unfair to many other tap lines. HELD, original report affirmed. Wasteful service by tap lines, 89 I. C. C. 327.

(p) The Interstate Commerce Commission entered an order providing that the maximum division to a tap line for a distance of not more than three miles should be $3.00, and if more than three miles 1½c per 100 pounds. It appeared that via the road of the claimant's tap line, if shipment hauled direct would move 2.41 miles, but as a matter of fact the shipments were first taken in the opposite direction. Because of this fact the distance actually traveled was 3.42 miles. The Commission interpreting its own order directed that for this service the claimant could not be allowed by the trunk line more than $3.00. HELD, that the order of the Commission was valid, and would not be disturbed on appeal. Louisiana & P. B. Ry. Co. v. United States, 42 Sup. Ct. 25.

(q) Where the Interstate Commerce Commission, to prevent unjust discrimination in favor of shippers owning tap lines, by means of an unfair division of the through rate over the two lines, fixed amounts receivable by the tap lines based on mileage, it did not act arbitrarily and unreasonably in refusing to include the back haul from the mill to a track scale, where it found that a greater allowance would result in unjust discrimination, that the evidence did not show that it was necessary that the shipments be weighed by the tap line, rather than by the trunk line, and that allowing of a larger division of the through rate would place

the owner of the tap line in a more advantageous position than other tap lines performing a similar service, and open the way for the relocation of other track scales, so as to require a long back haul and lay a basis for rebates. Louisiana & P. B. Ry. Co. v. United States, 42 Sup. Ct. 25.

ALL OTHER CITATIONS

Industrial Railway Case, 32 I. C. C. 129, 131. C. W. P. & S. R. R. Case, 37 I. C. C. 408, 414, 419; Indiana Northern Ry. Case, 37 I. C. C. 491, 494; Moshassuck Valley R. R., 37 I. C. C. 566; Westport Stone Co. and Big Four Stone Co. Case, 39 I. C. C. 313, 316; 240 U. S. 294, 60 L. Ed. 651; O'Keefe v. United States, 36 Sup. Ct. 313, 316; Chestnut Ridge Railway Case, 37 I. C. C. 558, 563; Louisiana & Pine Bluffs Divisions, 40 I. C. 470; Divisions of Joint Rates for Transportation of Stone, 41 I. C. C. 321, 327; Class Rates from Chestnut Ridge Ry. Station, 50 I. C. C. 152; Wasteful Service by Tap Lines, 53 I. C. C. 656,, 662; N. O. N. & N. Ry. v. Ill. Cent., 55 I. C. C. 113, 116; Solvay Process Co. v. D. L. & W. 55 I. C. C. 281; Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 191, 192; Anheuser-Bush Vry. Ass'n v. C. R. I. & P. Ry. 52 I. C. C. 55, 557; Big Sandy & Cumberland R. R. Co., 52 I. C. C. 347, 349; Warren & Ouachita Valley Ry., 58 I. C. C. 397; Allowances to Kanawha, Glen Jean & Eastern, 58 I. C. C. 405; Wyandotte Southern Ry. Co., 61 I. C. C. 765.

§7. Legality of divisions, allowances or practices.

See Allowances §10; Common Carriers; Divisions IV; Industrial Railroads; Legality.

CASES 1887-1908

(a) A division of a freight rate with another railroad company constitutes a mere subterfuge to give a concession in the rate, and is unlawful, where the railroad company receiving the division of the rate, while owning four or five thousand feet of railway siding adjoining one of several plants belonging to the shipper, does not own any equipment or rolling stock, and is not in any way engaged as a common carrier, but is in fact controlled by the officers of the shipping company, who control its earnings and receive the benefit of the division of the rate, thereby enabling it to sell its produce at prices which its competitors cannot meet. Re Transportation of Salt from Hutchinson, Kansas, 10 I. C. C. 1.

(b) No undue discrimination against individuals is made in the granting of divisions in rates to lumber mills owning or controlling short originating roads called "tap lines," while other carriers fail or refuse to allow like concessions to members of the complaining association located in a different section of the country. Central Yellow Pine Asso. v. Vicksburg, S. & P. R. Co., 10 I. C. C. 193.

(c) The second section of the Act to Regulate Commerce, which prohibits rebates whereby one shipper is preferred to another, refers to a like and contemporaneous service performed under similar circumstances and conditions; and, in the absence of a showing of such similarity of circumstances and conditions, such section is not violated by the granting of divisions of rates to lumber mills owning or controlling short originating roads, while other carriers fail or refuse to allow like concessions to complainants located in a different section of the country. Central Yellow Pine Asso. v. Vicksburg S. & P. R. Co., 10 I. C. C. 193.

(d) Defendants publish a certain rate on lumber from stations upon their lines, which must be strictly observed and charged to all shippers alike; and they are not entitled, under the Act to Regulate Commerce, to grant a division of the rate to the owner of a lumber mill as compensation to him for the cost of bringing his logs to the mill by steam railroad, horse railroad, wagon, or any other means of conveyance. Central Yellow Pine Asso. v. Vicksburg S. & P. R. Co., 10 I. C. C. 193.

(e) The second section of the Act to Regulate Commerce, which prohibits a rebate or other concession in rate whereby one shipper is preferred to another, refers to a like and contemporaneous service performed under similar circumstances and conditions, and it is not shown in this case that lumber mills served by defendants are so located that differences in divisions allowed by defendants to tap lines used for such mills, or the failure of one of the defendants to allow any division to some mills, violates this section. Central Yellow Pine Asso. v. U. S. & P. R. Co. et al., 10 I. C. C. 193.

(f) Where excessive divisions of rates are granted by the carrier to another carrier owned and controlled by a shipper, for the purpose of obtaining the traffic of that shipper, they benefit the shipper, and operate as a rebate or other device to cut the tariff charge, in violation of the Act to Regulate Commerce. Re Division of Joint Rates, etc. 10 I. C. C. 385.

(g) The logging roads, or "tap lines," to which the defendant, the Mobile & Ohio Railroad Company, grants allowances from its published rates, are not common carriers, but such tap lines are the private property of mill owners, and the allowances are therefore unlawful. Central Yellow Pine Asso. v. Illinois C. R. Co., 10 I. C. C. 505.

(h) No undue preference between individuals or localities is made by the failure or refusal of defendants to make "tap line" allowances to mill owners in their territory, which lies east of the Mississippi, while such allowances are granted to mill owners by other carriers in the territory west of the Mississippi. Central Yellow Pine Asso. v. Illinois C. R. Co., 10 I. C. C. 505.

IMPORTANT CASES SINCE 1908

(i) Any allowance to or division with a tap line which is an adjunct or plant facility is a preference and discrimination and an unlawful departure from the published rate. Star Grain & Lumber Co. v. A. T. & S. F. Ry. Co., 17 I. C. C. 338, 344.

(j) Wherever an abnormal division is allowed to a railroad which is tied up with an industry there results an indirect and hidden rebate to the shipper because of his ownership of the railroad. In Re Divisions of Joint Rates on Coal, 22 I. C. C. 51, 55.

(k) Whether a tap line is a common carrier is a question of fact, but if it is a common carrier it cannot haul for the proprietary company free of charge. Tap-line Case, 23 I. C. C. 292, 297.

(l) It would be an unlawful preference for a trunk line to set up a milling-in-transit privilege with a common carrier tap line by which the lumber rate is extended back through the mill point to the trees in the forest while not pursuing the same course with respect to forests on its own line. Tap-line Case, 23 I. C. C. 277, 298.

(m) Frequently an industry develops new traffic and shippers other than the owning industry located on its rails, whereupon the owning industry or its stockholders separately incorporate the railway which thereupon files tariffs with the Commission, claims thenceforth to be wholly separate and distinct from the owning industry, and thereafter holds itself out to serve the owning industry and its other shippers impartially. Assuming the newly-made carrier to be, under the law, a common carrier, allowances under Section 15 of the Act can no longer be made to the owning industry as for services rendered by the shipper, as the railway is no longer a part of, or in law, connected with the latter, which is "the owner of property transported," to whom alone, under that section of the statute, allowances may be made, but is in the contemplation of the Act in the same position as it would be if it had been constructed by parties having no interest whatever in the owning industry. Conversely, the owning industry would be on the same plane as if it had located as an independent shipper upon the newly-made railway after the latter's construction by parties having no connection with the industry. The railway is in such case a public agency, which, if it lives up to the obligations attached by the Act to its own representations, should collect its charges from the former owning industry, the same as it does from shipper on its line. This complete separation of the carrier from the shipper applies not only to local shipments, but also in case the service is performed in connection with a trunk line on a through haul. Mfrs. Ry. Co. v. St. L. I. M. & S Ry. Co., 28 I. C. C. 93, 102.

(n) Where a carrier is a common carrier and transports for others than its owners a substantial amount of interstate commerce, it is entitled to a division of the joint rate despite the fact that it is owned by one who is the principal shipper over its line. McCloud River Lumber Co. v. S. P. Co., 24 I. C. C. 89, 94.

(o) Industrial railways should not receive from the more distant trunk line connection any compensation as division or allowance which exceeds the amount added to the junction-point rate. Second Industrial Railways Case, 34 I. C. C. 596, 606.

(p) By paying or permitting to be paid to industrial line more than would be just and reasonable, trunk lines may be giving controlling industry a rebate. Chicago, West Pullman & Southern R. R. Co. Case, 37 I. C. C. 408, 416.

(q) As a general proposition, it may be said that a common-carrier railroad is under no obligation to haul cars at its own cost beyond its own rails. This statement, however, is subject to qualification. When a carrier adds to the line-haul rate a charge for the movement of cars incident to the receipt and delivery of carload freight at one industry while treating a like service at other similarly circumstanced industries as covered by the line-haul rate, it creates an unjust discrimination. Again, in the absence of changed conditions, a charge in addition to the line-haul rate would be improper for services which by long-continued general custom and usage have been treated as embodied in the line-haul charge. Newport Stone Co. and Big Four Stone Co. case, 38 I. C. C. 316, 318.

(r) To take from the trunk line carrier a portion of the lumber rate and apply it to the payment of the cost of the log haul relieves the mill owner in whole or in part of the reasonable cost of transporting his logs to his mills. This is a direct contribution to the mill owner who is the shipper of the lumber. It is none the less a contribution to the shipper because the payment is made to the tap line. The direct and inevitable result is that the mill owner is relieved of the whole or a part of the reasonable cost of getting his logs to his mill by a contribution out of the lumber rate, and this would unjustly discriminate against mill owners who are obliged to bear the full cost of transporting their logs. Milling Logs in Transit on Tap Lines, 40 I. C. C., 597, 601.

(s) Placing of cars on tracks within the plant inclosure designated by the industry constitutes delivery by the trunk lines under their line haul rate; subsequent service of switching cars to points of placement within the plant inclosure constitutes an additional movement, for which an additional charge must be made if it is performed by the trunk lines. Marting Iron and Steel Co. Case, 48 I. C. C. 620, 622.

(t) Clearly an excessive allowance to a tap line would constitute a rebate to the controlling industry. Diamond Alkali Co. v. F. P. & E. Ry., 53 I. C. C. 554, 549.

(u) A tap line is entitled only to just compensation for the actual and reasonably necessary services performed by it as a part of the transportation of the traffic from point of origin to destination, and the orders of the Commission relative to divisions out of the through rates were framed upon this principle in conformity with the decision of the Supreme Court. Wasteful Service by Tap lines, 53 I. C. C. 656, 662.

(v) The payment of switching reclaims to industrial lines may result in preferences and advantages to proprietary industries. Undue preferences of the shipper who happens to own an industrial road cannot be sanctioned in any guise. The arrangements between industrial roads and connecting trunk lines respecting demurrage, car detention, car interchange, and reclaims, are of fundamental importance, and, in so far as they are involved in this case, they are reserved for further consideration. Lake Erie & Fort Wayne Railroad Co., 58 I. C. C. 558, 560.

(w) The payment of switching reclaims to industrial lines may result in preferences and advantage to proprietary industries. Undue preference of the shipper who happens to own an industrial road cannot be sanctioned in any guise. The arrangements between industrial roads and connecting trunk lines respecting demurrage, car detention, car interchange, and reclaims are of fundamental importance, and, in so far as they are involved in this case, they are reserved for further consideration. Chicago Short Line Railway Co., 58 I. C. C. 561, 566.

(x) Carriers must observe reasonable rules and practices with respect to car service as defined in the act; however, car interchange is primarily a matter of agreement. The common carrier status of an industrial railway gives no inherent right to per diem or per diem reclaim. Birmingham Southern v. Director General, 61 I. C. C. 551, 555.

(y) The practice of trunk lines in absorbing a portion of the charges of a short line, found not to be a common carrier subject to the act, should be dis-

continued, but it is not unlawful to make a reasonable allowance to such short line for performing a portion of the service included in line-haul rates which trunk lines do not elect to do for themselves. National Tube Co. v. P., C., C. & St. L. R. R. Co., 61 I. C. C. 590, 599.

(z) Where short line found not to be a common carrier is not to say that it is unlawful for trunk lines to pay reasonable compensation to such short line as its agent or a reasonable allowance to the industry under section 15 of the act, for performing through its industrial railroad any portion of the service customarily included in the line-haul rates which they do not elect to do for themselves. Wyandotte Terminal R. R. Co., 62 I. C. C. 1, 5.

(aa) Contracts under which a subsidiary to a proprietary industry acts as switching agent for carriers not shown to violate the act and the Commission is without power to abrogate such contracts or revise their terms. Allegheny & South Side Ry. Co. v. Director General, as Agent, 62 I. C. C. 248, 252.

(bb) Division of rates with tap lines may not be at the will of common carriers involved and without any power of the Commission to control. Prescott & Northwestern R. R. v. M. P. R. R., 68 I. C. C. 487, 490.

(cc) Hauling lumber and forest products over unnecessary and circuitous routes before delivery to the connecting trunk line by a tap line is condemned. Cancellation of Joint Rates from and to Green Hill, S. C., on the Alcolu Railroad, 74 I. C. C., 571, 573.

(dd) Though a large shipper controlled the stock of a terminal railway company, whose charges trunk lines refused to further absorb, the Commission, in a proceeding by the terminal company to compel further absorptions, may, under Interstate Commerce Act, §15, as amended in 1910, fix a maximum for the joint rates which the terminal and trunk line companies might establish without determining the question of the division of the same, so as to prevent undue discrimination in favor of the shipper owning the stock of the terminal company. Mfrs. Ry. Co. v. United States, 38 Sup. Ct. 383.

ALL OTHER CITATIONS

Tap-line case, 23 I. C. C. 277, 549, 550, 577; Industrial Lumber Co. v. S. L. W. & G. Ry. Co., 19 I. C. C. 50, 53; Cedar Hill Coal & Coke Co. v. A. T. & S. F. Ry. Co., 16 I. C. C. 402, 403, 404. United States v. L. & P. Ry. Co., 34 Sup. Ct. 741, 746; 234 U. S. 1, 58 L. ed.; Industrial Railways Case, 29 I. C. C. 212, 218, 230, 238, 243, 247, 249, 252, 258, 288, 295, 320, 356, 363; Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502, 507; Joint Rates with Birmingham Southern R. R. Co., 32 I. C. C. 110, 119, 123; Industrial Railways Case, 32 I. C. C. 129, 130, 133; Rates on Sugar, 31 I. C. C. 490, 493; Union Lumber Co. v. G. C. & S. F. Ry. Co., 37 I. C. C. 225; Chicago, West Pullman & Southern R. R. Co. Case, 37 I. C. C. 408, 417; La. & Pine Bluff Divisions, 40 I. C. C. 470, 471; Butler County Railroad Divisions, 41 I. C. C. 36. I. C. R. R. v. Brooks-Scanlon Co. 241 Fed. 445; Second Industrial Rys. Case, 49 I. C. C. 359; C. C. & E. R. R., 50 I. C. C. 221; Natl. Tube Co. v. B. & O. R. R. 50 I. C. C. 489, 495; Combs, Cass & Eastern R. R., 50 I. C. C. 221; National Tube Co. v. B. & O. R. R., 50 I. C. C. 489, 500; Louisiana & Pine Bluff Divisions, 53 I. C. C. 475; Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 180. Manufacturers Jct. Ry. Co., I. & S. Docket No. 414, 58 I. C. C. 666, 670; Lakeside & Marblehead R. R. Co., 58 I. C. C. 671, 675; Valley R. R. Co., 58 I. C. C. 677, 679; Bay Terminal R. R. Co., I. & S. Docket No. 414, 58 I. C. C. 680, 683; Tide Water Oil Co. v. Director General, as Agent, 58 I. C. C. 92; Glen Jean & Eastern, 58 I. C. C. 405, 410; Jones & Laughlin Steel Co. v. Director General, 60 I. C. C. 325, 331; Illinois Northern Ry., 61 I. C. C. 629, 634; Pullman Railroad Co., 61 I. C. C. 637, 644; Wyandotte Southern Ry., 61 I. C. C. 756, 760; Tidewater Oil Co. v. Director General, 62 I. C. C. 226, 227; Benwood & Wheeling Co. v. P. C. C. & St. L., 62 I. C. C. 357, 361; Absorption of Switching Charges at Ft. Worth, 61 I. C. C. 73, 76; United States Gypsum Co. v. C. & P. C. R. R. Co., 61 I. C. C. 117; Illinois Northern Railway, 61 I. C. C. 629, 634; Pullman Railroad Company, 61 I. C. C. 637, 644; B. & W. C. Ry. Co. v. P., C. C. & St. L. R. R. Co., 62 I. C. C. 357, 361; Tionesta Valley Ry., 62 I. C. C. 473, 478; Genesee & Wyoming R. R. Co., 62 I. C. C. 680, 683; Tide Water Oil Co. v. Director General, 73 I. C. C. 528. Cancellation of Joint

Rates from and to Green Hill, S. C. on the Alcolu Railroad, 74 I. C. C. 571, 573.

§8. Passes to officers.

See Crimes III.

IMPORTANT CASES SINCE 1908

(a) The affairs of the proprietary lumber company may be so interwoven with the affairs of the tap line as to make it impossible to admit the right under the law of an officer of the tap line to use free transportation. Tap-line Case, 23 I. C. C. 277, 298.

§8½. Amendments.

ALL CITATIONS

Coal Operators' Traffic Bureau of St. Louis v. B. & O. S. W. R. R. Co., 41 I. C. C. 361, 362.

§9. Right to allowance.

See Allowances; Common Carrier; Divisions §6; Industrial Railroads.

CASES 1887-1908

(a) No undue preference between individuals or localities is made by defendants in the granting of divisions in rates to lumber mills owning or controlling originating roads called "tap lines," while other carriers fail or refuse to allow like concessions to members of the complaining association, located in a different section of the country. Central Yellow Pine Asso. v. Vicksburg, S. & P. R. Co., 10 I. C. C. 193.

(b) The transportation of the log to the mill by one line, and the transportation of the lumber from the mill by another line, may, under the circumstances of this case, be treated as in the nature of a through shipment from the point where the log is received to the point where the lumber is finally delivered; and the carrier of the lumber may, by joint arrangement with the log carrier, make such allowance toward the cost of moving the log as would be fairly involved in moving the lumber from the point where the log is received for carriage, provided always that the carrier of the log is a common carrier by rail; but this holding extends the application of the principle of milling in transit to the extreme limit . Central Yellow Pine Asso. v. Vicksburg, S. & P. R. Co., 10 I. C. C. 193.

(c) The third section of the Act to Regulate Commerce, which prohibits undue preference between individuals or localities, is not violated by defendants in the granting of divisions in rates to lumber mills owning or controlling short originating roads called "tap lines," while other carriers fail or refuse to allow like concessions to members of the complaining Association located in a different section of country. Central Yellow Pine Asso. v. V., S. & P. R. Co. et al, 10 I. C. C. 193.

(ca) While the defendants, whose advances in rates are claimed to be unreasonable, are not bound to make "tap line" allowances in their territory which lies east of the Mississippi, merely because such allowances are granted to mill owners by other carriers in the territory west of the Mississippi, the fact that the rate west of the Mississippi River, minus the allowance, is reasonable, tends to support the proposition that a similar reduction east of the Mississippi would leave the rate reasonably high, and the Mobile & Ohio Railroad Company by voluntarily making such allowances east of the river, practically concedes this proposition as to itself. Central Yellow Pine Asso. v. Illinois C. B. Co., 10 I. C. C. 505.

IMPORTANT CASES SINCE 1908

(d) Under their tariffs the public carriers interpret the lumber rate as applying from mills west of the Mississippi River as far as three miles from their own lines. If a lumber company having a mill within that distance of a trunk line uses its own power to set the empty car at the mill and to deliver it when loaded to the trunk line, it is doing for itself what the trunk line under its tariffs offers to do under the rate. In such a case the lumber company may therefore fairly be said to furnish a facility of transportation for which it may reasonably be compensated under section 15, whether its tap line is incorporated or unincorporated. But an allowance under such circumstances is lawful only when the trunk line prefers for reasons of its own and without discrimination to have the lumber company perform the service. It is not lawful when the lumber company refuses to permit the trunk line to do the work. No allowance, however, ought to be made by a trunk line to a lumber company where the mill is within a thousand feet of the trunk line. An allowance under such circumstances would be a mere device to effect an un-

lawful payment to the lumber company. The same rule would apply where a short switch track to the mill has been torn out or is still available, but not used, in order to give the appearance of a longer haul to the mill over a spur or switch track constructed by the lumber company or by its tap line, for the purpose of securing an allowance. Tap Line Case 23 I. C. C. 277, 294.

(e) Where a mill is distant more than three miles from a trunk line and is connected with the latter by a tap line not recognized by the Commission as a common carrier, no allowance or division may lawfully be made by a trunk line either to the lumber company or to its tap line. Such a lumber company, although using rails, stands in no better position under the law with respect to its lumber than does a lumber company that uses other means of delivering its lumber to a public carrier. Where a mill is more than three miles distant from a trunk line and is connected with it by a tap line organized as a common carrier and so recognized by the Commission, the mill is to be regarded as a shipping point equally with all other mill points in its rate group; and the lumber rate is to be regarded as in effect from the mill, the tap line being entitled to a division thereof according to the extent of its participation in the through service under the through rate. The Tap-line Case, 23 I. C. C. 277, 295.

(f) The lumber rate west of the Mississippi River applies from the mill. In those cases where a short switch track to the mill from a trunk line has been torn out or is still available but not used, in order to give the appearance of a longer haul to the mill over a spur or switch track constructed by the lumber company or by its tap line to secure an allowance, any compensation allowed for such service by the trunk line to the lumber company or its tap line is unlawful. The Tap-line Case, 23 I. C. C. 549, 586, 589, 632, 646.

(g) No allowance may be made where the mill of the controlling company is within a few hundred feet of the trunk line. Tap-line Case, 23 I. C. C. 549, 569.

(h) It is unlawful for a tap-line to receive divisions in excess of a reasonable switching charge. Tap line Case, 23 I. C. C. 549, 582.

(i) The lumber rate west of the Mississippi River applies from the mill. In those cases where the mill is situated a reasonable distance of not less than 1,000 feet from the trunk line that carrier may arrange with the lumber company to perform the service for it of transporting the loaded cars from the mill to the trunk line and may make a reasonable allowance to the lumber company for such service under section 15. The Tap-line Case, 23 I. C. C. 549, 552, 553, 559, 568, 569, 576, 594, 596, 597, 599, 601, 603, 605, 607, 608, 611, 618, 632, 641, 645, 646.

(jk) Where a tap-line is merely a plant facility hauling logs to the mill, and the mill itself is situated on a trunk line, any allowance or division of rates made by the trunk line to the lumber company or the tap-line is an unlawful rebate. The Tap-line Case, 23 I. C. C. 549, 552, 555, 587, 597, 599, 602, 606, 613, 635, 641, 642, 645, 646, 649.

(l) A common carrier, formerly considered an industrial line, should collect its charges from former owning industry the same as it does from other shippers. Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 102.

(m) The allowances and free services accorded by line carriers to industrial railways were never taken into consideration by the former in fixing the rate, but in effect are concessions from the rate. Industrial Railways Case, 29 I. C. C. 212, 216.

(n) The privileges and advantages now enjoyed by a relatively small number of extensive industrial establishments, must either be held to be an unlawful concession to them by the carriers, or, if lawful, the principles upon which they may be justified must be ascertained and clearly defined, so that like privileges and advantages may be claimed by all industrial establishments served, whether large or small. Industrial Railways Case, 29 I. C. C. 212, 217.

(o) No service can lawfully be required of a line carrier beyond the point of interchange with an industry, and therefore a line carrier cannot be required to make an allowance to the industry out of the rates, for doing the service for itself with its own facilities. Industrial Railways Case, 29 I. C. C. 212, 230.

(p) Where it has been customary to include in the service rendered under the

line-haul rate the movement of cars over industry tracks to convenient points for loading and unloading, switching performed by the industrial line between industries and connecting carriers may properly be regarded as a transportation service for which the connecting carriers may pay a division of the line-haul rate. C.W.P.& S.R.R.Case, 37 I. C. C. 408, 415.

(q) Trunk lines undoubtedly have a right to lease their tracks so long as the arrangement is profitable to them and does not interfere with the performance of their public duties. The industrial line having effected such a lease may be, and in the present case is, in a position to render a common-carrier service to all of the industries located on its line. However, should the arrangement prove unprofitable to the trunk lines or hinder them in the performance of their public duties it must be looked upon as "a device condemned by the act." So also where a trunk line without unjust discrimination permits the industrial line to operate over its tracks without compensation the arrangement may be just and proper so long as it is for their mutual benefit. C. W. P. & S. R. R. Co., 37 I. C. C. 408, 417.

(r) For a haul of 3 miles or less under the Commission's order, which is still in force, a tap line may receive a maximum allowance of $3 per car. Louisiana & Pine Bluffs Divisions, 40 I. C. C. 470, 471.

(s) Carriers refusal to switch inbound and outbound cars to and from convenient points on switch tracks serving quarries of one shipper, while performing a similar service for its competitors may result in undue prejudice. Refusal to make an allowance found unreasonable and reparation awarded. Westport Stone Co. v. C., C., C. & St. L. Ry. Co., 48 I. C. C. 637, 639.

(t) Refusal of carriers to establish and maintain joint rates, including terminal and spotting services, to and from loading and unloading points at the Wharton Steel Company's plant at Wharton, N. J., and to its ore yard near Wharton Junction, N. J., or imposing charges in excess of those accruing at line-haul or junction point rates while maintaining such rates and services without additional charges at competitive furnace points, found to result in undue prejudice. Wharton Steel Co. v. Director General, as Agent, 59 I. C. C. 11, 23.

(u) So far as industrial railways are concerned, transportation conditions in Chicago switching district differ materially from those common to industrial common carriers in other sections of the country. Operating conditions are more complex, interruptions to traffic more frequent, and connections more numerous. L. E. & Ft. W. R. R. Co., 78 I. C. C. 475, 478.

ALL OTHER CITATIONS

Tap-line Case, 23 I. C. C. 277, 618, 650; Industrial Lumber Co. v. St. L. W. & G. Ry. Co., 19 I. C. C. 50, 53. Commercial Club of Omaha v. A. & S. R. Ry. Co., 27 I. C. C. 302, 324. United States v. L. & P. Ry. Co., 34 Sup. Ct. 741, 748; 234 U. S. 1, 58 L. ed.; United States v. Butler County R. R. Co., 34 Sup. Ct. 748, 760; 234 U. S. 29, 58 L. ed.; Manufacturers' Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100, 103; Industrial Railways Case, 32 I. C. C. 129; Louisiana & Pine Bluffs Divisions, 40 I. C. C. 470, 472; N. J. I. & I. R. R. Case, 41 I. C. C. 41; J. & S. C. R. R. Case, 41 I. C. C. 46; Allowances to K., G. J. & E., 41 I. C. C. 53; Class Rates from Chestnut Ridge Ry. Stations, 41 I. C. C. 61; Northampton & B. R. R. Case, 41 I. C. C. 68; Divisions of Joint Rates for Transportation of Stone, 41 I. C. C. 321. Davis Brothers Lumber Company v. C. R. I. & P. R. R. Co., 46 I. C. C. 501; National Tube Co. v. B. & O. R. R., 50 I. C. C. 489, 495; United States v. S. V. Ry. Co., 53 I. C. C. 607, 617, 618.

III. THROUGH ROUTES AND JOINT RATES.

§10. Right in general.

See Common Carrier §7½; Through Routes and Joint Rates II.

CASES 1887-1908

(a) Defendants publish a certain rate on lumber from stations upon their lines, which must be strictly observed and charged to all shippers alike; and they are not entitled, under the Act to Regulate Commerce, to grant a division of the rate to the owner of a lumber mill as compensation to him for the cost of bringing his logs to the mill by steam railroad, horse railroad, wagon, or any other means of conveyance. Central Yellow Pine Asso. v. Vicksburg, S. & P. R. Co. 10 I. C. C. 193.

(b) The third section of the Act, which prohibits undue preference be-

tween individuals or localities, is not violated by defendants in the granting of divisions in rates to lumber mills owning or controlling short originating roads called "tap lines," while other carriers fail to allow like concessions to members of the complaining Association located in a different section of country. Central Yellow Pine Asso. v. V. S. & P. R. R. 10, I. C. C. 193, 201.

(c) No unlawful discrimination against localities is made by defendants in the granting of divisions in the rates to lumber mills owning or controlling short originating roads called "tap lines," while other carriers fail or refuse to allow like concessions to members of the complaining association located in a different section of the country. Central Yellow Pine Asso. v. Vicksburg, S. & P. R. Co., 10 I. C. C. 193.

(d) Under the Act to Regulate Commerce a common carrier subject to its provisions can allow a division of rates only to another common carrier which, participating in the particular traffic to which the rate is applied, is also subject the Act to Regulate Commerce. The two lines may by contract or agreement establish a joint rate from the point of origin on the one road to the point of destination on the other and agree between themselves as to divisions of the rate. Central Yellow Pine Asso. v. V. S. & P. R. Co., et al, 10 I. C. C. 193.

(e) While there may be great objections to allowing shippers to build and operate railroads over which their traffic moves, such action is not prohibited by the Act to Regulate Commerce. And the mere fact that the property of a common carrier is owned by the largest individual shipper over it, or that it was originally constructed for the purpose of doing the work of that shipper, furnishes no reason why it cannot make joint rates and agree upon joint divisions with other railroads. Re Division of Joint Rates, etc., 10 I. C. C. 385.

IMPORTANT CASES SINCE 1908

(f) The Commission may require trunk lines to establish, with connecting industrial lines lower than combination on junction point of trunk line and industrial line. Chicago, West Pullman & Southern R. R. Co. Case, 37 I. C. C. 408, 415.

(g) While the Interstate Commerce Act places on carriers the burden of proving that an increased rate is just and reasonable, the Interstate Commerce Commission in a proceeding by petitioner, a terminal railway company in which shipper served by it joined to require trunk line railroads to re-establish former absorptions of such railway's charges on the ground that the continued practice of absorbing the charges of a terminal association, the stock of which was owned by the trunk line railroads, constituted a discrimination against shippers on the line of petitioner, having found that terminal railway was a common carrier, and that there was no discrimination, may assume that the through rates charged by the trunk line railroads which had been in effect before the cancellations of the absorptions were reasonable. Mfrs. Ry. Co. v. United States, 38 Sup. Ct. 383.

(h) The contention that a tap line is entitled to compensation for an out of line haul of nearly a mile to a track scale, not sustained. Louisiana & Pine Bluffs Divisions, 40 I. C. C. 470, 471.

(i) No warrant is found for requiring trunk lines against their will to establish milling in transit with tap lines, under which rates on lumber applying from mill points will be readjusted. Milling Logs in Transit on Tap Lines, 40 I. C. C. 597, 601.

(j) Refusal of trunk lines to establish and maintain through routes and joint rates in connection with the Mount Hope Mineral R. R. Co., and allow it to participate in divisions thereof, not found unreasonable or unduly prejudicial. Fact that there are joint through rates in effect with other short lines in the same general territory does not establish a prima facie case of undue prejudice, and the negligible amount of traffic and lack of station facilities or agents at points other than the junction justifies denial of the prayer for joint rates. Mount Hope Mineral R. R. Co. v. C. R. R. Co. of N. J., 74 I. C. C. 195.

(k) To entitle a tap line to avail itself of a milling in transit privilege, it must make reports to the Interstate commerce Commission and file or concur in tariffs. St. Louis Southwestern Ry. Co. v. S. H. Bolinger & Co., 279 Fed. 564.

(l) It is permissible for a railroad company having a trunk line to enter into an agreement with a railroad com-

pany, whose line was a tap line or tributary to its trunk line, establishing thru routes and joint rates as to property transported over both the tap line and the trunk line, applicable to logs or lumber, belonging to the trunk line company, and it was contemplated that the logs should be manufactured into lumber after being received by that company. I. C. R. R. v. Brooks-Scanlon Co., 241 Fed. 445.

ALL OTHER CITATIONS

B. & G. N. R. R. v. A. T. & S. F. Ry. Co., 24 I. C. C. 161; C. V. & N. Ry. Co. v. M. St. P. & S. S. M. Ry. Co., 24 I. C. C. 634; L. & N. R. R. Co., v. M. St. P. & S. S. M. Ry. Co., 24 I. C. C. 639, 643; McCloud River Lumber Co. v. S. P. Co., 24 I. C. C. 89; Blakely Southern R. R. Co. v. A. C. L. R. R. Co., 26 I. C. C. 344, 348; Cresent Coal Mining Co. v. C. & E. I. R. R. Co., 24 I. C. C. 149, 157; Beaumont & Gt. Northern R. R. v. A. T. & S. F. Ry., 24 I. C. C. 161; Laona & Nor. R. R. Co. v. M. St. P. & S. Ste. M. Ry., 24 I. C. C. 639, 643; Campbell's Creek Coal Co. v. A. A. Ry. Co., 29 I. C. C. 682;The Tap Line Case, 35 I. C. C. 485; Boardman Co. v. S. P. Co., 37 I. C. C. 81, 84;Cybur Lumber Co. v. N. O. & N. E. R. R. Co., 43 I. C. C. 268; L. & N. R. R. v. C. & N. W. Ry., 49 I. C. C. 75; Babcock Bros. Lumber Co. v. G. F. & A. Ry., 49 I. C. C. 661, 664; Mfrs. Ry. Co. v. United States, 38 Sup. Ct. 383; New Orleans Natalbany & Natchez Ry. v. Illinois Central R. R., 55 I. C. C. 113; N. O. N. & N. Ry. v. I. C. R. R., 52 I. C. C. 429; Atlas Portland Cement Co. et al. v. N. & B. R. R., 52 I. C. C. 387; Diamond Alkali Co. v. F. P. E. Ry., 53 I. C. C. 549.

IV. TARIFFS AND PUBLICATION

See Tariffs.

§11. In general.

CASES 1887-1908

(a) Treating the transportation of the log to the mill by one line, and the transportation of the lumber from the mill by another line, as a through shipment involves the right to mill in transit; and when that privilege is granted, the tariff should show upon its face that the transportation covers carriage of the log to and the lumber from the mill; and the division allowed to the carrier of the log should be named in all cases. Central Yellow Pine Asso. v. Vicksburg, S. & P. R. Co., 10 I. C. C. 193.

IMPORTANT CASES SINCE 1908

(b) Every carrier that becomes party to an agreement as to divisions between trunk line carriers and tap lines or industrial roads must file with the Commission a full statement of the arrangement entered into, showing specifically the allowances of divisions granted thereby. Industrial Railways Case 129, 32 I. C. C. 132.

(c) Complainant, Mount Hope Mineral Railroad, a common carrier, extending from connections with the Jersey Central and D. L. & W., at Wharton, N. J., to Mount Hope, N. J., distance 5.6 miles, contended that trunk lines be required to establish through rates with it, and that reasonable divisions be prescribed in connection with such through joint rates. Original decision found in 56 I. C. C. 158. HELD: The refusal of defendants to establish and maintain through routes and joint class and commodity rates in connection with complainant, and to allow complainant to participate in divisions thereof, not unreasonable or unduly prejudicial, complaint dismissed. Mount Hope Mineral Railroad Co. v. C. R. R. Co. of N. J., 74 I. C. C. 195.

ALL OTHER CITATIONS

Swift & Co. v. Director General, as Agent, 77 I. C. C. 678.

§12. Reparation.

See Reparation.

(a) Principles announced in General Electric Co. Case, 14 I. C. C. 297, reaffirmed and applied, and complaints of the National Tube Co. for reparation on traffic of its plant at Lorain, O., during period that allowances out of the line-haul rate to its industrial railway were discontinued, dismissed. Demands of the same nature by Carnegie Steel Co. also dismissed. National Tube Co. v. B. & O. R. R., 50 I. C. C. 489.

(b) An order of the Interstate Commerce Commission, finding an unjust discrimination by the carrier in making a separate charge against a shipper for switching from the pier used by him, while absorbing such charge from piers used by his competitors, is not sufficient evidence to authorize recovery of damages by the shipper, since the measure of his damages is not the amount of the unjust discrimination, but the amount by which such discrimination had injured him. Hillsborough Mills v. Boston & M. R. R. (Mass., 1921), 269 Fed. 816.

ALL OTHER CITATIONS

Buffalo Union Furnace Co. v. L. S. & M. S. Ry., 44 I. C. C. 267; National Tube Co. v. B. & O. R. R., 50 I. C. C. 489.

§12½ Per Diem Reclaims.

See Per Diem Charges.

IMPORTANT CASES SINCE 1908

(a) The payment of per diem reclaims to industrial roads may result in undue preference to proprietary industries, and that the per diem agreement is not a proper basis for settlement by an industrial railway for the use or detention upon its lines of foreign cars. Mosshasuck Valley R. R. v. N. Y. N. H. & H. R. R., 69 I. C. C. 368, 374.

(b) Fact that a short line is found to be a plant adjunct and not a common carrier is not to say that it is unlawful for trunk lines to pay reasonable compensation to it for performing as their agent, or a reasonable allowance to the manufacturing company, under section 15 of the act, for performing through its industrial railroad, any portion of the transportation service customarily included in the line-haul rates which they do not elect to do for themseles. Inland Ry. Co., 78 I. C. C. 59, 64.

(c) Suggestion that industrial road be regarded as agent of trunk lines, to show that reclaim period or free time extended to them should exactly balance their average detention and thus permit industrial lines to escape car hire and transfer over to trunk lines obligation of furnishing adequate equipment. HELD: Agency theory not applicable when industrial line retains demurrage collected, nor does it accord with rules respecting liability for damage to car or its contents. Lake Erie & Fort Wayne R. R. Co., 78 I. C. C. 475, 489.

(d) Assumption that "basis for condemning reclaim arrangements is that a profit may result to the terminal road . . . it may receive a greater aggregate sum under reclaim than it pays out during same period in form of per diem," held warranted. While possibility of thus indirectly increasing division or absorption found reasonable by commission, or of giving proprietary industry, through its subsidiary corporate organization a sum from trunk-line connections not earned by any transportation service performed from trunk lines has influenced expressions of commission, it can not be said to be sole or most important reasons for decisions relative to per diem reclaims. L. E. & Ft. W. R. R. Co., 78 I. C. C. 475, 489.

ALL OTHER CITATIONS

L. E. & Ft. W. R. R. Co., 78 I. C. C. 475, 478, 488, 490.

V. PROCEDURE AND PLEADING.

See Procedure before Commission

§13. In General.

CASES 1887-1908

(a) Whether divisions or allowances from published tariff rates made by defendants to tap lines owned or controlled by lumber mills constitute departures from such published rates in violation of the Act to Regulate Commerce or of that Act as amended February 19, 1903, is the question herein presented, and while complainant, a lumber manufacturers' association, has no direct interest in the determination of that question it has such an indirect interest as entitles it under the statute to maintain this proceeding. Central Yellow Pine Asso. v. V. V. S. & P. R. Co., et al., 10 I. C. C. 193.

IMPORTANT CASES SINCE 1908

(b) In view of the difficult questions so frequently arising out of the relations between trunk-line carriers and industries with industrial railways, rulings in this case should be reviewed by the courts in order that some definite principle may be judicially established by which the Commission may hereafter be guided in such cases as they arise. National Tube Co. v. B. & O. R. R., 50 I. C. C. 489, 504.

(c) Where the Commission has, upon a full and fair hearing, found that a tap railroad, while an interstate carrier as to other shippers, is a mere plant facility as to a proprietary company, the Commission's findings are subject to review in a court only upon allegation that they are not sustained by any substantial evidence in the record, or are arbitrary in being based upon improper distinctions and considerations. L. & P. Ry. Co., v. United States, 209 Fed. 244, 250; affirmed, 234 U. S. 1; 34 Sup. Ct. 741, 58 L. ed.

(d) The Commission cannot be charged with such arbitrary action as would justify an annulment of its orders in respect to tap lines petitioning for joint rates on lumber from proprietary mills, merely because of a different finding as to other tap lines, whose history, physical conditions, and relations to and service for proprietary companies

are in some respects like those of the petitioning tap lines. L. & P. Ry. Co. v. United States, 209 Fed. 244, 250; affirmed, 234 U. S. 1; 34 Sup. Ct. 741; 58 L. ed.

(e) An order of the Commission directing the discontinuance of certain allowances by a trunk line to a tap line serving proprietary plants will be reviewed upon the petition of the tap line, though not the party against whom the order was directed, since the tap line is directly and financially interested by the order. L. & P. Ry. Co. v. United States, 209 Fed. 244, 251; Affirmed, 234 U. S. 1; 34 Sup. Ct. 741; 58 L. ed.

(f) In a procedure before the Commission to require trunk line railways to absorb charges of a terminal railway company, on the ground of discrimination as trunk lines continued to absorb charges of a terminal association, the stock of which they owned, such terminal railway and shippers served by it having sought no special relief because of the Antitrust Act are only entitled to have the Commission consider as a circumstance bearing on the question of discrimination that the terminal association had been adjudicated a combination in restraint of interstate commerce. Mfrs. Ry. Co. v. United States, 38 Sup. Ct. 383.

TARIFFS

I. CONTROL AND REGULATION
§1. Jurisdiction of Commission.
§1½. Suspension.
§2. Power of Congress.
II. PUBLICATION.
§3. Effect in general.
(1) Adherence to published rate.
(2) Erroneous quotation or publication.
(3) Notice to shipper.
§4. Necessity of publication.
§5. Purpose of publication.
III. POSTING.
§6. In general.
§6a. Form of tariffs.
IV. CONSTRUCTION.
§7. In general.
§8. Ambiguity.
§8½. Amendments and supplements.
§9. Cancellation.
§9a. Combination rule.
§9½. Changes during suspension period.
§10. Concurrences.
§11. Conflict in rates.
§11½. Description.
§12. Cross-references.
§12¼. Exceptions.
§12½. Guide book.
§13. Index.
§14. Legality.
§15. Reasonableness.
§16. Shipments in bulk.
§17. State rates.
§18. What is legal rate.
§19. As evidence.
§20. Court proceedings.

CROSS REFERENCES

See Infra II; Branch Lines IV; Claims I; Class Rates I; Classification; Commodity Rates §2; Decisions II; Demurrage III; Divisions II; Export Rates and Facilities IV; Express Companies VI; Facilities and Privileges III; Import Traffic I; Land Grant Railroads; Pipe Lines III; Proportional Rates §6; Reconsignment IV; Reduced Rates III; Reparation; Storage III; Switch Tracks and Switchings §10; Tap Lines IV; Terminal Facilities §4; Through Routes and Joint Rates V; Track Storage III; Transportation §4; Water Carriers III; Weights and Weighing VI.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Advanced Rates § 1 (4); Common Carrier; Interstate Commerce Commission I; Jurisdiction of Commission.

CASES 1887-1908

(a) Carriers should bring their tariffs into conformity with the statute, without suggestions from the Commission as to details. Re Tariffs of the Columbus & W. R. Co., (Com.), 2 I. C. R. 11.

(b) While the demand of the full legal rate and detention of the goods for its enforcement by a carrier can not be held to be in violation of the Act, the question of the lawfulness of such detention, where the shipper is an innocent party to the contract and not in pari delicto with the contracting carrier, will arise in a suit at law for the recovery of the goods and damages for their de-

tention and is one for the determination of the courts and not within the cognizance of the Commission. Duncan v. A. T. & S. F. R. Co., 4 I. C. C. 385, 389.

(c) The jurisdiction of the Commission and the purposes of the law can not be defeated by the omission or failure of carriers to include in their schedules and to keep posted and open to public inspection the rates, fares and charges for the entire service, both transportation proper and refrigeration, which under the law they are bound to provide. J. J. Waxelbaum & Co., v. A. C. L. R. R., 12 I. C. C. 178, 183.

(d) The Commission may not authorize a carrier to make a refund from the charges collected on the basis of the published rate, or otherwise to depart from the published rate, unless, upon a hearing or upon submission of the carrier, the Commission finds that rate to be discriminatory or unreasonable in amount and orders the establishment of a different rate. A. J. Poor Grain Co. v. C. B. & Q. R. Co., 12 I. C. C. 418, 423.

IMPORTANT CASES SINCE 1908

(e) The Act authorizes the Commission in its discretion and for good cause shown to permit changes in tariffs or fares on less than statutory notice. The Commission seeks to limit the exercise of this discretionary power to cases where actual emergency and real merit are shown. The power is not to be lightly regarded, and it will not be exercised to aid a carrier in any strategic endeavor or to aid shippers in any ordinary commercial exigency. Acme Cement Plaster Co. v. St. L. & S. F. R. R. Co., 22 I. C. C. 283, 285.

(f) Tariffs are but forms of words, and the Commission, in the exercise of its power to administer the Act, can look beyond the forms to what caused them and what they are intended to cause and do cause. In re Advances on Manganese Ore, 25 I. C. C. 663, 668.

(g) The Commission should not be expected in every case to check superseding issues of all tariffs to determine whether, by any possible construction, a rate may be increased via a possible route over which there may or may not ever have been any movement. New England and Canadian High Explosive Rates, 29 I. C. C. 697, 698.

(h) The Commission is empowered to strike a tariff from its files if filed as part of a scheme by shippers to secure unlawful allowances from carriers under pretense of common carriage. A. T. & S. F. Ry. Co. v. Kansas City Stock Yards Co., 33 I. C. C. 92.

(i) If a transportation service has been rendered without tariff authority and the shipper paid a sum claimed by the carrier for that service, the Commission can upon a proper record determine a reasonable charge therefor and order refund of whatever the carrier has collected in excess of a reasonable charge. Wharton Steel Co. v. Director General, as Agent, 59 I. C. C. 11, 22.

(j) Contention that rates from points in United States to point in Mexico, increased under General Order No. 28 of Director General, were unlawful since laws of Mexico required publication of increased rates for thirty days before becoming effective, not sustained. Rates assailed were lawfully established under acts administered by commission, which is without jurisdiction to determine whether or not they were lawfully established under laws of Mexico. Greene Cananea Copper Co. v. Director General, as Agent, 80 I. C. C. 121.

(k) Under section 6 of the Act a carrier must abide by the published tariff rule, just as it must charge a published rate; but there is no reason why, when it is found that the rule has resulted in unreasonable charges under section 1, the Commission should fail to afford relief. The Commission's powers should not be construed so narrowly as to defeat justice. Hawkins & Sons v. Director General, as Agent, 80 I. C. C. 225, 227.

(l) Where the task to be performed is to determine the meaning of words of the tariff used in their ordinary sense, and to apply that meaning to the undisputed facts, such operation is solely one of construction and preliminary resort to the commission is necessary. Fanley Grain Co. v. Director General, 89 I. C. C. 33, 36.

(m) Where the construction of a tariff on file with the Interstate Commerce Commission requires a determination whether the words used therein have a technical meaning different from their ordinary meaning, or where technical words or phrases not commonly understood are employed, the question of the application of the tariff in a particular case is not a question of law as to construction of a written instrument, but a question involving issues essentially

of fact, and the question must be presented to the Interstate Commerce Commission before resort is had to the courts. Great Northern Ry. Co. v. Merchants' Elevator Co., 42 Sup. Ct.

(n) The Act endows the Commission with plenary administrative power to supervise freight tariffs and charges it with the duty to annul any tariffs in contravention of such Act, and generally to enforce the provisions thereof. American Sugar Refining Co. v. D. L. & W. Ry. Co., 200 Fed. 652.

ALL OTHER CITATIONS

Noble v. G. T. W. Ry. Co., 20 I. C. C. 70, 71; Brantley Co. v. Ocean S. S. Co., 5 Ga. App. 844, 845, 63 I. C. C. 1129; Indianapolis Freight Bureau v. Penn. R. R. Co., 15 I. C. C. 567, 571; Carson Lumber Co. v. St. L. & S. F. R. R. Co., 189 Fed. 311, 314; Conifers Lumber Co. v. L. & N. R. R. Co., 25 I. C. C. 272, 273; Wabash R. R. Co. v. Priddy (Ind., 1913), 101 N. F. 724, 727; The Essex Terminal Ry., File No. 24129; A. T. & S. F. Ry. Co. v. Kansas City Stock Yards Co., 33 I. C. C. 92, 98; Horton v. Tonopah & Goldfield R. Co., 225 Fed. 406, 412; Chicago R. I. & P. Ry. Co., v. Theis (Kans., 1915), 152 Pac. 619, 621; Lake and Rail Rate Cancellations (No. 2), 42 I. C. C. 513, 522; Greenwald v. N. Y. C. & H. R. R. Co., 159 N. Y. S. 15; The Fifteen Per Cent Case, 45 I. C. C. 303, 310; Sheldon v. Chicago, B. & Q. R. R. (Ia., 1918), 169 N. W. 189; Consolidation of Express Companies, 59 I. C. C. 459, 469; Perry County Coal Corp v. Director General, 60 I. C. C. 52, 54; Keogh v. Chicago & N. W. Ry. Co. et al., 271 Fed. 444; Boston Wool Trade Asso. v. A. & S. Ry., 64 I. C. C. 365, 383; Louis, H. & St. L. Ry. Co. v. Johns & Patterson (Ky., 1924), 258 S. W. 312.

§1½. Suspension.

See Suspension of Rates

IMPORTANT CASES SINCE 1908

(a) Where a new tariff is filed, and is protested on the ground of violations of the fourth or other sections of the Act, the averment, if confirmed by tariff check is good ground for suspending the tariff. Greater Des Moines Committee v. C. St. P. M. & O. Ry. Co., 42 I. C. C. 65, 75.

§2. Power of Congress.

IMPORTANT CASES SINCE 1908

(a) Congress has the constitutional power to adopt the policy of requiring the sale of transportation by carriers only for cash at the published rates and to prescribe appropriate means to give it effect. L. & N. R. R. v. Mottley, 219 U. S. 467, 478, 31 Sup. Ct. 265, 55 L. ed. 297.

II PUBLICATION.

See Advanced Rates VIII; Allowances II; §5; Cars and Car Supply §37; Class Rates I; Classification VI; Crimes §22; Demurrage III; Distance Rates §2; Divisions II; Export Rates and Facilities IV; Facilities and Privileges III; Long and Short Hauls §16; Loss and Damage §18; Passenger Fares and Facilities §18; Proportional Rates VI; Reconsignment IV; Reduced Rates III; Refrigeration IV; Switch Tracks & Switching §10; Tap Lines IV; Telephone and Telegraph Companies §5; V; Terminal Facilities §4; Track Storage III.

§3. Effect.

CASES 1887-1908

(a) Under the Act shippers are not to be put in a position of subservience to common carriers, nor required to ask for rates, but are entitled to equal and open rate at all times. Re Tariffs of the Transcontinental Lines, 2 I. C. C. 203, 207.

(b) The filing of schedules of rates with the Commission as required by statute raises no presumption as to the legality of such rates, and no omission or failure to challenge or disapprove the schedules of rates so filed can have the effect of making rates lawful which are unreasonable. San Bernardino Board of Trade v. A. T. & S. F. Ry., 3 I. C. C. 138, 143.

(c) The fact that circulars concerning carload weights had been filed with the Commission and no opinion had been had thereupon expressed by the Commission as to the legality thereof, raises no presumption of approval by the Commission of the rules or regulations therein set forth, or of the manner in which they are established. Suffern, Hunt & Co. v. Indiana, D. & W. R. Co., 7 I. C. C. 255.

IMPORTANT CASES SINCE 1908

(d) A tariff filed by the authorized agent of a carrier has the same legal status as though separately published

and filed by the carrier. Johnson & Co. v. A. T. & S. F. Ry. Co., 21 I. C. C. 637, 639.

(e) To determine an overcharge the tariff rates itself and the rules and regulations connected therewith are the standards. Lay Fish Co. v. Director General, 80 I. C. C. 4, 6.

(f) That army goods were styled and regarded as rags by the shipper, and received and billed as such by the carrier, was not controlling as to their proper classification for rate purposes, since the carrier was bound to collect the prescribed rate on a proper classification. Louisville, H. & St. L. Ry. Co., v. Johns & Patterson (Ky., 1924), 258 S. W. 312.

ALL OTHER CITATIONS

U. S. v. Miller, 223 U. S. 599, 602, 604, 32 Sup. Ct. 323, 56 L. ed. 568; U. S. v. Standard Oil Co., 170 Fed. 988, 1000; N. Y. C. & H. R. R. R. Co. v. U. S., 166 Fed. 267, 269; In Re Mileage, Excursion and Commutation Tickets, 23 I. C. C. 95; Dietz Lumber Co. v. A. T. & S. F. Ry. Co., 22 I. C. C. 75, 76; Virgina-Carolina Chemical Co. v. A. C. L. R. R. Co., 22 I. C. C. 394; National Ass'n of Letter Carriers v. A. T. & S. F. Ry. Co., 21 I. C. C. 6, 9; Scott v. T. & N. O. R. R. Co., 20 I. C. C. 167, 168; Pacific Coast Biscuit Co. v. O. R. R. & N. Co., 20 I. C. C. 178, 180; In Re Restricted Rates, 20 I. C. C. 424, 429; Ohio Foundry Co. v. P. C. C. & St. L. Ry. Co., 19 I. C. C. 65, 67; Ford Co. v. M. C. R. R. Co., 19 I. C. C. 507, 511; Ala. Lumber & Export Co. v. P. B. & W. R. R. Co., 19 I. C. C. 295; Peale, Peacock & Kerr v. C. R. R. Co. of N. J., 18 I. C. C. 25, 33; Blinn Lumber Co. v. S. P. Co., 18 I. C. C. 430, 432; Snyder, Malone, Donahue v. C. B. & Q. R. R. Co., 18 I. C. C. 498, 499; Hood & Sons v. D. & H. Co., 17 I. C. C. 15, 19; Boise Commercial Club v. Adams Express Co., 17 I. C. C. 115, 121; Old Dominion Copper & Smelting Co. v. P. R. R. Co., 17 I. C. C. 309, 312; Voorhees v. A. C. L. R. R. Co., 16 I. C. C. 42, 44; Arkansas Fuel Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 95, 97; New Albany Box & Basket Co. v. I. C. R. R. Co., 16 I. C. C. 315, 316; Interstate Remedy Co. v. American Express Co., 16 I. C. C. 436, 437, 439; Ames Brooks Co. v. Rutland R. R. Co., 16 I. C. C. 479, 481; Laning-Harris Coal & Grain Co. v. St. L. & S. F. R. R. Co., 15 I. C. C. 37, 39; Palmer & Miller v. L. E. & W. R. R. Co. 15 I. C. C. 107, 108; Woodward & Dickerson v. L. & N. R. R. Co., 15 I. C. C. 170, 173; Williamson v. O. S. L. R. R. Co., 15 I. C. C. 228, 229; Falls & Co. v. C. R. I. & P. Ry. Co., 15 I. C. C. 268, 272; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 15 I. C. C. 370, 373; California Commercial Ass'n v. Wells, Fargo & Co., 14 I. C. C. 422, 428; Coomes v. C. M. & St. P. Ry. Co., 13 I. C. C. 192, 194; B. & O. R. R. Co. v. LaDue, 57 Misc, 614, 615, 108 N. Y. Supp. 659; Haverhill Box Board Co. v. B. & A. R. R. Co., 28 I. C. C. 336, 338; Pole Stock Lumber Co. v. G. & S. I. R. R. Co., 26 I. C. C. 451, 454; Franke Grain Co. v. I. C. R. R. Co., 27 I. C. C. 625, 628; N. Y. N. H. & H. R. R. Co. v. York & Whitney Co. (Mass., 1913), 102 N. E. 366, 368; Wabash R. R. Co. v. Priddy (Ind., 1913), 101 N. E. 724, 729; St. L. & S. W. Ry. Co. of Texas v. Spring River Stone Co. (Mo., 1913), 154 S. W. 465, 467; C. of Ga. Ry. Co. v. Patterson (Ala., 1912), 60 So. 465, 468; Montrose & Delta Counties Frt. Rate Asso. v. D. & R. G. R. R., 34 I. C. C. 393, 399; Ford v. C. R. I. & P. Ry. Co. (Minn., 1913), 143 N. W. 249; Crane R. Co. v. Central R. Co. of New Jersey (Pa., 1915), 93 Atl. 1076, 1078; Louisiana Sugar Planters' Asso. v. I. C. R. R. Co., 34 I. C. C. 253, 254; Brown & Sons Lumber Co. v. L. & N. R. R. Co., 37 I. C. C. 507, 509; Brown & Sons Lumber Co. v. L. & N. R. R. Co., 37 I. C. C. 507, 509; Good-Hopkins Lumber Co. v. G. N. Ry., 51 I. C. C. 99, 100; Reed Tobacco Co. v. C. & O. Ry., 51 I. C. C. 201, 202; Clark v. Southern Rv. (Ind., 1918), 119 N. E. 539; New York Central & H. R. R. Co. v. York & Whitney Co. (Mass., 1918), 119 N. E. 855; Chesapeake & Ohio Ry. Co. v. Maysville Brick Co., 132 Ky. 643, 116 S. W. 1183; Illinois Central R. R. Co. v. Henderson Elevator Co., 138 Key. 220, 127 S. W. 779; Id., 226 U. S. 441, 33 Sup. Ct. 176, 57 L. ed. 290; Louisville & Nashville R. R. Co. v. Coquillard Wagon Works, 147 Ky. 530, 144 S. W. 1080; Louisville & Nashville R. R. Co. v. Allen 152 Ky. 145, 153 S. W. 198; Gulf, Colorado & Santa Fe Ry. Co. v. Hefley, 158 U. S. 98, 15 Sup. Ct. 802, 39 L. Ed. 910; Texas & Pacific Ry. Co., v. Mugg, 202 U. S. 242 U. S. 242,, 26 Sup. Ct. 628, 50 L. Ed. 1011; Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co., 204 U. S. 426, 27 Sup. Ct. 350, 51 L. Ed. 553, 9 Ann. Cas. 1075; Texas & Pacific Ry. Co. v. Cisco Oil Mill, 204 U. S. 449, 27 Sup. Ct. 358, 51 L. Ed. 562; Kansas City Southern Ry. Co. v. Albers Commission Co., 223 U. S. 573, 82 Sup. Ct. 316, 56 L.

Ed. 556; Illinois Central Railroad Co. v. Henderson Co., 226 U. S. 441, 33 Sup. Ct. 176, 57 L. Ed. 890; Kansas Southern Ry. Co. v. Karl, 227 U. S. 639, 33 Sup. Ct., 391, 57 L. Ed. 683; Pennsylvania R. R. Co. v. International Coal Co., 230 U. S. 187, 197, 33 Sup. Ct. 893, 57 L. Ed. 1146, Ann. Cas. 1915A. 315; Boston & Maine R. R. Co. v. Hooker, 233 U. S. 97, 110, 113, 34 Sup. Ct. 536, 58 L. Ed. 868, L. R. A. 1915B 450, Ann. Cas. 1915D. 593; George N. Pierce Co. v. Wells, Fargo & Co., 236 U. S. 278, 284, 35 Sup. Ct. 351, 59 L. Ed. 576; Louisville & Nashville Railroad Co. v. Maxwell, 237 U. S. 94, 35 Sup. Ct. 494, 59 L. Ed. 853, L. R. A. 1915E 665; and Southern Railroad v. Prescott, 240 U. S. 632; 36 Sup. Ct. 469, 60 L. Ed. 836; Blackford v. St. Louis, I. M. & S. Ry. (Ky., 1918), 203 S. W. 867, 869; Atchison, T. & S. F. Ry. v. Young (Kans., 1918), 171 Pac. 1156, 1158; Boston & M. R. R. v. Piper, 39 Sup. Ct. 354; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 51 I. C. C. 635, 641; Chicago Live Stock Exchange v. A. T. & S. F. Ry., 52 I. C. C. 209, 222, 224; Grausten v. Boston & Maine R. R., 52 I. C. C. 269, 272; Ciradi Bros. Fruit & Produce Co. v. Pa. Co., (Mo., 1919), 213 S. W. 531; Burke v. Union Pac. R. R. Co., (N. Y., 1919), 124 N. E. 119; Citing Maloney Tank Mfg. Co. v. St. L. & S. F., 42 I. C. C. 605; Joyce Watkins Co. v. Director General, 56 I. C. C. 433, 434; Palmolive Co. v. Director General, 56 I. C. C. 253, 254; Pioneer Trust Co. v. Nashville, C. St. L. R. Co. (Mo., 1920), 224 S. W. 109; L. & N. R. R. Co. v. McMillen, 5 Ala. App. 662, 69 South 683; Armour Pkg. Co. v. U. S. 209, 56, 28 Sup. Ct. 428, 52 L. Ed. 681; Hurt v. Atlanta, B. & A. Ry. Co. (Atl., 1919), 84 So. 631, 632; Baltimore & O. S. W. R. Co. v. Settle, 43 Sup. Ct. 28; Keogh v. Chicago & N. W. Ry., 43 Sup. Ct. 47; Norfolk & W. Ry. Co. v. Emmons Coal Mining Co., 287 Fed. 168; Lexington Compress & Oil Mill Co. v. Yazoo & M. V. R. Co., (Miss., 1923), 95 Sou. 92; California Sugar & White Pine Co. v. Director General, as Agent, 73 I. C. C. 338, 340; Baker Reid Lumber Co. v. B. & O. R. R., 74 I. C. C. 489, 491; Pacific Mills Co. v. Director General, as Agent, 78 I. C. C. 459, 460.

§3. (1) Adherence to Published Rate. See Freight Rates; Legal Rate; Notice; Through Routes and Joint Rates §22; Undercharges.

CASES 1887-1908

(a) Rates lower than the established tariff are prohibited by law. Re Passenger Tariffs and Rate Wars, 2 I. C. C. 341, 348.

(b) Under the provisions of the Act to Regulate Commerce, the Grand Trunk Railway Company of Canada is required to print, post, and file its schedule of rates and charges for the transportation of property from points in the United States to points in Canada, and cannot lawfully charge, demand, collect, or receive from any person or persons a greater or less compensation therefore, or for any services in connection therewith, than is specified in such published schedule as may at the time be in force. Re Grand Trunk R. Co. (Com.) 2 I. C. C. R. 496.

(c) Common carriers engaged in interstate transportation are subject to the provisions of the Act in respect to the printing of schedules of rates, fares, and charges, for the traffic they carry, the posting and filing with the Interstate Commerce Commission of copies of such schedules, the notice of advances and the maintenance of the rates, fares and charges established and published and in force at the time. Matter of Grand Trunk Railway Co. 2 I. C. C. R. 496.

(d) Under the amendments of March 2, 1889, to the statute, requiring ten days' previous notice of advances and three day's previous notice of reductions in rates, they cannot be varied from day to day, or oftener, to meet fluctuations in ocean rates. New York Produce Exchange v. New York Central & H. R. R. Co., 2 I. C. C. R. 553.

(e) Inasmuch as the Interstate Commerce Act prohibits, not only contracting for, but also collecting, a less rate of freight on interstate shipments than that specified in the schedule of rates in force at the time (such schedule being required by the Act to be printed, and kept in every station for inspection and use by the public), a common carrier who has complied with the terms of the Act in respect to providing and keeping the schedule is not precluded from collecting from a shipper the full schedule rate because, by mistake, a less rate was named to him by the carrier at the point of shipment, and also in-

serted in a bill of lading signed both by the carrier and the shipper, no fraud or wilful deception having been practiced or attempted. On discovery of the mistake, after the shipment, but in time to correct it at the point of destination, it may there be corrected by the exaction of the full schedule rate, and payment of the same by the shipper,—he being also the consignee,— as a condition to surrendering the goods to him, the transportation being fully competed. Should he refuse to comply with the conditions, the detention of the goods by the carrier to enforce payment of the correct charges is no conversion. Savannah, Florida & Western R. Co. v. Bundick, 5. 1. C. R. 289.

(f) A common carrier which has complied with the terms of the interstate commerce act in respect to providing and keeping in every station for inspection and use by the public a schedule of the rates of freight in force can collect from a shipper the full schedule rate, notwithstanding a less rate was named by the carrier at the point of shipment and inserted in the bill of lading, where no fraud or wilful deception was practiced or attempted, as such act prohibits not only contracting for, but also collecting, a less rate of freight than that specified in the schedule. Savannah, F. & W. R. Co., v. Rundick (Ga.), 5 I. C. R. 289.

(g) A contract of shipment within the operation of the Interstate Commerce Act is illegal and void and does not bind either party where it prescribes a greater or less rate of transportation than that prescribed by the Interstate Commerce Commission for property of the kind shipped. Miss., Kans., & Te. R. R. Co. v. Bowles, 7 I. C. App. LXII.

(h) Circulars issued by a railway company prescribed maximum and minimum carload weights for grain depending up the capacity of the car furnished by the railway company to the shipper; the rules so prescribed were not shown upon the carriers posted schedules of rates and charges; and application of the rules to three carload shipments of corn carried for complainant resulted in materially increasing the charges above those in force under the carrier's published rate schedules. HELD: That complainant only had to consult the schedule showing defendant's rates and charges, and that complainant is entitled to recover charges collected on its shipments in excess of those set forth in such schedule. Suffern Hunt & Co. v. I. D. & W. R. Co., 7 I. C. C. 255.

(i) A shipper of goods over lines within the Interstate Commerce Act is not bound to ascertain the local rates on the connecting lines, or know or assume, as matter of law, that carriers cannot contract for a through rate lower than the combination of the local rates; nor is he bound to make personal investigation or inquiry at the office of the Interstate Commerce Commission to learn if a through or joint rate has been filed, and what are its terms. The court says: "Undoubtedly the Interstate Commerce Act purposes to control the carriers in such a way as will insure to persons and localities shipping by them just, fair, and equal treatment" . . . . It nowhere intimates by any express language that contracts made by carriers within the scope of their general powers are to be declared, in any collateral proceeding which may arise, null and void by reason of some alleged or supposed departure from the requirements of that act with reference to the matter of fares and charges. On the contrary, as we read the act, it is strongly implied that the carrier will not only be liable to the government and to any private party injured, for a violation of the provisions of the Interstate Commerce Act, but that carrier will also most certainly be bound on its contract to the party with whom it contracts." Pond-Dicker Lumber Co. v. Spencer, 8 I. C. C. App. LXV.

(j) A carrier which is a party to an agreement with other carriers for joint tariff rates is not bound by an emigrant rate given by an agent of one of the other carriers upon an interstate shipment, where it was based upon a false classification made by the agent knowingly or because of false representations of the shipper, in view of the amendment to the Interstate Commerce Act, making it an offense for any officer or agent to make false classification for the purpose of obtaining the low rate. The court says: "If the shipper obtained the low rate by misrepresentation, he was guilty of fraud, and neither carrier would be bound by a contract obtained in that way. On the other hand, if he stated the truth, and the agent, in order to favor him, billed the goods at emi-

grant rates, knowing that they did not come within the published definition of emigrant goods, he was guilty of a violation of the law, and his contract did not bind the connecting carrier. St. Louis & San Francisco R. R. Co. v. Ostrander, 8 I. C. C. App. XCIV.

(k) A tariff fixing a rate on machinery from Erie, Pa., to Salton, Cal., having been legally established, it was the duty of the defendants to apply the rate so published and in effect upon a shipment made by complainant between those points; and if, as claimed by complainant, a contract was made with defendant for a lower charge upon that shipment, such contract was not binding and its violation furnishes no ground for redress under the Act to Regulate Commerce. Red Cloud Min. Co. v. Southern Pac. Co., 9 I. C. C. 216.

(l) The Act requires carriers to publish and adhere to their tariffs. Re A. T. & S. F. R. Co., 10 I. C. C. 473, 487.

(m) Failure in the part of the shipper to pay, or of the carrier to collect, the full freight charges, based upon the lawfully published rate for the particular movement between two given points, constitutes a breach of law, and will subject either one or the other, and sometimes both, to its penalties, regardless of the rate quoted or inserted in a bill of lading. Poor Grain Co. v. C. B. & Q. Ry. Co., 12 I. C. C. 418.

(n) The published rate governing transportation between two given points, so long as it remains uncanceled, is as fixed and unalterable either by the shipper or by the carrier as if that particular rate had been established by a special Act of Congress When regularly published, it is no longer the rate imposed by the carrier, but the rate is imposed by the law. A. J. Poor Grain Co. v. C. B. & Q. Ry., 12 I. C. C. 418, 422.

(o) A rate may be lawful in the sense that it is the regularly published rate and therefore the only rate under which traffic may lawfully move, and yet at the same time be unlawful in the sense that it is excessive and unreasonable in amount In no event may a carrier agree with a shipper that the published rate, under which shipments have been made, is too high and undertake to adjust it by collecting a less rate. The publication fixes and makes the rate inflexible and unalterable, and that rate must be applied until changed in the manner required by law. A. J. Poor Grain Co. v. C. B. & Q. R. Co., 12 I. C. C. 418, 425.

(oa) Tariffs binding on carrier and shipper, both chargeable with notice of the rate and of the route over which a rate is made applicable. Poor Grain Co. v. C. B. & Q. Ry. Co., 12 I. C. C. 469.

(p) A carrier is required by law to publish the rate and also clearly to indicate the route over which the published rates are applicable. When so published the rate named and the route designated stand as the law, binding as well upon the shipper as upon the carrier. A. J. Poor Grain Co. v. C. B. & Q. R. Co., 12 I. C. C. 469, 470.

(q) A lawfully published schedule speaks with equal authority to the shipper and the carrier, and both are chargeable with notice of the rate and of the route over which a rate is made applicable. A. J. Poor Grain Co. v. C. B. & Q. Ry., 12 I. C. C. 469, 470.

IMPORTANT CASES SINCE 1908

(r) Section 6 of the Act requires that carriers subject to Act shall in all cases publish rates at which they afford transportation services and that the rates specified shall in every case be observed. In Re Contracts of Express Companies, 16 I. C. C. 246, 249.

(s) The fact that a charge is grossly unjust and unreasonable affords no excuse either to the shipper, carrier or the Commission for disregarding the application of lawfully published and established tariffs. The law plainly provides for but one method of getting rid of the unreasonableness or injustice of duly established rates, and that is by their condemnation upon complaint and investigaiton. They cannot lawfully be ignored without making the parties to such transaction incur the penalties of the law. Old Dominion Copper Mining & Smelting Co. v. Penn. R. R. Co., 17 I. C. C. 309, 312.

(t) A carrier publishing a tariff with the Commission and under its jurisdiction is bound to assess, collect and retain neither more nor less nor different compensation than the charges so published from any shipper. Humboldt S. S. Co., v. White Pass & Yukon Route, 25 I. C. C. 136, 140.

(u) There is more excuse for departure from the usual and approved standards in the framing of tariff schedules which tend toward or approach lines of demarcation between things which are forbidden by law and those which are not, where the carriers are acting initially and particularly when so acting are confronting competitive conditions, if the result of such action is found to be in violation of law, than when they are acting in the light of findings, reports, and orders of the Commission concerning the particular situation involved, where they will be expected to act in good faith in the light of the Commission's action so long as it stands. Nashville Flour Transit Rules, 41 I. C. C. 483, 494.

(v) Section 6 of the Act provides that common carrier shall file with the Commission schedules showing all charges for transportation and that such schedules shall state separately all terminal charges and other charges which the Commission may require. Section 6 also provides that no carrier, unless otherwise provided, shall engage or participate in the transportation of property unless the charges upon which the same is transported have been filed and published in accordance with the provisions of the Act. Rule 10 (c) of Tariff Circular 18-A provides that a terminal road must publish tariffs containing all its charges whether any part or all of such charges are absorbed by connecting carriers; and Rule 10 (e) provides that if part or all of the charges of a terminal carrier are to be absorbed by a connecting road, the tariff of such connecting road must specify that its rate includes originating or delivery services by the terminal road, and that it will absorb the charges of such terminal road in a specified sum, or as per the current tariffs on file with the Commission. Chicago Live Stock Exchange v. A. T. & S. F. Ry., 52 I. C. C. 209, 222.

(w) Interstate shippers are liable to pay the rate fixed by the printed and published schedules of carriers on file with the Commission. Lieberman Iron Co. v. Director General, 61 I. C. C. 21, 22.

(x) Shippers rights and obligations are determined by the special governing tariff and not by knowledge of defendant's usual practice indicated by other general tariffs. Louisa Schaefer v. L. V. R. R. Co., 66 I. C. C. 549, 551.

(y) The Act prohibits a carrier from charging, demanding, collecting, or receiving a greater or less or different compensation than that specified in its tariffs. California Sugar & White Pine Co. v. Director General, as Agent, 73 I. C. C. C. 338, 339, 340.

(z) Parties to a transportation transaction can not lawfully stipulate that any other than the applicable tariff rate shall apply. Baker Reid Lumber Co. v. B. & O. R. R., 74 I. C. C. 489, 491.

(aa) A provision in a tariff carrying rates which may be used in combination to the effect that the rates are subject to the combination rule in Morris I. C. C. 1, is equivalent to the publication of said rule in the rate tariff. Combination Rates on Limestone, 78 I. C. C. 579, 581.

(bb) Deviation from legally applicable rate is not permitted by the Act under any pretext; an allowance can not be made except under provisions of lawfully filed tariff. Lay Fish Co. v. Director General, as Agent, 80 I. C. C. 4, 5.

(cc) Under section 6 of the Act a carrier must abide by the published tariff rule, just as it must charge a published rate; but there is no reason why, when it is found that the rule has resulted in unreasonable charges under section 1, the Commission should fail to afford relief. The Commission's powers should not be contrued so narrowly as to defeat justice. Hawkins & Sons v. Director General, as Agent, 80 I. C. C. 225, 227.

(dd) Irrespective of the rate quoted, the legal rate must be paid by the shipper and collected by the carrier. Apperson Brothers Automobile Co. v. L. E. & W. R. Co., 81 I. C. C. 392, 393.

(ee) Rate published by defendants to apply over lines of defendants and complainant, in which complainant did not concur. HELD: Defendants are bound to protect rate published and held out by them to public. Complainant, not being party to rate published, must collect its local rate, and defendants must pay to it this rate until tariff is corrected to accord with the statute. Fact that there is contract with complainant fixing amounts to be received by complainant for its services in connection with traffic from junction point, can not be permit-

ted to defeat plain requirements of the law. Rate as at present published is unlawful and tariff should be corrected. St. Louis & O'Fallon Ry. Co. v. E. St. L. & S. Ry. Co., 81 I. C. C. 541, 542.

(ff) Railroad tariffs duly filed with the Interstate Commerce Commission, so long as in force, have the effect of statutes, and are binding upon the carrier and shipper alike. They are required for the purpose of preventing any preference or discrimination, and to effectuate that purpose must be uniformly applied and enforced. Anthony Carlin Co. v. Hines, (Ohio, 1923), 140 N. E. 99.

(gg) Interstate rate schedules, duly established in accordance with Interstate Commerce Act, §6, as amended (Comp. St. §8569), while in force, have the effect of a statute, and if in fact unreasonable the shipper is nevertheless bound to pay, and the carrier to retain, such rates, leaving, however, to the former the right to apply to the Interstate Commerce Commission for reparation. North American Co. v. St. Louis & S. F. R. Co., 288 Fed. 612.

(hh) The rights of a shipper against a carrier are determined by law through the provision of the tariff which are embodied in the applicable published rate. Baltimore & O. S. W. R. Co., v. Settle, 43 Sup. Ct. 28.

(ii) Unless and until suspended or set aside, the rate contained in a carrier's published tariff is for all purposes, as between carrier and shipper, the legal rate, and the rights of the parties as defined by the tariff cannot be varied or enlarged by contract or tort of the carrier, or affected by the tort of a third party. Keogh v. Chicago & N. W. Ry., 43 Sup Ct. 47.

(jj) When a carrier's tariff is filed with the Interstate Commerce Commission or published, it becomes the law between the shipper and the carrier until the Commission has determined what are the just and reasonable rates to be charged, and in the meantime the carrier is prohibited from departing from the tariff, and its only remedy, if the shipper refuses to pay the tariff charges, is to sue for their recovery. Norfolk & W. Ry. Co. v. Emmons Coal Mining Co., 287 Fed. 168.

(kk) A railroad company is charged by law with collecting the freight charges contained in its tariffs filed with, and approved by, the Interstate Commerce Commission and any agreement by it to vary therefrom is void. Lexington Compress & Oil Mill Co. v. Yazoo & M. V. R. Co., (Miss., 1923), 95 Sou. 92.

(ll) The legal rate is the filed rate, and it is the duty of the carrier to charge and collect the rate precisely as the same is contained in the tariffs on file with the Interstate Commerce Commission, and this is true even though such rate be excessive, unreasonable, and unlawful. Mobile & O. R. Co. v. Southern Sawmill Co., (Mo., 1923), 251 S. W. 434.

(mm) Whether tariff schedules filed by a carrier as reissues were effective retroactively is immaterial, where such schedules have been on file for the time required by the order of the Interstate Commerce Commission, before the shipments on which the carrier seeks to impose such tariff were made. Mobile & O. R. Co. v. Southern Sawmill Co., (Mo., 1923), 251 S. W. 434.

(nn) Where a 16-cent tariff rate on cypress lumber was permitted by the Interstate Commerce Commission to remain the legally filed and published rate, it was the duty of plaintiff, delivering carrier, to charge that rate so long as it was actually on file and published at the time the freight moved, regardless of the interpretation that should be given to a previous decision of the Commission in which the carriers were directed to cancel such rates as were found by the Commission to be unreasonable. Mobile & O. R. Co. v. Southern Sawmill Co., (Mo., 1923) 251 S. W. 434.

(oo) An order of the Interstate Commerce Commission under Interstate Commerce Act, §15 (U. S. Comp. St. §8583), directing a carrier to cancel a rate is not self-executing as to annul the rate but if the order is not obeyed by changing the tariff rate as provided in section 6 (section 8569) that tariff is conclusively presumed to be the legal rate, and a departure therefrom is made an offense, the Commission having the power to compel obedience by proceeding under section 16 (section 8584), and Act. Cong. Feb. 19, 1903, §1, as amended by Act. Cong. June 29, 1906, §2 (U. S. Comp. St. §8597). Mobile & O. R. Co. v. Southern Sawmill Co., (Mo., 1923) 251 S. W. 434.

(pp) If a tariff was unreasonable, the only way it could be changed so as to relieve the carrier from the obligation of applying that rate was to require the carrier under Interstate Commerce Act, §6 (U. S. Comp. St., §8569), to print new schedules showing the changes, or by indicating them upon schedules already enforced, but until that was done the carrier must charge the rate, even though the enforcement of the statute involves a hardship. Mobile & O. R. Co. v. Southern Sawmill Co., (Mo., 1923), 251 S. W. 434.

(qq) No estoppel can be enforced against the carrier to relieve the shipper or consignee from liability to pay the rate fixed by the regularly filed tariff under the Interstate Commerce Act (U. S. Comp. St. §8563 et seq.). Mobile & O. R. Co. v. Southern Sawmill Co. (Mo., 1923), 251 S. W. 434.

ALL OTHER CITATIONS

Dietz Lumber Co. v. A. T. & S. Ry. Co., 22 I. C. C. 75, 76; Floridin Co. v. Seaboard Air Line Ry., 21 I. C. C. 610; Clinton Bridge & Iron Works v. C. B. & Q. R. R. Co., 20 I. C. C. 416, 417; In Re Substitution of Tonnage at Transit Points, 18 I. C. C. 280, 296; California Commercial Ass'n v. Wells, Fargo & Co., 16 I. C. C. 458, 461; Ames Brooks Co. v. Rutland R. R. Co., 16 I. C. C. 479, 481; Nebraska-Iowa Grain Co. v. U. P. R. R. Co., 15 I. C. C. 90, 98; Miller & Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. 588; S. F. P. & P. Ry. Co. v. Grant Bros. Const. Co. (Ariz., 1910), 108 P. 467, 470; K. C. S. Ry. Co. v. Albers Comm. Co., 79 Kans. 59, 99 P. 819; I. C. R. R. Co. v. Henderson Elevator Co., 138 Ky. 220, 225, 127 S. W. 779; C. & O. Ry. Co. v. Maysville Brick Co., 132 Ky. 643, 654, 116 S. W. 1183; La. Ry. & Nav. Co. v. Holly, 127 La. 615, 619, 53 So. 882; Foster, Glassel Co. v. K. C. S. Ry. Co., 121 La. 1053, 1055, 46 So. 1014; Gulf & S. I. R. Co. v. Laurel Cotton Mills, 91 Miss. 166, 194, 45 So. 982; Sutton v. St. L. & S. F. R. R. Co., (Mo. App., 1911), 140 S. W. 76; Pecos Valley & N. E. Ry. Co. v. Harris (N. M., 1908), 94 P. 951; Houseman v. Fargo (N. Y., 1910), 124 N. Y. Supp. 1086, 1088; B. & O. R. R. Co. v. La Due, 128 App. Div. 594, 596, 112 N. Y. Supp. 964; A. T. & S. F. Ry. Co. v. Bell (Okla., 1912), 120 P. 987, 988; Hardaway v. Southern Ry. Co. (S. C., 1912), 73 S. E. 1020, 1021; Fisher v. G. N. Ry. Co., 49 Wash. 205, 210, 95 P. 77; Coeur D'Alene & S. Ry. Co. v. U. P. R. R. Co. (Wash., 1908), 95 Pac. 71, 75; Franke Grain Co. v. I. C. R. R. Co., 27 I. C. C. 625, 627; American Foundry Co. v. A. G. S. R. R. Co., 26 I. C. C. 446, 448; C. W. Hull Co. v. S. Ry. Co., 24 I. C. C. 302, 303; St. Louis Blast Furnace Co. v. Va. Ry. Co., 24 I. C. C. 361; St. L. & S. W. Ry. Co., of Texas v. Spring River Stone Co. (Mo, 1913), 154 S. W. 465, 467; Ford v. C. R. I. & P. Ry. Co. (Minn., 1913), 143 N. W. 249; United States v. Erie R. R. Co., 209 Fed. 283, 286; C. of G. Ry. Co. v. Birmingham Sand & Brick Co. (Ala., 1913), 64 So. 202, 204; T. & P. Ry. Co. v. Dickson Bros. (Tex., Civ. App. 1914), 167 S. W. 33; C. of Ga. Ry. Co. v. Curtis (Ga. App., 1914), 92 S. E. 318; Mott Store Co. v. St. L. & S. F. Ry. Co., (Mo., App., 1914), 168 S. W. 322; Southern Pacific Co. v. Frye & Bruhn (Wash., 1914), 143 Pac. 163, 164; Wichita & W. Ry. Co. of Texas v. Asher (Tex., 1915), 171 S. W. 1114, 1120; Rosenheimer Malt & Grain Co. v. C. St. M. & O. Ry. Co., Unrep. Op. A-808; Virginia-Carolina Peanut Co. v. A. C. R. Co. (N. C., 1914), 82 S. E. 1, 4; Louisiana Sugar Planters' Asso. v. I. C. R. R., 34 I. C. C. 253, 254; Reeves Coal Co. v. C. M. & St. P. Ry., 34 I. C. C. 122, 123; Goldfield Cases, 34 I. C. C. 360, 378; Northern Pine Mfrs. Asso. v. C. & N. W. Ry. Co., 33 I. C. C., 360, 364; Ochsenrieter v. A. T. & S. F. Ry. Co., 33 I. C. C. 518, 519; Indiana Tie Co. v. I. C. R. R. Co., Unrep. Ap. 1873; Berkey & Gay Furniture Co. v. M. C. R. R. Co., Unrep. Op. 1911; Horton & Tonopah & Goldfield R. Co., 225 Fed. 406, 408; Rates for the Transportation of Anthracite Coal, 35 I. C. C. 220, 245; St. L. & S. F. R. Co. v. Pickens, (Okla., 1915), 151 Pac. 1055; Lumber from Easton, Wash., 39 I. C. C. 188, 189; Emerson v. Central of Ga. Ry. Co., 72 So. R. (Ala., 1916) 120; Cleveland C. C. & St. L. Ry. Co. v Taldge Mohgany Co., 112 N. E. (Ind., 1916), 890; Hudson Motor Car Co. v. G. T. Ry. Co. of Canada, 42 I. C. C. 341, 342; Crane R. Co. v. Philadelphia & R. Ry. Co., 97 Atl. (Pac., 1916), 1055; Granbery v. Taylor, 159 N. Y. S. 932; In re Arlington Hotel Co. (Del., 1916), 98 Atl. 187; Memphis Merchants Exchange v. I. C. R. R. Co., 43 I. C. C. 378, 391; The Alaska Investigation, 44 I. C. C. 680, 708, 709; Sunderland Bros. Co. v. C. B. & Q. R. R., 45 I. C. C. 209, 210; Moore v. Duncan, 237

Fed. 780; Foster Lumber Co. v. A. T. & S. F. Ry., (Mo., 1917), 194 Fed. 780; Foster Lumber Co. v. A. T. & S. F. Ry. (Mo., 1917), 194 S. W. 280, 281; St. Louis, I. M. & S. Ry v. McNabb, (Okla., 1917), 162 Pac. 811; DuPont de N. P. Co. v. Penn. R. R., 47 I. C. C. 224; L. V. R. R. v. Weyant, 166 N. Y. Supp. 381; Goodnow Coal Co. v. N. P. Ry. Co., (Minn., 1917.), 162 N. W. 519; Reliance Elevator Co. v. Chicago, M. & St. P. Ry., (Minn., 1917), 165 N. W. 867; Fremont Milling Co. v. C. & N. W. Ry., (Nebr., 1917), 163 N. W. 331; Tuller v. Chicago, R. I. & P. Ry. (Ia., 1918), 168 N. W. 301; Minneapolis, S. P. & S. M. Ry. Co. v. Reeves Coal Co., (Minn., 1921), 181 N. W. 335; Oregon-Washington R. & Nav. Co. v. Cascade Co., (Ore., 1921), 197 Pac. 1085; Stevens v. Atchison, T. & S. F. Ry. Co., 220 N. Y. S. 195.

§3 (2) Erroneous quotation or publication.

See Erroneous Rate; Passenger Fares and Facilities § 15.

CASES 1887-1908

(a) Where a contract is made with a shipper by a carrier, member of a through line, for shipment of goods over the line at a less than the published lawful rate charged shippers in general, it is not a violation of the Act to Regulate Commerce within the jurisdiction of the Interstate Commerce Commission for the delivering carrier to exact payment of the full lawful rate before delivery, although if the shipper was an innocent party he might be entitled to his goods on payment of the contract rate. Duncan v. Atchison, T. & S. F. R. Co. (Com.) 4 I. C. R. 385.

(b) Misrepresentation by a carrier as to the rate charged, but without injury, affords no ground of redress in a suit for damages. Arkansas & L. R. Co. v. Smith, 4 I. C. R. 415.

(c) A contract for the transportation of coal from a point in Missouri to one in Kansas for a rate less than a reasonable joint tariff rate agreed upon by two companies operating the roads between the two places, caused by a mistake of the agent of the receiving carrier, is utterly void as violating the provisions of the interstate commerce act prohibiting unjust discrimination. Chicago, R. I. & P. R. Co. v. Hubbell (Kan.), 5 I. C. R. 241.

(d) Under judicial interpretation of the statute, shippers and consignees cannot depend for the lawful rate or charge upon what may be quoted by the carrier's agent, but they must be guided by the published rate sheets themselves; and this emphasizes the duty of carriers to make their schedules of rates comply precisely with the mandatory provisions in the statute concerning the contents and publication of such schedules, so that shippers may readily and accurately determine therefrom what rates, and what transportation rules affecting rates, are actually in force for a particular service. Suffern, Hunt & Co. v. Indiana, D. & W. R. Co., 7 I. C. C. 255.

(e) Shippers and consignees cannot depend for the lawful rate or charge upon what may be quoted by the carrier's agent, but must be guided by the published rate sheets themselves. Suffern, H. & Co. v. Indiana, D. & W. R. Co., 7 I. C. C. 255.

(f) Carriers are not only entitled to exact their proper established rates, but they are bound to do so, and a lower rate stated in the bill of lading issued by the carrier to the shipper will not be enforced. Shippers and consignees can not, therefore, depend for the lawful rate or charge upon what may be quoted by the carriers agent, but they must be guided by the published rate sheets themselves. Such interpretation of the law emphasizes the legal duty of the carriers to make their schedules of rates comply precisely with the mandatory provisions in the statute concerning the contents and publication of such schedules, in order that shippers may, upon inspection of such schedules, be enabled to readily and accurately determine what rates, and what transportation rules affecting rates, are actually in force for any particular service. Suffern Hunt & Co. v. I. D. & W. R. Co., 7 I. C. C. 255, 278.

(g) While shippers largely rely upon the rates quoted by freight agents and billing clerks the law charges them with knowledge of the lawful rates. And they will not be heard, before this Commission, to claim the benefit of a lower than the lawful rate on the ground that some railroad clerk has made a mistake in quoting a lower rate for a particular shipment. To permit shippers to impute negligence to carriers in quoting

rates and on that ground to enjoy the rate quoted instead of paying the lawfully published rate would open a way for the payments of rebates and might, in practical results, work a repeal of the law. A. J. Poor Grain Co. v. C. B. & Q. Ry. Co., 12 I. C. C. 418.

(h) Agents of carrier can not bind to other than tariff rate. Poor Grain Co. v. C. B. & Q. Ry. Co., 12 I. C. C. 418.

(i) Regularly published rate governing transportation between two given points, so long as uncanceled, the only legal rate, and cannot be affected by mistake in quoting a lower rate. Poor Grain Co. v. C. B. & Q. R. Co., 12 I. C. C. 418.

(ia) To permit shippers to impute negligence to carriers in quoting rates and on that ground to enjoy the rate quoted instead of paying the lawfully published rate would open a broad and ample way for the payment of rebates and for other unlawful practices and might, in its practical results, work a repeal of the essential feature of the law. A. J. Poor Grain Co. v. C. B. & Q. R. Co., 12 I. C. C. 418, 423.

(j) The published tariff rates control notwithstanding the erroneous quotation of another and lower rate by agent of the defendant A. J. Poor Grain Co. v. C. B. & Q. R. Co., 12 I. C. C. 418, 421.

(k) Regardless of the rate quoted or inserted in the bill of lading, the published rate must be paid by the shipper and actually collected by the carrier. The failure on the part of the shipper to pay or of the carrier to collect the full freight charges, based upon the lawfully published rate for the particular movement, between two given points, constitutes a breach of the law and will subject one or the other, and sometimes both, to its penalties. Not even a court may interfere with a published rate or authorize a departure from it when it has voluntarily been established by the carrier. A. J. Poor Grain Company v. C. B. & Q. Ry., 12 I. C. C. 418, 422.

(l) Mistake by carrier in responding to an inquiry by a shipper, either as to the rate or the route, will not excuse the carrier from collecting the lawful rate or the shippers from paying it. Poor Grain Co. v. C. B. & Q. Ry. Co., 12 I. C. C. 469.

(m) When responding to an inquiry by a shipper, a mistake made by a carrier either as to the rate or the route will not excuse the carrier from collecting the lawful rate or the shipper from paying it. A. J. Poor Grain Company v. C. B. & Q. Ry., 12 I. C. C. 469, 470.

IMPORTANT CASES SINCE 1908

(n) Accidents of tariff publication alone should not operate to continue rates upon a basis different from that upon which they were established and intended to be maintained. Substitution for Increase in Rates, 61 I. C. C. 518, 522.

(o) Proof of error in the publication of rates does not justify a departure from the published rates, and the intention of tariff framers is not controlling. Seaboard By-Product Coke Co. v. Director General, as Agent, 62 I. C. C. 317, 329.

(p) A misstatement by an agent of a railroad company of the amount of a freight charge on an interstate shipment, and its payment by the shipper, HELD not to relieve him from liability for the lawful rate. Payne, Director General of Railroads, v. Clarke, 271 Fed. 525.

(q) Where an erroneous interstate rate is quoted and collected, the carrier must collect the correct freight even though that results in injury or great hardship to the shipper or consumer, and the carrier cannot by its conduct estop itself to sue for and recover the lawful rate. Cleveland, C. C. & St. L. Ry. Co. v. Southern Coal & Coke Co., (Tenn. 1923), 248 S. W. 297.

ALL OTHER CITATIONS

Reno Wholesale Liquor Store v. S. P. Co., 23 I. C. C. 516, 517; Oster Bros. v. M. L. & T. R. R. Co., 21 I. C. C. 511, 512; Simon Cook Co. v. W. R. R. Co., 21 I. C. C. 563, 564; Newding v. M. K. & T. Ry. Co., 19 I. C. C. 29; Alabama, L. & E. Co. v. P. B. & W. R. R. Co., 19 I. C. C. 295; Forster Bros. Co. v. D. S. S. & A. Ry. Co., 14 I. C. C. 232, 236; O'Brien & Co. v. N. P. Ry. Co., Unrep. Op. 227; St. L. I. M. & S. Ry. Co. v. Wolf (Ark. 1911), 139 S. W. 536, 537; McLean Lumber Co. v. L. & N. R. R. Co., 22 I. C. C. 349, 352; Scott v. T. & N. O. R. R. Co., 20 I. C. C. 167, 168; Dunne & Grace v. St. L. & S. W. Ry. Co. (Mo. App. 1912), 148 S. W. 997, 999; Ohio

Iron & Metal Co. v. Wabash R. R. Co., 18 I. C. C. 299, 300; Blinn Lumber Co. v. S. P. Co., 18 I. C. C. 430, 433; Ames Brooks Co. v. Rutland R. R. Co., 16 I. C. C. 479, 481; Whitcomb v. C. & N. W. Ry. Co., 15 I. C. C. 27, 28; Platten Produce Co. v. C. M. & St. P. Ry. Co., 14 I. C. C. 512; Ga. R. R. v. Creety, 5 Ga. App. 424, 426, 63 S. E. 528; B. & O. S. W. Ry. Co. v. New Albany Box & Basket Co. (Ind. 1911), 94 N. E. 906, 909; McManus v. C. G. W. Ry. Co. (Iowa 1912), 136 N. W. 769, 774; Schenberger v. U. P. R. R. Co., 84 Kan. 79, 81, 113 Pac. 433; Louisiana Ry. & Nav. Co. v. Holly, 127 La. 615, 618, 53 So. 882; A. T. & S. F. Ry. Co. v. Bell (Okla. 1912), 120 Pac. 987, 989; Baldwin Land Co. v. Columbia Ry. Co., 58 Or. 285, 289, 114 Pac. 469; T. & P. Ry. Co. v. Leslie (Tex. 1910), 131 S. W. 824, 827; Freeman v. Kemendo (Tex. Civ. App. 1912), 148 S. W. 605, 606; I. C. R. R. Co. v. Henderson Elevator Co., 33 Sup. Ct. 176, 177; 226 U. S. 441; Kansas City S. Ry. Co., v. Carl, 33 Sup. Ct. 381, 395; 227 U. S. 639; Faribault Furniture Co. v. C. G. W. R. R. Co., 25 I. C. C. 40; Aldrich v. S. Ry Co. (S. C., 1913), 79 S. E. 316; Central Ry. Co. of N. J. v. Maurer (Pa., 1913), 88 Atl. 791, 793; C. of G. Ry Co. v. Curtis (Ga. App. 1914) 82 S. E. 318; Wolverton v. U. P. R. R. Co., 31 I. C. C. 23, 24; Southern Pac. Co. v. Frye & Bruhn (Wash., 1914), 143 Pac. 163, 164; Virginia-Carolina Peanut Co. v. A. C. R. Co. (N. C., 1914), 32 S. E. 1, 3; Sloop v. Delano (Mo. 1914), 170 S. W. 385, 386; Ill. Cent. Ry. v. Henderson Elevator Co., 226 U. S. 441, 33 Sup. Ct. 176, 57 L. Ed. 270; Kansas City Southern Railway Co. v. Albers Com. Co., 223, U. S. 573, 32 Sup. Ct. 316, 56 L. Ed. 556; Wichita Falls & W. Ry. Co. of Tex. v. Asher (Tex., 1915), 171 S. W. 1114, 1116; Indenpendent Cooperage Company v. M. C. R. R. Company, Unrep. Op. A-891; Virginia-Carolina Peanut Co. v. A. C. R. Co. (N. C.), 82 S. E. 1, 2, 3; Beaham v. N. Y. C. & H. R. R. Co. (Mo. 1915), 174 S. W. 150, 152; Oschenriter v. A. T. & S. F. Ry. Co., 33 I. C. C. 518, 519; Reeves Coal Co. v. C. M. & St. P. Ry. Co., 34 I. C. C., 122; Indiana Tie Co. v. I. C. R. R. Co., Unrep. Op. 1873; Atchison, T. & S. F. Ry. Co. v. Ehret (Okla. 1915), 152 Pac. 1107, 1109; Wardlow v. Andrews (Tex. 1915) 180 S. W. 1161, 1162; Baker-Wakefield Cypress Co. v. T. & P. Ry. Co., 37 I. C. C. 546; Reeves Coal Co. v. C. M. & St. P. Ry. Co., 37 I. C. C. 707; United Lumber Co. v. B. & O. R. R. Co., 41 C. C. 460; Northwestern Consol. Milling Co. v. C. M. & St. P. Ry. Co., 41 I. C. C. 683; Alabama Great Southern R. Co. v. George McFadden & Bros., 232 Fed; Lamb-Fish Lumber Co. v. I. & M. V. R. R., 42 I. C. 470, 471; New York, New Haven & Hartford R. R. v. York & Whitney Co., 215 Mass, 36, 102 N. E. 419; L. & N. R. R. v. Maxwell, 237 U. S. 94, 35 Sup. Ct. 494, 59 L. Ed. 853, L. R. A. 1915 E, 665; Dayton Coal & Iron Co., Ltd., v. Cincinnati, New Orleans & Texas Pacific Ry. Co., 239 U. S. 446, 36 Sup. Ct. 137, 60 L. ed. 375. Aradalou v. New York, N. Y. & N. H. R. Co. (Mass. 1916), 114 N. E. 300, 297; Healey v. C. & O. Ry., 44 I. C. C. 753, 754; Russi & Co. v. O. S. R. R., 45 I. C. C. 77, 78; Dietly v. N. Y. C. R. R., 46 I. C. C. 317, 319; Wieser & Co., Inc. v. M. K. & T. Ry. Co. of Texas, 49 I. C. C. 69, 70; Kansas City Ry. v. Albers, 223 U. S. 573, 32 Sup. Ct. 316, 56 L. Ed. 556; Sheldon v. Chicago, B. & Q. R. R., (Ia. 1918), 169 N. W. 189; Blackford v. St. Louis, I. M. & S. Ry., (Ky. 1918), 203 S. W. 867; Portland Cattle Loan Co. v. Oregon Short Line R. Co., 251 Fed. 33. 34; Lehigh Portland Cement Co. v. Director General, 55 I. C. C. 615; Chicago, M. & St. P. Ry. Co. v. Jewett, (Wis. 1919), 171 N. W. 757; Adams Express Co. v. Crominger, 226 U. S. 491, 33 Sup. Ct. 148, 57 L. Ed. 314, 44 L. R. A. (N. S.) 257; Boston & M. Ry. v. Hooker, 233 U. S. 97, 34 Sup. Ct. 526, 58 L Ed. 868, L. R. A. 1915B, 450 Ann. Cas. 1915B, 593; Atchison, etc, Ry. v. Robinson, 233 U. S. 173, 34 Sup. Ct. 556, 58 L. Ed. 901; American Express Co. v. U. S. Horse Shoe Co. 244 U. S. 58, 65, 37 Sup. Ct. 595, 61 L. Ed. 990; Duholm v. Chicago, M. & St. P. Ry. Co. (Minn. 1920) 177 N. W. 772; Hurt v. Atlanta, B. & A. Ry. Co. (Atla. 1919), 84 So. 631; Young v. Director General, 59 I. C. C. 305; Apperson Bros. Automobile Co. v. L. E. & W. R. R. Co., 81 I. C. C. 392.

§3. (3) Notice to Shipper.

See Notice; Released Rates §3½; Reparation §8.

CASES 1887-1908

(a) Under the amendments of March

2, 1889, to the statute, requiring ten days previous notices of advances and three days notice of reductions in rates, they can not be varied from day to day, or oftener, to meet fluctuations in ocean rates. New York Produce Exchange v. N. Y. C. & H. R. Co., 2 I. C. C. 553, 568.

(b) That shipper was not informed of the through tariff rates when making shipments between local points will not avail him as a basis for an action for violation of the long and short haul clause of the Interstate Commerce Act of 1887, where he made no inquiry, and no false statements were made to him, and the shipping point was a noncompeting one where no publication of the joint rate was required under the order of the Commission made June 21, 1887. Chicago & N. W. R. Co. v. Osborne (C. C. App. 8th C.), 4 I. C. R. 257.

(c) Under § 6 of the act, two kinds or classes of routes are recognized and provided for, namely, the line of a single carrier, and a continuous line or route operated by more than one carrier, where the participating carriers establish joint rates or charges for such continuous line or route; and in respect of both classes of lines, the provision is uniform that established rates shall not be increased except after ten days, notice, nor reduced except after three days' notice. Consolidated Forwarding Co. v. Southern P. Co., 9 I. C. C. 182.

(d) Shippers, being charged by law with knowledge of the lawful rates, cannot claim the benefit of a lower than the lawful rate, on the ground that some railroad clerk has made a mistake in quoting a lower rate for a particular shipment. Poor Grain Co. v. Chicago, B. & Q. R. Co., 12 I. C. C. 418.

(e) Shippers charged with knowledge of rates. Poor Grain Co. v. C. B. & Q. Ry. Co., 12 I. C. C. 418.

(f) Regardless of the rate quoted or inserted in a bill of lading, the published rate must be paid by the shipper and actually collected by the carrier. The failure on the part of the shipper to pay or of the carrier to collect the full freight charges, based upon the lawfully published rate for the particular movement between two given points, constitutes a breach of the law and will subject either one or the other, and sometimes both, to its penalties. Not even a court may interfere with a published rate or authorize a departure from it when it has voluntarily been established by the carrier. A. J. Poor Grain Co. v. C. B. & Q. Ry. Co., 12 I. C. C. 418.

(g) A lawfully published schedule speaks with equal authority to the shipper and the carrier, and both are chargeable with notice of the rate and of the route over which a rate is made applicable. A. J. Poor Grain Co. v. C. B. & Q. Ry. Co. Et. Al., 12 I. C. C. 469.

IMPORTANT CASES SINCE 1908

(h) The responsibility rests upon the carrier to have lawful rates and rules in effect and every shipper may, with safety, rely upon such rates without fear that they will be withdrawn as illegal after he has made shipment thereon, resting in confidence that they are lawful so long as they are in force. If subsequently found to be unlawful the carrier is subject to penalty for the institution and maintenance of such rates or rules, but the law does not contemplate that the shipment shall move under any other theory than that the provisions of the carrier's tariff are in full compliance with the law's demands. The carrier may not plead the unlawfulness of its tariff to avoid extending the benefit thereof to a shipper. Interstate Remedy Co. v. American Express Co., 16 I. C. C. 436, 439.

(i) Rules and regulations published in tariffs are as binding as published rates, and shippers are chargeable with knowledge of them. El Paso Chamber of Commerce v. Director General, 68 I. C. C. 135, 137.

(j) The Commission is of the opinion that a carrier may not plead the unlawfulness of its tariff to avoid extending the benefit thereof to a shipper. While it has been repeatedly emphasized by the Commission that the shipper is put upon notice of the rate by the publication of the tariff, it has not been held that a shipper must determine for himself the lawfulness of a rate, regulation, or practice, upon his peril. The responsibility rests upon the carrier to have lawful rates and rules in effect, and every shipper may with safety rely upon such rates without fear that they will be withdrawn as illegal after he has made shipments thereon, resting in the confidence that they are lawful as

long as they are in force. If subsequently found to be unlawful the carrier is subject to penalty for the institution and maintenance of such rates or rules, but the law does not contemplate that the shipper shall move upon any other theory than that the provisions of the carriers tariff are in full compliance with the laws demands. Louis Werner Stave Co. v. Director General, 68 I. C. C. 395, 397.

(k) The Commission has frequently held that a shipper is not required to look beyond the face of a tariff. Louis Werner Stave Co. v. Director General, 68 I. C. C. 395, 397.

(l) Shippers are presumed to know contents of tariffs, and lack of such knowledge will not affect applicability of tariffs. General Petroleum Corp. v. Director General, as Agent, 80 I. C. C. 53, 54.

(m) It is well settled that shippers are presumed to know the contents of tariffs, and lack of that knowledge would not affect the applicability of the tariff. General Petroleum Corporation v. Director General, 80 I. C. C. 53, 54.

(n) Diversion requested "with understanding that it be not made unless through rate could be protected." Charges assessed at applicable combination rate. HELD: Failure of carrier to comply with condition attached to diversion order does not constitute violation of the act. Every shipper is bound to take notice of terms and conditions of tariffs governing his shipments. Northwestern Traffic & Service Bureau v. C. & N. W. Ry. Co., 80 I. C. C. 81.

(o) Every shipper is bound to take notice of terms and conditions of tariffs governing his shipments. Western Transit Co. v. Leslie & Co., 242 U. S., 448. Northwestern Traffic & Service Bureau v. C. & N. W. Ry. Co., 80 I. C. C. 81, 82.

(p) Under the Interstate Commerce act, the rate for either freight or passengers under the tariff of the carrier duly filed is the only lawful charge. Deviation from it is not permitted upon any pretext. Shippers and travelers are charged with notice of it, and they as well as the carrier must abide by it, unless it is found by the Commission to be unreasonable. Ignorance or misquotation of rates is not an excuse for paying or charging either less or more than the rate filed. This rule is undeniably strict, and it obviously may work hardship in some cases, but it embodied the policy which has been adopted by Congress in the regulation of interstate commerce in order to prevent unjust discrimination. L. & N. R. R. Co. v. Maxwell, 35 Sup. Ct., 494, 495; 237 U. S. 94, 59 L. ed.

(q) In the O'Connor Case, 232 U. S. 508, 34 Sup. Ct. 380, 58 L. Ed. 703, and the Robinson Case, 233 U. S. 173, 34 Sup. Ct. 556, 58 L. Ed. 901, it was said that the conclusiveness of the filed rates has no application to attempted fraudulent acts or false billing. But there is no hint at fraud or false billings in the present case. The rates were open to inspection at the station of the defendant at Murfreesboro, and if the terms of the contract were not known, they were at least available to plaintiff. He must take notice of the rates applicable when they are filed with the Interstate Commerce Commission, as required by law, and actual want of knowledge is no excuse. The shipper's knowledge of the lawful rate is conclusively presumed. The rate when made out and filed is notice, and its effect is not lost, although it is not actually posted at the station. Kansas City Sou. Ry. v. Carl, 227 U. S. 639, 33 Sup. Ct. 391, 57 L. Ed. 683, J. T. Rather & Co. v. Nashville, C. & St. L. Ry. Co., (Tenn. 1915), 174 S. W. 1113, 1115, 1116.

(r) The shippers's knowledge of the lawful rate is conclusively presumed, and the carrier may not be required to surrender the goods carried upon the payment of the rate, if that is less than the lawful rate, until the full legal rate has been paid. Kansas City S. R. Co. v. Carl, 33 Supt. Ct. 391, 395; 227 U. S. 639.

ALL OTHER CITATIONS

C. & A. R. R. Co. v. Kirby, 225 U. S. 155, 166, 32 Sup. Ct. 648, 56 L. ed. 1033; Follmer & Co. v. B. B. & B. C. R. R. Co., 21 I. C. C. 617, 619; Hettler Lumber Co. v. G. & S. I. R. R. Co., 21 I C. C. 14; Running v. C. St. P. M. & O. Ry. Co., 19 I. C. C. 565; Ohio Iron & Metal Co. v. Wabash R. R. Co., 18 I. C. C. 288, 300; Gough & Co. v. I. C. R. R. Co., 15 I. C. C. 280, 282; B. & O. S. W. Ry. Co. v. New Albany Box & Basket Co. (Ind. 1911), 94 N. E. 906, 909. Franke Grain

Co. v. I. C. R. R. Co., 27 I. C. C. 625, 627; Wisconsin Lime and Cement Co. v. C. C. C. & St. L. Ry. Co., 25 I. C. C. 366, 367; C. C. C. & St. L. Ry. Co. v. Hayes (Ind., 1913), 102 N. E. 34, 41; Pacific Express Co. v. Ross (Tex., 1923), 254 S. W. 340, 344; C. R. I. & P. Ry. Co., v. Whedbee (Ark., 1913), 153 S. W. 86, 87; N. & N. R. R. Co. v. Allen (Ky., 1913), 153 S. W. 198, 200; Central R. R. Co. of N. J. v. Maurer (Pa., 1913), 88 Atl. 791; St. L. I. M. & S. Ry. Co. v. Faulkner (Ark., 1914), 164 S. W. 763; E. D. Clough & Co. v. B. & H. R. R. (N. H., 1914), 90 Atl. 863, 865; C. of G. Ry. Co. v. Curtis (Ga. App. 1914), 82 S. E. 318; Christy v. M. P. Ry. Co. (Kans. 1914), 141 Pac. 687; Zoller Hop Co. v. So. Pac. Co., 143 Pac. 931, 934, 935; Chamber of Commerce Houston, Tex. v. I. & G. N. Ry. Co., 32 I. C. C. 247, 254. Oschenriter v. A. T. & S. F. Ry. Co., 33 I. C. C. 518, 519; Tyler Coal & Coke Co. v. P. R. R. Co., (Unrep. Op. 1986); Blumenthal v. Central R. Co. of N. J. (N. J. 1915) 95 Atl. 973, 974; Baker-Wakefield Cypress Co. v. T. & P. Ry. Co., 37 I. C. C. 546; Emerson v. Central of Ga. Ry. Co., 72 So. R. (Ala. 1916) 121, 122, 120; Enderstein v. Atchison T. & S. F. Ry. Co., 157 Pac. (N. Mex. 1916) 670; Atchison T. & S. F. Ry. Co. v. Smith (Tex. 1916), 189 S. W. 70; Maloney Tank Mfg. Co. v. St. L. & S. F. R. R., 42 I. C. C. 605. Healey v. C. & O. Ry., 44 I. C. C. 753, 754. Blackford v. St. Louis, I. M. & S. Ry. (Ky. 1918), 203 S. W. 867; Good Hopkin Lumber Co. v. G. N. Ry., 51 I. C. C. 99, 100; Cicardi Bros. Fruit & Produce Co. v. Pa. Co., (Mo. 1919), 213 S. W. 531; Bassett v. Chicago & N. W. Ry. Co. (Wis. 1919), 171 N. W. 749; Mobile & O. R. Co. v. Laclede Lumber Co. (Mo. 1919), 216 S. W. 798; Joyce-Watkins Co. v. Director General, 56 I. C. C. 433, 434; Shroyer v. Chicago, R. I. & G. Ry. Co. (Tex. 1920), 222 S. W. 1095. United Verde Extension Mining Co. v. Director General, 57 I. C. C. 483, 484; Rumble & Wensel Co. v. Director General, 62 I. C. C. 110, 111; Old Dominion S. S. Co. v. Blakeman (Va. 1921), 105 S. E. 752; Montpelier & W. R. R. R. v. Charles Bianchi & Sons (Vt. 1921), 112 Atl. 534; Oregon-Washington R. & Nav. Co. v. Cascade Contract Co. (Ore. 1921) 197 Pac. 1085; Chicago & Alton R. R. Co. v. Kirby, 225 U. S. 155; Cairo Asso. of Commerce v. Director General, as Agent, 62 I. C. C. 701, 703; South Chester Tube Co. v. M. K. & T. Ry., 64 I. C. C. 78, 80; General Petroleum Corp. v. Director General, as Agent, 80 I. C. C. 53, 56; Western Transit Co. v. Leslie & Co., 242 U. S. 448; Northwestern Traffic & Service Bureau v. C. & N. W. Ry. Co., 80 I. C. C. 81, 82; O. K. Display Fixture Co. v. American Ry. Exp. Co., 201 N. Y. S. 266.

§4. Necessity of Publication.

See Allowances §4; II; Common Carrier §4; Demurrage §11; Divisions §2; Facilities and Privileges §17; Reconsignment §4; Refrigeration §5; Tariffs §4; Water Carriers III.

CASES 1887-1908

(a) Neglect to publish rates for milage tickets is violation of Act. Larrison v. Chicago, etc. R. R. Co., 1 I. C. C. 369.

(b) The statute has made it the duty of the carrier under a heavy penalty, to file a copy of tariffs with the Commission, and this is one of the most vital and important provisions of the statute. Milwaukee Chamber of Commerce v. F. & P. M. R. Co., 2 I. C. C. 393, 397.

(c) Common carriers engaged in the transportation of passengers or property, for a continuous carriage or shipment from a place in the United States to a place in an adjacent foreign country, are subject to the provisions of the Act in respect to the printing of schedules of rates, fares, and charges for the traffic they carry, the posting and filing with the Interstate Commerce Commission of copies of such schedules, the notices of advances and reductions, and the maintenance of the rules, fares, and charges established and published and in force at the time; also to the provisions in respect to joint tariffs of rates, fares, and charges established and published and in force at the time; also to the provisions in respect to joint tariffs of rates, fares, and charges for continuous lines or routes. Re Grand Trunk R. Co. (Com.) 2 I. C. R. 496.

(d) Under the provisions of the Act the Grand Trunk Railway Company of Canada is required to print, post and file its schedules of rates and charges for the transportation of property from points in the United States to points in Canada, and cannot lawfully charge, demand, collect, or receive from any person or persons a greater or less compensation

therefor, or for any services in connection therewith, than is specified in such published schedule as may at the time be in force. Matter of Grand Trunk Railway Co. v. 2 I. C. R. 496.

(e) Rules and regulations which in any wise change, affect or determine any part or the aggregate of a carriers rates, fares or charges must be shown separately upon the carriers posted schedules of rates, fares and charges; and any such rules or regulations promulgated by the carrier in circulars issued independently of its rate schedules are not lawfully in force. Suffern Hunt & Company v. I. D. & W. R. Co., 7 I. C. C. 255, 272.

(f) Rules or regulations which, if enforced, would result in changing or affecting rates or charges shown on published schedules must be notified to the public for the time required by law for other rate changes. The notice should set forth the changes proposed to be made in the schedules then in effect, and such changes must be shown by printing new schedules or be plainly indicated upon the schedules in force at the time. Suffern Hunt & Company v. I. D. & W. R. Co., 7 I, C. C. 255, 273.

(g) To be in compliance with the Act, any practice of a carrier which operates to alter, modify or change its rates must be fully and clearly set forth upon its published tariffs of rates and charges to be affected thereby. Spillers & Co. v. L. & N. R. Co., 8 I. C. C. 364, 367.

(h) A carrier cannot excuse the collection of an unpublished and unknown drayage and transfer charge by proof that it had a rule which forbade the sending of its own cars beyond its own line during a period of car shortage and congestion of business, especially where no notice of the rule, either actually or by reference in a published tariff, had been brought to the shipper. Schwager & Nettleton v. Great Northern Ry. Co., 12 I. C. C. 521.

IMPORTANT CASES SINCE 1908

(i) Under section 6 of the Act requiring schedules to be published and filed with the Commission and providing that they shall also state separately all terminal charges, storage charges, icing charges and all other charges which the Commission may require, and all privileges or facilities granted or allowed," it was not intended that the carrier should be required to state separately the hauling charge between the stations and the charge for the use of the terminal at both ends of the line. The terminal charges referred to in section 6, and which must be expressly set forth in the carrier's tariff, are those for other services at the terminal which the carrier may furnish, such as storage, elevation, switching and cartage. Associated Jobbers of Los Angeles v. A. T. & S. F. Ry. Co., 18 I. C. C. 310, 315.

(j) The duty rests upon the carrier to clearly and definitely state its rates and charges in its tariffs, and it is prohibited from accepting either more or less or different compensations for transportation than that so stated. The duty rests upon the shipper to clearly state and truly represent the character of his shipment, and he is entitled to no rate except that shown in the carrier's schedule for the transportation of the commodity as tendered for shipment. Ford Co. v. M. C. R. R. Co., 19 I. C. C. 507, 511.

(k) To prevent discrimination and promote equality of treatment in charges and services, the law requires not only a definite statement of the amount of the rates, fares and charges of carriers in their established schedules, but an equally definite statement therein of all privileges and facilities granted or allowed in connection therewith, and any rules or regulations which in any wise affect or determine any part or the aggregate of the rates, fares or charges, or the value of the service rendered to the passenger, shipper or consignee. It is clear that no schedule complies with the requirements of the law which does not definitely and fully state the charges on the one hand and the services to be rendered therefor, on the other. In Re Mileage, Excursion and Commutation Tickets, 23 I. C. C. 95.

(l) Where provisions are eliminated from one tariff in anticipation of publishing them in another the two tariffs should be amended simultaneously. Western Trunk Line Rules, 34 I. C. C., 554, 580.

(m) With respect to traffic where steamship company is forced to meet port to port competition of water carriers not required to file tariffs a petition may be filed for continuing per-

mission to make effective on short notice rates not higher than those in effect when permission is granted. Ocean S. S. Co. of Savanah, 37 I. C. C. 422, 480.

(n) While all charges must be separately stated, the statute does not make it unlawful to secure compensation for the protective service by regarding it as an integral part of the service of transportation. Perishable Freight Investigation, 56 I. C. C. 449, 463.

(o) The uniform scale of charges for transportation of circus and carnival trains promulgated by the railroad administration during Federal control, was merely an administrative authority and not a rate or charge, and as such not governed by section 208 (a) of the transportation act, or required to be filed with the commission. Comma v. St. L.-S. F. Ry. Co., 74 I. C. C. 400, 402.

ALL OTHER CITATIONS

C. & A. R. R. Co. v. Kirby, 225 U. S. 155, 165, 32 Sup. Ct. 648, 56 L. ed. 1033; Mobile Chamber of Commerce v. M. & O. R. R. Co., 23 I. C. C. 417, 424; Red River Oil Co. v. T. & P. Ry. Co., 23 I. C. C. 438, 444; Johnson v. M. St. P. & S. Ste. M. Ry. Co., 22 I. C. C. 255, 257; St. Paul Board of Trade v. M. St. P. & S. Ste. M. Ry. Co., 19 I. C. C. 285, 289; Hagar Iron Co. v. P. R. R. Co., 18 I. C. C. 529; Ames Brooks Co. v. Rutland R. R. Co., 16 I. C. C. 479, 481; Folmer & Co. v. G. N. Ry. Co., 15 I. C. C. 33, 36; Carstens Packing Co. v. B. A. & P. Ry. Co., 15 I. C. C. 432, 433; Kansas City Hay Co. v. St. L. & S. F. R. R. Co., 14 I. C. C. 631, 632; England v. B. & O. R. R. Co., 13 I. C. C. 614, 619; Sunderland Bros. Co. v. V. & O. S. W. R. R. Co., Unrep. Op. 267; Hull Co. v. M. P. Ry. Co., Unrep. Op. 459; Thorp Co. v. C. B. & Q. R. R. Co., Unrep. Op. 466; Mayer Fertilizer Co. v. W. R. R. Co., Unrep. Op. 472; Young & Vann Supply Co. v. L. & N. R. R. Co., Unrep. Op. 480; Kennedy & Co. Ltd., v. V. Ry. Co., Unrep. 1 Op. 530; Deeves Lumber Co. v. C. & I. 2 W. R. R. Co., Unrep. Op. 540; West 3 Coast Shingle Co. v. C. St. P. M. & O. R. R. Co., Unrep. Op. 596; O. R. & N. Co. v. Coolidge (Or. 1911), 116 Pac. 93, 95; Aransas Pass Channel & Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403, 409; Buren v. S. P. Co., 26 I. C. C. 332, 333; Transcontinental Commodity Rates, West Bound, 26 I. C. C. 456, 465; Crescent Coal & Mining Co. v. C. & E. I. R. R. Co., 24 I. C. C. 149, 157; St. Louis Blast Furnace Co. v. V. Ry. Co., 24 I. C. C. 360, 366, 367; Oregon R. & N. Co. v. Thisler (Kan. 1923), 133 Pac. 539; Pecos & N. T. Ry. Co. v. Porter (Tex., 1913), 156 S. W. 267, 272; Chamber of Commerce, Houston, Texas v. I. & G. N. Ry. Co., 32 I. C. C. 247, 255; Crane R. Co. v. Central R. Co. of New Jersey, (Pa. 1915), 93, Atl. 1076, 1077; Zoller Hop Co. v. So. Pac. Ry. Co., 143 Pac. 931, 933; Wesern Trunk Line Rules, 34 I. C. C., 554, 580; Iron Ore Rate Cases, 41 I. C. C. 181, 203 following New England Coal & Coke Co., 33 I. C. C. 173, 280; Sulzberger & Sons Co. v. M. St. P. & S. S. M. Ry. Co., 40 I. C. C. 173, 174; Moore Stave Co. v. M. L. & T. R. R. & S. S. Co., 41 I. C. 472, 473; Cardwell v. C. R. I. & P. Ry., 42 I. C. C. 730; The Car Peddling Case, 45 I. C. C. 494, 500; Clark v. Southern Ry. Co., (Ind. 1918), 119 N. E. 539; Redmond v. Adams Exp. Co., 53 I. C. C. 39, 42; Burke v. Union Pac. R. R. Co., (N. Y. 1919), 124 N. E. 119; Anaconda Copper Mining Co. v. Director General, 57 I. C. C. 723, 726.

§5. Purpose of Publication.

IMPORTANT CASES SINCE 1908

(a) There is more excuse for departure from the usual and approved standards in the framing of tariff schedules which tend toward or approach line of demarcation between things which are forbidden by the law and those which are not, where the carriers are acting initially and particularly, when so acting are confronting competitive conditions, if the result of such action is found to be in violation of law, than when they are acting in the light of findings, reports, and orders of the Commission concerning the particular situation involved, where they will be expected to act in good faith in the light of the Commission's action so long as it stands. Nashville Flour Transit Rules, 41 I. C. 483, 494.

(b) Commission's tariff regulations are aimed at simplicity and uniformity, and changes made with that object in view will be condemned only upon a clear showing of unlawfulness. Virginia Iron, Coal & Coke Co. v. Director General, 53 I. C. C. 583, 586.

(c) The objects of the Act are to prevent favoritism and to secure equal rights to all in interstate transportation, and to apply one legal rate published, posted and accessible to all alike. N. Y. C. & H. R. R. R. Co., v. U. S., 212 U. S. 481, 495, 29 Sup. Ct. 304, 53 L. ed. 613.

ALL OTHER CITATIONS

In Re Allowances for Transfer of Sugar, 14 I. C. C. 619, 630; White v. Western Union Teleg. Co., 33 I. C. C. 500, 501; Harris v. Southern Ry. Co., (S. C. 1915), 85 S. E. 158, 159; United States v. Erie R. Co. 222 Fed. 444, 448; Virginia Iron Coal & Coke Co. v. Director General, 53 I. C. C. 583, 588.

III. POSTING.

See Cars and Car Supply §40; Crimes §10; §22; Reparation §9.

§6. In general.

CASES 1887-1908

(a) It appears that the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railroad Company each has several stations on their lines at which no publication is made in their tariffs of the rates at these stations,—and this they admit; and the Commission finds that this conduct on their part has been owing to a misapprehension and misconstruction of the law and in accordance with a usage and practice long existing among railroads; the Commission therefore orders them to make publication of the rates they charge at these stations in their tariffs; and in all other respects, as to these defendants and the Union Pacific Railway Company, the petition in this proceeding stands dismissed. Rice v. Atchison, Topeka & Santa Fe R. R. Co., 3 I. C. R. 263.

(bc) Common carriers are required to post in their depots, stations and offices schedules showing the rates and charges for transportation in force on the routes of such carriers, as well as on freight which is, as on that which is not, for export. New Orleans Cotton Exchange v. L. N. O. & T. R. Co., 3 I. C. C. 523, 525.

(d) The rates which carriers are required by the sixth section of the statute to publish, file, and adhere to without deviation cover not merely the carriage, but services rendered in receivng and delivering property as well Phelps & Co. v. T. & P. R. Co., 4 I. C. C. 363, 367.

(e) Carriers' methods of making and publishing rates from eastern points to the Pacific coast criticised. Mere designation in a paper or circular of the means of arriving at rates by calculation or reference to other papers or tariffs does not constitute the rate sheet required to be published and filed by section six of the law. The reissuing by a carrier of a tariff of another line and by a supplement concurrently issued limiting its use of the rates therein prescribed to such as are over a specified minimum, is reprehensible. The only satisfactory method of publishing rates is to definitely state the charges fixed between points clearly specified, without burdening and confusing the public with the need of making involved calculations or with scrutinizing a series of supplements to determine whether a particular rate has been changed since the original tariff was issued. Colorado Fuel & Iron Co. v. Southern Pacific Co., 6 I. C. C. 488.

(f) Posting notices in a railway station that all rates are on file in the office of the station agent and may be examined upon application to such agent does not constitute compliance with the requirements of the act in respect to the posting by a common carrier of printed schedules showing its rates, fares and charges. Rea v. M. & O. R. Co. 7 I. C. C. 43, 50.

(g) When rates established to apply between points within a single state are applied as part of combination rates on transportation between different states, such state rates, as well as the interstate rates with which they are combined, must be published at stations and filed with the Commisson as provided in section 6 of the act. In the matter of export rates from points east and west of the Mississippi River, 8 I. C. C. 185, 213.

(h) The schedule of rates required by §6 of the law to be printed, posted and filed with the Commission should state, among other terminal charges, the rules and regulations, if any, of the carrier in relation to storage. Pennsylvania Millers' State Asso. v. Philadelphia & R. R. Co. 8 I. C. C., 531.

(i) Posting a notice in a station or

depot that the tariff sheets of the railroad company may be found in some other place is not compliance with the provision in the sixth section of the act requiring the posting of rate schedules or tariffs in every depot or station. Johnson v. C. St. P. M. & O. Ry. 9 I. C. C. 221, 237.

(j) The Act to Regulate Commerce provides that all interstate rates shall be filed with the Commission, and requires annual reports of the operations and financial condition of all interstate carriers. When a schedule is filed announcing an advance of general application, for which no apparent reason exists, such action is a proper subject of investigation, and if it thereupon appears that the advance is unwarranted the Commission should exhaust whatever power it has to correct the injustice. Re Proposed Advances in Freight Rates, 9 I. C. C. 382.

(k) The provision of section six of the Act to Regulate Commerce are not complied with by posting a notice stating that tariffs may be inspected upon application to the carrier's agent. Paxton Tie Co. v. Detroit S. R. Co. 10 I. C. C. 422.

(l) Carrier subject to the Act to Regulate Commerce as amended may not lawfully refuse transportation as therein defined, but must, upon reasonable request, afford the same upon established rates filed and kept posted as required by law. Waxelbaum & Co. v. A. C. L. R. R. Co., 12 I. C. C. 178.

(la) Omission to include all rates, fares, etc. The jurisdiction of the Commission and the purpose of the law can not be defeated by the omission or failure of carriers to include in their schedules and to keep posted and open to public inspection the rates, fares and charges for the entire service, both transportation proper and refrigeration, which under the law they are bound to provide. Waxelbaum v. A. C. L. R. R. Co., 12 I. C. C. 178.

IMPORTANT CASES SINCE 1908

(m) A tariff filed with the Commission in the manner prescribed by law and on statutory notice is a lawful tariff and lawfully binding upon both carriers and shippers, though it is not posted at stations fully thirty days prior to its effective date. Pueblo Transp. Ass'n vs. S. P. Co. 14 I. C. C. 82, 85.

(n) While the posting of tariffs is required by the Act, and while a failure to post the same may subject the carriers to penalties, the failure to obey the law in this respect does not invalidate the tariff when it has been properly filed with the Commission. Posting of rates as required by section 6 of the Act, is not a condition to making the tariff legally operative. The requirement that tariffs be posted in depots, stations and offices of carriers was intended as a means of affording special facilties to the public for ascertaining the rates actually in force, and not as a condition upon which the legal operation of a tariff must depend. Buren v. S. P. Co., 26 I. C. C. 332.

(o) Higher charges published in separate tariffs found applicable to shipments moving outbound from transit point, and the publication by the inbound carrier of the tariff naming lower charges without the concurrence of its connections found to be a direct contravention of the Commission's rules under section 6 of the act, and shipper is justifed in relying upon the lower basis of rates thus offered Reparation awarded. Brenner Lumber Co. v. Director General, as Agent, 66 I. C. C. 595.

(p) The posting of rates as required by section 6 of the Act is not essential to make them legally operative, and is required only as a means of affording special facilities to the public for ascertaining the rates actually in force. K. C. S. Ry. v. Albers Comm. Co. 223 U. S. 573, 594, 32 Sup. Ct. 316, 56 L. ed. 556.

(q) Under section 8 of the Act making a carrier liable for damages resulting to a shipper from the carrier's violation of the Act, a shipper may, for the carrier's failure to post and keep open for inspection its established rates whereby the shipper is compelled to pay a higher rate than that in effect over a competing line, recover the difference between the rate paid and the competitive rate, and this despite the fact that the shipper would thereby be charged less than the defendant's published charge. St. L. S. W. Ry. Co. v. Lewellen Bros., 192 Fed. 540, 542.

(r) Posting is not prerequisite to the

establishment of an interstate rate. I. C. R. R. Co. v. Henderson Co., 33 Sup. Ct. 176, 177; 226 U. S. 441.

(s) The rate, when made out and filed is notice to the shipper for the purpose of declaring valuation, and its effect is not lost, although it is not actually posted in the station. Kansas City S. R. Co. v. Carl, 33 Sup. Ct. 392, 395; 227 U. S. 639.

ALL OTHER CITATIONS

U. S. v. Miller, 223, U. S. 599, 604, 32 Sup. Ct. 323, 56 L. ed. 568; Canadian Valley Grain Co. v. C. R. I. & P. Ry. Co., 19 I. C. C. 108; Canadian Valley Grain Co. v. C. R. I. & P. Ry. Co., 18 I. C. C. 509, 510; Rutland v. C. R. I. & P. Ry. Co., 18 I. C. C. 509, 510; Pueblo Transp. Ass'n v. S. P. Co., 14 I. C. C. 82, 83, Baltimore & O. S. W. Ry. Co. v. New Albany Box & Basket Co. (Ind. 1911), 94 N. E. 906, 908; I. C. R. R. Co. v. Henderson Elevator Co., 138 Ky. 220, 227, 228, 127 S. W. 779; Mires v. St. L. & S. F. R. R. Co., 134 Mo. App. 379 390, 114 S. W. 1052, 1056; Wolf Milling Co. v. A. T. & S. S. F. Ry. Co., Unrep. Op. 439. American Refining Co. v. D. S. & W. R. R. Co., 207 Fed. 733, 739; Franke Grain Co. v. I. C. C. R. R. Co., 27 I. C. C. 625, 628, 629; Faribault Furnace Co. v. C. G. W. R. R. Co. 25 I. C. C. 40; Wabash R. R. Co. v. Priddy (Ind., 1913), 101 N. E. 724, 729; L. & N. R. R. Co. v. McMullen (Ala. 1912), 59 So. 683, 685; L. & N. R. R. Co. v. Allen (Ky, 1913), 153 S. W. 298, 199; Hunter v. St. L. & S. F. R. R. Co. (Mo., 1912), 150 S. W. 733, 736; North Ala. Ry. Co. v. Wilson Merc. Co. (Ala., 1913), 63 S. 34, 35. Nichols & Cox Lumber Co. v. United States, 212 Fed. 588, 593; Sunny Brook Distillery Co., Inc., v. Pa. Terminal Ry. Co., Unrep. Op. A-717; Virginia-Carolina Peanut Co. v. A. C. R. R. Co. (N. C., 1914), 82 S. E. 1, 3, 4; Beaham v. N. Y. C. & H. R. R. Co., (Mo. 1915), 174, S. W., 150, 152. Spiegle & Co. v. S. Ry. Co., 34 I. C. C. 448, 449; Rates on lumber from Southern Points, 34 I. C. C. 652, 707; Wardlow v. Andrews (Tex. 1915) 180 S. W. 1161, 1162; Southern Ry. Co. v. Wilmont Oil Mills; Same v. Broadway Cotton Oil Co., (S. C. 1916), 89 S. E. R. 476; Cumberland Transportaton Co. v. C. N. O. & T. P. Ry., 45 I. C. C. 523, 525; Foster Lumber Co. v. A. T. & S. F. Ry., Co. (Mo. 1917), 194 S. W. 280, 281; N. P. Ry. v. Longmire, (Wash. 1917), 167 Pac. 79, 80; Terre Haute Paper Co. v. St. L. S. F. Ry., 50 I. C. C. 141, 142. New York & H. R. R. Co. v. York & Whitney Co. (Mass. 1918), 119 N. E. 855; Blackford v. St. Louis I. M. & S. Ry., (Ky 1918), 203 S. W. 867; Swift & Company v. United States, 255 Fed. 291; Bush v. Miller (Mo. 1919), 216 S. W. 989; United States v. Miller, 223 U. S. 599; 604; Pacific Rice Mills Co. v. Director General, as Agent, 78 I. C. C. 459, 460.

§6a. Form of Tariffs.

CASES 1887-1908

(a) Methods generally adopted by carriers in the preparation and publication of rate sheets, if in substantial compliance with the law and sufficient for purposes of public information, while not necessarily to be accepted by the Commission as a standard, may be acquiesced in until a better mode can be substituted. Re passenger tariffs 2 I. C. C. 445, 446.

(b) All common carriers subject to the act shall, in future issues of their rate sheets, schedules and joint tariffs, including all future amendments and supplements to existing joint tariffs, comply with and conform to the general rules laid down in pamphlet of the Commission of Dec. 1891. That all common carriers in all joint tariffs hereafter filed, and all future amendments and supplements to existing joint tariffs, be hereafter so arranged and printed as to show distinctly the names of the several parties thereto. That all common carriers subject to the act which shall hereafter be named as parties to any joint tariff filed and published by another carrier, or as parties to any amendments or supplements to existing joint tariffs, shall forthwith upon the publication thereof file with the Commission a statement or certificate showing their acceptance of and concurrence therein and making themselves parties thereto. In the matter of form and contents of rate schedules 4 I. C. C. 698, 704.

(c) The mere designation, in a paper or circular, of the means of arriving at rates by calculation or reference to other papers, does not constitute the rate sheet required to be published and filed by the Act to Regulate Commerce, §6. Colorado

Fuel & I. Co. v. Southern P. Co. 6 I. C. C. 488.

(d) Defendants required to correct their methods of announcing rates, changes in rates, and exceptions to rate sheets by participating lines, so that their rate schedules will be readily intelligible to shippers and consignees. Johnston-Larimer Dry Goods Co. v. A., T. & S. F. R. Co., 6 I. C. C. 568.

(e) Rules or regulations which in any wise change, affect or determine any part or the aggregate of a carrier's rates fares or charges must be shown separately upon the carrier's posted schedules of rates, fares and charges; and any such rules or regulations promulgated by the carrier in circulars issued independently of its rate schedules are not lawfully in force. Suffern, Hunt & Co. v. Indiana, D. & W. R. Co., 7 I. C. C. 255.

(f) Rules or regulations which, if enforced, would result in changing or affecting rates or charges shown on published schedules must be notified to the public for the time required by law for other rate changes. The notice should set forth the changes proposed to be made in the schedules then in effect, and such changes must be shown by printing new schedules or be plainly indicated upon the schedules in force at the time. Suffern, Hunt & Co. v. Indiana, D. & W. R. Co., 7 I. C. C. 255.

(g) Rules or regulations which, if enforced, would result in changing or affecting rates or charges shown on the published schedules must be notified to the public for the time required by law for other changes. The notice should set forth the changes proposed to be made in the existing schedule, and such changes must be shown by printing new schedules, or plainly indicating it on the schedules in force. Suffern, H. & Co. v. Indiana, D. & W. R. Co. 7 I. C. C. 255.

IV. CONSTRUCTION.

§7. In General.

See Supra II; Advanced Rates §24; Classification §17, §20, §24; Commodity Rates I, II; §3; Construction; Courts V; Differentials III; Express Co's X, §13; Facilities and Privileges §17½ §18, §19; Long and Short Haul §16; Pipe Lines III; Reconsignment §5; Refrigeration §6; Reparation §8; Storage III; Tap Lines IV; Thru Rates and Joint Rates §18, §21, V; Track Storage III; Water Carriers III; Weights and Weighing VI.

CASES 1887-1908

(a) Any one member of a joint combination may file copies of joint tariff for all the members. Re Filing Copies of Joint Tariff, 1 I. C. R. 76.

(aa) When purposes of Act seem to be fully accomplished by rate sheets as printed, and no one complains. Commission may not feel inclined to interfere on its own motion where sheets are printed in smaller type than prescribed by Act. ReRate Sheets, 1 I. C. R. 316.

(b) Terms for rolling stock for transportation of petroleum oil should be uniform and published with rate sheets. Rice v. Louisville & Nashville R. Co. 1 I. C. R. 722.

(c) Common carriers are under obligations to take all descriptions of ordinary traffic from all points; and it is right that the rates should be known and announced publicly in advance of the offering of traffic. Re tariffs of the transcontinental lines 2 I. C. C. 203, 207.

(d) Methods generally adopted by carriers in the preparation and publication of rate sheets, if in substantial compliance with the Law and sufficient for purposes of public information, while not necessarily to be accepted by the Commission as a standard, may be acquiesced in until a better mode can be substituted. Re Passenger Tariffs v. 2 I. C. R. 445.

(e) The Act requires that all the rates of a rail carrier subject to its provisions shall be plainly printed in the tariff under which the freight is carried so that the shipper, consignee or any other person having occasion to examine them may see and understand what they are. Rice v. A. T. & S. F. R. Co. 3 I. C. C. 263, 271.

(f) A tariff sheet whose caption shows that the rate made applies only when the grain is destined through to points on the seaboard, and which has a memorandum at its foot showing that the total through rate is to be ascertained by consulting another tariff sheet for the rate from the point mentioned in such sheet to the seaboard, sufficient-

ly shows that the rate named is a part of the joint through rate and not a local rate. Parsons v. Chicago & N. W. R. Co., 5 I. C. R. 95.

(g) A charge that a tariff sheet was a mere device to evade the law will not be considered in the absence of allegations of any fact showing that the agreement upon a general through rate indicated by it was merely colorable. Parsons v. Chicago N. W. R. Co. (C. C. App. 8th C.) 5 I. C. R. 95.

(h) The rate which carriers are required by the Act to Regulate Commerce, §6, to publish, file, and adhere to without deviation, cover not merely the carriage, but services rendered in receiving and delivering property as well. Phelps v. Texas & P. R. Co. 6 I. C. C. 36.

(i) Posting notices in a railroad station that all rates are on file in the office of the station agent and may be examined upon application to him is not a compliance with the requirements of the Interstate Commerce Act that the schedules be posted, although the expedient is adopted because the schedules have been repeatedly torn down. Rea v. Mobile & O. R. Co. 7 I. C. C. 43.

(j) An interstate commerce rate for hay covers old hay as well as new hay. Miss., Kans., & Tex. R. R. Co. v. Bowles, 7 I. C. C. App. LXII.

(k) Rules or regulations in any wise changing, affecting, or determining any part of the aggregate of a carrier's rates, fares, or charges must be shown separately upon the posted schedules; and any such rules or regulations promulgated in circulars issued independently of such schedules are not lawfully in force. Suffern, H & Co. v. Indiana, D. & W. R. Co. 7 I. C. C. 255.

(l) It is unlawful practice for a carrier to disregard the regular published tariff rates, and charge a lower rate made up of a combination of the rate from the point of shipment to a competitive point, and from such competitive point to the station of destination, where the rule is not set forth in its published tariff. Spillers & Co. v. Louisville & N. R. Co., 8 I. C. C. 364.

(m) Published tariffs specifying rates per standard crate on vegetables shipped from Florida to northern or northeastern points should state plainly the dimensions of the crate to which the rates apply. Re Alleged Unlawful Charges for Transportation of Vegetables, 8 I. C. C. 585.

(n) Complainants shipped two carloads of snapped corn over the railways of the St. Louis & San Francisco and Texas & Pacific companies, from Grove, Indian Territory, to Marshall, Texas. On one carload defendants exacted a charge of 44 1-2 cents per 100 pounds and on the other 31 1-2 cents. The only published rates in effect and applicable to the shipments were, an interstate rate of the former company of 21 cents per 100 pounds plus 25 per cent for the transportation to Paris, Texas, and a proportional rate of the latter for transportation from Paris to Marshall of 14 1-2 cents, except that the T. & P. Company's tariff provided that lower combinations by other roads would be protected. Upon one shipment the tariff purporting to name the rates was an association tariff consisting of 297 pages, filled with notes, exceptions and special references, indicated by a host of arbitrary signs, and was so involved that the freight officials of the carriers could not agree, and the Auditor of the Commission found it difficult to determine the rate which did apply. HELD: 1. That the rate of the St. L. & S. F. Company for the transportation to Paris was excessive and unreasonable to the extent that it exceeded 21 cents per 100 pounds. 2. That the proportional rate of the T. & P. Company of 14½ cents per 100 pounds is assumed to be reasonable. 3. That complainants are entitled to reparation to the extent that the charges exacted from them exceeded 35 1-2 cents per 100 pounds. 4. That it is the duty of railroad companies, under the Act to regulate commerce, to print, publish and file tariffs showing rates which are so simplified that persons of ordinary comprehension can understand them; and that a notation in the tariff of one carrier making reference to the tariff of some competing carrier does not meet the requirements of the law that the rate charged shall be published and filed. H. B. Pitts & Son v. St. Louis & S. F. R. Co. et al. 10, I. C. C. 684.

(o) It is manifestly contrary to law, and leads to confusion, for one line of

rates to be retained in published tariffs while others are in fact used on actual shipments; and so long as carriers in Southern Classification territory deem it necessary to retain class F in their classifications, and publish rates applicable thereto, including flour in barrels, and at the same time publish commodity rates on the same article carried in sacks, there should be uniformally a just relation in such rates. S. J. & S. Cannon v. Mobile & O. R. Co. 11 I. C. C. 537.

(p) Tariff cannot be given retroactive effect. Re Through Routes and Joint Rates, 12 I. C. C. 163.

(pa) Published rate is the law. Poor Grain Co. v. C. B. & Q. Co. 12 I. C. C. 418.

(pb) Joint rate in tariff a unit. Union P. Purchasing Co. v. C. & M. W. R. Co. 12 I. C. C. 549.

IMPORTANT CASES SINCE 1908

(q) After the passage of the Hepburn Act the rule of the Commission was not that clauses applying rates to intermediate points should be eliminated from tariffs and the specific points be mentioned, but that indefinite and uncertain "intermediate" and "maxima" rules should be amended so as to make their application affirmative and definite and to state plainly what rates should be applied at intermediate points instead of saying that certain rates "should not be exceeded" at said points. White Water Farms Co. v. P. B. & W. Ry. Co. 13 I. C. C. 526, 527.

(r) In every instance where a commodity rate is named in a tariff upon a commodity and between specified points, such commodity rate is the lawful rate and the only rate that can be used with relation to that traffic between those points even though a class rate or some combination may make lower. The naming of a commodity rate on any article or character of traffic takes such articles or traffic entirely out of the classification and out of the class rates between the points to which such commodity rate applies. Porter v. St. L. & S. F. R. R. Co., 15 I. C. C. 1, 5.

(s) Tariffs reading "between" are always understood to apply in either direction. Advance Thresher Co. v. O. & N. W. R. R. Co., 15 I. C. C. 599, 600.

(t) A shipper cannot be charged with knowledge of the intent of the framers of schedules or the carrier's canons of construction. Newton Gum Co. v. C. B. & Q. R. R. Co., 16 I. C. C. 341, 346.

(u) A distance tariff is to be applied when no other rates are provided, or when, under a special provision in the tariff therefor, it makes lower than the specific rate shown in the same tariff. Lee Warren Milling Co. v. C. R. I. & P. Ry. Co., 16 I. C. C. 422, 423.

(v) Where the language of a tariff is ambiguous in its specifications, and when there is a reasonable doubt as to its true import and meaning, a private agreement may be examined and employed as a medium of explanation of the tariff to remove the ambiguity. Hood & Sons v. D. & H. Co., 17 I. C. C. 15, 19.

(w) Where, on a newly constructed line, the published class rates contain the provision that for rates to and from stations not named therein rates to and from stations next beyond shall be applied, and where between two given points from which commodity rates have been published there is a point from which no rates are named, such provision in the class tariff cannot be extended to the commodity tariff. Wheeler-Holden Co. v. L. & N. R. R. Co., 21 I. C. C. 237.

(x) A rate unreasonably high and unlawful, in the sense of section 1, may, nevertheless, be the legally established standard and rule of action, under section 6 of the Act. The sole test of the latter is the due publication of the rate in the manner and form prescribed by the statute, regardless of how the rate may have come to be established, whether knowingly in the usual course, or improper purposes. Crescent Coal & Mining Co. v. C. & E. I. R. R. Co., 24 I. C. C. 149, 156.

(y) Where the through rates and charges must necessarily be made up of the separately established rates and charges, because there is no joint tariff, the law requires carriers subject to the Act to file such separately established rates and charges. Eagle Pass Lumber Co. v. National Railways of Mexico, 25 I. C. C. 5, 7.

(z) The rate in effect at the time a shipment begins to move is the rate law-

fully applicable. Transit Case, 25 I. C. C. 130, 134.

(aa) Although a rule may appear to be unlimited in its application when taken by itself, the general character of the tariff in which it is found must be taken into consideration. Hutchinson Mill Co. v. A. T. & S. F. Ry. Co., 25 I. C. C. 180, 181.

(bb) Where there are two rates—one a joint rate, and the other a combination rate—the joint rate is the legal rate. Arabol Mfg. Co. v. S. B. Ry. Co., 25 I. C. C. 429, 431.

(cc) Tariffs should contain special arrangements necessary to meet special condition. In re Break-Bulk Rates on Grain, 27 I. C. C. 78, 82.

(dd) The customary meaning of the word "billed" is waybilled at point of origin. It would be an unwarranted construction of the term to hold that it means "received at—terminals up to and including" specified dates. New York Hay Exchange Assn. v. L. V. R. R. Co., 29 I. C. C. 90, 92.

(ee) Tariffs must be enforced in accordance with their terms, and when provisions are clear and free from ambiguity no agreement between the shipper and the carrier assigning another meaning to them may lawfully be substituted; nor may this Commission sanction a departure from their plain meaning until such rules have been found to be unlawful under the act. Peters Mill Co. v. C. B. & Q. R. R. Co., 38 I. C. C. 245, 248.

(ff) Tariff provided that on lumber milled in transit and delivered to connecting carrier, charges to junction point will be on weight of rough lumber and beyond the junction point on weight of dressed lumber, but it does not appear what rates the tariff proposes to assess. Such a provision is indefinite, improper, and unlawful and can not furnish a basis for reparation. Atlantic Lumber Co. v. T. & O. R. R., 46 I. C. C. 368, 370.

(gg) Line-haul rates of carriers in this country have been made to include compensation for the delivery and placement of freight upon the tracks of private industries, and if this long-established usage were to be changed and separate charges imposed for the accessorial services which are merely incidental to the line haul, even handed justice would seem to require that these line-haul rates should be proportionately reduced, and such a change would involve sweeping revisions of many thousands of tariffs. Huron Milling Co. v. P. M. R. R., 49 I. C. C. 558, 560, 561.

(hh) The fact that there was no notation or symbol of an increase in a tariff supplement, an item of which was amended, and that in a subsequent supplement a further modification of that item with reference to reconsignments bore symbols denoting both increase and reduction, did not affect the validity or applicability of the item, as it was allowed to become effective in each instance. New Era Milling Co. v. St. L. & S. F. R. R., 50 I. C. C. 207, 210.

(ii) A tariff must be construed in its entirety considering both the limitations on its title-page and rules contained therein. Commission can not consider only the part of the rule that is favorable to complainant's contention, and ignore provisions of the tariff that make clear its application. United Shoe Machinery Corp. v. Director General, 55 I. C. C. 253, 255, 256.

(jj) Tariffs should inform the public definitely and clearly as to the application of the rates named therein. New Bedford Board of Commerce v. Director General, 55 I. C. C. 320, 321.

(kk) Points on new branch line not indexed in the applicable tariff from which rates applied, whereas the rates from stations included in the tariff had been in effect prior to opening of the new line. Contention that it was never intended to apply rates of original tariff to points on the new line, not sustained, as the carrier should have specifically excepted points on the new branch line, as was subsequently done. Wood Curtis Co. v. S. P. Co., 56 I. C. C. 344, 345.

(ll) Tariffs are to be construed according to their terms, and the intention of the framers is not controlling. Provisions should be so clearly stated as to avoid misinterpretation or misunderstanding. Wood Curtis Co. v. S. P. Co., 56 I. C. C. 344, 346.

(mm) It is a well established rule that tariffs are to be construed according to their terms, and the intention of the framers is not controlling. Their

provisions should be so clearly stated as to avoid misinterpretation or misunderstanding. Wood Curtis Company v. S. P., 56 I. C. C. 344, 346.

(nn) A tariff providing joint rate, with creosoting-in-transit service, required payment of inbound freight bills and their recordation by Joint Rate Inspection Bureau, and required shippers, transit-house owners, or operators to keep daily record of receipts and deliveries. As requirements not compiled with combination rates were assessed in accordance with published tariffs. Joyce-Watkins Co. v. Director General, 56 I. C. C. 433.

(oo) A consolidated tariff governing the transportation of perishable commodities would greatly reduce the number of tariff publications, facilitate the ascertainment of charges, and tend to eliminate discrimination as between communities and commodities. Perishable Freight Investigation, 56 I. C. C. 449, 461.

(pp) Nothing can be added to or subtracted from the law by limitations or definitions stated in tariffs, and there is the constant risk, if declarations are included, of misstating the law and misleading the parties to no good purpose. Perishable Freight Investigation, 56 I. C. C. 449, 482.

(qq) Where a supplement to a tariff contained an index of commodities similar to the index in original tariff, and all matter in the supplement not embraced in the index made reference to a note in connection with each particular rate, there has been a substantial compliance with the rules of Tariff Circular 18-A, requiring an index and reference to show clearly the application of rates. Cobbs & Mitchell v. Director General, 59 I. C. C. 179, 181.

(rr) A tariff carried the following provision: This route shown in this tariff is that ordinarily and customarily used, but if from any cause the carriers for their own convenience, route shipments via junction points other than that shown being over the lines of carriers parties to this tariff, the rates shown herein will apply. HELD this provision was plainly applicable to shipments routed by carriers, not by shippers. Dort Motor Car Co. v. Director General, 59 I. C. C. 374, 375.

(ss) A contention that the phase in a tariff "Highest rate and minimum weight" means the highest rate and highest minimum weight, sustained. Minimum Weight on Live Stock in Mixed Carloads, 64 I. C. C. 546.

(tt) The meaning of a tariff is limited to the plain import of the language employed therein. El Paso Chamber of Commerce v. Director General, 68 I. C. C. 135, 136.

(uu) Tariffs are to be construed according to their language, and the intention of the farmers is not controlling. William L. Carney v. Director General, 68 I. C. C. 309, 310.

(vv) The Commission has frequently held that tariffs must be construed strictly according to their terms and that the intention of the framers is not controlling. Republic of France v. General 68 I. C. C. 419, 423.

(ww) If it was defendants purpose to restrict the application of the joint rate to any particular route and the reconsigning privileges authorized in connection therewith to it should be in clear and unequivocal language. Freeman Grain Co. v. Director General, 68 I. C. C. 559, 561.

(xx) Whatever may have been the intention of its framers a tariff is to be construed according to its terms. Los Angeles Pressed Brick Co. v. Director General, 69 I. C. C. 254, 255.

(yy) Different rates on "peanut hulls" and "ground peanut hulls" published in the same tariff. Shipments of hulls rolled under high pressure to effect compactness for shipment, as well as to reduce them to small particles, found to consist of "peanut hulls," as the term when used in a tariff must be construed to apply to the commodity prepared in a practical manner for transportation. Shipments found overcharged and reparation awarded. Rothchild Co. v. Director General, as Agent, 73 I. C. C., 126.

(zz) Neither the intention of tariff compilers nor the use to which an article is put is controlling in determining the rate applicable on a particular commodity. The commission has consistently condemned such methods of determining applicable rates. Morris & Co. v. Director General, as Agent, 73 I. C. C., 137.

(3a) In numerous instances the Commission has said that neither the intention of tariff compilers nor the use to which an article is put is controlling in determining the rate applicable on a particular commodity. Morris & Co. v. Director General 73 I. C. C. 137, 139.

(3b) Under the provisions of section 6 of the act requiring the observance of rates and charges lawfully published and filed, the rate in effect at the beginning of a transit movement must be applied on the shipment to final destination. Nonsurrender of Inbound Billing, 73 I. C. C., 455, 457.

(3a) Commercial rates charged on certain messages relating to news articles and tendered for transmission to newspapers found applicable and not unreasonable or unduly prejudicial. Such messages found not entitled to lower press rates, since they were not queries within the meaning of the tariff. While they related to newspaper articles to be transmitted, they did not relate strictly thereto, as provided in the rules. Consolidated Press Asso. v. W. U. T. Co., 73 I. C. C., 379.

(3d) Contention that transportation service was a switching movement and that increases in switching charges were not contemplated by General Order No. 28 of the director general. HELD, whether or not charges assessed were authorized by that order, the fact is that they were published and were the applicable charges, and it is immaterial, so far as the issue of their justness and reasonableness is concerned, whether the movement be designated a switching or linehaul service. Minnesota Steel Co. v. Director General, as Agent, 73 I. C. C., 571, 573.

(3e) Emergency rates established by the director general to afford relief to drought stricken territory and assessed on hay, feed, bran, and shorts, from points in Washington to destinations in Montana, found applicable. Another section of the same tariff named specific commodity rates, but since they were restricted to apply westbound, the "application of rates" provisions can not be construed as making them applicable on traffic moving eastbound. Devereaux Co. v. Director General, as Agent, 73 I. C. C., 627.

(3f) Tariffs are construed according to their language, and the intention of the framers is not controlling. Baker-Reid Lumber Co. v. B. & O. R. R. Co., 74 I. C. C. 489, 491.

(3g) Intention of tariff compilers is not controlling, it being well settled that where a tariff contains conflicting provisions the one according the lowest rates or charges governs, and particularly when the rule producing the lower rate or charge was first in effect and has not been legally canceled. Swift & Co. v. Director General, as Agent, 77 I. C. C. 678.

(3h) It is well settled that tariffs must be construed according to their terms. Definitions of the term "handling" at Virginia, south Atlantic and Gulf ports. 78 I. C. C. 4, 7.

(3i) Whatever may have been intention of framers, a tariff is construed according to its terms. In case of ambiguity a tariff must be construed against framer. Pacific Rice Mills Co. v. Director General, as Agent, 78 I. C. C. 459, 461.

(3j) Tariffs must be construed according to their provisions. Van Dusen Harrington Co. v. Director General 78 I. C. C. 729, 731.

(3k) Under section 6 a carrier must abide by the published rule, just as it must charge a published rate; but there is no reason why, when the Commission finds the rule has resulted in unreasonable charges under section 1, it should fail to afford relief. The power of the Commission should not be construed so narrowly as to defeat justice. Hawkins & Sons v. Director General 80 I. C. C. 225, 227.

(3l) Commission has frequently drawn distinction between legal rate required under section 6 of the act and lawful rate provided for in other sections. Lay Fish Co. v. Director General, as Agent, 80 I. C. C., 4, 5.

(3m) Allegation that carrier has violated section 6 of the act through assessing and collecting without tariff authority switching charges on grain transited at a certain point, predicated upon failure to state in tariff naming transit provisions charges in connection therewith, not sustained. Tariff carrying rates of carrier contains general provision that switching charges at any point will be added to through rate unless provis-

ion is made for absorption. This is in accordance with requirements of rule 10 (a) of Tariff Circular 18—A. Detroit Board of Trade v. W. Ry. Co. 80 I. C. C. 717, 723.

(3n) Shipments moved all-rail over lines of carriers parties to tariff containing no restriction as to routing. Charges assessed under higher rates of another tariff, upon defendant's construction that tariff first referred to was restricted to rail-and-water or rail-water-and-rail movements. HELD: Whatever may have been intention of carriers, lower-rail tariff contained no restriction against all-rail movement of traffic over lines of carriers parties thereto and forming complete route for complainant's shipments, and rates provided by it were applicable. Shipments found overcharged and refund directed. Boston Wool Trade Asso. v. Director General, as Agent, 81 I. C. C. 131.

(3o) Contention that charges in ground-storage tariffs were applicable on shipments remaining loaded in cars, specific orders for unloading having been given as required by tariff. HELD: Adequate request was made by complainant to have shipments unloaded, and it, therefore, had done all that was necessary to secure benefits of provisions of ground-storage tariffs. Republic of France v. Director General, as Agent, 81 I. C. C., 174, 179.

(3r) Tariffs may be intended to effect a certain result, but the mere intent of carriers in framing tariffs may not be given controlling weight in interpreting the tariffs. Standard Oil Company v. Midland Valley R. R. Co. 81 I. C. C. 193, 195.

(3p) As between two constructions of a tariff rule, that one should be adopted which gives effect to the whole rather than one which creates a conflict. Brenner Lumber Co. v. Director General, as Agent, 81 I. C. C. 241, 244.

(3q) Tariff provided for cancellation of combination rates in other tariffs and prescribed "combination rule." No specific cross reference between tariffs as required by Tariff Circular 18-A. Contention that superseding tariff was without legal effect, as published in violation of tariff requirements of commission. HELD: Tariff constituted notice of rule applicable in connection with combination rates and applied to traffic moving between points specified therein. Shipments found overcharged and reparation awarded. Former reports, 59 I. C. C., 411, and 62 I. C. C., 119, reversed. Acme Cement Plaster Co. v. Director General, as Agent, 81 I. C. C. 298.

(3r) If intent of carrier is to limit application of a charge to certain traffic, that intent should be expressed in clear and unambiguous terms. In case of ambiguity, the familiar rule of construction is that a tariff must be construed against the framer. Northwest Steel Co., 68 I. C. C., 195, 198. Sutherland Flour Mills Co. v. Director General, as Agent, 81 I. C. C. 365, 366.

(3s) In case of ambiguity, the familiar rule of construction is that a tariff must be construed against the framer. Sutherland Flour Mills Co. v. Director General 81 I. C. C. 365, 366.

(3t) A tariff whch makes the application of rates over particular routes dependent upon the existence of divisions, without stating the routes with respect to which divisional arrangements are in effect, is indefinite and unlawful and imposes uncertain and unreasonable conditions upon the shipper. Acme Mills v. Director General 81 I. C. C. 492, 494.

(3u) Tariffs must be construed strictly according to their language, and the intention of the framers is not controlling. Routing on grain and grain products from Chicago, Joliet, Peoria, and Lockport, Ill., to Texas points. 81 I. C. C. 725, 727.

(3w) Tariffs must be construed according to their language and the intention of the framers is not controlling. Mason City Brick & Tile Co. v. Director General, 88 I. C. C. 37, 38.

(3x) The location of a rule in a tariff must be considered in determining the correct application of the rule. Furnishing Ice and Salt, 88 I. C. C. 361, 363.

(3y) The words of a tariff should be construed in their ordinary sense, and where the meaning so construed, is clear it must govern. Flaney Grain Company v. Director General, 89 I. C. C. 33, 36.

(3z) The only lawful rate on an interstate shipment is the tariff rate by the route over which the shipment moved. Galveston, H. & S. A. Ry. Co. v. Lykes Bros. 294 Fed. 968.

(4a) In view of the Interstate Commerce Commission decision and tariffs in evidence, HELD, that whether melons were to be classified for charges by a carrier as a vegetable or a fruit was question of fact. American Ry. Express Co. v. Magnola Fish & Oyster Co. (Tex. 1923), 255 S. W. 459.

(4b) Where the question of a rate to be charged on an interstate shipment is in question, the interstate tariff rates for the shipment control as the tariff rates have the effect of a statute, and both carrier and shipper being presumed to know, they must abide by them. Peuchen v. Davis, 198 N. Y. S. 518.

(4c) A tariff is construed most strongly against the carrier. Southern Ry. Co. v. Berthold & Jennings Lumber Co., (Mo. 1923), 247 S. W. 219, 221.

(4d) In construing a written tariff rule of a carrier which has been filed with and approved by the Interstate Commerce Commission, the intentions of the parties must govern. Davis v. Latham-Bradshaw Cotton Co. (N. C. 1923.) 117 S. E. 391.

(4e) A carrier, having prepared tariff schedule for interstate shipments, is not entitled to have them liberally construed in its own favor, and the rule of fair and reasonable construction applies. Raymond Hadley Corporation v. Boston & M. R. R., 174 N. Y. S. 342.

ALL OTHER CITATIONS

U. S. v. H. V. Ry. Co., 194 Fed. 234, 237; C. B. & Q. R. R. Co. v. Feintuch, 191 Fed. 482, 488; Smith-Booth-Usher Co. v. L. S. & M. S. Ry. Co., 23 I. C. C. 242; Casey-Hedges Co. v. A. G. S. R. R. Co., 23 I. C. C. 249; Standard Oil Co. v. I. T. R. R. Co., 23 I. C. C. 369, 370; Wolf Co. v. Mallory Steamship Co., 23 I. C. C. 490; Wadell Showcase & Cabinet Co. v. M. C. R. R. Co., 22 I. C. C. 106, 107; Marion Iron & Brass Bed Co. v. T. St. L. & W. R. R. Co., 22 I. C. C. 272, 273; Continental Iron & Steel Co. v. L. & N. R. R. Co., 22 I. C. C. 281; Albree v. B. & M. R. R. Co., 22 I. C. C. 303, 320; Milburn Wagon Co. v. L. S. & M. S. Ry. Co., 22 I. C. C. 460; Switzer Lumber Co. v. A. & M. R. R. Co., 22 I. C. C. 471, 473; Republic Metalware Co. v. Erie R. R. Co., 22 I. C. C. 565, 566; Sidway Mercantile Co. v. L. S. & M. S. Ry. Co., 22 I. C. C. 570; Byrnes v. A. T. & S. F. Ry. Co., 22 I. C. C. 585, 587; Ireland & Rollings v. St. L. & S. F. R. R. Co., 22 I. C. C. 590, 591, 592; Goerres Cooperage Co. v. C. M. & St. P. Ry. Co., 21 I. C. C. 5; Decarie Incinerator Co. v. M. & St. L. R. R. Co., 21 I. C. C. 71; Bon Marche v. C. R. R. Co. of N. J., 21 I. C. C. 195, 196; Hood v. G. N. Ry. Co., 21 I. C. C. 246; Auto Vehicle Co. v. C. M. & St. P. Ry. Co., 21 I. C. C. 286, 287; C. & N. W. Lumber Co. v. T. F. Ry. Co. 21 I. C. C. 462; Obrien Commercial Company v. C. & N. W. R. R. Co. 20 I. C. C. 68; Dupont De Nemours Powder Co. v. D. & N. R. R. Co., 20 I. C. C. 83, 85; Havens & Co. v. C. & N. W. Ry. Co., 20 I. C. C. 156, 158; Thompson v. L. & N. R. R. Co., 20 I. C. C. 161, 162; Consolidated Water Power Co. v. S. P., L. A. & S. L. R. R. Co., 20 I. C. C. 169; Pacific Coast Biscuit Co. v. O. R. & N. Co., 20 I. C. C. 178; Dells Paper & Pulp Co. v. C. & N. W. Ry. Co., 20 I. C. C. 419; Western Mantle Co. v. S. P. & S. Ry. Co., 20 I. C. 643, 645; Chappelle v. L. & N. R. R. Co., 19 I. C. C. 56, 58; Ohio Foundry Co. v. P. C. C. & St. L. Ry. Co., 19 I. C. C. 56, 67; Southern Cotton Oil Co. v. S. Ry Co., 19 I. C. C. 79; Preston v. C. & O. Ry. Co., 19 I. C. C. 406, 407; Fish & Co. v. N. Y. C. & St. L. R. R. Co., 19 I. C. C. 452, 453; Webster Grocer Co. v. C. & N. W. Ry. Co., 19 I. C. C. 493, 495; Rickel v. A. T. & S. F. Ry. Co, 19 I. C. C. 499; Crombie & Co. v. S. P. Co., 19 I. C. C. 561, 562; Day Co. v. B. & O. S. W. R. R. Co., 19 I. C. C. 577; Fuller & Co. v. S. P. Co., 18 I. C. C. 202, 204 Marshall & Michel Grain Co. v. St. L. & S. F. R. R. Co., 18 I. C. C. 228, 230; Royal Metal Mfg. Co. v. C. G. W. R. R. Co., 18 I. C. C. 255, 256; Rosenblatt & Rosenblatt v. C. & N. W. Ry. Co., 18 I. C. C. 261, 263; Lull v. M. St. P. & S. Ste. M. Ry. Co., 18 I. C. C. 355, 356; Townley Metal & Hardware Co. v. C. R. I. & P. Ry. Co., 18 I. C. C. 378, 379; Chatfield Mfg. Co. v. L. & N. R. R. Co., 18 I. C. C. 385, 387; Woodward, Wight & Co. v. C. B. & Q. R. R. Co., 18 I. C. C. 500, 501; Hagar Iron Co. v. P. R. R. Co, 18 I. C. C. 529; Otis Elevator Co. v. N. Y. C. & H. R. R. Co., 17 I. C. C. 3, 5; Voorhess v. A. C. L. R. R. Co., 16 I. C. C. 45, 46; Diehl v. C. M. & St. P. Ry. Co., 16 I. C. C. 190, 191; Douglas & Co. v. C. R. I. & P. Ry. Co., 16 I. C. C. 232, 244; Newton Gum Co. v. C. B. & Q. R. R. Co., 16 I. C. C. 341 347; Reddick v. M. C. R. R. Co., 16 I. C.

C 492; Otis Elevator Co. v. C. G. W. Ry. Co., 16 I. C. C. 502, 504; Link-Belt Co. v. C. & N. W. Ry. Co., 16 I. C. C. 566, 568; Williamson v. O. S. L. R. R. Co., 15 I. C. C. 228; Place v. T. P. & W. Ry. Co., 15 I. C. C. 543, 545; Struthers- Wells Co. v. Penn. R. R. Co., 14 I. C. C. 291, 292; R. R. Com. of Ind. v. K. & I. B. R. R. Co., 14 I. C. C. 563, 565; Laning-Harris Coal & Grain Co. v. St. Joseph & Grand Island Ry. Co., 13 I. C. C. 317, 318; Porter v. St. L. & S. F. R. R. Co., 15 I. C. C. 1, 4; England v. B. & O. R. R. Co., 13 I. C. C. 614, 618; Fort Smith Traffic Bureau v. St. L. & S. F. R. R. Co., 13 I. C. C. 651, 656; Minneapolis Threshing Machine Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 452; Foster, Glassel Co. v. K. C. S. Ry. Co., 121 La. 1053, 1057, 46 So. 1014; O'Connor v. G. N. Ry. Co. (Minn., 1912), 136 N. W. 743, 745; Houseman v. Fargo (N. Y., 1910), 124 N. Y. Supp. 1086, 1088; Kissinger v. Fitzgerald, 152 N. C. 247, 251, 67 S. E. 588; O. R. & N. Co. v. Collidge (Or. 1911), 116 P. 93, 95; Coeur d'Alene & S. Ry. Co. v. U. P. R. R. Co. (Wash., 1909), 95 P. 71, 77.

Wichita Wholesale Furniture Co. v. St. L. I. M. & S. Ry., 26 I. C. C. 107; Ozark Cooperage & Lumber Co. v. St. L. & S. F. R. R., 26 I. C. C. 132, 133; United States v. W. & N. R. R. Co., 26 I. C. C. 309, 311; Bernheim & Co. v. O. R. R. & N. Co., 25 I. C. C., 156, 157; Conifer Lumber Co. v. L. & N. R. R. Co., 25 I. C. C. 272, 274; Memphis Freight Bureau v. I. C. R. R. Co., 27 I. C. C. 1, 2; Sea Gull Specialty Co. v. Baltimore Steam Packet Co., 27 I. C. C. 267, 270, 271; Arkansas Pass Channel & Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403, 409; Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 659; Highland Park Mfg. Co. v. S. Ry. Co., 26 I. C. C. 67, 68, 69; Keogh v. M. St. P. & S. Ste. M. Ry. Co., 26 I. C. C. 73, 76; Newman Lumber Co. v. M. C. R. R. Co., 26 I. C. C. 97, 100; Am. Brake Shoe & Foundry Co. v. A. G. S. R. R. Co., 26 I. C. C. 466; Pole Stock Lumber Co. v. G. & S. I. R. R. Co., 26 I. C. C. 451, 454; Disher Hoop & Lumber Co. v. St. L. & S. F. R. R. Co., 26 I. C. C. 488, 490; Withdrawal of Joint Rates on Grain via Minnesota Transfer, 26 I. C. C. 595, 598; Faribault Furniture Co. v. C. G. W. R. R. Co., 25 I. C. C. 40, 41; Ream v. S. P. Co., 25 I. C. C. 107, 110; Humboldt S. S. Co., v. White Pass & Yukon Route, 25 I. C. C. 136, 140; Johnson v. A. T. & S. F. Ry. Co., 25 I. C. C. 207, 208; North Fork Cannel Coal Co. v. A. A. R. R. Co., 25 I. C. C. 241, 244; Wisconsin Lime & Cement Co. v. C. C. C. & St. L. Ry. Co., 25 I. C. C. 366, 367; Railroad Commissioners of Montana v. C. B. & Q. R. R. Co., 25 I. C. C. 371; Western Classification Case, 25 I. C. C. 442, 444, 491; Portner Brewing Co. v. S. Ry Co., 25 I. C. C. 659; Rates on Drain Tile and Sewer Pipe, 25 I. C. C. 688, 690; Crescent Coal & Mining Co. v. C. & E. I. R. R. Co., 24 I. C. C. 149, 151, 153, 154, 155; St. Louis Blast Furnace Co. v. V. Ry. Co., 24 I. C. C. 360, 367, 369; In re Express Rates, 24 I. C. C. 380, 399; Virginia-Carolina Chemical Co. v. S. Ry. Co., 24 I. C. C. 600; Asbury Smith Logsdon v. I. C. R. R. Co., 24 I. C. C. 624, 625; Webb Motor Fire Apparatus Co. v. L. & N. R. R. Co., Unrep. Op. A-4; Reo Motor Car Co. v. M. C. R. R. Co., Unrep. Op. A-6; Brunswick-Balke-Collender Co. v. Goodrich Transit Co., Unrep. Op. A-83; Lee v. L. S. Ry. Co., 29 I. C. C. 101, 102; Green Bros. Box & Lumber Co. v. C. & N. W. Ry. Co., 29 I. C. C. 473, 474; In re Weighing of Freight by Carriers, 28 I. C. C. 7, 30; Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co., 28 I. C. C. 274, 276; Iowa Grain Rates, 28 I. C. C. 354; Becker v. P. M. R. R. Co., 28 I. C. C. 645, 650; Ludowici-Celadon Co. v. A. C. L. R. R. Co., 28 I. C. C. 693, 696; Taylor v. C. B. & Q. R. R. Co., Unrep. Op. A300; Monarch Metal Mfg. Co. v. K. C. Ry. Co., Unrep. Op. A305; Miller & Co. v. P. M. R. R. Co., Unrep. Op. A309; West Co. v. E. R. R. Co., Unrep. Op. A316; Duluth Iron & Metal Co. v. N. P. Ry. Co., Unrep. Op. A336; Peoples Fuel & Supply Co. v. G. T. W. Ry. Co., 30 I. C. C. 657, 660; Merchants Exch. of St. Louis v. B. & O. R. R. Co., 30 I. C. C. 700, 703; Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co., 30 I. C. C. 71, 73; Kenner Truck Farmers' Assn. v. I. C. R. R. Co., 32 I. C. C. 1, 5; American Natl. Live Stock Asso. v. S. P. Co., 32 I. C. C. 438, 439; Campbell Heating Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-749; City of Nashville v. L. & N. R. R. 33 I. C. C. 76, 89; Cement Rates from Mitchell, Ind., 32 I. C. C. 93, 94; Chamber of Commerce, Houston, Tex. v. I. & G. N. Ry. Co., 32 I. C. C. 247, 256; Reshipping Rates on Grain

from Omaha, 32 I. C. C., 590, 591; New Orleans Board of Trade v. L. R. & N. Co., Unrep. Op. A-799; Fullerton-Powell Hardwood Lumber Co. v. T. & P. Ry. Co., Unrep. Op. A-895; Mixed Car Dealers Asso. v. D. L. & W. R. R. Co., 33 I. C. C., 133, 141; Mixed Carloads of Lime, Cement and Plaster, 34 I. C. C., 124, 127; Louisiana Sugar Planters' Asso. v. I. C. R. R. Co., 34 I. C. C. 253, 254; Haskew Lumber Co. v. N. C. & St. L. Ry. 34 I. C. C., 333, 335; Transportation and Disposal of Waste Materials, 34 I. C. C. 337; Montrose and Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co., 34 I. C. C. 393, 399; Trap or Ferry Car Service Charges, 34 I. C. C., 516, 546; Jacksonville Machinery Works v. C. of Ga. Ry. Co., Unrep. Op. 1833; Oklahoma Traffic Asso. v. A. & S. Ry., 36 I. C. C. 329, 333; Allowances on Anthracite Coal, 36 I. C. C. 164, 170; Pitt Gas Coal Co. v. P. R. R., 37 I. C. C. 240, 242; Chicago, R. I. & P. Ry. Co. v. Theis, (Kans. 1915), 152 Pac. 619; Boardman Co. v. S. P. Co., 37 I. C. C. 81, 85; Standard Paint Co. v. S. P. Co. 37 I. C. C. 405, 406; Moore-Seaver Grain Co. v. U. P. R. R. Co., 38 I. C. C. 682, 683, 684; Lucke & Co. v. Wabash R. R. Co., 39 I. C. 517, 518; Woolson Spice Co. v. P. Co., 39 I. C. C. 583, 584; Slane Glass Co. v. V. & S. W. Ry. Co., 39 I. C. C. 586, 587; Swanson v. T. & P. Ry. Co., 39 I. C. C. 725, 730; Coal Operator's Traffic Bureau of St. Louis v. B. & O. S. W. R. R., 41 I. C. C. 361, 362; Boldt Co. v. P. C. C. & St. L. Ry. Co., 42 I. C. C. 308, 310 Obion Hdwe. Co. v. N. Y. C. R. R. Co., 42 I. C. C. 350; Colorado Portland Cement Co. v. C. M. & St. P. Ry. 41 I. C. C. 438; Boldt Co. v. P. C. C. & St. L. Ry. Co., 42 I. C. C. 308, 310; Healey & Towle v. C. & N. W. Ry. Co., 43 I. C. C. 83; Wistar, Underhill & Nixon v. C. & O. Ry. Co., 43 I. C. C. 254, 256; National Poultry, Butter and Egg Assn. v. N. & O. S. W. R. R. Co., 43 I. C. C. 392, 398; Concentrated Cotton Routing, 44 I. C. C. 663, 665; Iron Ore Rate Cases, 44 I. C. C. 368, 371; Prairie Oil & Gas Co. v. Wabash Ry. Co., 45 I. C. C. 1, 2; Chicago Portland Cement Co. v. I. C. R. R., 45 I. C. C. 477, 478; Acme Cement Plaster Co. v. A. T. & S. F. Ry., 45 I. C. C. 551, 554; Detroit Coal Co. v. M. C. R. R., 46 I. C. C. 231, 234; Jewel Tea Co. v. Penn. Co., 46 I. C. C. 314, 316; Price Bros. Co. v. C. N. Ry., 46 I. C. C. 397, 398; Russi & Co. v. O. S. R. R., 45 I. C. C. 77, 78; Otis Elevator Co. v. N. Y. C. R. R., 45 I. C. C. 201, 202; C. F. A. Class Scale Cases, 45 I. C. C. 254, 265; Hale-Halsell Grocery Co. v. M. K. & T. Ry., 45 I. C. C. 523, 525; Famechon Co. v. C. B. & Q. R. R., 45 I. C. C. 598, 599; Globe Grain & Milling Co. v. L. A. & S. L. R. R. 46 I. C. C. 645, 646; Nat. Wholesale Lumber Dealers v. L. & N. R. R., 46 I. C. C. 307, 308; Larrowe Milling Co. v. Clyde S. S. Co., 49 I. C. C. 143; Virginia Portland Ry., 49 I. C. C. 332, 335; Merrill-Soule Co. v. B. & O. R. R., 49 I. C. C. 733, 734; Portland Cattle Loan Co. v. Oregon Short Line R. Co., 251 Fed. 33; Express Charges on Empty Fish Cars, 50 I. C. C. 24, 25, 26; Starks Co. v. C. & N. W. Ry., 51 I. C. C. 385, 387; In the matter of Rates on Cement Between Points in Western Trunk Line Territory and Between Points in Western Trunk Line Territory and Adjacent Points, 52 I. C. C. 255, 231; Chicago Live Stock Exchange v. A. T. & S. F. Ry., 52 I. C. C. 209, 223; Walter A. Zelnicker Supply Co. v. Louisiana Western Ry. Co., 52 I. C. C. 543; Nashville Roller Mills v. C. R. I. & P. Ry., 52 I. C. C. 491; Redmond v. Adams Exp. Co., 53 I. C. C. 39, 42; Virginia Iron, Coke & Coal Co. v. Director General, 53 I. C. C. 583, 586; DuPont de Nemours Co. v. Director General, 55 I. C. C. 247; American Agricultural Chemical Co. v. H. & B. V. 57 I. C. C. 177, 178; United Shoe Machinery Corp. v. Director General, 55 I. C. C. 253, 255, 256; Illinois Classification, 56 I. C. C. 202, 208; United Verde Extension Mining Co. v. Director General, 57 I. C. C. 483, 484; Empire Refineries (Inc.), v. Director General, as Agent, 58 I. C. C. 713, 714; Cancellation of joint class rates from T. & W. 59 I. C. C. 122, 123; Young v. Director General, 59 I. C. C. 305; Prairie Pipe Line Co. v. Director General, as Agent, 59 I. C. C. 157; American Cement Plaster Co. v. C. & A. R. R. Co., 59 I. C. C. 165; Natchez Chamber of Commerce v. Director General, 60 I. C. C. 397, 401; Darcy Spring Co. v. Director General, 62 I. C. C. 129, 130; St. Louis, I. M. & S. Ry. Co. et al v. J. F. Hasty & Sons et al, 41 Sup. Ct. 269; Bryant & Chapman v. Director General, as Agent, 60 I. C. C. 237, 238; Cedar Rapids Gas Co. v. Director General, as Agent, 62 I. C. C. 636, 641; Southern Veneer Asso. v. A. C. L. R. R. Co., 62 I. C. C. 669, 674; Natchez Chamber of Commerce v. L. &

A. Ry. Co., 63 I. C. C. 288, 299; Boston Wool Trade Asso. v. A. & S. Ry. Co., 64 I. C. C. 365, 383; New York Cent. R. Co. v. Warren Ross Lumber Co., 190 N. Y. S. 835; Western Petroleum Refiners Asso. v. A. & R. R. Co., 66 I. C. C. 58, 60; Hercules Mining Co. v. Director General, as Agent, 66 I. C. C. 140, 141; Handling Charges at Certain Ports, 78 I. C. C. 4, 6; Tanners' Council v. Director General, as Agent, 78 I. C. C. 27, 28; Romann & Bush Co. v. Director General, as Agent, 78 I. C. C. 159; Chevrolet Motor Co. of Calif. v. Director General, as Agent, 78 I. C. C. 297; American Fruit & Vegetable Asso. v. B. & A. R. R. Co., 78 I. C. C. 381, 385, 386; American Trading Co. v. Director General, as Agent, 78 I. C. C. 387, 388, 392; Pacific Rice Mills Co. v. Director General, as Agent, 78 I. C. C. 459, 460; Republic Iron & Steel Co. v. Davis (Ala., 1923), 98 So. 197; Republic of France v. Director General, as Agent, 81 I. C. C. 174, 178; Pittsburgh Crucible Steel Co. v. Director General, as Agents, 81 I. C. C. 559, 661; New York Cent. Ry. Co. v. Calvert (Mich., 1923), 193 N. W. 295, 299.

§8. Ambiguity.

CASES 1887-1908

(a) A system of tariffs and classifications unintelligible to shippers defeats the end and object of the provisions of the law and rules of the Commission thereunder requiring the posting and publication of rates for the information of the public. Duncan v. A. T. & S. F. R. Co., 4 I. C. C. 385, 390.

(b) The only satisfactory method of publishing rates is to definitely state the charges fixed between points clearly specified, without burdening and confusing the public with the need of making involved calculations or with scrutinizing a series of supplements to determine whether a particular rate has been changed since the original tariff was issued. Colorado Fuel & Iron Co. v. S. P. Co., 6 I. C. C. 488, 519.

IMPORTANT CASES SINCE 1908

(c) It is not just or fair to the shipping public to promulgate as a basis for determining rates a classification the terms of which are indefinite or impracticable of application either in whole or in part. Shippers must necessarily be more or less misled thereby, and any effort on the part of the carriers to apply the classification by a lax interpretation thereof must result in inextricable confusion. The classification of an article of commerce should be plainly and clearly stated in terms that the shipping public may readily understand. Tariffs are to be construed according to their language and the intention of the person who framed the tariff and the arbitrary practice of the carriers thereunder may not be looked to as an authoritative construction thereof. Pacific Coast Biscuit Co. v. S. P. & S. Ry. Co., 20 I. C. C. 546, 549.

(d) Even if there be ambiguity in the tariff it should be construed against the framer. Northwestern Steel Co. v. Director General 68 I. C. C. 195, 198.

(e) In case of ambiguity, the familiar rule of construction is that a tariff must be construed against the framer. Pacific Rice Mills Co. v. Director General, 78 I. C. C. 459, 461.

(f) Whatever may have been the intention of the carriers publishing the tariffs the rules must be interpreted according to their wording and whatever ambiguity exists must be construed against the publishing carrier. Republic of France v. Director General, 81 I. C. C. 174, 178.

(g) Grain was switched by defendant from Cairo, Ill., elevator to connection with M. & O., thence over M. & O. to complainant's mill at Cairo. Tariff provided switching charge for movement from elevator to M. & O. connection. Contention that such switching charge restricted to traffic receiving line haul on connecting roads by tariff rule providing that "switching charges will only apply between industries and point of connection with other railroads, and will not apply on cars moved from one industry or side track to another industry or side track both of which are located at same station." HELD: Tariff rule did not clearly express alleged intent of carrier to so restrict switching charge, and because of ambiguity must be construed against carrier. Switching charge found applicable and reparation awarded. Sutherland Flour Mills Co. v. Director General, as Agent, 81 I. C. C. 365.

(h) Tariff ambiguities are resolved in favor of the shippers. Mason City Brick & Tile Co. v. Director General, 88 I. C. C. 37, 42.

ALL OTHER CITATIONS

Standard Oil Co. v. I. T. R. R. Co., 23 I. C. C. 369, 371; Sweeney, Lynes & Co. v. N. R. P. & N. R. R. Co., 20 I. C. C. 600, 601; Ford Co. v. M. C. R. R. Co., 19 I. C. C. 507, 511; Ponchatoula Farmers' Ass'n v. I. C. R. R. Co., 19 I. C. C. 513, 520; American Creosote Works, v. I. C. R. R. Co., 18 I. C. C. 212, 215; Noble v. V. S. & P. Ry. Co., 18 I. C. C. 224, 225; Townley Metal & Hardware Co. v. C. R. I. & P. Ry. Co., 18 I. C. C. 378, 379; Old Dominion Copper & Smelting Co. v. P. R. R. Co., 17 I. C. C. 309, 311, 312; Larrowe Milling Co. v. C. & N. W. Ry. Co., 17 I. C. C. 548, 549, 550; Dayton Chamber of Commerce v. C. M. & St. P. Ry. Co., 16 I. C. C. 82, 83; Newton Gum Co. v. C. B. & Q. R. R. Co., 16 I. C. C. 341, 346; Porter v. St. L. & S. F. R. R. Co., 15 I. C. C. 1, 4; Payne v. M. L. & T. R. R. & S. S. Co., 15 I. C. C. 185, 188, 190; Hydraulic Press Brick Co. v. St. L. & S. F. R. R. Co., 13 I. C. C. 342, 347. In re Advances in Break-bulk Rates, 27 I. C. C. 78, 82; Refrigeration Charges on K. C. S. Ry., 26 I. C. C. 617, 621; Crescent Coal & Mining Co. v. C. & E. I. R. R. Co., 24 I. C. C. 149, 153, 155; Sea Gull Specialty Co. v. Baltimore Steam Packet Co., 27 I. C. C. 267, 271; Alexander v. S. P. Co., 24 I. C. C. 306, 308; Webb Motor Fire Apparatus Co. v. L. & N. R. R. Co., Unrep. Op. A-4. Parry & Co. v. P. R. R. Co., 29 I. C. C. 559, 561; Atlantic Packing Co. v. Am. Exp. Co., 28 I. C. C. 244, 246; Mixed Car Dealers Asso. v. D. L. & W. R. R., 33 I. C. C. 133, 144; Peycke Bros. Commission Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-899; Jordan v. S. Ry. Co., (S. C. 1915), 84 S. E. 871, 873. Mixed Car Dealers Asso. v. D. L. & W. R. R. Co., 33 I. C. C. 133, 144; Trap or Ferry Car Service Charges, 34 I. C. C. 516, 546; Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 68; Midcontinent Oil Rates, 36 I. C. C. 109, 129; American Steel and Wire Co. v. A. & V. Ry. Co., 37 I. C. C. 525, 527; Minneapolis Threshing Machine Co. v. N. & St. L. R. R. Co., 37 I. C. C. 92, 95; National Petroleum Assn. v. A. T. & S. F. Ry. Co., 37 I. C. C. 287, 293; Chelsea Refining Co. v. M. P. Ry. Co., 38 I. C. C. 28, 29; Casey-Hodges Co. v. C. N. O. & T. P. Ry. Co., 39 I. C. C. 569, 572; Wool from California, 41 I. C. C. 314, 316; Western Carolina Lumber & Timber Asso. v. S. Ry. Co., 41 I. C. C. 753, 755; Markley & Co. v. A. C. L. R. R. Co., 42 I. C. C. 187, 188. Natl. Wholesale Lum. Deal. Assn. v. L. & N. R. R., 46 I. C. C. 307, 308; Hood & Sons v. B. & M. R. R., 49 I. C. C. 694, 699. National Lumber Co. v. A. G. & S. R. R., 50 I. C. C. 133, 134; New Bedford Board of Commerce v. Director General, 55 I. C. C. 320, 321. Space Rental Charges on Cotton, 66 I. C. C. 121, 123; Standard Oil Co. v. Director General, 66 I. C. C. 472, 473; Pacific Rice Mills Co. v. Director General, as Agent, 78 I. C. C. 459, 460; Brenner Lumber Co. v. Director General, as Agent, 81 I. C. C. 241, 244; Northwest Steel Co., 68 I. C. C. 195, 198; Sutherland Flour Mills Co. v. Director General, as Agent, 81 I. C. C. 366; Acme Mills v. Director General, as Agent, 81 I. C. C. 492.

§8½. Amendments and Supplements.

CASES 1887-1908

(a) The reissuing by a carrier of a tariff of another line, and, by a supplement concurrently issued, limiting its use of the rates therein prescribed to such as are over a specified minimum, is reprehensible. Colorado Fuel & I. Co. v. Southern P. Co. 6 I. C. C. 488.

IMPORTANT CASES SINCE 1908

(b) Where a change is made in an item republished it is technically an amendment, not a reissue. And an amended item should always be printed in a supplement in its entirety. Coal Operators' Traffic Bureau of St. Louis v. B. & O. S. W. R. R., 41 I. C. C. 361, 362.

(c) The fact that there was no notation or symbol of an increase in a tariff supplement, an item of which was amended, and that in a subsequent supplement a further modification of that item with reference to reconsignment bore symbols denoting both increase and reduction, did not affect the validity or applicability of the item, as it was allowed to become effective in each instance. New Era Milling Co. v. St. L. & S. F. R. R., 50 I. C. C. 207, 210.

(d) It is well settled that a rate once lawfully established continues to be the legal rate until it has been legally canceled. A subsequent tariff naming new rates without canceling the previous rate can not carry the new rate into lawful effect. Citing New Albany Box & Basket Co. v. I. C. 16 I. C. C. 315. Dewey Portland Cement Co. v. A. T. & S. F., 56 I. C. C. 444, 445.

(e) Where supplement to tariff contained index of commodities similar to index in original tariff, and all matter in the supplement not embraced in the index made reference to a note in connection with each particular rate, there has been a substantial compliance with the rules of Tariff Circular 18-A, requiring an index and reference to show clearly the application of rates. Cobbs & Mitchell v. Director General, 59 I. C. C. 179, 181.

(f) In publishing a reissue of a supplement to a tariff, a comma was erroneously inserted between certain items which had the effect of making applicable higher rates. After shipments moved tariff corrected by eliminating comma, making lower rate applicable. Reparation awarded. Young v. Director General, 59 I. C. C. 305.

(g) Contention that a revised clause was improperly published and not lawfully effective because the notation in the tariff to indicate a change of rate was either incorrectly shown or else entirely omitted, in violation of the commission's rules in Tariff Circular 18-A, HELD: Fact that there was no notation or symbol of an increase in the supplement . . . did not affect the validity or applicability of the item. Nat'l Preserves & Fruit Products Asso. v. A. & S. Ry. Co., 74 I. C. C. 179, 181.

(h) Contention that combination rates were illegal in that each factor was increased under General Order No. 28 of director general, master supplements to tariffs publishing separate factors providing that "total" increase would not exceed sum that was here applied to each factor, not sustained. Master supplements did not contain so-called combination rule or any other provision legalizing single maximum increase in through combination rates, and limitation upon amount of increase can therefore be construed only as applying to increase in each separately published rate. Hence, each factor, although used in constructing through rate, was subject to increase. Van Dusen Harrington Co. v. Director General, as Agent, 78 I. C. C., 729, 731.

ALL OTHER CITATIONS

Coal Operators' Traffic Bureau of St. Louis v. B. & O. S. W. R. R. Co., 41 I. C. C. 361, 363. Jewel Tea Co. v. P. Co., 46 I. C. C. 314, 316. Empire Refineries (Inc.) v. Director General, as Agent, 58 I. C. C. 713. 714; Combination Rule for Transcontinental Rates, 78 I. C. C. 24, 26.

§9. Cancellation.

IMPORTANT CASES SINCE 1908

(a) A rate, once lawfully published, continues to be the lawful rate until it has been lawfully cancelled. A subsequent tariff, naming other rates without cancelling the previous rates, can not carry the new rates into lawful effect. The silence of a subsequent tariff with respect to rates lawfully in effect cannot be accepted as a lawful cancellation of the previous rates, nor will vague references in subsequent tariffs as to the cancellation of previous tariffs have that effect. The law and the requirements of the Commission provide a method by which existing rates may be cancelled, and other rates put into effect, and these requirements must be fulfilled in order to give legal effect to a new rate intended to take the place of an existing one. The Albany Box & Basket Co. v. I. C. R. R. Co., 16 I. C. C. 315, 316.

(b) A cancellation of a schedule of rates is not to be construed as a withdrawal of all rights arising under such schedule to those who have availed themselves of its provisions prior to the date that such schedule dies. If there is offered to the shipper under the tariff a right of stopping-in-transit, reconsignment, storage or return of freight, he is entitled to the use of such privilege even though it may later be cancelled out of the tariff before the time allowed for the exercise of such right has expired. The date of original shipment determines the rights, privileges and obligations attaching to that shipment throughout its transportation. Interstate Remedy Co. v. American Express Co., 16 I. C. C. 436, 438, 439.

(c) Where the initial carrier's advanced rate tariff does not cancel the lower commutation rate named in the tariff of another line to which the initial line is a party, the lower rate is the legal rate. Stilwell v. L. & H. R. Ry. Co., 19 I. C. C. 404.

(d) Error in the publication of rates and rules is not in itself justification for cancellation of rates or rules so established and maintained. Intermediate application of class rates from Lexington, Ky., 77 I. C. C. 427, 430.

ALL OTHER CITATIONS

Cement Rates from Mitchell, Ind., 32 I. C. C. 93. Swanson v. T. & P. Ry., 39 I. C. C. 725; Coal Operators Traffic Bureau of St. Louis v. B. & O. S. W. R. R. R. Co., 41 I. C. C. 361, 362; Gulf Lumber Co. v. G. & S. R. R., 48 I. C. C. 461; Marsh & Truman Lum. Co. v. L. & N. R. R., 49 I. C. C. 605, 606. Marti Brokerage Co. v. S. P. Ry., 51 I. C. C. 91, 92; Dewey Portland Cement Co. v. A. T. & S. F. Ry., 56 I. C. C. 444, 445. Mitsui & Co. v. Director General, 58 I. C. C. 322; Cobbs & Mitchell v. Director General, as Agent, 59 I. C. C. 179, 181.

§9a. Combination Rule.

IMPORTANT CASES SINCE 1908

(a) Combination rates on clay, brick, mine props, mine caps, logging, slab wood, gravel, and sand between St. Louis and Vandalia, Mo., during Federal Control, which exceeded joint rates prescribed by the State commission, found not unreasonable. Factors composing the combination rates were on file with the appropriate commissions and were therefore the applicable rates. The director general was not amenable to rate orders of State commissions and fact that rates were subsequently reduced is insufficient to warrant a finding of unreasonableness. Walsh Fire Clay Products Co. v. Director General, as Agent, 73 I. C. C., 410.

(b) The publication by one carrier participating in the traffic of the so-called combination rule was a holding out by that carrier of a specific manner of making up the combination through rate, which combination basis that carrier must protect. Standard Oil Co. v. Director General, 74 I. C. C., 271, 272.

(c) Even though the combination rule may be undesirable as a tariff rule, that fact alone does not justify its elimination from the tariffs unless the carriers publish either joint or proportional rates in lieu thereof in order to prevent unwarranted increases in rates. Cancellation of Combination Rules to the Southwest, 74 I. C. C., 505, 509.

(d) A provision in a tariff carrying rates which may be used in combination to effect that rates are subject to combination rule, which provides a method for arriving at combination through rates, is equivalent to publication of said rule in rate tariff and principle announced in Sligo Case, 62 I. C. C., 643, and 73 I. C. C., 551, is controlling. Combination Rates on Agricultural Limestone, 78 I. C. C. 579, 581.

ALL OTHER CITATIONS

Greene Cananea Copper Co. v. Director General, as Agent, 80 I. C. C. 121, 122; Standard Oil Co. v. M. V. R. R. Co., 81 I. C. C. 193, 195; Acme Cement Plaster Co. v. Director General, as Agent, 81 I. C. C. 298.

§9½. Changes during Suspension Period.

IMPORTANT CASES SINCE 1908

(a) Where a tariff was suspended but before its effective date the carriers issued a corrected tariff purporting to cancel that under suspension, such tariff rejected under the Commission's order which prohibits changes in rates while under suspension pending investigation. Lumber to Texas Ports, 44 I. C. C. 275, 276.

§10. Concurrences.

See Concurrences; Through Routes and Joint Rates §2.

IMPORTANT CASES SINCE 1908

(a) Where there is concurrence in the guide book, but no concurrence in rate, though such was intended, there is no legal rate or basis of reparation, tariff rate charged not being unlawful. Noble v. G. T. W. Ry. Co., 20 I. C. C. 70, 71.

(b) So far as charges on its own road are concerned, a carrier cannot be bound by tariffs of its connections, in which it has not concurred; neither can it ignore the provisions of the tariffs of its connections with reference to charges for services performed by those connections. Hull Co. v. S. Ry. Co., 24 I. C. C. 302, 303.

(c) Concurrence sheets are not posted in the same manner as are tariffs, and no opportunity is afforded the general public to ascertain whether or not the terms of the concurrence limit the application of the tariff in so far as the participating road is concerned. Healy & Towle v. C. & N. W. Ry. Co., 43 I. C. C. 83, 84.

(d) Paragraph (4), section 6 of the act requires that the "names of the several carriers which are parties to any joint tariff shall be specified therein," and that each of the parties thereto other than the one filing the tariff shall file

such evidence of concurrence therein as may be required by the commission. N. Y. Dock Ry. v. B. & O. R. R. Co., 73 I. C. C., 656, 662.

(e) The New York Dock Ry. filed with the commission concurrences in tariffs naming rates applicable to or from its terminals, which in effect, give assent to the publication of rate schedules in which it is shown as a participating carrier. In instances where such railway is not named in the tariffs it is not a party to joint rates published therein, in view of the specific requirement of the law as set forth in paragraph (4), section 6, of the act. Accordingly divisions thereof to be received by such railway can not be prescribed. New York Dock Ry. v. B. & O. R. R. Co., 73 I. C. C., 656, 662.

(f) Where schedules purport to publish joint rates, and intermediate carrier, which forms a necessary link in through route, actually participates in through movement, and for whose account a switching charge is published, is not shown as concurring carrier, such method of publication is contrary to the act and commission's tariff regulations. Cord and Pulp Wood to Canton, 78 I. C. C. 503, 596.

(g) Rate published by defendants to apply over lines of defendants and complainant, in which complainant did not concur. HELD: Defendants are bound to protect rate published and held out by them to the public. Complainant, not being party to rate published, must collect its local rate, and defendants must pay to it this rate until tariff is corrected to accord with the statute. Fact that there is contract with complainant, fixing amounts to be received by complainant for its services in connection with traffic from junction point, can not be permitted to defeat plain requirements of the law. Rate as at present published is unlawful and tariff should be corrected. St. Louis & O'Fallon Ry. Co. v. E. St. L. & S. Ry. Co., 81 I. C. C. 538, 541, 542.

(h) The mere insertion in the tariff of an erroneous concurrence number did not invalidate the rates shown therein. Bartlett Co. v. C. P. & St. P. Ry. Co., Unrep. Op. A-203.

ALL OTHER CITATIONS

Edison Portland Cement Co. v. D. L. & W. Ry. Co., 22 I. C. C. 382; Wisconsin Bridge & Iron Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 185; West Coast Shingle Co. v. C. St. P. M. & O. R. R. Co., Unrep. Op. 596; Morton Salt Co. v. M. L. & T. R. R. & S. S. Co., 28 I. C. C. 422, 424; Warner Co. v. D. L. & W. R. R. Co., 32 I. C. C. 244, 246; Fullerton-Powell Hardwood Lumber Co. v. T. & P. Ry. Co., Unrep. Op. A-895; Du Pont De Nemours Powder Co. v. Wabash R. R. Co., 33 I. C. C., 507; Louisville Board of Trade v. I. C. & S. T. Co., 34 I. C. C. 640, 643; Casey-Hedges Co. v. A. G. S. R. R., 50 I. C. C. 240, 242; Ridge Coal Mining Co. v. M. P. R. R. Co., 62 I. C. C. 259, 263, 264.

§11. Conflict in Rates.

See Bills of Lading, §9, §9 (2); Through Routes and Joint §21; §21, §22.

IMPORTANT CASES SINCE 1908

(a) Where the rate of the delivering carrier conflicts with the rate previously established by the initial line, the former is not the legal rate. Sunderland Bros. Co. v. M. K. & T. Ry. Co., 18 I. C. C. 425, 426.

(b) While the tariff published by carrier's agent, being a bureau or committee issue, provided for the application of rates named in the individual issue of the carrier, this did not have the effect of excluding the application of the rates actually named in the bureau or commitee tariff issued by the agent. Kenner Truck Farmers' Assn. v. I. C. R. R. Co., 32 I. C. C. 1, 5.

(c) The shipper is entitled to the lower of conflicting rates. United Verde Copper Co. v. Penn Co., 48 I. C. C. 663, 664.

(d) There can be but one applicable rate at the time over the same route between the same points on the same trffic. U. S. Industrial Alcohol Co. v. Diector general 68 I. C. C. 389, 392.

(e) In case of conflict the commodity tariff takes precedence over the classification. Queen City Iron & Metal Co. v. Director General, 73 I. C. C. 618, 619.

(f) Two rates published in different sections of the same tariff, each section providing that if a rate therein made a lower charge than a rate in the other the rate therein would be applied. Since the tariff provided for the alternative application of rates in the different sec-

tions, the rate producing the lowest charge on a particular shipment was the rate applicable. Shipments found overcharged and reparation awarded. Rothschild Co. v. Director General, as Agent, 73 I. C. C., 126, 127.

(g) Proposal to except proportional rates of the Midland Continental R. R. on petroleum and products, from application of the combination rule, which provided a method by which through rates were given specific or flat increases under General Order No. 28 of the director general, when made up of separately established rates, found not justified. Tariffs specifically provided for application of the combination rule; use of the Midland's proportional rates as exception would result in conflicting tariff provisions. Cancellation of Combination Rule on Petroleum, 73 I. C. C., 146.

(h) In case of conflict the commodity tariff takes precedure over the classification. Queen City Iron & Metal Co. v. Director General, as Agent, 73 I. C. C., 618, 619.

(i) While the disposition of the commodity may properly be considered when the description given by the shipper and the rating applied by the carrier's inspector are in conflict, such evidence is not controlling. Western Cartridge Co. v. Director General, 74 I. C. C., 654, 655.

(j) Tariff provided for furnishing of ice and salt for refrigeration throughout c. f. a. territory at carrier's expense. Subsequently rule was adopted for purpose of assessing such charges upon consignor or consignee, creating conflict with the preexisting rule on this point. HELD: Intention of tariff compilers is not controlling, it being well settled that where a tariff contains conflicting provisions the one according the lowest rates or charges governs, and particularly when the rule producing the lower rate or charge was first in effect and has not been legally cancelled. Charges assessed found illegal and reparation awarded. Swift & Co. v. Director General, as Agent 77 I. C. C. 678.

(k) It is well settled that the intention of the tariff compilers is not controling; and it is equally well settled that where a tariff contains conflicting provisions the one according the lowest rates or charges governs, and particularly when the rule producing the lower rate or charge was first in effect and has not been legally cancelled. Swift & Co. v. Director General 77 I. C. C. 678, 680.

(l) Upon reargument, original report, 66 I. C. C., 415 amended to extent of finding that fifth-class rate on imported pickled sheep skins illegal to extent it exceeded domestic commodity rate on sheep slats (green). Tariff provision in connection with rate on "Green" slats indicated that that was not restricted to green hides in strict sense of the word nor to green hides preserved only with salt, but was intended to cover untanned skins which had undergone some temporary preserving process. Reparation awarded. Tanners' Council v. Director General, as Agent. 78 I. C. C. 27.

(m) Tariff carried rule providing that "rates . . . . will, in absence of specific commodity rates, apply from or to directly intermediate points." Shipments moved from certain branch line points in California to San Francisco, Calif., during Federal control, and commodity rate from next more distant point applied. Lower commodity rate from point farther distant available. HELD: Since points of origin were "directly intermediate" to point taking lower commodity rate, and language of tariff did not limit application of intermediate rule to "next more distant point," such lower rate was applicable. Rate charged found illegal and reparation awarded. Pacific Rice Mills Co. v. Director General, as Agent, 78 I. C. C. 459.

(n) A general provision in an item of a freight tariff established by the Interstate Commerce Commission, giving the carrier the right to transport cotton to any other compress, if the one designated is unvailable, without additional charge to the shipper must yield to an inconsistent provision in the subsequent item, referring to shipments on designated routes in cases coming within the later item. King v. Chicago R. I. & G. Ry. Co., (Tex. 1922), 241 S. W. 180, 181.

(o) A lawfully established rate remains in effect, and is the only lawful rate until canceled, notwithstanding a subsequently published conflicting rate. The latter does not supersede, nor can it be substituted for, the prior existing rate except by proper tariff provision to

that effect. Virginia-Carolina Chemical Co. v. S. Ry. Co., Unrep. Op. 555.

ALL OTHER CITATIONS

Ohio Foundry Co. v. P. C. C. & St. L. Ry. Co., 19 I. C. C. 65, 67; Veitch v. S. A. L. Ry., 22 I. C. C. 4, 6; Badenoch Co. v. C. & N. W. Ry. Co., 22 I. C. C. 36, 37; Ohio Foundry Co. v. P. C. C. & St. L. Ry. Co., 19 I. C. C. 65, 67; Van Brunt Mfg. Co. v. C. M. & St. P. Ry. Co., 17 I. C. C. 195, 196; Concentrated Cotton Routing, 44 I. C. C. 663, 665; Lindsay Commission Co. v. N. P. Ry., 44 I. C. C. 759, 760; Jewell Tea Co. v. Penn Co., 46 I. C. C. 314, 316; Boardman Co. v. A. T. & S. F. Ry., 46 I. C. C. 352, 353; Russi & Co. v. O. S. R. R., 45 I. C. C. 77, 78; New Era Milling Co. v. St. L. & S. F. R. R., 50 I. C. C. 207; Highland Iron & Steel Co. v. Director General as Agent, 57 I. C. C. 547, 548; Mitsui & Co. v. Director General, as Agent, 64 I. C. C. 4; Cincinnati Abattoir Co. v. Director General, as Agent, 66 I. C. C. 65; Hercules Mining Co. v. Director General, as Agent, 66 I. C. C. 140, 141; Du Pont de Nemours & Co. v. Director General, as Agent, 66 I. C. C. 291; Standard Oil Co. v. Director General, as Agent, 66 I. C. C. 472; Crookston Gas Co. v. G. N. Ry. Co., 81 I. C. C. 128; Procter & Gamble Co. v. Director General, as Agent, 81 I. C. C. 361, 362.

§11½. **Description.**

IMPORTANT CASES SINCE 1908

(a) Iron or steel articles which have a recognized commercial value other than that of the metal from which they are manufactured are not properly described as scrap iron. Schwartz v. T. & N. O., 61 I. C. C. 29, 31.

(b) Where a commodity rate description of vehicles included trailers, and carriers failed to cancel such description when a specific designation of trailers was placed in the classification, such commodity rates are legally applicable. Texas State Highway Dept. v. Director Generall, as Agent, 69 I. C. C. 220, 222.

§12 **Cross-references.**

CASES 1887-1908

(a) It is the duty of railroad companies, under the Act, to print, publish and file tariffs showing rates which are so simplified that persons of ordinary comprehension can understand them; and that a notation in the tariff of one carrier making reference to the tariff of some competing carrier does not meet the requirement of the law that the rate charged shall be published and filed. H. B. Pitts & Son v. St. L. & S. F. R. R. 10 I. C. C. 684, 688.

IMPORTANT CASES SINCE 1908

(b) The provisions of a storage and reconsigning tariff issued separately by one carrier, to which two other connecting carriers are not named as parties, cannot be applied to through movements under the joint tariff of the three carriers unless the latter tariff by express reference to the former so provides. Wash. Broom & Woodenware Co. v. C. R. I. & P. Ry. Co., 15 I. C. C. 219, 221.

(c) References in one tariff publication to another must be in specific, clear, and unambiguous terms as to every item affected. Marx & Sons v. I. C. R. R. Co., 36 I. C. C. 419, 522.

(d) Where use of rates in one section of tariff is predicated upon rates in another section of the same tariff, one factor cannot be used interdependently of the other. Nebraska Bridge Supply & Lumber Co., v. Director General, 58 I. C. C. 129, 131.

(e) Where supplement to tariff contained index of commodities similar to index in original tariff, and all matter in the supplement not embraced in the index made reference to a note in connection with each particular rate, there has been a substantial compliance with the rules of Tariff Circular 18-A, requiring an index and reference to show clearly the application of rates. Cobbs & Mitchell v. Director General, as Agent, 59 I. C. C. 179, 181.

(f) Tariff must contain specific authority for extra service and the charge therefor, or must provide that rates contained in tariff are subject to the rules, regulations, and charges as lawfully on file with the Commission governing reconsignment, etc., Rule 10 (a) of Commission's tariff regulations cited. Sifritt v. P. M. R. R. Co., Unrep. Op. 1913.

ALL OTHER CITATIONS

Swift & Co. v. S. Ry. Co. 36 I. C. C. 386, 387.

§12¼. **Exceptions.**

See Class Rates §2(1).

IMPORTANT CASES SINCE 1908

(a) Where a tariff applied generally from all points in Oregon, it applied

from points there on a new branch line, although they were not specifically named in the index of stations to the tariff. Wood Curtis Co. v. S. P. Co., 56 I. C. C. 344.

(b) Where tariff naming a lower rate applying in connection with a delivering line specifically excepts shipments moving over the rails of certain carriers, the lower rate is not applicable to shipments forwarded via the rails of said lines so specifically excepted. American Cement Plaster Co. v. C. & A. R. R. Co., 59 I. C. C. 165, 166.

(c) Commodity rates were in effect on packing-house products, but exceptions to classification provided that in applying increases under General Order No. 28 of director general "the increased class rates applicable to like commodity description . . . . are not to be exceeded." Contention by defendants that, because not all commodities named in item "packing-house products" in commodity tariff appeared in similar item in classification exceptions, the "commodity descriptions" were not "like," within meaning of rule above quoted, and that class rates applied to specifically named packing-house products were inapplicable, not sustained. Fact that certain articles were listed in one tariff and not in other does not deprive articles listed and described alike both of benefit of the rule. Former report, 61 I. C. C., 153, reversed. Morrell & Co. v. C., B. & Q. R. R. Co., 81 I. C. C. 200, 202, 203.

§12½. Guide Book.

IMPORTANT CASES SINCE 1908

(a) In the adoption of a guide book or other auxiliary to a main tariff, routing, way-billing, terminal and transit rules and other restrictive, expansive, or modifying regulations may not be ignored, as to do so would work violence to the well-established principle that a tariff rate or rule cannot be divorced from any of its governing conditions or limitations, except by clear and specific tariff provisions therefor. Newman Lumber Co. v. M. C. R. R. Co., 26 I. C. C. 97, 100.

(b) Where a carrier is named in a tariff as an originating line and a paragraph in the tariff limits the application of the rates to certain guide books to which said carrier is not a party, that carrier is not thereby eliminated as an originating line when rates to certain destinations are specifically shown and reference to the guide books is unnecessary. Cancellation of Joint Class Rates from T. & W. R. R. Co., 59 I. C. C. 122, 123.

(c) No rule or provision which would warrant conclusion that rules as to billing instructions contained in basing book should take precedence over rules contained in tariffs of initial line. Morse Lumber Co. v. L. & N. R. R. Co., Unrep. Op. 1919.

§13 Index.

IMPORTANT CASES SINCE 1908

(a) Where there are two stations of the same name in the same state in different counties a tariff which does not in its index contain such information, but leads a reader to suppose there is but one station of that name in the state, does not comply with section 6 of the Act to the effect that "schedules ....'..... shall plainly state the places between which property and passengers shall be carried ....." Larson Lumber Co. v. G. N. Ry. Co., 21 I. C. C. 474, 475, 476.

(b) Points on new branch line not indexed in the applicable tariff from which rates applied, whereas the rates from stations included in the tariff had been in effect prior to opening of the new line. Contention that it was never intended to apply rates of original tariff to points on the new line, not sustained, as defendant should have specifically excepted points on the new branch line as was subsequently done. Wood Curtis Co. v. S. P. Co., 56 I. C. C. 344, 345.

(c) Where a supplement to a tariff contained index of commodities similar to index in original tariff, and all matter in the supplement not embraced in the index made reference to a note in connection with each particular rate, there has been a substantial compliance with the rules of Tariff Circular 18-A, requiring an index and reference to show clearly the application of rates. Cobbs & Mitchell v. Director General, as Agent, 59 I. C. C. 179, 181.

ALL OTHER CITATIONS

Arkansas Fuel Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 246; Highland Park Mfg. Co. v. S. Ry., 26 I. C. C. 67; Napoleon Hill Cotton Co. v. M. K. & T.

Ry. Co., Unrep. Op. A-344; Kuehne-Chastain Com. Co. v. G. B. & W. R. R., 38 I. C. C. 87; Atchison, T. & S. F. Ry. v. Young, (Kans. 1918), 171 Pac. 1156.

§14. Legality.

See Legal Rate; Legality of Rates; Proportional Rates III.

CASES 1887-1908

(a) The filing of schedules of rates with the Commission as required by statute raises no presumption as to the legality of such rates, and no omission or failure to challenge or disapprove the schedules of rates so filed can have the effect of making rates lawful which are unreasonable. San Bernardino Board of Trade v. Atchison, T. & S. F. Co., 3 I. C. R. 138.

(b) A tariff of rates adopted by a carrier subject to the Act to Regulate Commerce, between a point on its own line and points on the line of a connecting carrier with which it has no agreement for a joint tariff, not showing its charges for the haul upon its own route, is illegal, independently of the legality of the charge for the haul upon its own route upon which the rates are based, since the requirement of §6 as to the publication of rates upon its route cannot be complied with. New York, N. H. & H. R. Co. v. Platt, 7 I. C. C. 323.

(ba Tariffs can not be made to apply to conditions other than those existing upon the date when such tariffs became effective. A combination through rate is as binding, definite, and absolute as a joint through rate; and all of the conditions, regulations, and privileges obtaining as to any factor in such combination rate for through shipment at the time of initial shipment upon such combination through rate must be adhered to and can not be varied as to that shipment during the period of such shipment to its final destination. A local or proportional rate "in" can not be absorbed, diminished, or affected by any "out" rate not in effect at the time when the traffic moved upon such local or proportional rate. In the Matter of Through Routes and Through Rates, 12 I. C. C. 163.

(bb) Tariffs do not conform to the law, which make the rate charged dependent upon one or more factors which do not enter into the transportation as actually conducted. Pacific Coast Jobbers & Manfrs. Asso. v. Southern P. R. Co., 12 I. C. C. 319.

(bbc) That the law does not permit a rate to be stated which includes charges which the carrier does not in fact meet. And that a tariff does not conform to the law which makes the rate set forth dependent on one or more factors, such as a state toll, which do not enter into the transportation as actually conducted. Pac. Coast Jobbers & Manfrs. Asso. v. So. Pac. Co., 12 I. C. C. 320.

(c) A tariff or schedule of transportation rates does not conform to the law which makes the rate charged as set forth in the tariff dependent upon one or more factors which do not enter into the transportation as the same is actually conducted. Pacific Coast Jobbers & Mfrs. Asso. v. Southern Pacific Co., 12 I. C. C. 320, 324.

IMPORTANT CASES SINCE 1908

(d) Every rate is presumed to be lawful. Banner Milling Co. v. N. Y. C. & H. R. R. R. Co., 14 I. C. C. 398, 408.

(e) A rate or tariff published and filed with the Commission cannot be held to be legal merely because of that fact; it must also be plain and intelligible. Porter v. St. L. & S. F. R. R. Co., 15 I. C. C. 1, 4.

(f) It is permissible for a carrier to issue a distance tariff for use in determining rates on its own lines, but only in cases where no other rates are provided. Porter v. St. L. & S. F. R. R. Co., 15 I. C. C. 1, 5.

(g) The law does not contemplate that the shipper shall move upon any other theory than that the provisions of the carrier's tariff are in full compliance with the law's demands. Interstate Remedy Co. v. American Express Co., 16 I. C. C. 436, 439.

(h) The Commission will not sanction a tariff rate published only for articles to be employed in a special undertaking. American Creosote Works v. I. C. R. R. Co., 18 I. C. C. 212, 215.

(i) A tariff is contrary to law which provides that the rate in effect at the time of reshipment shall govern. Southern Cotton Oil Co. v. A. C. L. R. R. Co., 19 I. C. C. 434, 435.

(j) Tariffs which contain rates applicable only to the shipments of certain

consignees, or applicable only when a commodity is put to a particular use and which are restricted to the use of certain shippers and not open to all shippers alike, are in violation of section 2 of the Act and unjustly discriminatory in violation of section 3 of the Act, and are therefore unlawful. In Re Restricted Rates, 20 I. C. C. 426, 437.

(k) A tariff is not unlawful on the ground that it is in effect an exclusive service for the benefit not of the general public but of a single shipper, where the result arises merely from the fact that one shipper is in a position to avail himself of the tariff, while others are not. Albree v. B. & M. R. R. Co., 22 I. C. C. 303, 319.

(l) A tariff is unlawful under the 15th section of the Act which compels a shipper to load his milk into a car leased by another shipper in such a way as to disclose the secrets of his business and which compels him to pay the transportation rate to such other shipper. Albree v. B. & M. R. R. Co., 22 I. C. C. 303, 321.

(m) A rate may be unlawful in view of section 1 and at the same time be the legally established rate under section 6. The sole test of the legality of a rate is the due publication of the rate in the manner and form prescribed by the statute. Crescent Coal & Mining Co. v. C. & E. I. R. R. Co., 24 I. C. C. 149, 156.

(n) When timber is of many kinds, and several kinds of lumber take same rates, there is no impropriety in tariff which permits shipping at carload rates in straight or mixed carloads to and from transit point. National Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 685, 686.

(o) Carriers should not publish rates in one tariff and discounts or allowances from such rates in another tariff . . . . but wherever possible should file net rates as such. Allowances on Anthracite Coal, 36 I. C. C., 164, 170.

(p) A tariff provision which makes the application of rates over particular routes dependent upon the existence of divisions without stating the routes with respect to which divisional arrangements are in effect is indefinite and unlawful and imposes uncertain and unreasonable conditions upon the shipper. McGowin Lumber & Export Co. v. Director General, 59 I. C. C. 238, 240.

(q) The fact that there was no notation or symbol of an increase in a tariff does not affect the validity or applicability of the item. National Preservers & Fruit Products Asso. v. A. & S. Ry., 74 I. C. C., 179, 181.

(r) Commission has frequently drawn distinction between legal rate required under section 6 of the act and lawful rate provided for in other sections. Lay Fish Co. v. Director General, as Agent, 80 I. C. C. 4, 5.

(s) Allegation that carrier has violated section 6 of the act through assessing and collecting without tariff authority switching charges on grain transited at a certain point, predicated upon failure to state in tariff naming transit provisions charges in connection therewith, not sustained. Tariff carrying rates of carrier contains general provision that switching charges at any point will be added to through rate unless provision is made for absorption. This is in accordance with requirements of rule 10 (a) of Tariff Circular 18-A. Detroit Board of Trade v. W. Ry. Co., 80 I. C. C. 717, 723.

ALL OTHER CITATIONS

Cramer v. C. R. I. & P. Ry. Co. (Ia. 1911), 133 N. W. 387, 390; Foster, Glassel Co. v. K. C. S. Ry. Co., 121 La. 1053, 1058, 46 So. 1014; Woodward-Bennett Co. v. S. P. L. A. & S. L. Ry. Co., 29 I. C. C. 664; Perishable Freight Investigation, 56 I. C. C. 449, 483; Anaconda Copper Mining Co. v. Director General, 57 I. C. C. 723, 726! Van Dusen Harrington Co. v. Director General, as Agent, 78 I. C. C. 729.

§15. Reasonableness.

IMPORTANT CASES SINCE 1908

(a) The rule requiring the consignee to secure a berth for unloading is not unreasonable. Mosson Co. v. P. R. R. Co., 19 I. C. C. 30, 32, 33.

(b) Tariff provisions which purport to state the law, fix limitations of the carriers' liability, or define the legal obligations of the parties, are generally objectionable. Perishable Freight Investigation, 56 I. C. C. 449, 483.

ALL OTHER CITATIONS

Carstens Packing Co. v. S. P. Co., 17 I. C. C. 6; National Petroleum Ass'n. v.

Ann Arbor R. R. Co., 14 I. C. C. 272, 282; O. R. & N. Co. v. Coolidge (Ore. 1911), 116 P. 93, 95; Gisholt Machine Co. v. C. & N. W. Ry. Co., 39 I. C. C. 147, 148; R. R. Commission of La. v. A. H. T. Ry. Co., 41 I. C. C. 83, 111.

§16. Shipments in Bulk.

See Bulk Shipments.

IMPORTANT CASES SINCE 1908

(a) The rate on coarse salt in bulk applies only to such salt when loaded in the cars without any container and does not apply to salt shipped in 200 lb. sacks. Gottron Bros. Co. v. G. & W. R. R. Co., 28 I. C. C. 38, 46.

§17. State Rates.

See State Rates and Regulation.

IMPORTANT CASES SINCE 1908

(a) The Commission has constantly insisted upon the exaction of the lawfully published interstate rates upon all traffic really moving as interstate commerce. Kanotex Refining Co. v. A. T. & S. F. Ry. Co., 34 I. C. C. 271, 273.

(b) Shipments moved intrastate during Federal control, and distance rates assessed under tariff stating that it contained all intrastate rates and was only tariff applicable to intrastate movements. Contemporaneously another tariff was in effect, its title page indicating that it applied to intrastate and interstate traffic, and contained lower specific rates unrestricted. HELD: Legality of specific rates published in interstate tariff without restriction can not be affected by provision contained in intrastate tariff under which charges collected. Since rule 10 (g) of Tariff Circular 18-A provides that distance rates may be applied only when no specific rates are in effect, shipments found overcharged and refund directed. Crookston Gas Co. v. G. N. Ry. Co., 81 I. C. C. 128.

(c) Whether an interstate or intrastate tariff is applicable depends on the essential character of the movement, and is not necessarily determined by the contract between shipper and carrier. Baltimore & O. S. W. R. Co. v. Settle, 4 Sup. Ct. 28.

ALL OTHER CITATIONS

Memphis Freight Bureau v. I. C. R. R. Co., 27 I. C. C. 1, 2; Michigan Bean Jobbers Asso. v. G. R. I. Ry. Co., 33 I. C. C. 318, 321.

§18. What is Legal Rate.

See Classification §17; §24; Commodity Rates §2; II; Crimes; Demurrage §12; Evidence §47; Legal Rate; Reconsignment §5; Tariffs IV; Through Routes and Joint Rates §15;; §15½; §18; §20; §20½; §21; §22.

CASES 1887-1908

(a) Complainant atacked rates on household goods from Hammond, La., to Chicago, Illinois. A shipper was charged under a special tariff $60.00 per car from Chicago, Ill., to Hammond, La., distance 863 miles, and on the return move was charged $122 under the general tariff. The service and transportation conditions were the same, but the tariff naming the south bound rate was unlawful in that it named a special rate for certain classes without taking into account the general public. Complaint dismissed. Elvey v. I. C. R. R., 2 I. C. C. 804.

(b) Under the conditions now governing the manufacture and use of the "Scheidel outfit," such outfit is properly classified by defendant with the x-ray and medical or scientific apparatus as double first class, and is not entitled to a first-class rating with dynamos, transformers, and other electrical machinery; but no opinion is expressed upon the justice of the first class rate for such machinery. W. Scheidel & Co. v. Chicago & N. W. R. Co., 11 I. C. C. 532.

(c) The tariff of the Southern Pacific Company on traffic westbound to San Francisco contains a schedule of transportation rates imposed upon such traffic, and by a note in such tariff headed "Toll at San Francisco, Cal.," an additional charge of 5 cents per ton is levied upon such traffic reaching San Francisco by both the Ogden and the Coast Line routes: HELD: 1. That traffic moving by the Coast Line is not subject to the payment of such charge. Pac-Coast Jobbers & Manfrs'. Asso. v. So. Pac. Co. et al., 12 I. C. C. 320.

IMPORTANT CASES SINCE 1908

(d) The Commission ought not to impose a charge not specified in tariff where the omission to state such a charge was not due to inadvertence. Lee v. St. L. S. W. Ry Co., 29 I. C. C. 101, 102.

(e) Not infrequently shipments are reconsigned on basis of the sum of the

local rates without violating tariffs where no specific through rates is in effect. Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C. 523, 527.

(f) An unsuspended tariff item modifying a suspended item and published under special permission from the Commission takes effect on its lawfully proposed effective date, provided that the existing rates from and to the same points are properly cancelled. Oklahoma Traffic Asso. v. A. & S. Ry., 36 I. C. C., 329, 332.

(g) The consequences of a practice in particular cases can not determine the rate legally applicable. Marquette Coal Co. v. P. R. R., 40 I. C. C. 4, 6.

(h) Official classification provided in substance that when parts or pieces constituting one or more complete articles are shipped under one bill of lading at one time, by one shipper, to one consignee and destination, they should be charged for at the rate provided for the complete article, and a statue which constituted a minor but essential part of a monument should have taken the rating provided for the monument. Moore Granite & Monumental Works v. I. C. R. R. Co., 40 I. C. C. 77, 79.

(i) Where a producing point is located upon the boundary line between territories, the proper scale or scales to apply depends upon the direction of the movement. In such cases the producing point shall be considered to be in that territory within which the point of destination is located, except that, if the point of destination is not in either of the territories whose common boundary passes through the producing point, then the producing point shall be considered to be within the territory which is bounded by such common boundary line lying nearest to the point of destination. A similar rule, mutatis mutandis, will be applied to destinations located upon boundary lines. Western Cement Rates, 48 I. C. C. 201, 248.

(j) If the tariffs do not provide the rates on a shipment from one classification territory to another, charges should be computed at the ratings published in the classifications for the movement within their respective territories. Holt, et al., as Receivers of Aetna Explosives Co. v. Alabama Great Southern R. R. Co., 52 I. C. C. 235, 238.

(k) If no specific rate from a point of origin to a point of destination of a through shipment is provided, and no specific manner of constructing the combination rate is prescribed, the lowest combination of rates applicable via the route over which the shipment moves is the lawful rate for that shipment. Holt, et al., as Receivers of Aetna Explosives Co. v. Alabama Great Southern R. R. Co., 52 I. C. C. 235, 238.

(l) A rate once lawfully established continues to be the legal rate until legally canceled. Subsequent tariff naming new rates without cancelling previous rate can not carry new rates into lawful effect. Dewey Portland Cement Co. v. A. T. & S. F. Ry., 56 I. C. C. 444, 445.

(m) Where a tariff naming a lower rate applying in connection with a delivering line specifically excepts shipments forwarded via the rails of said lines so specifically excepted. American Cement Plaster Co. v. C. & A. R. R. Co., 59 I. C. C. 165, 166.

(n) While a tariff naming the commodity rate did not define scrap iron, rates on scrap iron are understood generally to apply on scraps or pieces of iron or steel having value for remelting purposes only, and the western classification, which governed the tariff naming the rate on scrap iron, carried a note to that effect. Schwartz v. T. & N. O., 61 I. C. C. 29, 31.

(o) The legal rate is the rate in effect on date shipments are accepted for transportation. Transcontinental Freight Co. v. Director General, as Agent, 62 I. C. C. 127, 128.

(p) A point was formerly reached by a narrow gauge line over which an out-of line charge was established. Subsequently the line was made standard gauge and became part of the main line rendering the out-of-line haul unnecessary, but the charge for the extra service was not eliminated from the tariff until after shipments moved. The Commission held charges assessed for the unperformed out-of-line movement found illegal. Reparation awarded. Grayson Owen Co. v. Director General, as Agent, 64 I. C. C. 157.

(q) Contention that a lower rate remained in effect because new tariff car-

ried a note that "This tariff contains no changes in rates from those published effective June 25, 1918," and because item naming the increased rate did not bear a symbol indicating an increase over the previous rate as required by Tariff Circular 18-A, not sustained. Tariff publishing the increased rate and cancelling the previous tariff conformed to the essential requirements of the act and was lawfully on file with the Commission. Hercules Mining Co. v. Director General, as Agent, 66 I. C. C., 140, 141.

(r) Rates named in a tariff published after the issuance of general order No. 28 of the Director General, but not to become effective until after the effective date of that order, found subject to the increase of 25 per cent provided thereunder. Growers Rice Milling Co. v. Director General, as Agent, 66 I. C. C. 165.

(s) An applicable tariff provided for the application to intermediate points of rates from or to the next more distant station when rates are not specially published, subject to the general proviso, "Except as may be otherwise specifically provided in the tariff." HELD: The publication of a "rate basis" to the intermediate points without corresponding "rates" on specific commodities did not operate to make inapplicable the intermediate clause. Shipments found overcharged and refund directed. Standard Oil Co. v. Director General, as Agent 66 I. C. C. 472.

(t) Higher charges published in separate tariffs found applicable to shipments moving outbound from transit point, and the publication by the inbound carrier of a tariff naming lower charges without the concurrence of its connections found to be a direct contravention of the Commission's rules under section 6 of the act, and shipper is justified in relying upon the lower basis of rates thus offered. Reparation awarded. Brenner Lumber Co. v. Director General, as Agent, 66 I. C. C. 595.

(u) Higher rate published in the same tariff from intermediate than from farther distant point: Rate from farther distant point published subject to Rule 77 of Tariff Circular 18-A. HELD: Higher rate from intermediate point legally applicable but publication of lower rate from farther distant point subject to rule 77 was in violation of the fourth section of the act and tantamount to an admission that the higher rate from the intermediate point was unreasonable. Reparation awarded. Standard Asphalt & Refining Co. v. Director General, as Agent, 66 I. C. C. 611.

(ua) What the second Cummins amendment declares to be unlawful it also declares to be void. It does not declare any rate to be void. A void rate would be without legal effect and could not be legally applicable. U. S. Industrial Alcohol Co. v. Director General, 68 I. C. C. 389, 392.

(ub) There can not be at the same time rates legally applicable and other rates "technically" legally applicable. There can be but one applicable rate at the same time over the same route between the same points on the same traffic. U. S. Industrial Alcohol Co. v. Director General, 68 I. C. C. 389, 392.

(uc) In publishing tariffs carrier failed to show as clearly as it should have done that a switching rate superseded a group rate formerly in effect. Contention that switching charge was not legally established because item in which that charge was published did not specifically refer to and cancel the line-haul rate, and the tariff naming that rate was not at the same time correspondingly amended in accordance with the provisions of rule 8 (a) of Tariff Circular 18-A, and that shipments were undercharged not sustained. Louis Werner Stave Co. v. Director General, as Agent, 68 I. C. C. 395, 396, 398.

(v) Different rates on "peanut hulls" and "ground peanut hulls" published in the same tariff. Shipments of hulls rolled under high pressure to effect compactness for shipment, as well as to reduce them to smaller particles, found to consist of "peanut hulls", as the term when used in a tariff must be construed to apply to the commodity prepared in a practical manner for transportation. Shipments found overcharged and reparation awarded. Rothschild Co. v. Director General, as Agent, 37 I. C. C. 126.

(w) Shippers were required to bill fresh-meat bones as fresh meat, and rates applicable on fresh meat were assessed in some instances under an analogous-article rule of the governing classification. Governing tariffs specifically

provided rates on "bones" and "bones, n. o. i. b. n."on a lower basis. HELD, rates charged found illegal and shipments found overcharged. Reparation awarded. Morris & Co. v. Director General, as Agent, 73 I. C. C. 137.

(x) A joint agency tariff, to which the Southern Ry. is a party, names rates on berries, without restriction as to kind. A later tariff of the Southern's own issue names rates between the same points on strawberries, in crates of sizes the same as and additional to those provided for in the agency tariff, which has never been specifically cancelled. HELD, that as to crates of sizes common to both tariffs the rates in the later tariff were not legally established; and as to crates of sizes provided for only by the later tariff, as to which there is no conflict, the rates in the later tariff were legally established. Strawberries from Virginia Points to Eastern Destinations, 73 I. C. C., 365.

(y) Under the provisions of section 6 of the act requiring the observance of rates and charges lawfully published and filed, the rate in effect at the beginning of a transit movement must be applied on a shipment to final destination. Nonsurrender of Inbound Billing, 73 I. C. C., 455, 457.

(z) Contention that joint rates were inapplicable because in contravention of the fourth section; and that the increase authorized by General Order No. 28 of the director general should have been applied but once to the combinations alleged to be applicable. HELD, argument contrary to the commission's construction of the fourth section and the view repeatedly expressed that the lawfulness of rates can not be determined solely by a construction of the general order. Silica Sand Producers' Asso. v. C., B. & Q. R. R. Co., 73 I. C. C., 588, 589.

(aa) Old worn-out log-car wheels were originally billed as scrap iron, but subsequently changed by carrier's agent to second-hand car wheels because they had not been broken up as required by a provision in the tariff. Southern classification rating of sixth class was assessed. Contemporaneously lower commodity rate in effect on "scrap iron and scrap steel, all kinds (except old rails suitable for relaying purposes)." HELD, commodity description sufficiently broad and comprehensive to include scrap iron both in its original form and when broken up. Commodity rate on scrap iron found legally applicable and shipments over-charged. Reparation awarded. Queen City Iron & Metal Co. v. Director General, as Agent, 73 I. C. C., 618.

(bb) Horses and mules moved by express to Goshen, N. Y., where no attempt was made to preserve their identity. Subsequently a portion thereof was forwarded to Jersey City, N. J., for export, for which carrier assessed rate from Goshen, plus terminal charges. Contention that under the terms of the tariff such terminal charges should have been absorbed. HELD, inbound and outbound movements were wholly independent transactions. Rate assessed for movement from Goshen found applicable and absorption of terminal charges was not authorized in connection therewith. Le Prestre, Miller & Co. v. E. R. R. Co., 73 I. C. C., 621.

(cc) First-class ratings and rates assessed on a shipment of accessories and parts comprising parts of motor trucks and chassis previously shipped from Chicago, Ill., to Austin, Tex., found legally applicable. Such shipment found not to consist of bodies or chassis, k. d., upon which ratings of third and second class applied. Had such articles been included in cars with the motor trucks or chassis, the rating on the latter would have been applied on the parts on basis of actual weight. State Highway Dept. of Tex. v. Director General, as Agent, 73 I. C. C., 629.

(dd) Complainant attacked rates charged on carloads of petroleum and petroleum products from and to various points in the southwest during the period. August 1, 1918, to Feb. 29, 1920, as illegal on the ground of tariff interpretation. Rates on petroleum were increased 25 per cent on June 25, 1918, under G. O. 28 and on July 11, 1918 freight rate authority No. 96 provided for an increase of 4.5 cents, this increase to apply but once where the charges were based on combinations. There were no joint rates in effect and the 4.5 cents increase was added to each factor which was subsequently corrected. HELD, rates applicable were those in effect June 25, 1918, plus 4.5 cents per 100 pounds, shipments overcharged, repar-

ation awarded. Standard Oil Co. v. Director General, 74 I. C. C., 188.

(ee) Contention that a revised clause was improperly published and not lawfully effective because the notation in the tariff to indicate a change of rate was either incorrectly shown or else entirely omitted, in violation of the commission's rules in Tariff Circular 18-A, HELD: Fact that there was no notation or symbol of an increase in the supplement . . . did not effect the validity or applicability of the item. Nat'l Preserveers & Fruit Products Asso. v. A. & S. Ry. Co., 74 I. C. C. 179, 181.

(ff) Where tariff of participating carrier provided lower rate between specified points over route other than route of movement, and unrestricted in its application to any particular route, such lower rate is applicable over all routes of carrier. Shipments found overcharged and reparation awarded. Baker-Reid Lumber Co. v. B. & O. R. R. Co., 74 I. C. C. 489.

(gg) The term "scrap brass" is generally understood to mean pieces of brass or old brass articles useful only for remelting purposes. Western Cartridge Co. v. Director General, as Agent 74 I. C. C. 654, 655.

(hh) When the description of commodity given by shipper and the rating applied by carrier's inspector are in conflict, the disposition of the commodity may properly be considered, but such evidence is not controlling, particularly when shipments clearly come within the description contained in applicable tariffs. Western Cartridge Co. v. Director General, as Agent, 74 I. C. C. 654, 655.

(ii) Tariff provided that commodity rates on bulk shipments should be computed not to exceed the applicable class rates, and to that extent shipments of apples in bulk, from Mosier, Oreg., to Louisville, Ky., found overcharged and reparation awarded. Holmes v. Director General, as Agent, 74 I. C. C. 668.

(jj) The Commission has frequently drawn the distinction between the legal rate required under section 6 of the act, and the lawful rate provided for in other sections. Lay Fish Co. v. Director General, 80 I. C. C. 4, 5.

(kk) Where certain grades of a commodity made and sold for common grades are not merely by-products of the production of higher grades, and otherwise fully conform to description and loading requirements of common grades, incidental final use, by purchaser, of a selected few thereof for better purposes should not be regarded as affecting their essential character for rate-making purposes, although exclusive or predominant use of grades for a given purpose is a circumstance to be considered, with other facts, in determining proper description to be applied. National Paving-Brick Mfrs. Asso. v. A. & Y. Ry. Co., 80 I. C. C. 179, 183.

(ll) Allegation that carrier has violated section 6 of the act through assessing and collecting without tariff authority switching charges on grain transited at a certain point, predicated upon failure to state in tariff naming transit provisions charges in connection therewith, not sustained. Tariff carrying rates of carrier contains general provision that switching charges at any point will be added to through rate unless provision is made for absorption. This is in accordance with requirements of rule 10 (a) of Tariff Circular 18-A. Detroit Board of Trade v. W. Ry. Co., 80 I. C. C. 717, 723.

(mm) Commodity rates were in effect on packing-house products, but exceptions to classification provided that in applying increases under General Order No. 28 of director general "the increased class rates applicable to like commodity descriptions . . . are not to be exceeded." Contention by defendants that, because not all commodities named in item "packing-house products" in commodity tariff appeared in similar item in classification exceptions, the "commodity descriptions" were not "like," within meaning of rule above quoted, and that class rates applied to specifically named packing-house products were inapplicable, not sustained. Fact that certain articles were listed in one tariff and not in the other does not deprive articles listed and described alike in both of benefit of rule. Findings in former report, 61 I. C. C., 153, reversed. Morrell & Co. v. C., B. & Q. R. R. Co., 81 I. C. C. 200, 202, 203.

(nn) Complainant purchased new brass cartridge cases and new cartridge-brass disks from United States Salvage

boards, for remelting purposes; having agreed under oath that material would be remelted while in its possession and would not be used for any purpose or sold until remelted. Contention that "cartridge shell" and "brass blanks" rates assessed were inapplicable and that charges should have been assessed at scrap brass rates, not sustained. Character of an article for transportation standpoint, and not use to which parties may contract that it shall be put, determines rate or rating applicable. Chases Companies v. Director General, as Agent 81 I. C. C. 207.

(oo) Rails intended for use in mining operations moved at rate lower than that on "railway track." HELD: Rails were of weight often used on short-line railroads, and higher "railway track" rate was applicable. The commission has repeatedly refused to sanction different rate on same commodity based on use to which article is put. Mid-Continent Equip. & Mach. Co. v. M. & O. R. R. Co., 81 I. C. C. 510.

(pp) Shipment consigned "Madry Siding, N. C.," transported by carrier through Madrys Spur, N. C., to point on same branch, where demurrage accrued while consignor gave further disposition orders, and further charge assessed for back haul to Madrys Spur. Madry Siding was not listed in tariffs. HELD: Terms "spur" and "siding" used interchangeably by defendant, whose agents considered Madry Siding and Madrys Spur as one and same point. Shipment should have moved under billing accepted by defendant, and was overcharged to extent total charges assessed exceeded rate to Madrys Spur. Reparation awarded. Webb Fuel Co. v. Director General, as Agent, 81 I. C. C. 631.

(qq) As used in a tariff as to lumber dressed and planed in transit at C., Miss, an intermediate point, into which charges at the local rate are paid, and reshipped and rebilled at a through rate from point of origin, providing that, "The agent will then refund reshipper charges into C., Miss., less 2 cents per 100 pounds, with minimum of $6 per car based on the rebilled weight," the word "charges" refers to the total amount charged the reshipper and paid by him for carriage into such place, and does not refer to the charges into it for the carriage of the rebilled lumber, and this construction would not make the tariff illegal as requiring the carrier to transport the lumber to the intermediate point without collecting its published tariff for such transportation. Southern Ry. Co. v. Berthold & Jennings Lumber Co., (Mo. 1923), 247 S. W. 219.

(rr) The freight rates on carload lots of redwood coffin stock, planed and cut to size and shape, shipped from Santa Clara, Calif., to Minneapolis, Minn., in October, 1919 was 90 cents per hundred under the published tariffs then in force. Minnesota-Koll Casket Co. v. Payne, (Minn. 1922), 188 N. W. 560.

(ss) In the absence of a joint through rate, the lawful rate would have been a combination rate; and it was not necessary, in publishing a joint through rate to cancel or refer to the several factors which would have been applied in the absence of a joint through rate. Bartlett Co. v. C. P. & St. L. Ry. Co., Unrep. Op. A-203.

(tt) A connecting carrier is bound to know that the lower of two conflicting rates is the legal rate, and to apply such rate. Dreyfuss v. Penn. R. Co., 153 N. Y. Supp., 966, 968.

(uu) Where a carrier has published conflicting rates effective contemporaneously in the same tariff, the shipper is entitled to the lower of these rates. Dreyfuss v. Penn. R. Co. 153 N. Y. S., 966, 968.

(vv) Unquestionably the schedule of transportation rates filed with the Interstate Commerce Commission, posted and published in conformity with the statute, together with the waybill and the fact that the shipment was made, constitute a contract. It is an agreement to perform a certain amount of service for a definite compensation. Any change therein after the transportation begins, without the consent of both parties, would be unjust. With respect to such contracts the Interstate Commerce Commission has repeatedly said that changes in the schedule of rates will not be permited to retroact on freight movements commenced before the change was made. The contract was entire and indivisible, so much so that, if through any act of the shipper the shipment was not completed, the carrier was en-

titled to his full charge; and by issuing the bill of lading the carrier binds itself to deliver the goods at their destination. Horton v. Tonopah & Goldfield 225 Fed. 406, 411.

(ww) A rate filed by a carrier with, and approved by, the Interstate Commerce Commission, constitutes the lawful rate, irrespective of its subsequent publication. Payne, Director General of Railroads, v. Clarke, 271 Fed. 525.

ALL OTHER CITATIONS

Priesmeyer Sho Co. v. C. & A. R. R. Co., 23 I. C. C. 78; Crescent Coal & Mining Co. v. C. & E. I. R. R. Co., 24 I. C. C. 149, 151; Railroad Commission of Ark v. St. L. I. M. & S. Ry. Co., 24 I. C. C. 292; Virginia-Carolina Chemical Company v. B. S. Ry. Co., 24 I. C. C. 601; Miller & Co. v. P. M. R. R. Co., Unrep. Op. A-309; Central of Georgia Ry. Co. v. Southern Ferro Concrete Co., (Ala. 1915) 68 So. 981, 982; Kanotex Refining Co. v. A. T. & S. F. Ry Co., 34 I. C. C. 271, 273; Brandsville Fruit Shippers' Asso. v. St. L. & S. F. R. R. Co., Unrep. Op. 1862; Horton v. Tonopah & Goldfield R. Co., 225 Fed. 406, 410; Maley & Wertz v. L. & N. R. R. Co., 36 I. C. 253; Rutter & Co. v. C. & N. W. Ry. 36 I. C. C. 272, 275; Belknap Glass Co. v. G. N. Ry., 36 I. C. C., 322; National Petroleum Asso. v. A. T. & S. F. Ry., 37 I. C. C. 287; Monarch Mach. & Stamping Co. v. I. H. B. R. R., 37 I. C. C. 589; Colorado Tent & Awning Co. v. D. & R. G. R. R., 37 I. C. C. 617; Chelsea Refining Co. v. M. P. Ry., 38 I. C. C. 28; Lucey Co. v. A. T. & S. F. Ry., 38 I. C. C. 264; Oklahoma Fuel Co. v. Ft. S. P. & W. Ry., 38 I. C. C. 576; Bradley Timber & Ry. Supply Co. v. M. St. P. & St. Ste. M. Ry., 38 I. C. C. 598; Dodd & Struthers v. Pa. R. R., 38 I. C. C. 629; Englehart Heating Co. v. N. C. & St. L. Ry., 38 I. C. C. 685; Hinton Bros. Lumber Co. v. A. & M. R. R. Co., Unrep. Op. 2116; Brecht Co. v. S. Ry. Co., Unrep. Op. 2156; Cohen-Schwartz Rail & Steel Co. v. St. L. & S. F. R. R. Co., Unrep. Op. 2167; Meletio Fish & Oyster Co. v. T. St. L. & W. R. R. Co., Unrep. Op. 2205; Pitt Gas Coal Co. v. P. R. R. Co., 37 I. C. C. 240, 242; National Petroleum Assn. v. A. T. & S. F. Ry. Co., 37 I. C. C. 287, 294; Abel & Roberts v. M. P. Ry., 39 I. C. C. 211; Boardman Co. v. A. T. & S. F. Ry., 39 I C C 445; Ludowici-Celadon Co. v. E. J. & E. Ry. Co., 39 I. C. C. 407, 408; Goldcamp Mill Co. v. N. & W. Ry. Co., 39 I. C. C. 433, 439; Bon Marche v. C. M. & St. P. Ry. Co., 39 I. C. C. 611, 612; Crunden-Martin Mfg. Co. v. M. P. Ry. Co., 39 I. C. C. 631; Marshalltown Buggy Co. v. Wabash R. R. Co., 39 I. C. C. 633, 634; Du Pont de Nemours Powder Co. v. M. C. R. R. Co., 40 I. C. C. 71, 72; Bartlett Hayward Co. v. B. & O. R. R. Co., 40 I. C. C. 151, 154; Goodman Mfg. Co. v. C. M. & St. P. Ry., 40 I. C. C. 675; Standard Paint Co. v. C. & N. W. Ry., 41 I. C. C. 365; Augusta Veneer Co. v. S. Ry., 41 I C. C. 414, 416; Coal Operators Traffic Bureau of St. Louis v. B. & O. S. W. R. R., 41 I. C. C. 361; Standard Paint Co. v. C. & N. W. Ry. Co., 41 I. C. C. 365; Meyer Co. v. A. T. & S. F. Ry., 41 I. C. C. 380; Colorado Portland Cement Co. v. C. M. & St. P. Ry., 41 I. C. C. 438; Beall & Co. v. O. W. R. R. & Nav. Co., 41 I. C. C. 627; Cleveland, C. C. & St. L. Ry. Co. v. Talge Mahogany Co., 112 N. E. (Ind. 1916) 890; Hawkeye Oil Co. v. C. G. W. R. R. Co., 42 I. C. C. 243; Hale Halsell Grocery Co. v. M. K. & T. Ry. Co., 42 I. C. C. 491, 494; Lindsay Commission Co. v. N. P. Ry., 44 I. C. C. 759; Prairie Oil & Gas Co. v. Wabash R. R., 45 I. C. C. 1; Federal Bridge Co. v. A. T. & S. F. Ry., 45 I. C. C. 537, 538; Lookout Paint Mfg. Co. v. N. Y. C. R. R., 45 I. C. C. 539; Tarkio Molasses Feed Co. v. C. B. & Q. R. R., 46 I. C. C. 17, 19; Boardman Co. v. A. T. & S. F. Ry., 46 I. C. C. 352, 354; McKay & Morgan v. L. & N. R. R., 45 I. C. C. 146, 148; Bowling v. M. K. & T. Ry., of Texas, 45 I. C. C. 473, 474; Portland Traffic & Transportation Asso. v. C. R. I. & P. Ry., 46 I. C. C. 333, 334; Flaney Grain Co. v. G. N. Ry., 47 I. C. C. 74; American Sumatra Tobacco Co., v. N. Y. N. H. & H. R. R., 47 I. C. C. 243; Du Pont De N. P. Co. v. Penn. R. R., 47 I. C. C. 224; Practical Drawing Co. v. C. H. & D. Ry., 47 I. C. C. 227; Wausau Southern Lum. Co. v. G. & S. I. R. R., 47 I. C. C. 507; Neola Elevator Co. v. M. P. Ry., 49 I. C. C. 629; California Corrugated Culvert Co. v. C. H. & D. Ry., 49 I. C. C. 385; Kindling Mach. Co. v. C. & N. W. Ry., 50 I. C. C. 314; Dunham Co. v. N. Y. C. R. R., 50 I. C. C. 343; Hanley & Kinsella C. & S. Co. v. T. St. L. & W. R. R., 50 I. C. C. 376; Wausau Southern Lum. Co. v. C. & N. W. Ry., 50 I. C. C. 453; Harmon & Co. v. N. Y. N. H. & H. R. R., 50 I. C. C.

455; Merchants Basket & Box Co. v. St. L. S. W. Ry., 49 I. C. C. 615; Swift & Co. v. G. N. Ry., 51 I. C. C. 115; Zelnicker Supply Co. v. T. & O. C. Ry., 51 I. C. C. 133; Schwartz v. St. L. S. F. Ry., 51 I. C. C. 145, 146; Concrete Engineering Co. v. Penn. Co., 51 I. C. C. 423; Portland Cattle Loan Co. v. Oregon Short Line R. R., 251 Fed. 33, 36; Baltimore & O. R. R. v. Carnegie Steel Co., 251 Fed. 682, 684; Swift & Co. v. B. & O. R. R., 50 I. C. C. 103; Terre Haute Paper Co. v. St. L. & S. F. Ry., 50 I. C. C. 141; Casey-Hedges Co. v. A. G. S. R. R., 50 I C. C. 240; Mills & Co. v. St. L. & S. F. Ry., 50 I. C. C. 260; International Paper Co. v. B. & M. R. R., 50 I. C. C. 341; Wausau Southern Lumber Co. v. C. & N. W. Ry., 50 I. C. C. 453; Phillips Excelsior Co. v. T. A. & G. R. R., 51 I. C. C. 425; Schwartz v. St. L. & S. F. Ry., 51 I. C. C. 145; Carroll & Co. v. A. T. & S. F. Ry., 51 I. C. C. 395; Carthage Marble & White Lime Co. v. M. P. R. R., 51 I. C. C. 619; Standard Oil Co., (Cal.) v. A. T. & S. F. Ry., 52 I. C. C. 525; Lanier Bros. v. L. & N. R. R., 52 I. C. C. 580; Nashville Traffic Bureau v. L. & N. Ry., 53 I. C. C. 37; Weissbaum & Co. v. Director General, 53 I. C. C. 681, 683; Jacob E. Decker & Sons v. Director General, 55 I. C. C. 433, 439; Fargo Iron & Metal Co. v. N. P. Ry., 55 I. C. C. 65; Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 188; Consolidated Classification Case 54 I. C. C. 42; Lakewood Engineering Co. v. New York Cent. R. Co. (1919) 259 Fed. 61; Lakewood Engineering Co. v. Director General, 57 I. C. C. 311, 314; Highland Iron & Steel Co. v. Director General, 57 I. C. C. 547; Hines Lumber Co. v. Director General, 57 I. C. C. 701, 702; Frost & Co. v. Director General as Agent, 57 I. C. C. 755; Transcontinental Freight Co. v. Director General, 58 I. C. C. 424; West Virginia Rail Co. v. P. C. C. & St. L. Ry. Co., 59 I. C. C. 241, 242; Medidian Traffic Bureau v. S. Ry., 60 I. C. C. 5, 8; Transcontinental Freight Co. v. Director General, 62 I. C. C. 127, 128; St. Louis, I. M. & S. Ry. Co. et al v. J. F. Hasty & Sons et al., 41 Sup. Ct. 269; Miller v. Director General, as Agent, 60 I. C. C. 162; Bryant and Chapman v. Director General, as Agent, 60 I. C. C. 237, 238; U. S. Importing & Exporting Co. v. Director General, as Agent, 60 I. C. C. 500; Illiff-Bruff Chemical Co. v. Director General, as Agent, 60 I. C. C. 720, 721; Kimball et al v. Chicago, R. I. & P. Ry. Co., 271 Fed. 469; Butler Motor Co. v. Atchison, T. & S. F. Ry. Co., 272 Fed. 683; Lieberman Iron Co. v. Director General, 61 I. C. C. 21; Red Star Yeast & Products Co. v. Director General, as Agent, 61 I. C. C. 107; Transcontinental Freight Co. v. Director General, as Agent, 62 I. C. C. 127, 128; Chevrolet Motor Co. of California v. Director General, as Agent, 62 I. C. C. 693; C. S. Maltby v. S. V. 63 I. C. C. 103, 104, 297; Charleston Mining & Mfg. Co. v. Director General, as Agent, 64 I. C. C. 553; Missouri Pac. R. Co. v. Patterson Milling Co., 273 Fed. 518; Los Angeles Ice & Cold Storage Co. v. Director General, 68 I. C. C. 155; Charleston Milling Co. v. Director General, 68 I. C. C. 525; Sugund Rothschild v. Director General 73 I. C. C. 126; W. H. Warner & Co. v. Director General, 73 I. C. C. 523; King v. Chicago, R. I. & G. Ry. Co., (Tex. 1922), 241 S. W. 180; W. P. Deveraux Co. v. Director General, 77 I. C. C. 627; Southern Ry. Co. v. Berthold and Jennings Lumber Co., (Mo., 1923), 247 S. W. 219; Pioneer Lumber Co. v. Director General, 74 I. C. C., 288; Birmingham Commission Co. v. Director General, 74 I. C. C. 693; Standard Oil Company (California) v. Director General, as Agent, 74 I. C. C. 188; State Highway Dept. of Texas v. P. V., C. & St. L. Ry. Co., 74 I. C. C. 367; Clark & Sons v. Director General, as Agent. 74 I. C. C. 396; Hazel Atlas Glass Co. v. Director General, as Agent 74 I. C. C. 679; Birmingham Commission Co. v. Director General, as Agent, 74 I. C. C. 693; Hercules Powder Co. v. N. Y. C. R. R. Co., 78 I. C. C. 55; Elk Tanning Co. v. Erie R. R. Co., 78 I. C. C. 452; Standard Oil Company v. Midland Valley R. R. Co., 81 I. C. C. 193; Boston Wool Trade Asso. v. Director General, as Agent, 78 I. C. C. 341, 343; Pacific Rice Mills Co. v. Director General, as Agent, 78 I. C. C. 459; Republic Iron & Steel Co. v. Davis (Ala., 1923) 98 So. 197; Corotto v. Director General, as Agent, 77 I. C. C. 89; Southern Cotton Oil Co. v. Director General, as Agent, 80 I. C. C. 627; Fred Brenner Lumber Co. v. Director General, 81 I. C. C. 241; Boston Wool Trade Asso. v. Director

General, as Agent, 81 I. C. C. 131; Proctor & Gamble Co. v. Director General, as Agent, 81 I. C. C. 361, 362; State Highway Department of Texas v. C., B. & Q. R. R. Co., 81 I. C. C. 433; Mitsui & Co. v. Director General, as Agent, 81 I. C. C. 489; Ginocchi-Jones Fruit Co. v. Director General, as Agent, 81 I. C. C. 495; Litman & Ossep v. Director General, 88 I. C. C. 199; Midcontinent Equipment & Machinery Co. v. M. Ry., 88 I. C. C. 217.

§19. As Evidence.

See Undercharges §4.

IMPORTANT CASES SINCE 1908

(a) It is declared by the Interstate Commerce Commission, in a ruling on the subject that there is no presumption of law that a freight rate upon particular commodity is reasonably low because such rate has been duly published and filed by the carrier with the Interstate Commerce Commission. Barnes on Interstate Transportation, p. 223; Illinois Cent. R. Co. v. Interstate Commerce Commission, 206 U. S. 441, 27 Sup. Ct. 700, 51 L. Ed. 1128. But evidently this ruling is not made to allow each independent shipper to bring the rate into question in each case coming up, for that would be to destroy the main feature of the law, the prevention of discrimination. The ruling is made only so the Commission itself may not be bound. J. T. Rather & Co. v. Nashville, C. & St. L. Ry. Co., (Tenn. 1915), 174 S. W., 1113, 1114.

(b) A tariff purporting to have been filed with the Interstate Commerce Commission and verified by the certificate of a chairman of the Interstate Commerce Commission is incompetent for evidence, because the federal statute provides that copies of tariff rates on file with that commission shall be received in evidence, if certified by the secretary, under the seal of the commission. Beaham v. N. Y. C. & H. R. R. Co., (Mo. 1915), 174, S. W., 150, 152.

(c) The law imposes upon shippers the duty of ascertaining the rates and conditions under which they ship, and noncompliance with tariff rules affords no basis for a finding that the rate legally applicable is unreasonable or discriminatory. Joyce-Watkins Co. v. Director General, 56 I. C. C. 433, 434.

ALL OTHER CITATIONS

St. L. I. M. & S. Ry. v. McNabb, (Okla. 1917), 162 Pac. 811; L. V. R. R. Weyant, 165 N. Y. Sup. 391.

§20. Court Proceedings.

See Courts.

IMPORTANT CASES SINCE 1908

(a) It is unnecessary in order to secure uniformity in a construction of interstate tariffs filed with the Interstate Commerce Commission, that all questions concerning their construction shall be first presented to the Commission, since the construction of a tariff is a question of law, which may be ultimately reviewed by the United States Supreme Court, if the parties properly preserve their rights. Great Northern Ry. Co. v. Merchants Elevator Co., 42 Sup. Ct. 477.

(b) A court has the power to construe a tariff and resort as to its meaning does not first have to be made to the Interstate Commerce Commission. It is only when a question of fact is involved that resort should be had to the Commission. Great Northern Ry. Co. v. Merchants' Elevator Co., 42 Sup. Ct. 477.

(c) The construction of a railroad tariff on file with the Interstate Commerce Commission, in which the words used in their ordinary meaning, presents a question of law, which can be raised in the courts, without resort being first had to the Interstate Commerce Commission. Great Northern Ry. Co. v. Merchants' Elevator Co., 42 Sup. Ct. 477.

TAXES

CASES 1887-1908

(a) A state tax upon sleeping cars of a company, used in carrying passengers into and out of the State, is void as a regulation of interstate commerce. Indiana v. Woodruff Sleeping & Parlor Coach Co. (Ind. Sup. Ct.) 1 I. C. R. 798; S. P. cited in Wabash etc. R. Co. v. People (U. S. Sup. Ct.) 1 I. C. R. 31.

(aa) A statute of a State, intended to regulate or to tax, or to impose any other restriction upon the transmission of persons or property or telegraphic messages from one State to another, is not within that class of legislation which the States may enact in the absence of legislation by Congress; and that such statutes are void even as to that part of

such transmission which may be within the State. Wabash, etc., R. Co. v. People 1 I. C. R. 31.

(b) State tax upon earnings of sleeping car company engaged in transporting passengers from one State to another is void. Indiana v. Woodruff Sleeping & Parlor Coach Co. (Sup. Ct. Ind.) 1 I. C. R. 798; S. P. cited in Wabash, St. Louis & P. R. Co. v. People (U. S. Sup. Ct.) 1 I. C. R. 37.

(c) State tax upon gross receipts of railroads for carriage of freight or passengers into, out of or through State, is void. Fargo v. Stevens (U. S. Sup. Ct. 1 I. C. R. 51.

(d) State tax upon interstate commerce is void. Robbins v. Taxing District of Shelby County, (U. S. Sup. Ct.) 1 I. C. R. 45; Fargo v. Stevens, (U. S. Sup. Ct.) 1 I. C. R. 53; Western Union Tel. Co. v. Pendleton (U. S. Sup. Ct.) 1 I. C. R. 307; Gloucester Ferry Co. v. Commonwealth of Pennsylvania (U. S. Sup. Ct.) 1 I. C. R. 382; Riddle, Dean & Co. v. Baltimore & Ohio R. R. Co., 1 I. C. R. 779; Indiana v. Woodruff Sleeping & Parlor Coach Co., (Sup. Ct. Ind.) 1 I. C. R. 800; Re Hennick (Sup. Ct. D. C.) 1 I. C. R. 66, 69.

(e) A state tax upon a steamship company upon gross receipts from transportation between different States, and to and from foreign countries, is unconstitutional. Phila. etc. Steamship Co. v. Pennsylvania (U. S. Sup. Ct.) 1 I. C. R. 308.

(f) Goods brought into a State for sale, although they become thereby a part of the mass of its property, cannot be taxed by reason of their introduction into the State or because they are products of another State. Cited in Phila. etc. Steamship Co. v. Pennsylvania (U. S. Sup. Ct.) 1 I. C. R. 311.

(g) Freedom of transportation implies exception from charges other than such as are imposed by way of compensation for the use of the property employed, or for facilities afforded for its use, or as ordinary taxes upon the value of the property within the jurisdiction of the State. Gloucester Ferry Co. v. Commonwealth of Pa., 1 I. C. R. 382.

(h) Receiving and landing passengers and freight is incident to their transportation. All restraints by exactions in the form of taxes upon such transportation or upon acts necessary to its completion, are invasions of the exclusive power of Congress. Gloucester Ferry Co. v. Commonwealth of Pa., 1 I. C. R. 382.

(i) The capital stock of a foreign ferry company engaged in interstate traffic is not taxable by State. Gloucester Ferry Co. v. Pennsylvania (U. S. Sup. Ct.) 1 I. C. R. 382.

(j) No State can impose a tax upon that portion of interstate commerce which is involved in the transportation of persons and property, whatever be the instrumentality by which it is carried on. Cited in Bowman v. Chicago & N. W. R. Co. (U. S. Sup. Ct.) 1 I. C. R. 829. S. P. in Gloucester Ferry Co. v. Pennsylvania (U. S. Sup. Ct.) 1 I. C. R. 382.

(k) A state has power to prescribe the terms upon which a foreign corporation may do business within its territory, unless the corporation is engaged in the business of interstate commerce. If it is not engaged in transacting business of that kind, the State may levy a tax upon its receipts within the State, and enforce collection. Indiana v. Woodruff Sleeping & Parlor Coach Co., 1 I. C. R. 798.

(l) The State has no power to levy a tax upon the earnings of a sleeping car company engaged in the business of transporting passengers from one State to another. The matter of interstate commerce is a national matter with which no State can in any wise interfere. The jurisdiction of the Federal Government absolutely excludes the State from directly or indirectly hampering or taxing the commerce between States. The statute attempting to authorize it is itself without force. That it restricts the amount of the tax to be paid by the corporation to the distance which passengers are carried through this State does not relieve it of the objection; for the tax it assumes to levy is upon interstate commerce, and not upon the internal commerce of the State. The tax cannot be sustained upon the ground that the carrier can be compelled to pay a tax upon its gross earnings for the privilege of doing a local business in the State. Indiana v. Woodruff Sleeping & Parlor Coach Co., 1 I. C. R. 798.

(m) Tax of fares is tax on passengers. State of Indiana v. Woodruff Sleeping & Parlor Coach Co. (Sup. Ct. Ind.) 1 I. C. R. 800.

(n) It makes no difference whether such commerce is carried on by individu-

als or corporations. State of Indiana v. Woodruff Sleeping & Parlor Coach Co. (Sup. Ct. Ind.) 1 I. C. R. 801.

(o) A state tax upon interstate commerce is void. Re Hennick (Sup. Ct. D. C.) 1 I. C. R. 66 S. P. cited in Bowman v. Chicago & N. W. R. Co. (U. S. Sup. Ct. 1 I. C. R. 830.

(p) A state law imposing such tax is not cured by including in its provisions subjects within jurisdiction of State. Phila. etc. Steamship Co. v. Pennsylvania (U. S. Sup. Ct.) 1 I. C. R. 308; Re Hennick (Sup. Ct. D. C.) 1 I. C. R. 70 S. P. cited in Bowman v. Chicago & N. W. R. Co. (U. S. Sup. Ct.) 1 I. C. R. 834.

(q) Lines wholly within state; "common control, management or arrangement for continuous carriage;" Interstate Commerce Act, §1; English Regulation of Railways Act of 1873, §11. Appendix IV, note, 1 I. C. R. 858.

(r) A single tax assessed, under the statute of Ohio, upon the receipts of a telegraph company which were derived partly from interstate commerce and partly from commerce within the State, but which were returned and assessed in gross and without separation or apportionment, is not wholly invalid, but is invalid only in proportion to the extent that such receipts were derived from interstate commerce. Ratterman v. Western U. Teleg. Co. (U. S. Sup. Ct.) 2 I. C. R. 59.

(s) The collection of the taxes on that portion of the receipts derived from interstate commerce should be enjoined, and the treasurer should be permitted to collect the other tax upon property of the company and upon the receipt derived from commerce entirely within the limits of the State. Ratterman v. Western Union Telegraph Co., 2 I. C. R. 59.

(t) Where the subjects of taxation can be separated, so that that which arises from interstate commerce can be distinguished from that which arises from commerce wholly within the State, the tax on interstate commerce will be restrained while permitting the State to collect that upon commerce wholly within its own territory. Ratterman v. Western U. Teleg. Co. (U. S. Sup Ct.) 2 I. C. R. 59.

(u) The property of a telegraph company, situated within a State, may be taxed by the State as all other property is taxed; but its business of an interstate character cannot be thus taxed. Leloup v. Port of Mobile, 2 I. C. R. 134.

(v) The Western Union Telegraph Company established an office in the city of Mobile, Alabama, and was required to pay a license tax under a city ordinance which imposed an annual license tax of $225 on all telegraph companies, and the agent of the company was fined for the nonpayment of this tax. In an action to recover the fine he pleaded the character and nature of occupation of the company, and its acceptance of the Act of Congress of July 24, 1866, and the fact that its business consisted in transmitting messages to all parts of the United States, as well as in Alabama. HELD, a good defense. Leloup v. Port of Mobile, 2 I. C. R. 134.

(w) A general license tax on a telegraph company doing business in different States affects its entire business, interstate as well as domestic, and is unconstitutional. Leloup v. Port of Mobile (U. S. Sup. Ct.) 2 I. C. R. 134.

(x) Franchises conferred by Congress cannot, without its permission, be taxed by the State. California v. Central P. R. Co. (U. S. Sup. Ct.) 2 I. C. R. 153.

(y) An assessment, by the State Board of Equalization of California, of all the franchises of a railroad company, including franchises conferred by the United States for constructing a railroad from the Pacific Ocean across the State as well as across the Territories of the United States, and of taking toll thereon,—is repugnant to the commercial clause of the United States Constitution. California v. Central P. R. Co. (U. S. Sup. Ct.) 2 I. C. R. 153.

(z) An assessment of the steamers of a railroad company by the State Board of Equalization in California is in violation of the Constitution and void, and, being inseparably blended with the other property assessed, the whole assessment is void. California v. Central P. R. Co. (U. S. Sup. Ct.) 2 I. C. R. 153.

(aa) The State Board of Equalization of California having included in their assessment all the franchises of a railroad company, amongst which were franchises, conferred by the United States, of constructing a railroad from the Pacific Ocean across the State as well as across the Territories of the United States, and of taking toll thereon,—HELD, that the assessment of these franchises were repugnant to the

Constitution and laws of the United States and the power given to Congress to regulate commerce among the several States. California v. Central Pacific R. R. Co., 2 I. C. R. 153.

(bb) By the Constitution of California two modes of assessment for taxation are prescribed; one, by a State Board of Equalization; the other, by county boards and local assessors. All property is directed to be assessed in the county, city, etc., in which it is situated, except that the franchise, roadway, roadbed, rails, and rolling stock of any railroad operated in more than one county are to be assessed by the state board and apportioned to the several counties, etc. By an Act of the Legislature the state board is required to include in their assessment steamers engaged in transporting passengers and freights across waters which divide a railroad. This Act was held by the Supreme Court of California, in San Francisco v. Central Pac. R. R. Co. 63 Cal. 469, to be contrary to the Constitution; and steamboats were held to be assessable by the county board, and not by the state board. This court, following that decision and that of Santa Clare County v. Southern Pac. R. R. Co. 118 U. S. 394 (30:118), HOLDS that the assessment of the steamers of a railroad company by the state board is in violation of the Constitution of California, and void, and, being inseparably blended with the other property assessed, it makes the whole assessment void. California v. Cent. Pac. R. R. Co. 2 I. C. R. 153.

(cc) Exemptions from taxation, being exceptions to the rule of taxation, are strictly construed. Atlantic & P. R. Co. v. Lesueur (Ariz.) 2 I. C. R. 189.

(dd) Exemption from taxation of a railroad right of way does not carry with it improvements to such right of way. Atlantic & P. R. Co. v. Lesueur (Ariz.) 2 I. C. R. 189.

(ee) The exemption of a right of way from taxation does not exempt the superstructure, i. e., a railway, thereon. Atlantic & Pacific R. Co., v. Lesueur, 2 I. C. R. 189.

(ff) Exemption from taxation is the exception to the rule of taxation, and can be sustained only from the strictest construction. Atlantic & Pacific R. Co. v. Lesueur, 2 I. C. R. 189.

(gg) Taxation of the franchise of a ralway granted by Act of Congress, by the Territories, does not conflict with the commercial clause of the United States Constitution. Atlantic & P. R. Co. v. Lesueur (Ariz.) 2 I. C. R. 189.

(hh) The taxation, by a Territory, of the franchise of a corporation incorporated by Act of Congress, is not unconstitutional as the taxation of a federal agency, in the absence of such restriction in the grant of the taxing power to the Territory, as Congress may permit the Territory to do so. Atlantic & P. R. Co. v. Lesueur (Ariz.) 2 I. C. R. 189.

(ii) For the purpose of taxation, the situs of the rolling stock of a railway company is where it is habitually used. If the specified property be constantly changing, the amount may be fixed by the average amount so used. Atlantic & Pacific R. Co. v. Lesueur. 2 I. C. R. 189.

(jj) Nor is the taxation by a Territory of the franchise of a corporation incorporated by Act of Congress unconstitutional, as the taxation of a federal agency, in the absence of such restriction in the grant of the taxing power to the Territory, as Congress may permit the Territory to do so. Atlantic & Pacific R. Co. v. Lesueur, 2 I. C. R. 189.

(kk) The situs of the rolling-stock of a railroad company for the purpose of taxation is where it is habitually used; and if the specified property be constantly changing, the amount may be fixed by the average amount so used. Atlantic & P. R. Co. v. Lesueur (Ariz.) 2 I. C. R. 189.

(ll) Taxation of the franchise of a railway granted by Act of Congress, by the Territories, is not in conflict with the constitutional grant to Congress of the power to regulate commerce among the several States. Atlantic & Pacific R. Co. v. Lesueur, 2 I. C. R. 189.

(mm) The situs, for taxation, of unregistered vessels (including dredges and scows) engaged in interstate commerce, is the State of the domicil of their owner, although they may never have been within that State,—in the absence of anything to show that they are so permanently located in another State as to be liable to taxation there. Com. v. Amer. Dredg Co. (Pa.) 2 I. C. R. 221.

(nn) The situs, for taxation, of tangible personal property temporarily in another State, but not permanently located there, is the State of the domicil

of the owner. Com. v. American Dredging Co. (Pa.) 2 I. C. R. 221.

(oopp) The situs, for purposes of taxation, of tangible personal property, temporarily in another State but not permanently located there, is the State of the domicil of the owner. Commonwealth v. Amer. Dredg. Co., 2 I. C. R. 221.

(qq) The tax upon railroad gross receipts from transportation, etc., prescribed by Pa. Act 1879, §7 (P. L. 116), if valid in other respects, cannot be evaded by the fact that the railroad company is a foreign corporation and has sent such receipts to its home office, so that they are not physically within Pennsylvania. Delaware & H. C. Co. v. Com. (Pa.) 2 I. C. R. 222.

(rr) Such statute is valid, however, as to all receipts derived from commerce wholly confined within the limits of the State; and this, although the company doing the business is a foreign corporation. Delaware & Hudson Canal Co. v. Commonwealth, 2 I. C. R. 222.

(ss) Philadelphia & Reading R. Co. v. Com.—82 U. S. 15 Wall, 284 (21 L. ed. 164), has been in effect overruled by Fargo v. Michigan, 121 U. S. 230 (30 L. ed. 888) and Phila. & Southern M. S. S. Co. v. Com. 122 U. S. 326 (31 L. ed. 1200). Delaware & Hudson Canal Co. v. Commonwealth, 2 I. C. R. 222.

(tt) Receipts for transportation between points within and points without the State of Pennsylvania, or between points without that State but passing through the State on its way, being interstate commerce, cannot be taxed under the Pennsylvania Act of June 7, 1879. Delaware & Hudson Canal Co. v. Commonwealth, 2 I. C. R. 222.

(uu) Section 7 of the Pennsylvania Act of June 7, 1879, imposing a tax upon the gross receipts of railroad companies from transportation, etc., is valid in respect to receipts from business between points both of which are in Pennsylvania. Delaware & Hudson Canal Co. v. Commonwealth, 2 I. C. R. 222.

(vv) A state statute which attempts to tax the gross receipts of transportation companies derived from tolls and and transportation, telegraph business, or express business," is not valid, so far as such receipts are derived from commerce between points within and points without the state. Delaware & Hudson Canal Co. v. Commonwealth, 2 I. C. R. 22.

(ww) The gross receipts of railroad companies from transportation between points within the State are taxable under section 7 of the Pennsylvania Act of June 7, 1879 (P. L. 116); but receipts from interstate transportation are not taxable thereunder. Lehigh Valley R. Co. v. Commonwealth, 2 I. C. R. 226.

(xx) A state statute taxing gross receipts of transportation companies derived "from tolls and transportation," telegraph business or express business, is not valid, so far as the receipts are derived from commerce between points within and points without the State, but passing through the state on its way. Delaware & H. C. Co. v. Com. (Pa.) 2 I. C. R. 222; Northern P. R. Co. v. Raymond (Dak.) 2 I. C. R. 321.

(yy) The payment of the whole of the annual tax on gross earnings of a railroad company on the date upon which, under the Dakota Act of March 9, 1883, only the first installment thereon had become due, is a valid payment and a satisfaction of the whole tax for the year, and not merely of the first installment. Northern P. R. Co. v. Raymond (Dak.) 2 I. C. R. 321.

(zz) The Dakota Act of March 9, 1883, providing for a tax or a per centum in lieu thereof on the gross earnings of a railroad company is unconstitutional so far as the earnings are derived from interstate transportation. Northern Pacific R. Co. v. Raymond, 2 I C. R. 321.

(3a) An ordinance levying a tax of $50 on every railroad running through the corporate limits does not violate the principle of uniformity of taxation. Richmond & D. R. Co. v. Reidsville (N. C.) 2 I. C. R. 416.

(3b) A municipal ordinance levying a tax of $50 upon every railroad running through the corporate limits, whether it be called a privilege tax or by some other name, being a tax imposed upon business in the town, if authorized by the State law, is not void as a tax on interstate commerce. Richmond & D. R. Co. v. Reidsville (N. C.) 2 I. C. R. 416.

(3c) But such taxes may be levied upon all messages carried and delivered exclusively within the State. Western U. Teleg. Co. v. Seay (U. S. Sup. Ct.) 2 I. C. R. 726.

(3d) Where a state court decided that a state law taxing telegraph companies authorized and imposed a tax

upon receipts derived by them from messages from or to other States, and sustained a state tax thereon under such law, this court has jurisdiction to review such decision. Western Union Telegraph Co. v. Seay, 2 I. C. R. 726.

(3e) The city of Philadelphia is not authorized to tax a telegraph company occupying its streets, and could not, even if authorized, tax a company engaged in interstate commerce. Philadelphia v. Western U. Teleg. Co. (C. C. E. D. Pa.), 2 I. C. R. 728.

(3f) A company formed and doing business within the State of New Jersey, which was organized by a number of individuals signing articles of agreement by which the concern was described as a "joint-stock company," and which provided for continuance a certain number of years, for a capital stock divided into shares, represented by certificates or script and assignable in the usual manner; which provided, further, that the business should be managed by a board of directors; that suits should be brought in the name of the president, and all deeds should run to and be made by him; and that the death of members less than a majority of the interest of the whole should not dissolve the company,—is either a "corporation, joint-stock company, or association," within the provisions of N. Y. Laws 1880, chap. 542, which provides for the taxation of such concerns, and is therefore liable to taxation under that Act, although the articles of agreement contain no reference to any statute under which the company was organized, and the statute provided for such organizations was not in fact passed until after the agreement was prepared. People, Platt v. Wemple (N. Y.) 2 I. C. R., 735.

(3g) A tax upon the corporate franchise or business of express companies organized or doing business within the State, to be computed upon their capital stock or its valuation, is neither in form nor in substance obnoxious to the Federal Constitution, as interfering with commerce. People, Platt, v. Wemple (N. Y.) 2 I. C. R. 735.

(3h) The word "incorporated," as used in Laws 1880, §3, amended by Laws 1881, chap. 380, providing that every company incorporated under any laws of this State shall be subject to a certain tax, is not to be confined to an association brought into being according to the formality of a statute, but as including any combination of individuals upon terms which embody or adopt as rules or regulations the enabling provisions of the Statute. People, ex rel, Platt, v. Wemple, 2 I. C. R. 735.

(3i) An ordinance requiring a license tax from peddlers, and declaring that all persons selling goods from house to house by retail from samples or otherwise shall be deemed peddlers, is, so far as relates to sales by sample made for residents of other States void as a regulation of commerce in violation of the Constitution of the United States. Re. Kimmel, 3 I. C. R. 114.

(3j) Rolling-stock of a nonresident railroad company, used in interstate commerce, is not subject to taxation in a State where it is operating a leased railroad. Bain v. Richmond & D. R. Co. (N. C.) 3 I. C. R. 149.

(3ja) No State has the right to lay a tax on interstate commerce, by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on. Lyng v. People of the State of Michigan, 3 I. C. R. 143.

(3k) A State cannot, under the guise of a license tax, exclude from its jurisdiction a foreign corporation engaged in interstate commerce, nor impose any burdens upon such commerce within its limits. Norfolk & W. R. Co. v. Commonwealth of Pa., 3 I. C. R. 178.

(3l) A license tax assessed under the Pennsylvania Act of June 7, 1879 (P. L. 112, 120), by the auditor-general of the State against such company for keeping an office in Philadelphia for the use of its officers, stockholders, agents and employes, is a tax upon the company's business of interstate commerce, and is a violation of the commercial clause of the Constitution of the United States. Norfolk & Western R. Co. v. Commonwealth of Pa., 3 I. C. R. 178.

(3m) An agent in San Francisco, California, of a railroad corporation having its principal place of business in Chicago and operating a continuous line of road between Chicago and New York, whose duty it was to solicit passenger traffic over such road, cannot be convicted of a misdemeanor for not paying the license tax required by Order 1589 of the City and County of San Francisco, im-

posing municipal licenses. McCall v. People of State of Cal., 3 I. C. R. 181.

(3n) Such order, so far as it affects such agent, imposes a tax on interstate commerce and is therefore repugnant to clause 3, of sec. 8, art. I., known as the "commerce clause" of the United State Constitution. McCall v. People of State of Cal., 3 I. C. R. 181.

(3o) A statute requiring the payment of a license fee for the privilege of purchasing certain kinds of produce in a certain county, to be shipped out of it, which fee is greater in the case of nonresidents of the county than of residents, is not obnoxious to U. S. Const., art. 4, §2, entitling citizens of each State to all the privileges and immunities of the citizens of the several States. Rothermel v. Meyerle, 3 I. C. R. 315.

(3p) Although a statute imposing a license fee for the privilge of buying certain produce in a particular county to be shipped out of it may be void as an interference with interstate commerce so far as it applies to produce purchased to be shipped out of the State, it is valid in its application to produce intended for shipment to places within the State. Rothermel v. Meyerle, 3 I. C. R. 315.

(3q) The exaction of a license fee for the privilege of purchasing goods to be shipped to another State is not unconstitutional as a tax upon interstate commerce, since at most it is simply a tax on the goods at the time of their purchase, at which time they are subject to state taxation, and so remain until the business of transportation has actually commenced. Rothermel v. Meyerle, 3 I. C. R. 315.

(3r) A notice by the lessor of a railroad to its lessee, not to pay certain taxes because of their invalidity which have been assessed under state laws requiring the lessee under heavy penalties to pay the taxes and deduct them from the rent due, will not entitle the lessor to recover their amount from the lessee in case they are paid and are afterwards adjudged invalid, if it made no offer to idemnify the lessee against liability and under the decisions as they then stood the taxes were lawful. Vermont & C. R. Co. v. Vermont C. R. Co. (Vt.) 3 I. C. R. 488.

(3s) Taxes assessed upon the gross earnings of a railroad are taxes upon the property of such road, within the rule which requires the lessor, and not the lessee, to pay such taxes,—especially where the rent to be paid is a certain proportion of the gross earnings, and the tax law directs the lessee to pay the tax and deduct it from rent due the lessor. Vermont & C. R. Co. v. Vermont C. R. Co. (Vt.) 3 I. C. R. 488.

(3t) Where the lessee of a railroad is compelled to pay taxes assessed against the lessor, the law implies a request on the part of the lessor for the making of such payment; and the lessee may maintain an action to recover the amount from the lessor, or may deduct the amount from the rent due. Vermont & C. R. Co. v. Vermont C. R. Co. (Vt.) 3 I. C. R. 488.

(3u) Since a state tax on the gross receipts of railroad companies was held valid prior to the decision in Philadelphia & S. M. S. S. Co. v. Pennsylvania, 122 U. S. 326, 30 L. ed. 1200, the lessee of a railroad cannot be compelled to make good to the lessor the amount which before that decision, in obedience to a state law, it deducted from the portion of such receipts belonging to the lessor and paid to the State as taxes, even though a part of such receipts came from interstate commerce and were therefore not taxable under that decision. Vermont & C. R. Co. v. Vermont C. R. Co. (Vt.) 3. I. C. R. 488.

(3v) A state law which seeks to tax the earnings derived by railroads from interstate commerce is unconstitutional. Vermont & C. R. Co. v. Vermont C R. Co. (Vt.) 3 I. C. R. 488.

(3w) A law which requires the lessee of a railroad to deduct the taxes levied on the road from the rent stipulated to be paid under the lease, and pay the same to the State, is not void, even with reference to existing leases, as impairing the obligation of a contract, where both lessor and lessee and the rent due are proper subjects for taxation. Vermont & C. R. Co. v. Vermont C. R. Co. (Vt.) 3 I. C. R. 488.

(3x) Taxes assessed upon the gross earnings of a railroad are taxes upon the property of such road within the rule which requires the lessor, and not the lessee, to pay such taxes, especially where the rent to be paid is a certain proportion of the gross earnings and the tax law directs the lessee to pay the tax and deduct it from rent due the

lessor. Vt. & Canada R. Co. v. Vt. Central R. Co., 3 I. C. R. 488.

(3y) The amount of the annual license tax is not the amount in controversy in a suit to restrain the enforcement of the tax, so as to defeat the jurisdiction of a federal court, where complainant asks to be relieved from threatened penalties, and alleges that if the injunction is not granted its business will be entirely destroyed, and it will be damaged in a sum exceeding $2,000, and that goods in excess of that sum will be seized. American Fertilizing Co. v. North Carolina Bd. of Agriculture (C. C. E. D. N. C.) 3 I. C. R. 532.

(3z) The Alabama Statute imposing a license tax on itinerant dealers, etc., so far as it applies to a foreign traveling agent, who goes from house to house and sells goods by sample for a non-resident, is an attempted regulation of interstate commerce, and unconstitutional. Murray, 3 I. C. R. 574.

(4a) For the purposes of taxation, personal property may be separated from its owner, and he may be taxed, on its account, at the place where it is, although not the place of his own domicil. Pullman's Palace Car Co. v. Com. (U. S. Sup Ct.) 3 I. C. R. 575.

(4b) Taking, as a basis of assessment, such proportion of the capital stock of the company as the number of miles over which it ran cars within the State bore to the whole number of miles, in that and other States, over which its cars were run, was just and equitable method of assessment. Pullman's Palace Car Co. v. Com. (U. S. Sup. Ct.) 3 I. C. R. 575.

(4c) Where the cars of a company within a State are employed in interstate commerce, their being so employed does not exempt them from taxation by the State. Pullman's Palace Car Co. v. (U. S. Sup. Ct.) 3 I. C. R. 595.

(4d) There is nothing in the Constitution or laws of the United States which prevents a State from taxing personal property within its jurisdiction, employed in interstate or foreign commerce. Pullman's Palace Car Co. v. Com. (U. S. Sup. Ct.) 3 I. C. R. 595.

(4e) A tax, not upon the property employed in the business of interstate commerce, but upon the right to carry on the business at all, imposes a direct burden upon the commerce itself. Pullman's Palace Car Co., v. Com. (U. S. Sup. Ct.) 3 I. C. R. 595.

(4f) A tax on the capital of a corporation, on account of its property within the State, is in substance and effect a tax on that property. Pullman's Palace Car Co., v. Com. (U. S. Sup. Ct.) 3 I. C. R. 595.

(4gh) As to whether a tax is in accordance with a law of a State, the decision of the highest court of a State is conclusive. Pullman's Palace Car Co. v. Com. (U. S. Sup. Ct.) 3 I. C. R. 595.

(4ij) Ships or vessels can be taxed only at their legal situs, their home port and the domicil of their owners. Pullman's Palace Car v. Commonwealth of Pa., 3 I. C. R. 595.

(4j) For the purposes of taxation, personal property may be separated from its owner, and he may be taxed, on its account, and the place where it is, although not the place of his own domicil. Pullman's Palace Car Co. v. Commonwealth of Pa., 3 I. C. R. 595.

(4k) An ordinance requiring a license tax from persons who solicit orders for books in behalf of a principal in another State, is an unconstitutional regulation of interstate commerce. City of Bloomington v. Bourland, 3 I. C. R. 667.

(4l) A State can levy an excise tax upon a railroad corporation for the privilege of exercising its franchises within the State. Maine v. Grand Trunk R. Co. (U. S. Sup. Ct.) 3 I. C. R., 807.

(4m) Reference to the transportation receipts of a railroad company and to a certain percentage of the same, in determining the amount of an excise tax upon the company, is not in effect the imposition of the tax upon such receipts or an interference with interstate and foreign commerce, although the railroad lies partly within and partly without the State. Maine v. Grand Trunk R. Co. (U. S. Sup. Ct.) 3 I. C. R. 807.

(4n) The character of an excise tax levied upon a railroad corporation, or its validity, is not determined by the mode adopted in fixing its amount for any specific period or the times of its payment. State v. Grand Trunk R. Co. 3 I. C. R. 807.

(4o) Constitutional provisions as to equality of taxation are not violated by a tax on the business of express companies, which does not apply to railroad or steamboat companies which carry ex-

press matter. Pacific Exp. Co. v. Seibert (U. S. Sup. Ct.) 3 I. C. R., 810.

(4p) A tax upon the business of an express company done within the State is not a tax upon interstate commerce, although the company is also engaged in business between the States. Pacific Exp. Co. v. Seibert (U. S. Sup. Ct.), 3 I. C. R. 810.

(4q) The Fourteenth Amendment of the United States Constitution does not prevent a State from adjusting its system of taxation in all proper and reasonable ways, nor the classification of property for taxation, nor prohibit special legislation. Pacific Express Co. v. Seibert, 3 I. C. R. 810.

(4r) The Missouri Act imposing a tax upon the business of express companies is not repugnant to the 14th Amendment of the United States Constitution, because it does not impose a like tax upon railroad or steamboat companies which carry express matter; nor does such Act violate the provision of the constitution of Missouri relating to equality of taxation. Pacific Express Co v. Seibert, 3 I. C. R. 810.

(4s) The statute of New York does not require that the whole business of a foreign corporation shall be done within the state, in order to subject it to the taxing power of the state. Horn Silver Min. Co. v. New York (U. S. Sup. Ct.), 4 I. C. R. 57.

(4t) A tax levy only upon the franchise or business of a foreign corporation is not a tax of interstate commerce. Horn Silver Min. Co. v. New York (U. S. Sup. Ct.) 4 I. C. R. 57.

(4u) The extent of a tax upon a foreign corporation is a matter purely of state regulation, and any interference with it is beyond the jurisdiction of the Supreme Court of the United States. Horn Silver Min. Co. v. New York (U. S. Sup. Ct.), 4 I. C. R. 57.

(4v) According to the law of most states a franchise or privilege of being a corporation is personal property and is subject to taxation. Horn Silver Mining Co. v. State of New York, 4 I. C. R. 57.

(4w) A state has power to tax all property having a situs within its limits, whether employed in interstate commerce or not. Ficklen v. Shelby County Taxing Dist. (U. S. Sup. Ct.), 4 I. C. R. 79.

(4x) Where complainant took out licenses under the Tennessee law of 1881 to do a general commission business, and gave bond to report their commission during the year, and to pay the required percentage thereon, they cannot, when they apply for similar licenses for the ensuing year, resort to the courts because the municipal authorities refuse to issue such licenses without the payment of the stipulated tax. Fickler v. Shelby Co., Taxing District, 4 I. C. R. 79.

(4y) A citizen doing a general business at the place of his domicil cannot escape payment of his share of the burdens of municipal government because the amount of his tax is arrived at by reference to his profits. Fickler v. Shelby Co. Taxing District, 4 I. C. R. 79.

(4z) A state Legislature may tax trades, professions and occupations in the absence of inhibition in the state constitution in that regard, and where a resident citizen engages in general business subject to a particular tax, the fact that the business done changes to consist, for the time being, wholly or partially in negotiating sales between resident and non-resident merchants of goods situated in another state does not necessarily involve the taxation of interstate commerce, forbidden by the Constitution. Ficklen v. Shelby Co. Taxing District, 4 I. C. R. 79.

(5a) A railroad corporation of a state is liable to taxation by such state upon its receipts, for the mileage within the state, from transportation by continuous carriage from a point in the state to another point in the state, but over a line which, in its course between those points passes out of the state into another state and back again into the State. Lehigh Valley R. Co. v. Commonwealth of Pa., 4 I. C. R. 87.

(5b) A privilege tax on telegraph companies, graduated according to the value of the property of the company measured by its mileage, and imposed in lieu of all other taxes, although incidentally affecting interstate commerce, is not unconstitutional, as an interference with such commerce. Postal Telegraph Cable Co. v. Adams, 4 I. C. R. 416.

(5c) A license tax of $590 per annum imposed on every person selling in a city any meat which is not from animals of his own raising, unless he rents a stall in a public market, while the rent of

such stall is $150 per year and the market regulations are so restricted and burdensome as to preclude the reasonable conduct of a wholesale business there, is unconstitutional in respect to wholesale dealers in meat brought from other states, by reason of the necessarily resulting discrimination against them, although the ordinances on the subject on their face purport to apply to vendors irrespective of the places from which it comes,—especially where neither sales nor inspection of meat are restricted to the market, and the regulations are clearly made for the purpose of revenue and not merely to prevent the sale of uninspected meat. Georgia Packing Co. v. Macon, 4 I. C. R. 508.

(5d) The suit in equity by the Northern Pacific Railroad Company to enjoin the collection of the taxes imposed upon its property in certain counties of North Dakota is without equity, because of the failure to aver that the company had tendered or paid the gross earnings tax for the year 1889 (or the tax assessed by the county auditors) and it is not entitled to the equitable relief prayed without first tendering or paying such taxes. Northern Pacific R. Co. v. Clark, 4 I. C. R. 641.

(5c) No one can have an injunction against the collection of a tax until he has paid so much of the tax assessed against him as it can be plainly seen he ought to pay. Northern Pacific R. Co. v. Clark, 4 I. C. R. 641.

(5f) An ordinance of a city imposing a license fee upon every telegraph company, or agency, doing business in the city, for business done exclusively in the city, not including business done to and from points without the state or business done for the government, its officers or agents, is not void as an interference with interstate commerce. Postal Telegraph Cable Co. v. City Council of Charleston, 4 I. C. R. 637.

(5g) A license tax imposed by a state upon an agent of a citizen of another state for the privilege of selling his goods in the former state, is a direct burden of interstate commerce, and therefore beyond the power of the state. Brennan v. City of Titusville, 4 I. C. R. 658.

(5h) A license tax required for the sale of goods is in effect a tax upon the goods themselves. Brennan v. City of Titusville, 4 I. C. R. 658.

(5i) No state can levy a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on. Brennan v. Titusville (U. S. Sup. Ct.) 4 I. C. R. 658.

(5j) The law of Ohio requiring a corporation to pay the secretary of state for filing articles of agreement of consolidation of corporations a percentage on the capital stock of the new consolidated corporation created by such articles is valid and constitutional, when applied to the consolidation of foreign corporations with a domestic corporation of the state, forming continuous line of railroad through several cities. Ashley v. Ryan (U. S. Sup. Ct.) 4 I. C. R. 664.

(5k) The exaction of a charge by a state for the filing of articles of consolidation of several railroad companies forming a connecting line, only one of which is a corporation of the state, as a condition imposed by the state upon the taking of corporate being or the exercise of corporate franchises, constitutes no tax upon interstate commerce or the right to carry on the same or the instruments thereof, and its enforcement involves no attempt on the part of the state to extend its taxing power beyond its territorial limits. Ashley v. Ryan (U. S. Sup. Ct.) 4 I. C. R. 664.

(5l) Ascertaining the value of the whole line of a railroad as a single property, and then determining the value of that within the state upon a mileage basis, is not a valuation of property outside of the state, if no special circumstances exist to distinguish between the conditions in the two states,—such as terminal facilities of enormous value in one and not in another. Cleveland C. C. & St. L. R. Co. v. Backus (U. S. Sup. Ct.) 4 I. C. R. 677.

(5m) The true value of a line of railroad for the purpose of taxation is something more than an aggregation of the values of separate parts of it, operated separately. It is the aggregate of those values plus that arising from a connected operation of the whole. Cleveland C. C. & St. L. R. Co. v. Backus (U. S. Sup. Ct.), 4 I. C. R. 677.

(5n) Assessing that part of an interstate railroad which is within the state at its actual cash value on a mileage

basis is not placing a burden upon interstate commerce beyond the power of the state, simply because the value of the railroad as a whole is created partly—and perhaps largely—by the interstate commerce which it is doing. Cleveland, C. C. & St. L. R. Co. v. Backus (U. S. Sup. Ct.) 4 I. C. R. 677.

(5o) If an assessing board, seeking to assess for purposes of taxation a part of a road within a state, the other part of which is in an adjoining state, ascertains the value of the whole line as a single property, and then determines the value of that within the state, upon the mileage basis, that is not a valuation of property outside of the state, if no special circumstances exist to distinguish between the conditions in the two states such as terminal facilities of enormous value in one and not in another. Cleveland, C. C. & St. L. R. Co. v. Backus, 4 I. C. R. 677.

(5p) It is not necessary that the assessing board of a state in order to keep within the limits of state jurisdiction shall treat the part of a railroad within the state as an independent line, disconnected from the part without, and place upon that property only the value which can be given to it if operated separately from the balance of the road. Cleveland, C. C. & St. L. R. Co. v. Backus, 4 I. C. R. 677.

(5q) Where an assessing board is charged with the duty of valuing a certain number of miles of railroad within a state forming part of a line of road running into another state, and assesses those miles of road at their actual cash value determined on a mileage basis, this is not placing a burden upon interstate commerce, beyond the power of the state, simply because the value of that railroad as a whole is created partly—and perhaps largely—by the interstate commerce which it is doing. Cleveland, C. C. & St. L. R. Co. v. Backus, 4 I. C. R. 677.

(5r) The rule of all property taxation is the rule of value, and by that rule property engaged in interstate commerce is controlled the same as property engaged in commerce within the state, this does not cast a burden on interstate commerce. Cleveland, C. C. & St. L. R. Co. v. Backus, 4 I. C. R. 677.

(5s) The rule of property taxation is that the value of the property is the basis of taxation; the value of the property results from the use to which it is put and varies with the profitableness of that use. Cleveland, C. C. & St. L. R. Co. v. Backus, 4 I. C. R. 677.

(5t) When a railroad runs into two states each state is entitled to consider as within its territorial jurisdiction and subject to the burdens of its taxes the proportionate share of the value flowing from the operation of the entire mileage as a single continuous road. Cleveland, C. C. & St. L. R. Co. v. Backus, 4 I. C. R. 677.

(5u) While no state can impose any tax or burden upon the privilege of doing the business of interstate commerce, yet it has the unquestioned right to place a property tax on the instrumentalities engaged in such commerce. Cleveland, C. C. & St. L. R. Co. v. Backus, 4 I. C. R. 677.

(5v) A state statute which imposes a tax, in general terms, on the doing of specified kinds of business, or the pursuit of designated occupations, in the state, and requires that a license shall be taken out before any such business or avocation shall be done or engaged in, should not be construed to apply to any business of the kind that may constitute interstate commerce, but only to business that is domestic or state commerce and to persons engaged or intending to engage in such domestic or state business. Osborne v. State of Florida, 4 I. C. R. 731.

(5w) A state cannot tax or regulate interstate commerce, or make the payment of a tax or the taking out of a license a condition precedent to carrying interstate commerce. A state statute which does so, either expressly or in effect, is offensive to the commerce clause of the Constitution of the United States, and void at least to that extent. The same is true as to foreign commerce. Osborne v. State of Florida, 4 I. C. R. 731

(5x) Although interstate commerce cannot be taxed or regulated by state legislation, and the commerce clause of the Federal Constitution exempts all such commerce from regulation or taxation by state authority, yet the doing of business that constitutes interstate commerce by a person who is also at the same time engaged in business, of the same kind, that constitutes state or local commerce, cannot be made a bar or exemption of the local or state commerce business from taxation or regulation by

state authority. Osborne v. State of Florida, 4 I. C. R. 731.

(5y) The ninth section of the General Revenue Law of 1893 (chapter 4115, approved June 2, 1893) provides that no person shall engage in or manage the business, profession, or avocation mentioned therein without first taking out a state license as provided therein and paying the occupational tax and license fee prescribed thereby: and it authorizes counties and incorporated cities and towns to impose further taxes. As to express companies its special provisions, substituting figures for words, are as follows: "All express companies doing business in this state shall pay in cities of 15,000 inhabitants or more, a license tax of $200; in cities of 10,000 to 15,000 inhabitants, $100; in cities of 5,000 to 10,000 inhabitants, $75; in cities of 3000 to 5000 inhabitants, $50; in cities of 1000 to 3000 inhabitants, $25; in towns and villages of less than 1,000 and more than fifty inhabitants, $10." Any express company violating these provisions, or any person that knowingly acts as agent for any express company before it has paid the tax payable by such company is guilty of a misdemeanor and punishable as therein provided. HELD, the act does not tax or regulate or apply to interstate commerce, as distinguished from state or local commerce carried on by an express company, but applies only to express business that is local or state commerce. That so long as an express company confines its operations to express business that constitutes interstate or foreign commerce it is exempt from the above legislation, but if it engages in business that is state or local, as distinguished from interstate or foreign commerce, it becomes subject to the statute, notwithstanding it may at the same time engage in interstate or foreign commerce. The effect of the section, in so far as it imposes licenses taxes on express companies, is that each company doing any business that constitutes local or state commerce, as contradistinguished from interstate or foreign commerce, shall pay a state license tax and take out a state license when it proposes to do business in any city or town or village having more than fifty inhabitants, the amount of such tax being as above indicated according to the population. When there are in one county several cities or towns or villages belonging to one or more of the stated classes, the company must take out a separate state license for each city, town, or village it may intend to do business in, and pay the tax and the fee for the same. Any county may require each company doing business within its limits to pay for doing business in any city, town, or village in the county and within the provisions of the act, a license tax not exceeding fifty per cent of the amount paid the state for doing business in such city, town, or village. And any incorporated city or town may impose a tax of as much as fifty per cent of the state tax on any company doing business therein. That the amount of the tax is not shown to be prohibitory or destructive of the business of express companies, even if it be that any judicial action could be based on such a showing. The act is of uniform operation throughout the state as to all persons standing in the situation made the test of such taxation. The ascertainment of population involved in the act is not one that the courts are incapable of dealing with successfully. Osborne v. State of Florida, 4 I. C. R. 731.

(5z) A state tax on all telegraph companies doing business in the state, which is in the form of a privilege tax, but in lieu of all other taxes, and levied at the rate of $1 per mile of wire on companies having less than 1,000 miles of wire, and in the sum of $3,000 each on the others,—is not an unconstitutional interference with commerce. Postal Teleg. Cable Co. v. Adams (U. S. Sup.) 5 I. C. R. 1.

(6a) By whatever name the exaction by taxation of an instrumentality of interstate or international commerce may be called, if it amounts to more than the ordinary tax upon property or a just equivalent therefor, ascertained by reference thereto, it is not open to attack as inconsistent with the Constitution. Postal Telegraph Cable Co. v. Adams, 5 I. C. R. 1.

(6b) The prohibition of any state tax, duty, impost, or toll on the use of the Mississippi and navigable rivers leading into it, which was made a consideration of the admission of the state of Louisiana, is not violated by a statute providing for the gauging by a state officer of all coal or coke boats or barges in the state. Pittsburg & S. Coal Co.

v. Louisiana, Charity Hospital (U. S. Sup.), 5 I. C. R. 18.

(6c) Coal in boats and barges moored at landings on the Mississippi river, within the state of Louisiana, awaiting orders of the owners' agent for further disposal thereof, is taxable by that state. Pittsburg & S. Coal Co. v. Bates (U. S. Sup.), 5 I. C. R. 30.

(6d) Goods which are the product of other states are not free from taxation in the state to which they have been carried for use or sale. Pittsburg & Southern Coal Co. v. Bates, 5 I. C. R. 30.

(6e) Property which still belongs to the original owners in Pennsylvania but was brought from that state on the navigable waters of the United States in boats and barges to Louisiana for purposes of sale, is subject to taxation and sale in Louisiana as any other property of the citizens of the United States is subject when it becomes incorporated into the bulk of the property of the country, and such taxation and sale are not a regulation or restriction upon commerce of the states and do not violate any provision of the United States Constitution. Pittsburg & Southern Coal Co. v. Bates, 5 I. C. R. 30.

(6f) State and municipal authorities are powerless to impose a tax upon messages to or from other states, since such a tax would be in conflict with that clause of the Federal Constitution which gives to Congress the exclusive power to regulate commerce among the several states. Western Union Telegraph Co. v. Freemont, 5 I. C. R. 46.

(6g) An ordinance allowing an occupation tax on that portion of the business of a telegraph company which is carried on wholly within the state is not an unconstitutional interference with interstate commerce. Western U. Teleg. Co. v. Fremont (Neb.), 5 I. C. R. 46.

(6h) A statute of a state requiring every peddler to procure a license and pay a tax therefor, and imposing a penalty for peddling without a license, is not repugnant to the power given to Congress to regulate commerce, as applied to a peddler, within the state, of sewing machines made in another state by a corporation of that state, and sent by it to him to sell, on its account, and as its agent. Emert v. State of Missouri, 5 I. C. R. 68.

(6i) A foreign corporation which pays the insurance, taxes, repairs, and rent of an establishment in the state from which its goods are sold, and the salaries of various employees engaged in conducting the business there, and a stated commission to a person in charge of such establishment, which does not depend upon the amount of sales or profits, is not relieved from liability for taxation on the goods stored in such establishment on the ground that the one in charge is carrying on an independent business in its goods. People, Parke, v. Roberts (N. Y. Sup. Ct.), 5 I. C. R., 462.

(6j) A state may impose a tax on the privilege of doing business within such state by a foreign corporation, measured by the amount of its capital stock employed in such business within the state. People, Parke, v. Roberts (N. Y. Sup. Ct.) 5 I. C. R. 462.

(6k) A State can validly impose taxes on tolls or rentals paid by one company to another for the use of so much of its railroad as is within the State, where the company paying the tolls is engaged in the transportation of merchandise from points within the State, to points beyond. The New York, Lake Erie, & Western Railway Company owned certain branch railroads in the State of Pennsylvania over which the Delaware & Hudson Canal Company and the Buffalo, Rochester, & Pittsburg Railroad Company were engaged in transporting merchandise from points within two points without the State of Pennsylvania, and operated trains under contracts to pay tolls or rental for the use of the tracks. The State of Pennsylvania imposed a tax upon the amounts received from such tolls. The court says an interference with interstate commerce must be direct, and not the mere incidental effect of the requirement of the usual proportional contribution to public maintenance, before it will be in conflict with the United States Constitution. N. Y., Lake Erie, & Western Ry. Co., v. Commonwealth of Penn., 7 I. C. C. App. 1.

(6l) A tax imposed by the corporation tax act of a State upon foreign pipe-line companies engaged in the transportation of oil from points in foreign States into the State imposing the tax is not an unconstitutional interference with interstate commerce. State of N. J. Tide Water Pipe Co., Limited

v. St. Board of Assessors, 7 I. C. C. App. II.

(6m) The Ohio act of April 24, 1893, imposing a tax upon the business of trafficking in cigarettes or cigarette wrappers, is not void as an interference with interstate commerce in failing to discriminate between commerce within the State and that among the several States. Nor is it unconstitutional as providing for taxation by a rule not uniform or according to the true value of the property, nor as depriving a person engaged in the business of the equal protection of the laws. The decision was by a divided court, and since the act was repealed before the case was decided, the reasons for the majority opinion are not set out by the court. Metz v. Hagerty, 7 I. C. C. App. IV.

(6n) Interstate business is not taxed by taxing the franchise of a bridge company which maintains a toll bridge between States. Commonwealth of Kentucky v. Henderson Bridge Co., 7 I. C. C. App. VI.

(6o) The right of a State to tax the franchise of a bridge corporation created by it is not defeated by the fact that the company had obtained from another State the privilege of extending its bridge from the boundary of that State at low-water mark to the high lands, and had acquired from Congress the privilege of maintaining the bridge across a navigable river, and the designation of the bridge as a post road. Commonwealth of Kentucky v. Henderson Bridge Co., 7 I. C. C. App. VI.

(6p) A statute permitting a municipal corporation to exact a license tax from every railroad doing business within its limits is void as an interference with interstate commerce. The court said: It is true that, in estimating its license tax, the city council only took into consideration the intrastate business of the company. But under the terms of the Act they could have made the estimate of the whole business of the company, and we deal not with what the council did do, but with what they could have done under the authority conferred on them. The validity of this authority, not of their action under it, is the question before us. Southern Ry. Co. v. City of Ashville, 7 I. C. C. App. XI.

(6q) A municipal ordinance imposing a tax upon wires and poles of a telegraph company operated and employed in transmission of messages between different States is not void as an interference with interstate commerce. City of Philadelphia v. American Union Telegraph Co., 7 I. C. C. App. VII.

(6r) An ordinance of a city imposing a license fee upon every telegraph company or agency doing business in the city for business done exclusively in the city, not including business done to and from points without the State or busisness done for the government, its officers or agents, is not void as an interference with interstate commerce, although the same companies may also send interstate messages. Western Union Telegraph Co. v. Charleston et al. 7 I. C. C. App. XVI.

(6s) A license tax on all those engaged in packing or canning oysters for sale or transportation whose places of business are in the State is not an unconstitutional interference with interstate commerce as applied to those who may sell or transport their oysters beyond the State. The court says: The law does not in any way discriminate in favor of the citizens of this State against the citizens of other States; on the contrary, it only applies to those whose places of business are in this State. Nor do we think it can be said that it in any way regulates or undertakes to regulate interstate commerce. Of course oyster packers in this State may sell or transport all their oysters within the State, or they may sell or transport some of them beyond the State. But that does not prohibit the State from taxing them for the prosecution of their business within the State. St. of Md. v. C. L. Applegarth, et al., 7 I. C. C. App. XVII.

(6t) A specific tax upon citizens of foreign States for doing business is not invalid if the property has become subject to taxation. Singer Manufacturing Co. v. W. A. Wright., 7 I. C. C. App. XXII.

(6u) A specific tax levied under a statute of Georgia upon persons engaged in the conduct of a particular business there is not an unconstitutional interference with interstate commerce, where the property employed in the business has been brought into the State and has itself become subject to taxaction therein. The court says the prop-

erty involved in the conduct of this business, having become intermingled with the general mass of property in the State, has itself become subject to taxation there, and upon principle the business of selling it is alike taxable in that jurisdiction. Singer Manufacturing Co. v. W. A. Wright 7 I. C. C. App. XXII.

(6v) A statute imposing a license tax upon every person who shall engage in the business or vocation of operating towboats, to be graduated according to the gross annual receipts, is illegal in so far as it applies to boats operated under a permit from the United States government upon interstate waters. The court says: The tax is a charge explicitly made as the price of the privilege of navigating the Mississippi River between New Orleans and the Gulf, in the coastwise trade, as the condition on which the State of Louisiana consents that the boats may be employed according to the terms of the license granted under the authority of Congress. The sole occupation sought to be subjected to the tax is that of using and enjoying the license of the United States to employ these particular vessels in the coastwise trade, and the State then seeks to burden with an exaction, fixed at its own pleasure, the very right to which the licensee is entitled under, and which he derives from, the Constitution and laws of the United States. Frere v. Victor Von Schveler., 7 I. C. C. App. XXVI.

(6w) A license tax on the business of putting up lightning rods is not a tax on interstate commerce, in case of a person who puts up no rods except those which he sells and which are brought from another State, although he puts them up without extra charge. St. of North Carolina v. Gorham, 7 I. C. C. App. XXVII.

(6x) An ordinance requiring every express company having an office in the city, and receiving goods, wares, and merchandise, and forwarding them to points within the State, or receiving goods, wares, or merchandise within the State and delivering them in the city, to pay a license tax of a certain amount,—is an interference with interstate comerce. The court says: The tax is on every express company having an office in the city and receiving goods and forwarding them to points within the State. Receiving them from what points? Evidently from any quarter within or without the State, for the next sentence is, "for receiving goods, wares, and merchandise within the State and delivering them in the city." This description includes all the business of the express company. The tax is not confined to such business as the company does within the State, nor is any distinction made between the business done within the State and that done without the State. Webster v. Mc K. Bell., 7 I. C. C. App. XXIX.

(6y) That a city is on a branch and not on the main line of an interstate railroad, will not entitle it to impose a license fee upon the railroad for the privilege of doing business which is in fact interstate. City of San Bernardino v. Southern Pacific Co., 7 I. C. C. App. XXXII.

(6ya) Importer of goods who have sold them in the original packages but have not collected the proceeds cannot be compelled to pay a municipal tax upon the goods, since the payment of the import duty gives them the right to dispose of the goods, as well as to bring them in to the state. Gelpi v. Schenck. 7 I. C. C. App. XXXIV.

(6z The provisions of a State statute requiring payment of a tax by persons to agents of manufacturers in another state who merely solicit orders and not manufacture, pack, ship, handle, or even see the fertilizers. The court says: Even if the act could be construed as an inspection law, or as an exercise of the police power of the State, the complainants' business could not be affected by it, as complainants do not deal with, nor handle, nor bring to the State fertilizers; and, even if the complainants were to import into the State original packages of fertilizers, and the act could be properly construed as an inspection law, within and under the police power of the State, still the interference with complainants' business would be in violation of the commerce clause of the United States Constitution. St. of Louisiana et al. v. Largarde et al., 7 I. C. C. App. L.

(7a) A statute imposing a tax upon persons traveling from place to place engaged in selling goods by sample is

an unlawful interference with commerce so far as it applies to persons taking orders for goods to be shipped from other states; and if it fails in regard to them it will not be upheld at all, since it cannot be assumed that the legislature would have discriminated against the business interests of the state in favor of those of other states. State, ex rel. M. F. Selliger v. O'Connor., 7 I. C. C. App. XL.

(7b) A state statute which imposes a tax upon the sale of certain designated newspapers and all other publications of like character is not an interference with commerce, although applied to the sale of newspapers published in another State. The court says: The law indeed requires the person who sells the complainant's newspaper to pay the tax, but it is equally obligatory on all persons who sell other publications of like character to pay the same amount. Whether, therefore, the seller of the paper be a resident or nonresident of the State, whether the paper be edited or published in Missouri, Texas, or elsewhere,—each and all, without distinction or discrimination, must submit to the requirements of the law before selling, within the limits of the State, the designated papers. As thus construed, the act is not an encroachment on the commerce clause of the Constitution. Preston v. Finley., 7 I. C. C. App. LXXXI.

(7c) A steamboat is not exempt from taxation because it is engaged in interstate commerce. Linehan Ry. Transfer Co. v. Pendergrass, 7 I. C. C. App. LXXVII.

(7d) The freedom of commerce between States is not nterfered with by a statute requiring every foreign building and loan association to pay into the State treasury annually 2 per cent of its annual gross receipts. The court says: The statute, whatever may be said of the nature of the tax it imposes, in express terms, affects only business done within the State. The business of the corporation is purely internal and domestic. Southern Building & Loan Association of Knoxville, Tennessee v. Norman, 7 I. C. C. App. LXXVIII.

(7e) The imposition of a privilege tax by a city for business done within such city by a railroad company whose lines extend into other States is not an interference with interstate commerce. City of Anniston v. Southern R. R. Co., 7 I. C. C. App. XC.

(7f) An ordinance imposing a license tax for privilege of doing business in the city by carrying passengers or freight from the city to other points in the State is not an invalid regulation of commerce. Alabama Great Southern R. R. Co. v. City of Bessemer, 7 I. C. C. App. XCII.

(7g) A State statute imposing a license tax on local business of an express company, but which does not require a license for doing interstate business, is valid. Osborne v. St. of Florida 7 I. C. C. App. XCV.

(7h) A state statute forbidding the deduction from personal assets of debts owed for imported property in the original packagees, and therefore not subject to taxation because of the Federal Constitution, is not invalid as an attempted evasion of such Constitution, but merely prohibits a double exemption. People, ex rel. Moses Bijur v. Barker., 8 I. C. C. App. IV.

(7i) The territorial law of Oklahoma of march 5, 1885, making cattle subject to taxation which are kept or grazed on the Indian reservation of said territory, is not in conflict with the power of Congress to regulate commerce, as such a tax is too remote and indirect to be a tax or burden on interstate commerce, or an interference with the power of Congress. The court says: It is not perceived that local taxation by a State or territory of property of others than Indians would be an interference with congressional power under the clause giving Congress the power to regulate commerce with the Indian tribes. Thomas v. Gay & Reed., 8 I. C. C. App. VIII.

(7j) The words "doing any business," as used in Pa. act, April 22, 1874, Pub. Laws, 108, does not include the taking of orders or making sales by sample by agents of a foreign corporation coming into the state for such purpose, as a contrary construction would make the act offend against the Federal Constitution as imposing unlawful restriction on interstate business. Mushon

& Co. v. Pootsville Lumber Co., 8 I. C. C. App. XXXII.

(7k) The determination of the internal revenue department that a package is a proper and original package for purposes of taxation does not show that it is an original package of commerce. McGregor v. Cone., 8 I. C. C. App. XXXVIII.

(7l) The subjection to taxation, as part of its capital stock, of the goods of a foreign corporation which it employs within the State by State statute, does not constitute an illegal interference with interstate commerce. People of the St. of N. Y. ex rel., N. England Loan & Trust Co. v. Roberts., 8 I. C. C. App. XXXVIII.

(7m) A tax on the capital stock of a foreign transportation company doing business in the State appointed by the mileage method does not violate the commerce clause of the Federal Constitution. Commonwealth of Penn. v. Western Union Telegraph Co., 8 I. C. C. App. XCI.

(7n) State statutes can have no application to interstate or foreign commerce in view of the full exercise of the power to regulate such commerce by the act of Congress of February 4, 1887. Gulf, Colorado, & Santa Fe R. R. Co., v. Miami Steamship Co., 8 I. C. C. App. XLVII.

IMPORTANT CASES SINCE 1908

(7o) At a conference of representatives of the States in which the Kansas City, Mexico & Orient lines operate, and of connecting carriers, a large number of counties in Texas expressed willingness to assess the Orient for taxation purposes at the nominal value of $100 per mile. Other States should follow the lead of Texas in this respect; in fact, complete exemption from all taxes until the Orient can earn something is demanded in public interest. The commission earnestly recommends this course to the respective State authorities. Kansas City, Mexico & Orient Division, 73 I. C. C., 319, 329.

(7p) A tax by the state, in accordance with its law on the cars run in the state belonging to a foreign corporation engaged in leasing tank cars to shippers, by taking as their assessed value a sum bearing the same ratio to the value of all its cars that the miles of railroad in Georgia over which the cars move bears to total mileage so traversed in all states, a plan arbitrary, and resulting in grossly excessive valuation, violates the Fourteenth Amendment as to due process of law, and unduly burdens interstate commerce. Union Tank Line v. Wright 39 Sup. Ct. 276.

(7q) Income Tax Act N. C., March 8, 1921, schedule D., §202, as amended by Pub. Laws 1921, c. 35, providing for the ascertainment of the net income of railroads by making certain deductions from the net operating income as established by the accounts of the railroads with the Interstate Comerce Commission, imposes a tax on the railroad property, and not on the corporations operating the property, so that it does not conflict with the Interstate Commerce Commission's definition of "net income," which applies to the income of the operating companies and provides for consideration of non-operating income and expense disregarded under the state statute. Atlantic Coast Line R. Co. v. Doughton (1923) 43 Sup. Ct. 620.

(7r) Under the commerce clause of the United States Constitution, it is essential that a state tax shall not directly burden interstate commerce, and shall not discriminate against interstate commerce. Atlantic Coast Line R. Co. v. Doughton (1923) 43 Sup. Ct. 620.

(7s) The North Carolina income tax levied on the net income of carriers, ascertained by making certain deductions from the net operating income, as determined by the accounts with the Interstate Commerce Commission, but not considering the nonoperating income and charges which fixed the net income of the companies operating the property, but not the income from the property itself, is not a tax on the gross receipts from interstate commerce, which admittedly would be void. Atlantic Coast Line R. Co. v. Doughton (1923) 43 Sup. Ct. 620.

(7t) A state statute, imposing a tax on the net income of interstate carriers and purporting to base it on the accounts filed with the Interstate Commerce Commission, is not invalid because it departs in some particulars from the system of accounting prescribed by the Interstate Commerce Commission, since the Commission's standard form is not immut-

able, and the Commission is not intrusted with the function of determining whether a tax burdens interstate commerce. Atlantic Coast Line R. Co. v. Doughton (1923) 43 Sup. Ct. 620.

ALL OTHER CITATIONS

Sonneborn Bros. v. Keeling, 43 Sup. Ct. 643.

TEAM TRACKS

See Switch Tracks and Switching §11.

TEAMING

See Drayage.

TELEPHONE AND TELEGRAPH COMPANIES

I. DISCRIMINATION IN SERVICE.
§ 1. In general.
II. CHARGES AND REGULATIONS.
§2. In general.
§2½. Private wire service.
III. CONTROL AND REGULATION.
§3. In general.
§3½. Jurisdiction of Commission
IV.. LIABILITY FOR DAMAGES.
§4. In general.
V. REPARATION.
§5. In general.
VI. CONTRACTS BETWEEN COMPANIES.
§6. In general.

CROSS REFERENCES

See Cable Rates; Discrimination.

I. DISCRIMINATION IN SERVICE.

See Discrimination; Facilities and Privileges §21.

§1. In General.

CASES 1887-1908

(a) The duty enjoined by the Act of Congress of Aug. 7, 1888, §2, upon the Pacific railroad companies, of affording equal facilities to all connecting lines of telegraph without discrimination against any, should be enforced in the mode prescribed by §3,—of application to the Interstate Commerce Commission, which is required to proceed by mandamus, rather than by bill in equity, as the remedy provided is exclusive. Union Pacific R. Co. v. United States, 4 I. C. R. 705.

IMPORTANT CASES SINCE 1908

(b) A telephone company being a public servant, subject to the provisions of a law that forbids undue preferences and unjust discriminations on any grounds whatsoever, it is manifest that nothing but a difference in the service rendered or in the facilities furnished will justify any difference in the charges exacted. Shoemaker v. C. & P. Telephone Co., 20 I. C. C. 614, 621.

(c) A difference in telephone charges for the same service is not justified by the fact that lower rates were accorded old subscribers; nothing but a difference in service rendered or facilities furnished will justify a difference in rates. Shoemaker v. C. & P. Tel. Co., 20 I. C. C. 614, 621.

(d) Demanding higher charges of new telephone subscribers than demanded of old subscribers for the same service and facilities may constitute unlawful discrimination and preference. Shoemaker v. C. & P. Tel. Co., 20 I. C. C. 614, 621.

(e) It must appear that the discrimination in the respect alleged affects the relative aggregate charges to the limited and unlimited service subscribers, respectively, on their interstate class before the Commission would have any jurisdiction over the subject matter. But a case may arise in which unreasonableness or discrimination in telephone charges or services will so affect interstate transmission as to fall within the Commission's regulating powers. Local Commercial Telephone Service in Pittsburgh, Pa., 27 I. C. C. 622, 624.

(f) It is clearly a telegraph company's right to adopt such methods of bookkeeping as it deems advisable, and an allegation of unjust discrimination or undue prejudice can not properly be predicated upon the fact that the company charges a competing cable company for the service performed by it a rate or division which is greater in amount than the sum which the company arbitrarily credits to itself for performing the same service on messages which it receives from its own cables. Commercial Cable Co. v. Western Union Telegraph Co., 45 I. C. C. 33, 37.

(g) The existence of friendly relations in one instance and their apparent absence in another can not be accepted as such a difference in conditions as to justify a difference in charges which otherwise would be condemned as un-

lawful. Commercial Co. v. Western Union Telegraph Co., 45 I. C. C. 33, 38.

(h) Section 4 of the interstate commerce act, which the complainant alleges is violated by defendants, will, upon examination, be seen not to apply to the transmission of messages. The complainant not having made a prima facie case, the Commission declines his final suggestion to institute inquiries under its broad authority as to the reasonableness and fairness of the defendant's rates. The breadth of those powers suggests that they should not be used captiously or vexatiously. Whitaker v. Western Union Telegraph Co. 59 I. C. C. 286, 289.

(i) Complainant attacked failure of defendant to install and equip a telegraph office at St. Clairsville, O., as unduly prejudicial, and that the present charge of 10c on all messages sent or received at that point is unjustly discriminatory. St. Clairsville is on the National Road about 12 miles west of Wheeling, W. Va. telegrams are now telephoned from or to the office of defendant in Wheeling; they are received and delivered by an agent of defendant at St. Clairsville. Telegrams can be sent from 7 a. m. until 9:30 p. m. and later. On telegrams to and from St. Clairsville the Ohio rate is applicable plus 10c per message for the telephone service. The Ohio rate in many cases is less than the West Virginia rate. The attention of the Commission has not been directed to any provision of the act which would authorize the Commission to require the establishment or reinstallation of a telegraph office. HELD, complaint-dismissed. Davis v. W. U. Tel., 88 I. C. C. 489.

(j) A contract by a telephone company to furnish free telephone service to certain customers for a limited time would be invalid as a discrimination under the Pennsylvania law. Pittsburgh & Allegheny Telephone Co. v. Stinson Printing Co. (Penn., 1924) 123 A. 818.

(k) Small municipalities and residence communities forming the suburbs of a large city, the inhabitants of which suburban communities have their social and commercial interests in the metropolitan center cannot be said to have separate community interests, and where a telephone business has been built up to include such city and its suburbs, with free call service throughout the entire district, the telephone company may not thereafter separate the suburbs into separate exchange areas, and make toll charges for calls beyond the boundaries of each area, and to do so amounts to unjust discrimination. City of Cincinnati v. Public Utilities Commission, (Ohio 1922), 137 N. E. 36.

(l) Where a press agency leased wires from a telegraph company, which later leased other wires to other news agencies at lower rates, in violation of the Interstate Commerce Act, the press agency, having continued to accept the services, was liable, at least on a quantum meruit, for the reasonable value thereof, but the telegraph company could not recover more than the rate given the press agency's competitors. Postal Telegraph-Cable Co. v. Association Press, 162 N. Y. S. 4.

(m) Where a telegraph company leased wires to a press agency at certain rates, and thereafter made similar contracts, under similar circumstances and conditions, with other news agencies, at lower rates, although the contracts were for service between different points than the service contemplated in the first lease contracts, there was a "preference or advantage to a locality," within the Interstate Commerce Act, §1, providing that the act shall apply to telegraph companies; section 3, providing that it shall be unlawful for any common carrier subject to the act to make or give any undue or unreasonable preference or advantage to any locality in any respect. Postal Telegraph-Cable Co. v. Associated Press, 162 N. Y. S. 4.

(n) Where a telegraph company leased wires to a press agency, and thereafter leased other wires for a like service and under similar conditions to other news agencies, with whom there was a keen rivalry, at lesser rates, although the service under any contract made at a lesser rate was not between the same points as the service provided for in the first contracts, there was a "preference" given to the later lessees, to the undue and unreasonable prejudice and disadvantage of the first lessee, in violation of Interstate Commerce Act, §1, giving it application to telegraph

companies, and section 3, making it unlwful for any common carrier subject to the act to make or give any undue or unreasonable preference or advantage to any person, company, firm, corporation, locality, or particular description of traffic. Postal Telegraph-Cable Co. v. Associated Press, 162 N. Y. S. 4.

(o) Discriminatory contracts by telegraph companies to the prejudice of one party are forbidden by the common law. Postal Telegraph-Cable Co. v. Associated Press, 162 N. Y. S. 4.

ALL OTHER CITATIONS

Postal Telegraph-Cable Co. v. Associated Press, 171 N. Y. S. 791, 795; W. U. T. Co. v. Call Publishing Co., 181 U. S. 97, 21 Sup. Ct. 561, 45 L. Ed. 765; P. C. T. Co. v. Cumberland Tel. Co. (C. C.) 177 Fed. 726; Shoemaker v. C. & P. Tel. Co., 20 Interest. Com. Com'n Rep. 614; Lehigh, etc. v. B. & O. R. R. Co., 35 Interest. Com. Com'n. Rep. 20; Tulsa Assn. v. A. T. & S. F. Ry. Co., 40 Interest. Com. Com'n. Rep. 11; United States v. Chicago Ry., 127 Fed. 785, 62 C. C. A. 465; I. C. C. v. Chicago & G. Co., et al., (C. C.), 141 Fed. 1003; Taylor v. Western Union Telegraph Co., (Mo. 1918), 204 S. W. 818; Western Union Telegraph Co. v. Esteve Bros. & Co., 268 Fed. 22; Postal Telegraph-Cable Co. v. Associated Press (N. Y. 1920) 127 N. E. 256; Postal Telegraph-Cable Co. v. Western Union Telegraph Co., 59 I. C. C. 512; Litchman et ux v. Pacific Telephone and Telegraph Co. (Wash. 1921), 194 Pac. 967; Blackledge v. Farmers Independent Telephone Co. of Red Cloud (Nebr. 1921), 181 N. W. 709.

II. CHARGES AND REGULATIONS.

§2. In General.

CASES 1887-1908

(a) As a telegraph service along its right of way is essential to the safe operation of its trains, a railroad company or a group of separately incorporated roads generally recognized as a "railway system," may lawfully contract to furnish free or reduced-rate transportation to a telegraph company for such of its officers, men, materials, and supplies as are required in connection with the construction, maintenance, and operation of such a telegraph line and service upon its own right of way; and the legality of such free or reduced-rate transportation is not affected by the fact that the telegraph company may also use such telegraph line in connection with its telegraph service to the public. But such a railroad company or system of roads cannot lawfully contract, in consideration of free telegraph service at reduced rates over wires beyond its own right of way, to furnish free or reduced-rate transportation for the officials, employees, laborers, materials, or supplies of a telegraph company in conection with the construction, maintenance, or operation of a telegraph line and service off the line of such railroad company or system of railroads and upon the line or lines of another carrier or system. Railroad-Telegraph Contracts v. 12 I. C. C. 11.

IMPORTANT CASES SINCE 1908

(b) It is not proper to use commercial rates as a basis for estimating the amount of telegraph expense when some of the messages were transmitted over lines of a railroad. Central Commercial Co. v. L. & N. R. R. Co., 33 I. C. C., 164, 167.

(c) Congress has, in section 1 of the act, provided that messages may be classified into day, press and such other classes as are just and reasonable, and that different rates may be charged for the different classes. It is plain that both classification and charge are to be made in the first instance by the carrier, and it follows by necessary implication that the carrier is to define the classes and formulate such rules and regulations pertaining thereto as shall be just and reasonable. The initiative is with the carrier. White v. Western Union Teleg. Co., 33 I. C. C. 500, 501.

(d) Through calls at combination rates require fewer terminal services than separate calls under rates combined, and combination thru rates that include charges for terminal service not performed are reasonable. Malone v. New York Telephone Co., 40 I. C. C. 185.

(e) Telephone calls may be classified and a through rate for one kind of service is not necessarily unreasonable merely because it exceeds an aggregate of intermediate rates for a different kind of service. Malone v. N. Y. Telephone Company, 40 I. C. C. 185.

(f) The Act expressly authorizes reasonable classification of telephone mes-

sages and charges, and as toll service differs substantially from local service it may reasonably be rated higher. The single fact, therefore, that defendants charged more for toll calls than for local calls is not enough to prove that the through rate charged for complainant's calls was unreasonable. Malone v. New York Telephone Co., 40 I. C. C. 185, 187, 188.

(g) The combination of local rates to a particular basing point with toll rates from the basing point would discriminate in favor of persons making long distance calls from the points taking the combination rates against persons calling from the basing point, especially where the charges for the time consumed over the initial periods allowed are computed on different bases. Malone v. N. Y. Telephone Co., 40 I. C. C. 185, 188.

(h) The intermediate rates between two points whose aggregate can not legally be exceeded by a joint rate between the same points must apply to the same kind of service as the joint rate. Furthermore, purely intrastate rates can not lawfully be included among the rates aggregated unless they are available for interstate application. Malone v. N. Y. Telephone Co., 40 I. C. C. 185, 188.

(i) Toll service must be more costly to perform than local service, especially as there is no return to the telephone company unless the person called responds. Malone v. New York Telephone Co., 40 I. C. C. 185, 187, 189.

(j) If, as a matter of law, the rate charged and collected for an unrepeated message carries with it the same protection to the sender or recipient and imposes upon the telegraph company the same liability and degree of care as the rate for a repeated message, then the express authority by the Congress to maintain classifications of repeated and unrepeated messages, with the different rates attached thereto, is without significance or effect; for no useful purpose would have been served in authorizing the two classifications taking different rates without recognizing the fundamental differenc between them that for years has been well understood and maintained. It seems clear, therefore, that the Congress in recognizing, by the amendment to Section 1, these classes of messages with the different charges attached, has also recognized a distinction in the carrier's liability under them, and has sanctioned this distinction for future, subject of course, to the general provisions in the Act requiring all rates, and all rules and regulations affecting rates, to be reasonable and uniform in their application, under like circumstances, for the different kinds of service offered. Such classification of its messages, with the different rates and liabilities attaching to them, having affirmative recognition in the Act itself, it follows that when lawfully fixed and offered to the public they are binding upon the carrier, and upon all those who avail themselves of its services, until they have been lawfully changed. Unrepeatedly Message Case, 44 I. C. C. 670, 678.

(k) Congress has expressly authorized unrepeated telegraph rates with restricted liability attached, and such rates are not therefore contrary to public policy. Unrepeated Message Case, 44 I. C. C. 670, 679.

(l) The fact that the deferred service is so generally accorded at half rates would seem to warrant the presumption, in the absence of evidence to the contrary, that those rates are not unremunerative. Commercial Cable Co. v. Western Union Telegraph Co., 45 I. C. C. 33, 36.

(m) The requirement of adherence to established rates and charges, as provided in the act, applies as strictly to telegraph companies as to other common carriers and can not be questioned. Limitations of liability in transmitting telegrams, 61 I. C. C. 541, 546.

(n) The Commission is not prepared to concede that a public service corporation may rely upon its financial condition as a justification for refusal to establish reasonable rules and regulations. Limitations of liability in transmitting messages. 61 I. C. C. 541, 550.

(o) Complainants alleged defendant has refused to apply press rates on numerous messages relating to news articles tendered at Washington, D. C., and that the charges assessed on such messages were unjust, unreasonable and unduly prejudical. The commercial rates were charged. Messages are classi-

fied by defendant into commercial, press, day, and night and various other classes. Commercial messages are those transmitted for the general public. Press messages are those for newspapers. Day press rates are one third of the day commercial rates. Night press rates are one sixth of the day commercial rates. For many years news articles for publication have been accorded rates lower than commercial messages. Queries are necessary to facilitate the gathering and spreading of news and are so intimately connected with the news articles to which they refer that they have been given the same rates. A query to a newspaper, the only kind here to be considered, in substance is a brief description or summary of a news article followed by numerals, the latter indicating the number of words contained in the article. Those tendered by press associations often contain summaries of several different news articles numbered consecutively to facilitate ordering. They identify but do not "puff" the authors, emphasize the desirability of an article by describing its subject. Defendant distinguishes messages which state the number of words and not the price from those which quote the price. As to the former, business arrangements concerning dispatches have been completed prior to the sending of the message and the purpose of the message is to enable the newspaper to determine whether it has space available and desires to publish the particular dispatches. These are accepted as queries. As to the latter such business arrangements have not been completed and the purpose of the message is to negotiate a business arrangement with respect to particular dispatches. On these the commercial rates are charged. HELD, under defendants rules, the typical message used was not a query, because, while it related to newspaper articles to be transmited, it did not relate strictly thereto. It was primarily a commercial message. HELD, rate charged not unreasonable or unduly prejudicial, complaint dismissed. Consolidated Press Association v. Western Union Telegraph Co., 73 I. C. C. 479.

(p) Commercial rates charged on certain messages relating to news articles and tendered for transmission to newspapers found applicable and not unreasonable or unduly prejudicial. Such messages found not entitled to lower press rates since they were not queries within the meaning of the tariff. While they related to newspaper articles to be transmitted, they did not relate strictly thereto as provided in the rules. Consolidated Press Asso. v. W. U. T. Co., 73 I. C. C., 479.

(q) Rates should not be increased, neither should toll charges be made, for the mere purpose of reducing prolonged conversations over telephone lines about unimportant matters. City of Cincinnati v. Public Utilities Commission, (Ohio 1922), 137 N. E. 36.

(r) Telephone companies are not subject to unusual hazards and they are permitted to enjoy a practical monopoly, and rates of return must therefore be on a conservative basis. City of Cincinnati v. Public Utilities Commission, (Ohio 1922), 137 N. E. 36.

(s) A telephone company is entitled to the benefit of the increase in value of property since it was acquired, in fixing the value of such property as the basis of ascertaining proper rates. City of Cincinnati v. Public Utilities Commission, (Ohio 1922), 137 N. E. 36.

(t) A telephone company held not entitled to add its depreciation reserve account of a sum amounting to approximately 30 per cent of its entire outstanding capital stock as a basis for rates, in view of testimony that the plant and equipment was in good physical condition, and that an 8 per cent accrued depreciation was reasonable; such accumulated reserve having been permitted to reach beyond what was necessary for replacement of capital in respect to past capital outlay expired in the process of carrying on the business, constituting unappropriated surplus. City of Cincinnati v. Public Utilities Commission, (Ohio 1922), 137 N. E. 36.

(u) A telephone utility may be required to operate a part of its system under a schedule of rates and charges which will not produce a fair return on the portion of its property used in that part of its system, provided the return on the property as a whole does not thereby render the business as a whole unprofitable. City of Cincinnati v. Public Utilities Commission, (Ohio 1922) 137 N. E. 36.

(v) Under the Act, §6, providing that

a common carrier subject to the Act shall file with the Commission and print and keep open to public inspection schedules showing all rates, fares, and charges which shall plainly state any rules or regulations which in any wise change, affect, or determine any part of the aggregate of such rates, fares, and charges, or the value of the services rendered, a telegraph company cannot assert the validity, and binding force of its rate or regulation under the interstate commerce law when it has not complied with the plain requirement of such law by filing its rates and regulations with the Interstate Commerce Commission. Western Union Telegraph Co. v. Piper, (Tex. 1917, 191 S. W. 817.

(w) "Going concerns" value should be considered in determining the value of a telephone plant for the purpose of ascertaining the sufficiency of the rates therefore prescribed by the Public Utilities Commission. Denver v. Denver Union Water Co., 246 U. S. 178, 179, 38 Sup. Ct. 278, 62 L. Ed. 649. Southwestern Bell Telephone Co. v. Public Utilities Commission (Kan., 1924) 223 Pac. 771.

ALL OTHER CITATIONS

Higbee v. Western Union Telegraph Co. (Mo. App. 1914), 166 S. W. 825; Western Union Tel. Co. v. Compton (Ark. 1914), 169 S. W. 946; Bailey v. W. U. Tel. Co. (Tex., 1914), 171 S. W. 839, 842, 844, 846; Norfolk Truckers' Exch. Inc. v. Norfolk Southern R. Co. (Va. 1914), 82 S. E. 92; W. U. Tel. Co. v. First Natl. Bank of Berryville (Va., 1914), 83 S. E. 424; White v. Western Union Teleg. Co., 33 I. C. C. 500, 501. Message Case, 44 I. C. C. 670, Commercial Cable Co. v. Western Union Telegraph Co., 45 I. C. C. 33, 34; Whitaker v. Western Union Telegraph Co., 59 I. C. C. 286; Southwestern Telegraph & Telephone Co. v. City of Houston (Tex. 1920), 268 Fed. 878; Limitations of Liability in Transmitting Telegrams, 61 I. C. C. 541, 545; Southwestern Bell Telephone Company v. City of Ft. Smith, 294 Fed. 102; Gallaher v. Southern N. E. Telephone Co. (Conn., 1923) 121 Atl. 686.

§2½. Private Wire Service.

IMPORTANT CASES SINCE 1908

(a) The Commission upon its own motion entered upon an investigation of the rules and practices connected with "private-wire service." The three respondents entered into contracts with persons for what was popularly known as "private" or "leased" wires. These terms were not strictly accurate. Respondents did not lease any particular wire, but merely furnished "circuits" under contracts providing for the location of the terminals in the offices of the lessee. Other stations, known as "drops," might be located at points on the circuit intermediate to the terminals. Respondents maintained the equipment; the operators were employes of the lessee. The private wire service was either telegraphic (Morse service) or telephonic (talking service). Under contracts for Morse service a circuit was provided each morning at a stated time for the exclusive use of lessee, who transmitted messages through his own operators, without interference by the lessor. Where the service was interrupted the lessee might send messages over the public wires at one-half the usual charges. The Morse-service mileage on the lines of the three respondents was: In private wire service, 205,729; in public wire service, 1,672,199. The annual revenues were: From private wires, $3,929,510.25; from public wires, $55,903,203.12. Full talking service consisted of the use of a telephone circuit with terminals, drops, and other facilities, between stations named, during each day or night. In half talking service the circuit was released after each conversation, the aggregate service being limited to 300 minutes per day. The contract for "short talking periods gave the lessee the circuit at a certain fixed time or times each day. The rate for private wire Morse service was usually $20 per mile per annum. Full talking service, 24 hours daily, $40; day service, $40; night service, $20. Half talking service, first 100 miles, $25; each additional mile, $20. Short period talking service, from $2 to $10 per hour, according to time of day. The usual message and answer speed between New York and Chicago was from 2 to 4 minutes. An industrial concern with its financial office 1,000 miles from its plant could obtain almost immediate message, and, answer service between the two, an achievement impossible over the public wires. Publicity being absent in the case of private wires, the use of codes was unnecessary. Application for private wires were approved only to the extent that surplus

facilities were available. In case of prostration of telegraph wires the private-wire service was restored more rapidly than the public service, and public wires were appropriated for private use on such occasions. Provisions restricting the use of the wire to the lessee's own business so as to prevent the transmission of "contraband," were practically dead letters. All three respondents put terminals or drops in the offices of the lessees "correspondents" at the lessee's direction. Effective censorship of the matter transmitted was practically impossible. Subletting was common, as also free use of the wire by "correspondents" among themselves. Greater possibility of abbreviation and the use of expressions peculiar to a particular business enhanced the advantages accruing to its users was that operators at the drops along the route could listen in on messages passing between the terminals, thus increasing the capacity of the wire. On a short industrial route of 53 miles considered the average expense per message was 2.5c; while the public rate for 10 words between the same points was 25c. On a broker's private wire from Chicago to San Francisco, 2466 miles, the expense per message was 37c; public rate 75c. HELD (1) that the fact that in Morse service the lessees furnished their own operators did not divest respondents of their status of common carriers as to messages sent over the private wires; (2) that the Morse service was not a wholesale service, the rate being based on mileage and not on volume of business; (3) that the Morse service differed from other classes of service and, stripped of certain abuses, might properly be placed among "such classes as were just and reasonable" into which respondents were authorized by the Act to classify messages transmitted by them; (4) that the Morse service was not shown to be prejudicial to users of respondents' public telegraph service; (5) that the provision that in time of interruption to the private wires, the public wires could be used at one-half the regular rates was preferential and must be eliminated; (6) that in the case of private-wire service some reasonable restrictions were necessary in the interest of the public; (7) that respondents were justified in inserting in the contract for private-wire service a provision restricting the use of instruments and facilities to the transmission of messages concerning the business of the lessee and providing against transmission of messages for others; (8) that respondents were furnished the more reasonable service at a relatively lower charge, contrary to recognized principles of classification; (9) that there was no essential difference between private wire talking service and the toll service furnished by Bell Company; and (10) that the classification of messages into private-wire talking service was an unreasonable classification. Private Wire Contracts, 50 I. C. C. 831.

(b) Private-wire equipment is a part of the quasi-public facilities of a common carrier, was as a rule installed as such, and is entitled as a matter of law to be located under the right of eminent domain. Private Wire Contracts, 50 I. C. C. 731, 740.

(c) The lawfulness of the so-called private-wire service depends upon whether or not private-wire messages are among "such other classes as are just and reasonable" into which respondent carriers are authorized by section 1 of the Act to classify messages transmitted over their lines. Private Wire Contracts, 50 I. C. C. 731, 756.

(d) While the private-wire service in a sense be a surplus or by-product service, the rates for the transmission of mesages by common carriers can not properly be based upon the theory that one class of service carries the burden of expense and that revenue derived from another class is practically net revenue. This theory carried to its logical conclusion, would permit a railroad to charge the first passengers, up to a given number, entering a car a fare sufficiently high to cover expenses and yield a profit and charge passengers over this number a lower fare on the principle that they were receiving surplus transportation. Private Wire Contracts, 50 I. C. C. 731, 758.

(e) The telegraph companies are justified in inserting in the contract for private-wire service a provision restricting the use of instruments and facilities provided to the transmission of messages concerning the business of the lessee, and providing that messages shall not be transmitted for other persons or firms. It is not unlawful for two or more per-

sons to unite in securing private-wire service where all are named as lessees. Private Wire Contracts, 50 I. C. C. 740, 764.

(f) One who uses a station on a private branch telephone service of his corporation for his own purpose and on his own private business notwithstanding that said service is expressly limited by contract with the telephone company to the business of said corporation, all in accordance with the order of the State Railway Commission, cannot make an injury to such private business of his own, caused by a deprivation of the continuance of such personal and private use by him, a basis for the recovery of damages from the company. McGrew v. Nebraska Telephone Co., (Nebr. 1922), 190 N. W. 783.

ALL OTHER CITATIONS

Private Wire Contracts, 50 I. C. C. 731, 747, 755, 757, 759, 761, 762, 763, 765, 766.

III. CONTROL AND REGULATION.

See Control and Regulation.

§3. In general.

CASES 1887-1908

(a) Intercourse by telegraph between States is interstate commerce, and State has no authority to regulate same. Western Union Tel. Co. v. Pendleton (U. S. Sup. Ct.) 1 I. C. R. 306 S. P. cited in Wabash etc. R. Co. v. People (U. S. Sup. Ct.) I. C. R. 37.

(b) Indiana Statute regulating mode in which messages sent by telegraph companies, doing business in that State, shall be delivered in other States is void. Western U. Tel. Co. v. Pendleton (U. S. Sup. Ct.) 1 I. C. R. 306, S. P. cited in Wabash etc. R. Co. v. People (U. S. Sup. Ct.) 1 I. C. R. 37.

(c) A State has no authority to regulate the transmission of telegraphic messages into other States and their delivery therein. Western Union Tel. Co. v. Pendleton, 1 I. C. R. 306.

(d) Indiana Statute regulating mode in which messages sent by telegraph companies, doing business in that State, shall be delivered in other States, is void, as an interference with interstate commerce. Western U. Tel. Co. v. Pendleton (U. S. Sup. Ct.) 1 I. C. R. 306.

(e) The Statute of Indiana, which attempts to regulate the mode in which messages sent by telegraphic companies doing business in said State shall be delivered in other States, is void, such regulation being an interference with the freedom of interstate commerce. Western Union Tel. Co. v. Pendleton 1. I. C. R. 306.

(f) The telegraph is an instrument of commerce. Ratterman v. Western U. Teleg. Co. (U. S. Sup. Ct.), 2 I. C. R. 59.

(g) The property of a telegraph company, situated within a State, may be taxed therein as all other property is taxed; but its business of an interstate character cannot be taxed. Leloup v. Port of Mobile (U. S. Sup. Ct.), 2 I. C. R. 134.

(h) Where a telegraph company is doing the business of transmitting messages between different States, and has accepted and is acting under the telegraph law passed by Congress July 24, 1866, no State within which it sees fit to establish an office can impose upon it a license tax, or require it to take out a licenses for the transaction of such business. Leloup v. Port of Mobile, 2 I. C. R. 134.

(i) Telegraphic communications are commerce, as well as in the nature of postal service, and, if carried on between different States, are interstate commerce, and within the power of regulation conferred upon Congress, free from the control of State regulations, except such as are strictly of a police character; and any State regulations by way of tax on the occupation or business, or requiring a license to transact such business, are unconstitutional and void. Leloup v. Port of Mobile, 2 I. C. R. 134.

(j) Where a telegraph company transmits messages between different States, and has accepted, and is acting under the telegraph law passed by Congress July 24, 1866, no State in which it does business can require it to take out a license for the transaction thereof. Leloup v. Port of Mobile (U. S. Sup. Ct.) 2 I. C. R. 134.

(k) The privilege of a telegraph company which is a business agency of the general government, to maintain its wires along the structure of an elevated railroad in the streets of a city, such railroad being an independent post road of the United States, cannot be destroyed by state legislation. Western U. Teleg. Co.

v. New York (C. C. S. D. N. Y.), 2 I. C. I. 533.

(l) State legislation compelling electric wires in the streets of a city to be placed under the surface of the streets, although such streets, being letter-carrier routes, are all post roads, is an exercise of police power, and is not an unlawful attempt to regulate commerce, or an invasion of the rights of a telegraph company as a business agency of the general government, under the Act of Congress of July 4, 1866 (U. S. Rev. Stat. tit. 65), to operate its lines over "any post road of the United States. Western U. Teleg. Co. v. New York (C. C. S. D. N. Y.) 2 I. C. R. 533.

(m) A statute confirming a contract between commissioners for placing electric wires under ground and a subway company, to lay subways for such wires, is none the less an exercise of police power because it gives to such company special privileges, but no exclusive privileges or franchise. Western U. Teleg. Co. v. New York (C. C. S. D. N. Y.) 2 I. C. R. 533.

(n) Telegraphic communications carried on between different States are interstate commerce; and any state tax on the business is unconstitutional. Leloup v. Port of Mobile (U. S. Sup. Ct.) 2 I. C. R. 134; Western U. Teleg. Co. v. Pennsylvania (U. S. Sup. Ct.) 2 I. C. R. 241; Western U. Teleg. Co. v. Seay (U. S. Sup. Ct.), 2 I. C. R. 726.

(o) Interstate messages are elements of commerce between the States and not subject to legislative control of the States while state messages are elements of internal commerce solely within the limits and jurisdiction of the State, and therefore subject to its taxing power. Western Union Telegraph Co. v. Seay, 2 I. C. R. 726.

(p) Telegraph companies which have accepted the provisions of the Act of Congress of July 24, 1866, sections 5263 to 5268, Rev. Stat. U. S., cannot be taxed by a State for any messages, or receipts arising from messages, from points within the State to points without, or from points without the State to points within; but such taxes may be levied upon all messages carried and delivered exclusively within the State. Western Union Telegraph Co. v. Seay, 2 I. C. R. 726.

(q) A privilege tax on telegraph companies, graduated according to the value of the property of the company measured by its mileage, and imposed in lieu of all other taxes, although incidentally affecting interstate commerce, is not unconstitutional as an interference with such commerce. Postal Teleg. Cable Co. v. Adams (Miss.), 4 I. C. R. 416.

(r) An ordinance of a city imposing a license fee upon every telegraph company or agency doing business in the city, for business done exclusively in the city, not including business done to and from points without the state, or business done for the government, its officers or agents,—is not void as an interference with interstate commerce. Postal Teleg. Cable Co. v. Charleston (U. S. Sup. Ct.), 4 I. C. R. 637.

(s) Messages of a telegraph company sent and delivered entirely within the state are subject to its taxing power. Postal Telegraph Cable Co. v. City Council of Charleston, 4 I. C. R. 637.

(t) The duty enjoined upon the Union Pacific Railroad Company by the Act of Congress of Aug. 7, 1888, § 1, of operating by itself alone through its own corporate officers its telegraph lines, may and should be enforced by mandamus if in fact violated. Union P. R. Co. v. United States (C. C. App. 8th C.) 4 I. C. R. 705.

(u) A territorial act which regulates the order of receipt and transmission of telegraphic messages, and prescribes a penalty for its violation, but which does not attempt to regulate the delivery of messages outside the territory, or of messages sent from without the territory is not a regulation of interstate commerce. Butner v. Western U. Teleg. Co. (Okla.), 4 I. C. R. 770.

(vw) Paragraph 543 of the Oklahoma Statutes of 1890, imposing a penalty of $50 upon carriers of messages for certain breaches of duty, does not apply to a failure to deliver a message, but only applies to the failure to receive or transmit messages in the order presented. It is a penal statute, and must be strictly construed. Butner v. Western Union Telegraph Co., 4 I. C. R. 770.

(x) An act of the territorial legislature which regulates the order of recepit and transmission of telegraphic

messages, and prescribes a penalty for its violation, but which does not attempt to regulate the delivery of messages outside the territory, or of messages sent from without the territory, is not in conflict with the constitutional provision giving to Congress the right to regulate commerce between the state and territories. Butner v. Western Union Telegraph Co., 4 I. C. R. 770.

(y) A state statute prescribing a penalty for failure to deliver a telegram, where the regulations of the company itself require the delivery, is not unconstitutional as a regulation of interstate commerce. Western Union Telegraph Co. v. Tyler, 4 I. C. R. 481.

(z) Where a telegraph company is engaged in both interstate and intrastate business, an ordinance levying an occupation tax on that portion of such business which is carried on wholly within the state is not repugnant to section 8, article 1, of the Constitution of the United States, since it in no way interferes with, or regulates, interstate commerce. Western Union Telegraph Co. v. Fremont, 5 I. C. R. 46.

(aa) The Georgia statute imposing upon telegraph companies a penalty for failing to transmit messages may be enforced in case of an interstate message, where it is not started towards its destination, and the entire negligence therefor occurs within the territory and jurisdiction of the state. Western U. Teleg. Co. v. Michelson (Ga.), 5 I. C. R. 236.

(bb) A telegraph company which has a continuous line between points in the same state over which it might transmit a message received for that purpose, but which passes through another state on the route, cannot claim that the message is interstate commerce and therefore exempt from state authority limiting the charge for transmission, although the company does not in fact transmit the message the whole distance, but delivers it at an intermediate point in another state to another company because its own line for the remainder of the distance is fully occupied by other business. Leavell v. Western U. Teleg. Co. (N. C.) 5 I. C. R. 358.

(cc) According to the principle ruled by this court in the cases of Western U. Teleg. Co. v. James, 90 Ga. 254, and Western U. Teleg. Co. v. Michelson, 94 Ga. 436, 5 Inters. Com. Rep. 236, there is nothing in that provision of the Constitution of the United States which confers upon Congress the power to regulate commerce among the several states, prohibiting the general assembly of this state from enacting a law subjecting telegraph companies to penalties for acts of negligence occurring entirely within the limits of Georgia, although such acts may be committed in dealing with messages which are to be transmitted to points in other states. Western Union Telegraph Co. v. Howell, 5 I. C. R. 516.

(dd) The provision of the United States Constitution, conferring upon Congress the power to regulate commerce among the several states, does not prohibit the legislature of a state from enacting a law subjecting telegraph companies to penalties for acts of negligence occurring entirely within the limits of the state, although such acts are comitted in dealing with messages to be transmitted to points in other states. Western U. Teleg. Co. v. Howell (Ga.), 5 I. C. R. 516.

(ee) The attorney general of the United States in a suit to enforce the duty imposed upon the Pacific railroad companies by Act of Congress of Aug. 7, 1888, § 2, of affording equal facilities to all connecting lines of telegraphs without discrimination, has, if such suit can be maintained, the burden of showing that some telegraph company has placed itself in a position to demand of the railway company the same facilities accorded to other companies, and that such demand has been refused, as it cannot be presumed that the railroad company intends to disregard its duty. Union P. R. Co. v. United States (C. C. App. 8th C.) 4 I. C. R. 705.

(ff) Telegraph messages between points in the same State do not constitute interstate commerce because of the fact that they traverse another State on their route. The court places its decision upon the reasoning in Lehigh Valley R. Co. v. Pennsylvania, 145 U. S. 192, 36 L. ed. 672, 4 Inters. Com. Rep. 87. St. of N. Carolina ex rel Ry. Commission v. Western Union Telegraph Co., 7 I. C. C. App. XX.

(gg) A state statute providing a penalty for failure to promptly deliver a telegram is not, even when applied to

messages transmitted from another state, repugnant to the commerce clause of the United States Constitution. Western Union Telegraph Co. v. Bright 7 I. C. C. XLV.

(hh) Forwarding money by telegraph to another State to be wagered on a horse race to take place in a third State may be made a criminal offense in the State from which the money is sent, although it is lawful to make such wagers in the State in which the wager is made. The court says: The act in question would seem to be in furtherance of the obligation which rests upon the general assembly of Virginia to pass laws to suppress a recognized vice. There is no question that police power must be exercised in subordination to the Constitution of the State and a fortiori that it must not be in contravention of the Constitution of the United States. Now, as the proper discharge of the functions and duties intrusted to the national and State governments is necessary to the highest efficiency of both, it follows that in the development and growth of the two systems thus blended and interwoven, and operating directly, each by its own force, upon the same individuals, wisdom and prudence must prevail in order that the happiest and best results may be achieved. In the case before us, there would seem to be no reason why any antagonism or conflict should result from the exercise, within their appointed limits, of the power on the part of Congress to regulate commerce among the States, and the duty of the State to suppress a recognized offense against good morals. Ex parte Richard Lacy 7 I. C. C. App. LVIII.

(ii) A grant by a railroad company whose line is a military and post road of exclusive franchises along its right of way for telegraph purposes violates U. S. Rev. Stat. § 5263, providing that any telegraph company shall have the right to construct lines of telegraph over any portion of the public domain of the United States and over and along any of the military and post roads and over and across navigable streams of water, although part of the line is through property obtained by purchase or condemnation. The court says that in each case it has been held that the section of the Revised Statutes referred to is in its nature prohibitive as to the force and effect of any contract entered into by a railroad company granting an exclusive privilege and franchise over and along its right of way over and through the public domain to any single telegraph company, where such railroad has acquired its right of way under and by virtue of an act of Congress, or which are or may be declared military post roads by act of Congress; and the court refers to Western U. Teleg. Co. v. Burlington & S. W. R. Co. 11 Fed. Rep. 1; Pensacola Teleg. Co. v. Western U. Teleg. Co. 96 U. S. 1, 24 L ed. 708; Mercantile Trust Co. v. Atlantic & P. R. Co. 63 Fed. Rep. 513. Union Trust Company v. Atchison, Topeka & Santa Fe Railroad Co. (Postal Telegraph Cable Co.), 7 I. C. C. App. LXVI.

(jj) A State statute cannot invalidate a provision in a contract for the transmission of a telegram that notice of claim for damages must be given within sixty days after breach of contract, so far as to apply to messages sent into and received from another State. Western Union Telegraph Co. v. Burgess (Tex. Civ. App.), 8 I. C. C. App. XXXIII.

(kk) Restrictions on sending prepaid telegrams or telephone messages, made by a by-law of a live-stock exchange, when these restrictions are merely for the regulation of the business of the members, and do not affect the business of the telegraph company, are not void as regulations of interstate commerce. Hopkins v. U. S. 8 I. C. C. App. XVIII.

(ll) A city ordinance providing for the levying and collecting of a license fee for each telephone instrument operated and maintained by a telephone company and used exclusively within the limits of the city, for which a rental charge is made for local business, does not apply to or affect in any manner the business of the telephone company which is interstate in character, where a separate charge is made by the telephone company upon its patrons for all communications outside the city. Ogden City v. Crossman, 8 I. C. C. App. XXXI.

(mm) A State statute making a telegraph company liable to the party aggrieved for unreasonable delay in delivering a message is not an unlawful interference with interstate commerce as applied to a message sent from a point without to a point within the State over the line of a company which has filed

with the Postmaster General its written acceptance of the restrictions and obligations imposed by act of Congress of July 24, 1866. Western Union Telegraph Co. v. Mellan 8 I. C. C. App. XLV.

(nn) A State statute imposing a penalty for lack of due diligence in delivering a telegram, if made in a reasonable exercise of the police power of the State, is not an unconstitutional interference with interstate commerce as applied to interstate messages, in the absence of any legislation by Congress on the subject. The court said: The statute in question is of a nature that is in aid of the performance of a duty of the company that would exist in the absence of any such statute, and it is in no wise obstructive of its duty as a telegraph company. Can it be said that the imposition of a penalty for the violation of a duty which the company owed by the general law of the land is a regulation of or obstruction to interstate commerce within the meaning of that clause of the Federal Constitution under discussion? We think not. No tax is laid upon any interstate message, nor is there any regulation of a nature calculated to at all embarrass, obstruct or impede the company in the full and fair performance of its duty as an interstate sender of messages. Western Union Telegraph Co. v. James, 7 I. C. C. LXXI.

(oo) A municipal corporation is not precluded from requiring a telephone company to remove its poles from a main street to an alley, on the ground that the corporation is engaged in interstate commerce, and that such requirement will not be an interference therewith. Mich. Telephone Co. v. City of Charlotte, 8 I. C. C. App. LXXVIII.

(pp) A telegraph company is subject to such reasonable police regulations with reference to domestic transmission of messages as a State may see proper to impose to secure convenience to the people, notwithstanding that it is a foreign corporation, is engaged in interstate transmission of messages, and secured its right to erect its lines along the post roads in the State under an act of Congress. Western Union Telegraph Co. v. Miss. R. R. Commission, 7 I. C. C. App. XCIII.

(qq) The commerce clause of the United States Constitution is not infringed by a State statute providing that any telegraph company doing business in the State which fails to transmit a message as provided in the statute shall forfeit $100 to the person sending or wishing to send the message; nor by a statute providing for a like forfeiture where the company fails to deliver the message promptly to the person to whom it is addressed after its arrival at destination, where the regulations of the company require such delivery. Western Union Telegraph Co. v. Powell 7 I. C. C. App. CVI.

IMPORTANT CASES SINCE 1908

(rr) The Act to Regulate Commerce expressly authorizes reasonable classification of telephone messages and charges. Toll service differs substantially from local service and may reasonably be rated higher. Malone v. N. Y. Telephone Co., 40 I. C. C. 185, 187, 188.

(ss) Although certain of its provisions are inapplicable, the general principles of the Act, as amended, together with many of its details, extend to telephone and telegraph companies engaged in the transmission of interstate messages. Unrepeated Message Case, 44 I. C. C. 670.

(tt) The provisions of section 2 in its present form found inapplicable to telephone and telegraph companies. Unrepeated Message Case, 44 I. C. C. 670, 673.

(uu) The control of the Commission, after full hearing upon complaint, over the rates, charges and practices of telephone and telegraph companies is and has been regarded, by the Commission, as being almost as complete and comprehensive as it is over the rates and practices of the several other classes of carriers that are subject to its jurisdiction. No embarrassment or difficulty has been found in applying the general provisions of the Act, as well as many of its details, to common carriers serving the public in the transmission of messages over telephone and telegraph lines between Interstate points. Under section 20 the Commission has also prescribed systems of accounts for interstate telegraph and telephone companies, which all such companies are now observing; under the provisions of that section they also file annual and other reports with the Commis-

sion. Unrepeated Message Case, 44 I. C. C. 670, 673.

(vv) Section 15 requires carriers to adopt, conform to, and observe, for the future, the regulations and practices prescribed by the Commission as just, fair, and reasonable. Unrepeated Message Case, 44 I. C. C. 670, 673.

(ww) Telephone and telegraph companies observe system of accounts and file annual reports prescribed by the Commission under section 20. Unrepeated Message Case, 44 I. C. C. 670, 673.

(xx) But some of the provisions of the Act, notably sections 2 and 4, that were neither modified nor amplified but were left unchanged by the amendatory legislation of June 18, 1910, have been found inapplicable in their present form to telephone and telegraph companies. Section 6 is also inapplicable, in large part at least. It deals with the form and manner of filing, publishing and posting the rates, charges, rules and regulations of common carriers; but on its face section 6 relates only to carriers engaged or participating "in the transportation of passengers or property," its terms are too definite to permit the Commission to extend its application by construction to telephone and telegraph companies; and, although the rates, charges, rules and regulations of such companies may be stated briefly perhaps, and with less expense, than the rates and regulations of any other class of carriers under the Commission's jurisdiction the Commission has felt, as stated in its annual reports to the Congress for 1911 and subsequent years, that no authority has been given to the Commission under section 6 to require such companies to comply with its provisions when fixing and establishing their rates and charges. Unrepeated Message Case, 44 I. C. C. 670, 673, 674.

(yy) Section 6 does not apply to telephone and telegraph companies. Unrepeated Message Case, 44 I. C. C. 670, 674.

(zz) Under the Act, as has many times been said, the right to initiate their rates rests with the carriers. As section 6 does not apply to telephone and telegraph companies, it may well be said that in a special sense and to a special extent such companies do initiate their charges. But it has not been thought or even suggested that a telephone or telegraph company, after having fixed and established a charge for a particular service, or a regulation pertaining to or affecting the rate or service, may depart from the charge, or from the regulation affecting the charge, at its discretion or until the charge or regulation has been lawfully changed by it. The courts have often said that the vital feature of the Act to regulate commerce is to secure equality and uniformity as to all persons availing themselves of the services of common carriers and to destroy any favoritism by such carriers among those requiring their services. This principle, founded in common right as well as in common justice, runs all through the Act and through the supplementary legislation enacted in aid of the enforcement of the Act. It can not therefore be doubted, that even though section 6 is inapplicable to telephone and telegraph companies, their rates and charges are nevertheless binding upon such companies, when they have lawfully been fixed and offered to the public; and the rates and charges must be observed together with the rules and practices affecting the rates and charges until they have lawfully been changed either voluntarily or under orders of the Commission. Having been declared to be common carriers, and having been subjected to the general provisions of the Act, it is manifest that telephone and telegraph companies may not lawfully accept or exact of one person either less or more than they demand of another person for the same service. To secure such uniformity in their dealing with the public was doubtless one of the purposes of the Congress in subjecting telephone and telegraph companies to the provisions of the Act to Regulate Commerce; and the Commission thinks the language used by the Congress is doing this was sufficient to accomplish the end sought. Unrepeated Message Case, 44 I. C. C. 670, 674, 675.

(3a) Congress subjected the telephone and telegraph companies to the provisions of the Act to Regulate Commerce to secure uniformity in their dealing with the public. Unrepeated Message Case, 44 I. C. C. 670, 675.

(3b) Telephone and telegraph compan observe system of accounts and file annual reports prescribed by the Commission under section 20; but that part of

the section 20, known as the Carmack Amendment, held inapplicable. Unrepeated Message Case, 44 I. C. C. 670, 673, 677.

(3c) Lack of uniformity among the courts, when dealing with rates and rules for transmission of interstate messages, may explain the legislation by which the Congress has put all telephone and telegraph companies engaged in interstate transmission of messages under jurisdiction of Commission. Unrepeated Message Case, 44 I. C. C. 670, 677.

(3d) Congress, by amendment to the Act, has recognized the three classes of messages, such classification when lawfully fixed and offered to the public are binding upon the telegraph companies as well as upon those who avail themselves of the service. Unrepeated Message Case, 44 I. C. C. 670, 678.

(3e) Congress, by the amendatory act of 1910, has placed under the control and jurisdiction of the Commission the rates and practices of Interstate telegraph companies. Unrepeated Message Case, 44 I. C. C. 670, 679.

(3f) Telegraph companies have here the direct authority and sanction of Congress to classify their messages into repeated and unrepeated and to charge different rates for each. Unrepeated Message Case, 44 I. C. C. 670, 679.

(3g) Congress, by the language used in the amendatory Act of 1910, has manifested a definite intention to place under the jurisdiction and control of this Commission the rates and practices of interstate telegraph companies, as well as the rules, regulations, conditions and restrictions affecting their interstate rates. Unrepeated Message Case, 44 I. C. C. 670, 679.

(3h) The Commission has authority to require a telegraph company, in imposing charges for transmitting messages received from cable companies, to avoid discrimination as between competing cable companies. Commercial Cable Co. v. W. U. Teleg. Co., 45 I. C. C. 33, 39.

(3i) Telephone and telegraph companies are common carriers engaged in the transmission of intelligence and, as to their interstate business, are subject to the provisions of the Act. Private Wire Contracts, 50 I. C. C. 731, 757.

(3j) The fact that in Morse service the lessees furnish their own operators does not divest respondents of their status of common carriers as to messages sent over the private wires. Private Wire Contracts, 50 I. C. C. 740, 759.

(3k) However it is beyond the Commission's power to require the telegraph companies and the Bell Company to increase their charges for private-wire service. Private Wire Contracts, 50 I. C. C. 731, 765.

(3l) The provisions of section 4 of the act not applicable to the transmission of telegraph messages. Whitaker v. Western Union Telegraph Co., 59 I. C. C. 286, 298.

(3m) By the Interstate Commerce Act, and section 2, 12, which make that act applicable to interstate telegraph business and make interstate telegraph companies common carriers of messages, who are required to publish their rates and regulations subject to control by the Interstate Commerce Commission, Congress occupied the whole field of regulating interstate telegraph business, and therefore Const. Okl. art. 23, §9, making void any contract stipulating for notice or demand other than such as provided by law, as a condition precedent to liability, does not invalidate a clause in a contract for the sending of a telegram from the point in Oklahoma to a point in Kansas, which provides that the company shall not be liable for damages unless the claim is presented in writing within 60 days after the message is filed with the company for transmission. Gardner v. Western Union Telegraph So., 231 Fed. 405.

(3n) The course by which a message was transmitted in the ordinary course of business by a telegraph company between two points within the state determines its character as an interstate or intrastate transaction, and it is interstate where it actually was sent through a portion of another state, though it was not necessary to send it across the state boundaries. Western Union Telegraph Co. v. Speight, 41 Sup. Ct. 11.

(3o) Where the New York Stock Exchange agreed to furnish quotations to telegraph companies and they were authorized to furnish the same to subscribers subject to discontinuance on objection by the exchange, the distribution of such quotations in Massachusetts constituted interstate commerce, even though

the quotations were sent in the ordinary course of telegraphy in Morse code to a point in Massachusetts where they were translated into English and transmitted by an operator to the tickers in the offices of the subscribers. Western Union Telegraph Co. v. Foster, 38 Sup. Ct. 438.

(3p) The question whether a regulation by an interstate telegraph company requiring notice of claim to be given within 60 days is reasonable is for the Interstate Commerce Commission to determine. Gardner v. Western Union Telegraph Co., 231 Fed. 405.

(3q) Permits granted by the Secretary of the Interior to a power company to construct and maintain an electric power transmission line across a certain Indian reservation, under Act. Feb. 15, 1901 (Comp. St. §4946), authorizing the Secretary of the Interior to grant such permission, and making the permission revocable in the discretion of the Secretary or his successor, and to construct telephone lines across the reservation, under Act March 3, 1901, §3, under which the company had constructed and had for many years maintained a costly plant, were not terminated by the issuance of patents to persons who had made homestead filings on land within the reservation, across which the power and telephone lines had been constructed with notice of the existence of such transmission and telephone lines, in the absence of revocation of permits by the Secretary of the Interior. Swendig v. Washington Water Power Co., 281 Fed. 900.

(3r) That transmission of intelligence by wire is commerce, either state or interstate, is definitely settled and no longer questioned. W. U. Telegraph Co. v. Texas, 105 U. S. 464, 26 L. ed. 1067; Western Union Telephone Co. v. Pendleton, 122 U. S. 347, 7 Sup. Ct. 1126; 30 L. Ed. 1187; W. U. Tel. Co. v. James, 162 U. S. 654, 16 Sup. Ct. 934, 40 L. Ed, 1106; W. U. Tel. Co. v. Tyler, 90 Va. 299, 18 S. E. 281, 44 Am. St. Rep. 910; Reed v. W. U. Tel. Co., 56 Mo. App. 173; Ames v. Kirby, 71 N. J. Law 445, 59 Atl. 559; W. U. Tel. Co. v. Hughes, 104 Va. 246, 51 S. E. 227; W. U. Tel. Co. v. Bolling, (Va., 1917), 91 S. E. 154.

ALL OTHER CITATIONS

Western Union Telegraph Co. v. Bilisoly (Va., 1914), 82 S. E. 91; Norfolk Truckers' Exch. Inc. v. Norfolk Southern R. Co., (Va., 1914), 82 S. E. 92; Bailey v. W. U. Tel. Co. (Tex., 1914), 171 S. W. 839, 844; Western Union Telegraph Co. v. Bailey (Tex.. 1916) 184 S. W. 519; Western Union Telegraph Co. v. Foster; Macleod, Public Service Commission v. Western Union Telegraph Co., 113 N. E. (Mass., 1916), 192; Western Union Telegraph Co. v. Orr, 158 Pac. (Okla. 1916) 1139; W. U. Telegraph Co. v. Bank of Spencer, 156 Pac. (Okla., 1916) 1175; Mitchell Coal & Coke Co. v. Pa. R. Co., 230 U. S. 247, 33 Sup. Ct. 916, 57 L. ed. 1472; Chicago & Alton Ry. Co. v. Kirby, 225 U. S. 155, 32 Sup. Ct. 648, 56 L. Ed. 1033, Ann. Cas. 1914A, 501; Tex. & Pac. Ry. Co. v. Aoilene Cotton Oil Co., 204 U. S. 426, 27 Sup. Ct. 350, 51 L. Ed. 553, 9 Ann. Cas. 1075; Gardner v. Western Union Telegraph Co., 231 Fed. 405, 411, 412; Western Union Telegraph Co. v. Hawkins, (Ala., 1916), 73 So. 973, 974; Dickerson v. Western Union Telegraph Co., 74 So. 779; Western Union Telegraph Co. v. Lee, (Ky., 1917), 192 S. W. 70; Western Union Telegraph Co. v. Showers, (Miss., 1916), 73 So. 276; Meadows v. Postal Telegraph & Cable Co., (N. C., 1917), 91 S. E. 1009; Western Union Telegraph Co. v. Kaufman, (Oklahoma, 1917), 162 Pac. 708; Western Union Telegraph Co. v. Piper, (Tex., 1917), 191 S. W. 817; W. U. Tel. Co. v. Boegli, (Ind., 1917), 115 N. W. 773, 776; Y. & M. V. Ry. v. Picher Lead Co. (Mo., 1916) 190 S. W. 387; Poor v. Western Union Telegraph Company, (Mo., 1917), 196 S. W. 28; W. U. Tele. Co. v. Bailey, (Tex., 1917), 196 S. W. 516, 518, 519; West. U. Tel. Co. v. Mahone, (Va., 1917), 91 S. E. 157; West. U. Tel. Co. v. Bolling, (Va., 1917), 91 S. E. 154; Western Union Telegraph Co. v. Merrow, (Tex., 1919), 208 S. W. 689; Taylor v. Western Union Telegraph Co., (Mo., 1918), 204 S. W. 818; La Cost v. Chicago, R. I. & P. Ry., (Ark., 1918) 203 S. W. 586; Davis v. Western Union Telegraph Co., (Mo., 1918), 202 S. W. 292; Des Arc Oil Mill v. Western Union Telegraph Co., (Ark., 1918), 201 S. W. 273; Irvine v. Postal Teleg. Cable Co., (Cal. 1918), 173 Pac. 487; Private Wire Contracts, 50 I. C. C. 731, 740; Public Service Commission v. New England Telp. & Telg. Co., (Mass., 1919), 122 N. E. 567; Postal Telegraph-Cable Co. v. Call, 255 Fed. 850; Southwestern Tel. & Tel. Co. v. City of Houston, 256 Fed. 690; State v. Dakota Central Telephone Co., (S. D., 1919), 171 N. W. 277; State v. Wisconsin Telephone Co., (Wis., 1919), 172 N. W. 225; Groesbeck v.

Michigan State Telephone Co., (Mich. 1919), 172 N. W. 799; State v. Tri-State Telephone & Telegraph Co., (Minn., 1919), 173 N. W. 856; Western Union Telegraph Co. v. Bowies, (Va., 1919), 98 S. E. 645; State v. Cumberland Telegraph & Telephone Co., (Miss., 1919), 81 So. 404; Postal-Telegraph-Cable Co. v. Warren-Godwin Lumber Co., 40 Sup. Ct. 69; Western Union Telegraph Co. v. Boegli 40 Sup. Ct. 167; Dakota Cen. Tel. Co. v. South Dakota 39 Sup. Ct. Rep. 507; Brewer v. Postal Telegraph Cable Co. (Kansas City, Mo., 1920) 223 S. W. 949; Western Union Telegraph Co. v. Glover, (Ala., 1920), 86 Sou. 154; Postal Telegraph-Cable Co. v. City of Fremont, 41 Sup. Ct. 279; Blackledge v. Farmers' Independent Telephone Co. of Red Cloud (Nebr., 1921), 181 N. W. 709; Texas Telephone Co. v. City of Mart (Tex., 1920), 226 S. W. 497; Mountain State T. & T. Co. v. City and County of Denver, (Colo., 1921), 201 Pac. 1024; Bell Telephone Co. v. Public Service Commission et al. (Mo., 1921), 233 S. W. 425.

§3½. Jurisdiction of Commission.

See Jurisdiction of Commission.

IMPORTANT CASES SINCE 1908

(a) Power to regulate interstate rates, and the like, as affecting railroads and telegraph companies which are engaged in interstate commerce, has been conferred by Congress upon the Interstate Commerce Commission and such control cannot be interfered with by state laws. Dunning v. Western Union Telegraph Co., (Nebr., 1922), 187 N. W. 890.

(b) Until the Interstate Commerce Commission, through pending investigations, shows amount reserved for depreciation by telephone company to be excessive, prudence would dictate that the judgment of the company on that point should be permitted to stand; the percentage allowed for depreciation by the company not being unusual. Southwestern Bell Telephone Co. v. City of Ft. Smith 294 Fed. 102.

ALL OTHER CITATIONS

Gardner v. Western Union Telegraph Co., 231 Fed. 405; Poor v. Western Union Telephone Co., (Mo., 1917), 196 S. W. 28; W. U. Tele. Co. v. Bailey, (Tex., 1917), 196 S. W. 516, 517; Dune v. West. U. Tel. Co., (Wis., 1917), 161 N. W. 755; Private Wire Contracts, 50 I. C. C. 731, 756, 757, 763, 765; State v. J. Rosenbaum Grain Co., (Kans., 1924) 222 Pac. 80; Chicago, B. & O. R. Co. v. Reed, (Kans., 1923) 217 Pac. 322.

IV. LIABILITY FOR DAMAGES.

§4. In general.

CASES 1887-1908

(a) Judicial notice will be taken of the fact that there is no inherent difficulty in stringing several independent lines of telegraph on the same poles. Union Pacific R. Co. v. United States, 4 I. C. R. 705.

(b) The duty enjoined upon the Union Pacific Railroad Company by Act of Congress of Aug. 7, 1888, §1, of operating by itself alone through its own corporate officers its telegraph lines, may and should be enforced by mandamus if in fact violated. Union Pacific R. Co. v. United States, 4 I. C. R. 705.

(c) Damages for mental pain and suffering alone, occasioned by the negligence of a telegraph company in failing to deliver a message announcing the death of a relative, cannot be recovered. Butner v. Western U. Teleg. Co. (Okla.) 4 I. C. R. 770.

(d) The sendee of a telegraphic message cannot maintain an action against the telegraph company for neglect, delay, or nondelivery of the message, in the absence of showing that it was sent by his agent or was sent for his benefit, and that the carrier had actual or constructive notice that it was so sent for the benefit of the sendee. Butner v. Western P. Teleg. Co. (Okla.) 4 I. C. R. 770.

(ef) The terms "carelessly, wrongfully, and negligently failed and neglected" to deliver a message, used in a complaint, import ordinary and simple negligence, and nothing more. Butner v. Western Union Telegraph Co., 4 I. C. R. 770.

(g) A state statute prescribing a penalty for failure to deliver a telegram, where the regulations of the company itself require the delivery, is not unconstitutional as a regulation of interstate commerce. Western U. Teleg. Co. v. Tyler (Va.) 4 I. C. R. 481.

(h) A person to whom a telegram is addressd can maintain an action for a penalty on account of failure to deliver it promptly, under Va. Code, §1292, expressly providing that the forfeiture shall be to him or to the person sending

the dispatch. Western Union Telegraph Co. v. Tyler, 4 I. C. R. 481.

(i) Failure to comply with special contract terms touching presentation of claims or making demand against a telegraph company for failure to transmit a message does not prevent a recovery of the statutory penalty, where the default sued for is failure to start the message. Western U. Teleg. Co. v. Michelson (Ga.), 5 I. C. R. 236.

(j) A telegraph company receiving a prepaid telegram in Georgia for transmission to a point in another state, which was never delivered to the addressee, has the burden of showing that it was transmitted from the Georgia office with due diligence, and that nondelivery was due to default or some other cause arising beyond the limits of the state, in order to escape liability for the statutory penalty for negligence in transmission. Western U. Teleg. Co. v. Howell (Ga.), 5 I. C. R. 516.

(k) Where a message, the charges upon which were duly paid in advance, was received by a telegraph company, at one of its offices in this state, for transmission to a point in another state, and was never delivered to the person to whom it was addressed, it is incumbent on the company, in order to escape liability for the statutory penalty for negligence in transmission from the Georgia office, to show that the message was in fact transmitted from that office with due diligence, and that the nondelivery to the sendee was due to some default or other cause arising beyond the limits of this state Western Union Telegraph Co. v. Howell, 5 I. C. R. 516.

IMPORTANT CASES SINCE 1908

(l) The sender of a telegram may more nearly estimate the possible damage in the case of error in transmission or delay than can the telegraph company. Unrepeated Message Case, 44 I. C. C. 670, 676.

(m) The so-called Carmack Amendment, which is part of section 20, inapplicable to telephone and telegraph companies. Unrepeated Message Case, 44 I. C. C. 670, 677.

(n) The silence of the Carmack Amendment with respect to telegraph companies and their liability for errors in the transmission of interstate telegraph messages can not be controlling with respect to the Commission's jurisdiction, if under other provisions of the Act the matters in controversy are brought within its cognizance. Unrepeated Message Case, 44 I. C. C. 670, 678.

(o) A general investigation has been made of the practice of the telegraph companies subject to the interstate commerce act in adjusting claims for damages arising from errors or delays in the transmission or delivery, or, from nondelivery, of interstate messages, and the reasonableness of their rules limiting liability on the several classes of messages, dependent upon the rates paid. The telegraph companies offer the sender his choice of three classes of messages, unrepeated, repeated, and valued, with different rates for each class, dependent upon the service to be performed and the liability to be assumed. In an unrepeated message it is stipulated that the company shall not be liable for mistakes, delays, or nondelivery beyond the amount received for sending it. In a repeated class of messages, the rate is one and one-half times the unrepeated message, and companies agree to assume liability to the extent of 50 times the rate paid, with a maximum liability in the case of the Western Union of $50. For the valued message, the rate charged is the repeated rate plus a surcharge of one-tenth of one per cent of the valuation. Western Union provides for limitation of liability of $50 and by Postal Company of repeated messages, 50 times the repeated rate. It is shown by the record that the practice of the Western Union in the settlement of damage claims is not in accord with the rules it has established, but is founded on a policy in which business considerations predominate. The practice is to adjust claims contrary to the rules, not only in the jurisdictions which heretofore have declined to sanction their validity but also in jurisdictions where they have been expressly upheld. It is frankly admitted that business considerations and equity dictate its policy. The policy of the Postal is the reverse of that of the Western Union. It is clear that the policy of the Western Union is contrary to both the spirit and the terms of the interstate commerce act and must therefore be condemned. There has been no change in the practice of the Western Union for 50 years. A repeated telegram differs from the ordinary telegram in that it is repeated back at each stage of trans-

mission from point of origin to destination. Repetition of a message is a certain guard against errors in transmission, but is no protection against delayed delivery. The charge for an unrepeated message includes the cost incident to its receipt, transmission, and delivery, and a profit to the company. The repetition is but one additional element of the total service, and its cost therefore, a relatively small proportion of the original cost, while the charge is 50 per cent higher. The valued message appears to be of no practical use in the great majority of instances, because of the impossibility of anticipating what default, if any, there may be in the service and thus determining in advance what loss may ensue. So far as a large class of messages might be eliminated, as it never has been and probably never will be used to any considerable extent. The present record amply demonstrates the need for a substantial revision of respondents rules concerning their liability on interstate messages. The record herein offers no sound reason why telegraph companies should longer be permitted to avoid liability for their errors or negligence or be permitted to limit their liability for errors of negligence. HELD, present rules unreasonable; that the maximum liability in the case of a message for the transmission of which the unrepeated rate is charged should be not less than $500, and for a message received for transmission at the repeated rate, $5,000, which limitation the Commission finds to be reasonable as parts of the respective rates. Provision should be made for the transmission of valued messages under a liability limited to the value stated in writing by the sender of the message at the time it is offered for transmission upon payment of the repeated rate plus one-tenth of one per cent of the stated value in excess of $5,000. Limitations of liability in connection with the transmission of telegraph messages, 61 I. C. C. 541.

(p) Failure to perform service limits recovery to value of service only where there were no special circumstances tending to show that a telephone company was chargeable with knowledge of facts from which the likelihood of special damages should be inferred, and, in an action by a subscriber for damages on account of being unable to summon the fire department when his buildings took fire after interruption of service of which the company had timely notice, the subscriber can recover no more than the ordinary value of the service for which he paid; there being no recovery for the results of the unforseen situation which thereafter arose. Barrett v. New England Telephone & Telegraph Co., (N. H. 1922), 117 Atl. 264.

(q) A stipulation by a telegraph company limiting its liability in case of an unrepeated message to only the amount paid for its transmission, is valid under the Interstate Commerce Act. Western Union Telegraph Co. v. Esteve Bros., 41 Sup. Ct. 584.

ALL OTHER CITATIONS

Bailey v. W. U. Tel. Co. (Tex., 1914), 171 S. W. 839, 846; Western Union Tel. Co. v. Compton, (Ark., 1914), 169 S. W. 946; Western Union Telegraph Co. v. Simpson (Ark., 1915), 174 S. W. 232, 233; Southern Express Co. v. Byers, 36 Sup. Ct. 411; 240 U. S. 612, 60 L. Ed. 825; W. U. Telegraph Co. v. Stewart, (Ark., 1915) 179 S. W. 813; Western Union Telegraph Co. v. Sharp, (Ark., 1915), 180 S. W. 504, 506; W. U. Telegraph Co. v. Schoonmaker, (Tex., 1916) 181 S. W. 263, 264, 266, 267, 268, 269; W. U. Telegraph Co. v. Bailey, (Tex., 1916) 184 S. W. 519, 520, 523; Southern Express Co. v. Caldwell, 88 U. S. (21 Wall.) 264, 22 L. ed. 556; M. K. & T. Ry. Co. v. Harriman Brothers, 227 U. S. 657, 33 Sup. Ct. 397, 57 L. Sd. 690; Whitehill v. W. U. Telegraph Co. (C. C.) 136 Fed. 499; Manier v. Western Union Telegraph Co., 94 Tenn. 442, 29 S. W. 732; Gardner v. Western Union Telegraph Co., 231 Fed. 405, 409; Western Union Telegraph Co. v. Bassett, 71 So. R. (Miss., 1916) 750; Western Union Telegraph Co. v. Orr, 158 Pac. (Okla., 1916) 1139; Western Union Telegraph Co. v. Bank of Spencer, 156 Pac. (Okla., 1916) 1175; Western Union Telegraph Co. v. Smith (Tex., 1916) 188 S. W. 702; Unrepeated Message Case, 44 I. C. C. 670, 675; Southern Ry. Co. v. Rowe, (Ala., 1916), 73 So. 634; Western Union Telegraph Co. v. Hawkins, (Ala., 1916), 73 So. 973, 974; Dickerson v. Western Union Telegraph Co., 74 So. 779; Kirsch Postal Telegraph Cable Co., (Kans., 1917), 164 Pac. 267, 268; Western Union Telegraph Co. v. Lee, (Ky., 1917), 192 S. W. 70; Western Union Telegraph Co. v. Showers, (Miss., 1916), 73 So. 276, 277; Meadows v. Postal Telegraph & Cable Co., (N. C., 1917), 191 S. W. 192; Western Union Telegraph Co. v. Piper,

(Tex., 1917), 191 S. W. 817; Poor v. Western Union Telegraph Co., (Mo., 1917), 196 S. W. 28; Norris v. W. U. Tele. Co., (N. C., 1917), 93 S. E. 465; W. U. Tel. Co. v. Schade, (Tenn., 1917), 192 S. W. 924; P. & S. F. Ry. v. Vaughn, (Tex., 1917), 191 S. W. 142; Postal Telegraph-Cable Co. v. Prewitt, (Tex., 1917), 199 S. W. 316; W. U. Tele. Co. v. Bailey, (Tex., 1917), 196 S. W. 516, 517; West. U. Tel. Co. v. Bolling, (Va., 1917), 91 S. E. 154; Dune v. Western Union Tel. Co., (Wis., 1917), 161 N. W. 755; La Cost v. Chicago, R. I. & P. Ry., (Ark., 1918), S. W. 586; Lehue v. Western Union Telegraph Co., (N. C., 1918), 96 S. E. 29; Berg v. Western Union Telegraph Co., (S. C., 1918), 96 S. E. 248; Early-Foster Co. v. MacKay Telegraph Co., (Tex., 1918), 204 S. W. 1172; Western Union Telegraph Co. v. Chihuahua Exchange, (Tex., 1918), 206 S. W. 364.; Williams & Sons v. Postal Telegraph-Cable Co., (Va., 1918), 95 S. E. 436; Des Arc Oil Mill v. Western Union Telegraph Co., (Ark., 1918), 201 S. W. 273; C. F. Witherspoon & Sons v. Postal Tel. & Cable Co., 257 Fed. 758; State v. Cumberland Telephone & Telegraph Co., (Miss., 1919), 81 So. 404; Western Union Telegraph Co. v. Janko, (Tex., 1919), 212 S. W. 243; Western Union Telegraph Co. v. Esteve Bros. & Co., 268 Fed. 22; Postal Telegraph-Sable Co. v. Associated Press (N. Y., 1920) 127 N. E. 256; Western Union Telegraph Co. v. Glover, (Ala., 1920), 86 Sou. 154; Michell v. Cumberland Telephone & Telegraph Co. (Ky., 1920) 221 S. W. 547; McPhillips v. New York Telephone Co., 187 N. Y. S. 183; Western Union Telegraph Co. v. Speight, 41 Sup. Ct. 11; McFeena's Telegraph Co. (Ky., 1921), 227 S. W. 450; Limitations of liability in connection with the transmission of telegraph messages, 61 I. C. C. 541, 544, 545, 546, 549, 550; Cavers v. Home Telephone & Telegraph Co. of Spokane, (Wash., 1921), 201 Pac. 20; Southwestern Telegraph & Telephone Co. v. Riggs, (Tex., 1921), 234 S. W. 875.

V. REPARATION.

See Tariffs.

§5. In general.

IMPORTANT CASES SINCE 1908

(a) While section 6 of the Act does not require telegraph and telephone companies to publish and file their charges for interstate transmission of messages, other sections require that such charges shall be just and reasonable and neither unduly preferential nor unduly prejudicial. Private Wire Contracts, 50 I. C. C. 731, 764.

ALL OTHER CITATIONS

Western Union Telegraph Co. v. Piper, (Tex., 1917), 191 S. W. 817; Western Union Telegraph Co. v. Esteve Bros. & Co., 268 Fed. 22; Brewer v. Postal Telegraph Cable Co. (Kansas City Mo., 1920) 223 S. W. 949; Whitaker v. Western Union Telegraph Co. 59 I. C. C. 286, 287.

VI. CONTRACTS BETWEEN COMPANIES.

§6. In general.

CASES 1887-1908

(a) The condition of the business of the respective parties to a contract for a telegraph line on a railroad right of way several years after the agreement was made cannot control in determining the purpose of the parties in making it, nor its true interpretation. Union Pacific R. Co. v. United States, 4 I. C. R. 705.

(b) The United States government as the holder of a lien upon the Pacific railroads and telegraph lines is entitled, under the Act of Congress of Aug. 7, 1888, to maintain a bill in equity to have its rights and equities in and to the telegraph property along the right of way of the Union Pacific Railway Company judicially ascertained, and to have the rights of other persons and corporations therein also ascertained and adjudicated, and, incidental thereto, to have set aside and annulled all provisions of contracts that are unlawful and in any manner impeach the security of the United States, cloud its title, or prejudice its rights. Union Pacific R. Co. v. United States, 4 I. C. R. 705.

(c) The privilege granted to the United States Telegraph Company by Act of Congress of July 2, 1864, to enter into arrangements with the Pacific railroad companies for the construction and maintenance of a line of telegraph upon the railroad right of way, in discharge of the obligation of the railroad companies to construct and maintain such a line, must be presumed to have been conferred with full knowledge of the charter powers of the grantee to consolidate with other corporations engaged in like business, and is not personal so as to become lost by the merger of

such telegraph company with the Western Union Telegraph Company, but passed to and became vested in the consolidated company. Union Pacific R. Co. v. United States, 4 I. C. R. 705.

(d) The Pacific Railroad acts, requiring the railway companies to erect and maintain a line of telegraph along their right of way, do not impose upon the company the duty of maintaining a separate line of poles upon which to string its wires, where a telegraph company lawfully in possession of a line of telegraph on the railroad right of way, and operating the same for commercial and other purposes, by contract with the railway company provides that the latter may maintain upon the former's poles wires devoted to its exclusive use, and the latter has offices at convenient points and operates expressly required to send over such wires all such messages of a governmental or commercial character as are directed to be sent, and the right to string such additional wires as may be deemed essential or convenient. Union Pacific R. Co. v. United States, 4 I. C. R. 705.

(e) The provisions of the contract of July 1, 1881 between the Union Pacific Railway Company and the Western Union Telegraph Company, giving the latter access to the former's station-houses, with some of its wires and the right to avail itself of the service of the employes of the railway company, at most afford to the telegraph company some facilities for competing with the railway company in the matter of transacting a commercial business, which it would not enjoy if compelled to maintain independent offices, and do not amount to a transfer or surrender of the telegraphic franchise of the railway company, which, notwithstanding them, retains its right and capacity to do a commercial business. Union Pacific R. Co. v. United States, 4 I. C. R. 705.

(f) The provisions of the contract of July 1, 1881, between the Union Pacific Railway Company and the Western Union Telegraph Company looking to the exclusive right of the latter to maintain a line of telegraph upon the railroad right of way, do not render the contract voidable on the grounds of public policy, as they do not bind the railway company absolutely to exclude other telegraph companies from the right of way, or withhold all facilities for the construction of competing lines, as they provide for the grant of such exclusive right only to the extent that the railway company may legally do so. Union P. R. Co. v. United States (C. C. App. 8th C.) 4 I. C. R. 705.

(g) The privilege granted to the United States Telegraph Company by Act of Congress of July 2, 1864, to enter into arrangements with the Pacific railroad companies for the construction and maintenance of a line of telegraph upon the railroad right of way, in discharge of the obligation of the railroad companies to construct and maintain such a line, must be presumed to have been conferred with full knowledge of the charter powers of the grantee to consolidate with other corporations engaged in like business, and is not personal so as to become lost by the merger of such telegraph company with the Western Union Telegraph Company, but passed to and became vested in the consolidated company. Union P. R. Co. v. United States (C. C. App. 8th C.) 4 I. C. R. 705.

(h) The privilege given the United States Telegraph Company to erect and maintain a line of telegraph upon the rights of way of the Pacific railroad companies by Act of Congress of July 2, 1864, providing that such telegraph company "and their associates" may construct a line of telegraph between the Missouri River and San Francisco, and authorizing such railroad companies to enter into an agreement with it for the transfer of its line to the line of the road in fulfillment of the obligation of the railroad companies to construct and maintain a line of telegraph,—is not personal, but may be shared by another corporation becoming lawfully associated with the United States Telegraph Company in the work of constructing a transcontinental line,—especially one with which such telegraph company became lawfully united by the process of consolidation. Union P. R. Co. v. United States (C. C. App. 8th C.) 4 I. C. R. 705.

(i) The United States government as the holder of a lien upon the Pacific railroads and telegraph lines is entitled, under the Act of Congress of Aug. 7, 1888, to maintain a bill in equity to have its rights and equities in and to the telegraph property along the right of way of the Union Pacific Railway Company judicially ascertained, and to have the rights of other persons and corporations

therein also ascertained and adjudicated, and, incidental thereto, to have set aside and annulled all provisions of contracts that are unlawful and that in any manner impeach the security of the United States, cloud its title, or prejudice its rights. Union P. R. Co. v. United States (C. C. App. 8th C.), 4 I. C. R. 705.

(j) The Pacific Railroad Acts, requiring the railway companies to erect and maintain a line of telegraph along their right of way, do not impose upon the company the duty of maintaining a separate line of poles upon which to string its wires, where a telegraph company lawfully in possession of a line of telegraph on the railroad right of way, and operating the same for commercial and other purposes, by contract with the railway company provides that the latter may maintain upon the former's poles wires devoted to its exclusive use, and the latter has offices at convenient points, and operators expressly required to send over such wires all such messages of a governmental or commercial character as are directed to be sent, and the right to string such additional wires as may be deemed essential or convenient. Union P. R. Co. v. United States (C. C. App. 8th C.) 4 I. C. R. 705.

IMPORTANT CASES SINCE 1908

(k) Exchange areas should be so arranged by a telephone company as to give free call service to all inhabitants within the radius of general community of interest. City of Cincinnati v. Public Utilities Commission, (Ohio, 1922), 137 N. E. 36.

TERMINAL FACILITIES

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
§1½. Jurisdiction of courts.
II. DUTY TO PERFORM TERMINAL SERVICE.
§2. In general.
§3. Duty to allow use.
§3½. Employment of agents.
§4. Publication of terminal charges.
§5. Reasonableness of charges.
§5a. Reparation.
§6. What are public terminals and facilities.
III. STATUS OF TERMINAL ROADS.
§7. In general.
§8. Definition of "Terminal Charges."
§9. Allowances.
§10. Discrimination.
§11. Through routes and joint rates.

CROSS REFERENCES

See Allowances §8 (4); Divisions; Evidence §57¾; §59(1); Exclusive Contracts; Facilities and Privileges §16; Reasonableness of Rates §34; Switch Tracks and Switching §6; Tonage Charges; Transportation §10; Trap Car and Ferry Charges.

I. CONTROL AND REGULATION.

See Control and Regulation; §1 Jurisdiction of Commission, Facilities and Privileges I; Interstate Commerce Commission I; Jurisdiction of Commission.

§1. Jurisdiction of Commission.

CASES 1887-1908

(a) In proceedings involving issuance of an order concerning the publication and enforcement of transportation or terminal charges, rules and regulations, investigation is useful to enable the Commission to determine what, if any, administrative order should be directed to defendant carriers, and whether such order should be made to apply to all carriers subject to the regulating statute. American Warehousemen's Asso. v. I. C. R. Co., 7 I. C. C. 556, 560.

IMPORTANT CASES SINCE 1908

(b) Terminal tracks are a part of the railroad which is subject to the provisions of the Act and to the jurisdiction of the Commission, and in exercising the powers vested in the Commission to establish through routes and joint rates the terminals stand, to all practical intents and purposes, in the same light as any other part of the railroad. I. & S. W. Ry. v. C. B. & Q. R. R. Co., 42 I. C. C. 389, 393.

(c) By section 1 all terminal facilities of every kind used or necessary in the transportation or delivery of property, moving as defined therein, are included in the term "railroad" as used in the Act. Guyton & Harrington Mule Co. v. L. & N. R. R., 50 I. C. C. 546, 549.

(ca) Paragraph (4), section 3 of the act, under which the commission may require the use of one carrier's terminal

facilities by another is satisfied by a showing that it is in the public interest and that it would be practicable for the terminal carrier to switch between its industries and the line carrier. Interpretation given expression and the Chicago, Milwaukee & St. Paul Ry. required to extend the use of its terminal facilities at Hastings, Minn., to the C. B & Q. R. R. Hastings Commercial Club v. C., M. & St. P. Ry. Co., 69 I. C. C., 489.

(cb) The object of that part of section 3 of the act which relates to the interchange of traffic, between connecting carriers, was to make more flexible the use of existing terminal facilities, and while the power granted the commission is to be exercised upon careful consideration of each situation, it is but an extension of the general principle that the interest of the public imposes important qualifications on the manner of use of the property employed in the carrier serivce. Hastings Commercial Club v. C., M. & St. P. Ry. Co., 69 I. C. C. 489, 493.

(cd) Where Congress had formerly safeguarded the carrier in the exclusive use of its terminals it now recognizes that there is a broader interest than that of the individual carrier whose property rights happened to be involved, viz, that of the public. Hastings Commercial Club, v. C. M. & St. P. Ry. Co., 69 I. C. C. 493.

(d) It is apparent that the limitation put upon the authority of the Commission to establish through routes and joint rates does not apply where it finds it to be in the public interest to require one carrier to afford another carrier the use of its terminals. Port Arthur Chamber of Comerce v. T. & F. S. Ry., 73 I. C. C. 361, 363.

(e) In determining what is "in the public interest" in a given case, as antecedent to the affirmative exercise of the broad grant of power, giving the commission the right, when in the public interest, to allow one carrier to use the terminals of another, the commission must take into consideration not only the interests of the particular shippers located at or near the terminal involved but also the interests of the carriers and of the general public. York Mfrs. Asso. v. P. R. R. Co., 73 I. C. C., 40, 49.

(f) In view of the parenthetical clause in paragraph (4) of section 15 of the act, the limitation put upon the commission's authority to establish through routes and joint rates does not apply where the commission finds it to be in the public interest to require one carrier to afford another carrier the use of its terminals. Port Arthur Chamber of Commerce v. T. F. S. Co., 73 I. C. C., 361, 363.

(g) The interstate commerce act formerly provided that section 3 should "not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business." As amended by the transportation act, 1920 that proviso was omitted and a paragraph inserted under which the commission may require the use of one carrier's terminal facilities by another when in the public interest, where it is practicable and does not substantially impair the ability of the terminal carrier to handle its own business. Team Track Switching at Argentine, 73 I. C. C., 367, 370.

(h) The Commission may require the use of one carriers terminal facilities by another when in the public interest, where it is practicable and does not substantially impair the ability of the terminal carrier to handle its own business. Team Track switching at Argentine 73 I. C. C. 367, 370.

(i) Paragraph (4) of section 3 of the act, in substance, authorizes the commission when found "to be in public interest and practicable," to require joint use of terminals at reasonable compensation to carrier owning such terminals. Authority of commission under this paragraph is dependent upon showing of public interest. Miller Paper Co. v. P. R. R. Co., 80 I. C. C. 314, 317.

(j) A track connecting the lines of two carriers within a city for the interchange of traffic is not excepted from the jurisdiction of the Interstate Commerce Commission by Interstate Commerce Act, providing that the authority of the commission, conferred by previous paragraphs of the section, shall not extend to spur, industrial terminal, switching, or side tracks located wholly within one state. People v. Public Service Commission, (Ind. 1922), 135 N. E. 195.

ALL OTHER CITATIONS

S. P. Terminal Co. v. I. C. C., 219 U. S. 498, 521, 526, 31 Sup. Ct. 279, 55 L. ed. 310; Southwestern Produce Distributors v. Wabash R. R. Co., 20 I. C. C. 458, 461; Peale, Peacock & Kerr v. C. R. R. Co. of N. J., 18 I. C. C. 25, 33; Wilson Produce Co. v. Penn. R. R. Co., 14 I. C. C. 170, 174; Eichenberg v. S. P. Co., 14 I. C. C. 250, sustained, 219 U. S. 498, 521, 31 Sup. Ct. 279, 55 L. ed. 310; Mfrs. Ry. Co., v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 101; St. Louis, Springfield & Peoria R. R. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 236, 237; Morris Iron Co. v. B. O. R. R. Co., 26 I. C. C. 240, 244; Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 101; Waverly Oil Works v. P. R. R. Co., 28 I. C. C., 621, 625, 628; Seattle Chamber of Commerce v. G. N. Ry. Co., 30 I. C. C. 683, 690; Manufacturers Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100, 106; Pennsylvania Co. v. United States, 35 Sup. Ct. Rep. 370, 374, 376; Iowa & Southwestern Ry. Co. v. C. B. & Q. R. R. Co., 32 I. C. C., 172, 174; St. Louis Mo-Illinois Passenger Fares, 41 I. C. C. 584, 590; New York Harbor Case, 47 I. C. C. 643, 733; St. Louis Chamber of Commerce v. B. & O. R. R. Co., 57 I. C. C. 639, 653; Miller Paper Co. v. P. R. R. Co., 80 I. C. C. 314, 317.

§1½. Jurisdiction of Courts.

See Courts.

II. DUTY TO PERFORM TERMINAL SERVICE.

§2. In general.

CASES 1887-1908

(a) When a new railroad makes a physical connection with an old railroad, at a point other than the established yard or depot of the old road, but neither company has any yard, station, depot, or ground, at the point of connection; nor any buildings, sheds, or platforms there, for the reception and accommodation of freights, to be handled and exchanged at that point; nor any clerks or employes, stationed there for the inspection of cars, reception of freights, etc.; an interchange of traffic at such a point cannot be made in a proper and convenient way to either company; and no authority is conferred upon the Commission, or upon this court, to compel the old company to provide at said point of connection the same or equal facilities, which it had previously provided at its regular, established, yards and depots, Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(b) The second clause of the third section, provides that "Every common carrier subject to the provisions of this act, shall, according to their respective powers, afford all reasonable, proper, and equal facilities, for the interchange of traffic, between their respective lines, and for the receiving, forwarding and delivering of passengers and property, to and from their several lines, and those connecting therewith, and shall not discriminate in their rates and charges, between such connecting lines, etc." but neither this, nor any other provision of the Law, requires of the common carrier of interstate commerce, the duty of either forming new connections, or of establishing new stations for the reception and delivery of freights. The Act to Regulate Commerce deals with such common carriers as it finds them, and leaves to them full discretion as to what extensions they will make of their lines, the connections they may form, and the yards and depots they may choose to establish. When railroad companies, in compliance with their charter obligations, have provided themselves with convenient, suitable, and ample, stations and depots, for the accommodation of their business, the law imposes upon them no duty, either to the public or other railroad lines, of making new stations, yards, or depots, even though such additional constructions might be for the convenience of the public, or of other carriers—Congress has certainly not undertaken, even if it possessed the power, to deal with such matters. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(c) Where a new railroad makes a physical connection with an old railroad, at a point other than the established yard, or depot of the old road, and there are no facilities at said connection, for receiving, forwarding, or delivering freight, individual shippers, or consignees of freight, have no right to require the old company to receive or deliver their traffic, at such point of

connection; and the new company, or other companies using its tracks, cannot properly demand, or require of the old company, to concede to it, or them, rights and facilities, which the old company is under no obligation, or duty, to grant, or provide for individual owners or shippers of interstate commerce. This would be conferring upon common carriers engaged in transporting interstate traffic, rights and privileges superior to those intended for the benefit of such commerce itself. The law was not designed to advance the interests of carriers; but was intended for the benefit and advantage of the commerce they transported; and the provisions of the Act all look to that as its object and purpose. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(d) It is of no importance to the question involved that after freight carried by petitioner's road reached High Bridge, in New York, its delivery from that point to the pier, which constituted the terminus of the carriage, was made by an agent or contractor employed for the purpose. Petitioner, being carrier for the whole distance, was entitled to the prileges given by the Statute accordingly. New York & N. R. Co. v. N. Y. & N. E. R. Co. 3 I. C. R. 542.

(e) A common carrier is not in every case under legal compulsion to furnish the same terminal facilities for all descriptions of traffic; it is sufficient if reasonable provision is made in this regard, and what is reasonable in a given instance depends largely upon the conditions and surroundings of the particular locality. Palmer's Dock Hay & Produce Board of Trade v. Pennsylvania R. Co., 9 I. C. C. 61.

(f) The Pennsylvania Railroad Company, whose terminal in Brooklyn is connected with its railroad terminus in Jersey City, by means of water carriage across New York harbor, does not unjustly discriminate against hay in carloads by discontinuing "track delivery" for hay in carloads at its station in Brooklyn, though it continued to make such delivery for other railroad traffic, where such action was taken to relieve a state of chronic congestion at the Brooklyn station, resulting largely from consignments of hay thereto, and where it still continued to deliver carload hay alongside the wharves in Brooklyn as it does within the lighterage districts in New York. Palmer's Dock Hay & Produce Board of Trade v. Pennsylvania R. Co. 9 I. C. C. 61.

(g) A carrier may not reasonably be required to accept and deliver free of charge traffic moved by its competitor. Laning-Harris Coal & Grain Co. v. A. T. & S. F. R. Co., 12 I. C. C. 479.

IMPORTANT CASES SINCE 1908

(h) It is the duty of carriers to make reasonable effort to provide adequate terminal and other facilities. The reasonableness of the effort must be measured by the circumstances and conditions affecting the undertaking. Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 53.

(j) Under Interstate Act 1887, §3 (Comp. St. §8565), requiring equal facilities for interchange of traffic, and Transportation Act 1920, §405 (Comp. St. Ann. Supp. 1923, §8565), authorizing the Interstate Commerce Commission to require the use of terminal facilities of one carrier by another, if it is in the public interest and practicable to do so, where it was not shown to be in the public interest and practicable to do so, where it was not shown to be in the public interest to require the use of terminal facilities of one railroad by another, the Commission could not order the practice in a certain zone of each carrier using the other's tracks as if they were common property extended to other parts of the city. Pennsylvania R. Co. v. United States. 295 Fed. 523.

(k) Where the practice has grown up between two railroads of using each other's tracks as common property within a certain zone in a city, the industries located along the tracks of either company in such zone are in law considered as being located on the individual tracks of both companies, and the industries outside the zone as being located on the tracks of one of the companies only, the industries within the zone in legal effect not being similarly situated to those outside the zone, and the advantages enjoyed by them were not an undue or unreasonable preference, under Interstate Commerce Act 1887, §3 (Comp. St. §8565)

Pennsylvania R. Co. v. United States. 295 Fed. 523.

(i) The use of tracks or terminal facilities referred to in section 3 is not limited to physical entry upon such tracks or terminal facilities by the power, equipment, or employees of another carrier. Louisville Board of Trade v. L. & N. R. R. Co., 40 I. C. C. 679, 690.

ALL OTHER CITATIONS

Barrett Mfg. Co. v. Central R. R. of N. J., 17 I. C. C. 464, 466; New England Investigation, 27 I. C. C. 560, 608; St. L. S. & P. R. R. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 236; Galveston Commercial Assn. v. A. T. & S. F. Ry. Co., 25 I. C. C. 216, 228; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 74; Waverly Oil Works Co. v. P. R. R. Co., 28 I. C. C. 621, 625, 626; 627; Becker v. P. M. R. R. Co., 28 I. C. C. 645, 652; Merchants' & Mfrs.' Asso. v. C. R. R. Co. of N. J., 30 I. C. C. 396, 401; Manufacturers Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. 100, 105; Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 57; The Missouri River-Nebraska Cases, 40 I. C. C. 201, 256; St. Louis (Cupples Station) Terminal Regulations, 40 I. C. C. 425, 433; Covington Stock Yards Co. v. Keith. 139, U. S. 128, 11 Sup. Ct. 469, 35 L. Ed. 73; Chicago R. I. & P. Ry. Co. v. Theis, (Kansas 1915) 152 Pac. 619, 620; K. C. & M. Ry., v. St. L. & S. F. R. R., 46 I. C. C. 464; Export Freight Free Time, 47 I. C. C. 162, 180; Miller Engineering Co. v. Louisiana Ry. & Nav. Co., (La. 1919), 81 So. 314.

§3. Duty to allow use.

CASES 1887-1908

(a) The fact that a railroad company interchanges traffic with certain railroads, at its regular established yard or depot (where it has provided all reasonable proper, and equal facilities for that purpose), and refuses to interchange traffic with a new road, at a point of connection where no such facilities exist, does not constitute any "discrimination," or any "undue, or unreasonable preference or advantage," in favor of the railroads, with which such interchange is made. The third section of the Act does not mean that whatever facilities a railroad company may furnish, or provide, for the interchange of business with connecting lines, at any one place (such as its regularly established and properly equipped depot), it is bound to provide for any, and all other railroads, at such other and different points as they may select in making their connection. On the contrary said section means, that where a railroad subject to the provisions of the Act has provided and established, at any given place, its facilities, in the shape of yards, stations, and depots, for the interchange of traffic, or for the receiving, forwarding, and delivering of passengers and property, and there affords such facilities to some of its connecting lines, it shall not deny to other connecting lines at that point, the same proper, reasonable, and equal facilities. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. C. R. 351.

(b) It by no means follows because certain facilities for the interchange of freight are furnished by a railroad to another connecting line or lines at one point, upon certain terms, conditions and considerations, and where ample accommodations for the transaction of such business are provided and maintained at the joint expense of the companies using them, that another company, making a physical connection with the road (furnishing such facilities) at another, different, and distant place, is entitled to demand at said different point of connection, the same, or equal facilities. The company making the physical connection, at a point other than that at which the established road has already provided its facilities, and conducts its interchange, with other connecting lines, cannot demand or require an interchange at such point of physical connection, without first furnishing at such point, reasonable, and proper facilities, for the interchange sought. It cannot rely upon the terminal facilities at another point of the road, with which it has formed the physical connection; nor can it compel the road, with which the connection is made, to join with it, in the expense of providing at that point the facilities necessary and proper for the interchange. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(c) No provision of the Act confers equal facilities upon connecting lines, under dissimilar circumstances and conditions. On the contrary, even as to

interstate commerce itself, the distinction is recognized throughout the law, between discriminations and preferences which are just and reasonable, and those which are unjust and unreasonable, according as they are made, or given, under similar or dissimilar circumstances and conditions. All discriminations and preferences are not forbidden, or made unlawful; but only such as are unjust, or undue, or unreasonable. In each, and every case, therefore, the question whether discrimination is unjust, or a preference is undue, or unreasonable, either as to the common carrier, or the commerce it may transport, involves a consideration of the circumstances and conditions, under which such discrimination, or preference, is made or given. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(d) An interchange of traffic at a new point of connection between railroads, where there are no buildings, sheds, platforms, or other facilities, for the proper care, protection, and handling of freight, and no clerks, or employes, stationed there to look after, and attend to the business, cannot possibly be carried on, without requiring the old road to concede the use of its track and terminal facilities to the new road, or without imposing upon the old road the trouble, inconvenience, and expense of handling the traffic interchanged between them; and neither the Commission, nor this court, has any authority to require the old road to concede the use of its tracks and terminal facilities, in order to accomplish an interchange of traffic; nor can this court, or the Commission, impose upon the old road the duty of making such interchange, at its own expense, over its own tracks, with its own engines, at its own yard, and with its own employes. Such interchanges between railroads are arranged by mutual agreements, fixing the compensation to be paid for services, and for the use of improvements, and providing for "prorating," the expense incident to such interchange. But if the parties cannot themselves agree upon such terms, neither this court nor the Commission can make an agreement for them, under the existing law, and under circumstances such as exist in this case. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co. 2 I. C. R. 351.

(e) The provision in the third section section of the Act, to the effect that a common carrier shall not be required "to give the use of its tracks and terminal facilities, to another carrier engaged in like business," is a limitation upon, or qualification of, the duty of affording all reasonable, proper, and equal facilities, for the interchange, or for the receiving, forwarding, and delivering, of traffic to, from, and between, connecting lines; and therefore it is left open to any common carrier to contract, or enter into arrangements, for the use of its tracks and terminal facilities, with one or more connecting lines, without subjecting itself to the charge of giving an undue, or unreasonable preference or advantage to such lines, or of discriminating against other carriers who are not parties to, or included in such arrangements. No common carrier can, therefore, justly complain of another, that it is not allowed the use of that other's tracks and terminal facilities, upon the same or like terms and conditions, which, under private contract or agreement, are conceded to other lines. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(f) The provision of section 3 of the Act of Congress of Feb. 4, 1887, that common carriers shall afford equal facilities for the interchange of traffic between their lines, but need not give the use of their tracks and terminal facilities to other carriers, does not affect a contract made by a railroad upon being given permission to use the streets of a city for its tracks, that it will pass the cars of other railway companies over its tracks when necessary to reach their customers' warehouses, and that it will not exceed a certain rate in its charges for switching. State of Iowa v. Chicago, M. & St. P. R. Co., 4 I. C. R. 425.

(g) The tracks and terminal facilities of a railroad company can be used by a connecting company for the exchange of interstate freight only with the consent of the former. Anthony Salt Co. v. Missouri P. R. Co. (Com.), 4 I. C. R. 537.

(h) No common carrier can justly complain of another because it is not al-

lowed the use of the tracks and terminal facilities of such other in the same manner and to the same extent a third carrier is. Little Rock & M. R. Co. v. St. Louis, I. M. & S. R. Co. (C. C. W. D. Ark.), 4 I. C. R. 537.

(i) The fact that one connecting railway company has a contract for the interchange of interstate freight which involves the use of the receiving railway's tracks and terminal facilities will not authorize a court of equity to compel the receiving railway to grant a like contract or concession to another connecting company. Little Rock & M. R. Co. v. St. Louis, I. M. & S. R. Co., 4 I. C. R. 537.

(j) A connecting railway company desiring an interchange of passengers and freight cannot demand as a matter of right an interchange of freight at the point of physical connection without first furnishing at such point reasonable and proper facilities for the interchange sought and cannot rely upon the terminal facilities at another point or compel the receiving railway to go to any expense of providing proper facilities at the point of physical connection. Little Rock & M. R. Co. v. St. Louis, I. M. & S. R. Co., 4 I. C. R. 537.

(k) The provision of §3 of the Act to Regulate Commerce, that "this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business," refers to facilities for interchanging traffic between connecting lines. Chicago Fire Proof Covering Co. v. Chicago & N. W. R. Co., 8 I. C. C. 316.

(l) Defendant, a common carrier of interstate commerce, is not in every case under legal compulsion to furnish the same terminal facilities for all descriptions of traffic; it is sufficient if reasonable provision is made and depends largely upon the conditions and surroundings of the particular locality. Palmer's Dock Hay & Produce Board of Trade v. Pennsylvania R. R., 9 I. C. C. 61, 66.

(m) The Act in specific terms provides that one carrier shall not be obliged to give the use of its tracks and terminals to another carrier engaged in like business. The defendant company could not deliver cars to any industry except upon its own rails without the consent and cooperation of the carrier or carriers upon whose rails the industry sought to be reached is located or via whose rails it is reached. Laning Harris Coal & Grain Co. v. A. T. & S. F. R. Co., 12 I. C. C. 479, 480.

IMPORTANT CASES SINCE 1908

(n) It is the duty of carriers to make reasonable effort to provide adequate terminal and other facilities. Lightrage and Storage Regulations at New York, 35 I. C. C. 47, 53.

(o) If the law requires that terminals be opened, no showing of prospective loss can deter an order to that effect. Louisville Board of Trade v. L. & N. R. R. Co., 40 I. C. C., 679, 688.

(p) The proviso in section 3 protects the carrier that has secured and built up valuable terminals, without which its railroad would be of little use, against having those terminals utilized by a competing carrier that has not provided itself with adequate terminals and that desires to thus secure the line haul which the carrier owning the terminals is prepared to perform and which the other carrier cannot secure unless it can have the use of the terminals of its competitor. Louisville Board of Trade v. L. & N. R. R. Co., 40 I. C. C., 679, 689, 690.

(q) The use of tracks or terminal facilities referred to in section 3 is not limited to physical entry upon such tracks or terminal facilities by the power, equipment, or employees of another carrier. Louisville Board of Trade v. L. & N. R. R. Co., 40 I. C. C. 679, 690.

(r) The use by a shipper of a carrier's yard and station property as a place of business to which he may invite the general public to come and make purchases directly from the car is not a service of transportation, nor does such a practice affect the service of transportation offered by a carrier to the public. On the contrary, it stands wholly apart from any duty the carrier owes to a shipper; and in forbidding the practice for the future the carrier is simply asserting that control over its property, as a private property, which the courts have held it enjoys, as fully as the private individual, with respect to "those of the general public who have no occasion to use it for purposes of transpor-

tation." The Car Peddling Case, 45 I. C. C. 410, 502.

(s) Section 3 protects the carrier which has secured and built up terminals against having those terminals utilized by a competing carrier that has not provided itself with adequate terminals and that desires thus to secure a line haul which the carrier owning the terminals is prepared to perform and which the other carrier cannot secure unless it can have the use of the terminals of its competitors. K. C. & M. Ry. v. St. L. & S. F. R. R. 46 I. C. C. 464, 466.

(t) Under section 3 a carrier is protected against having its terminals utilized by a competing carrier that has not provided itself with adequate terminals and thus desires to secure a line haul which the carrier with terminals is prepared to perform. Kansas City & Memphis Ry. v. St. L. & S. F. R. R., 46 I. C. C. 464, 466.

(u) Any reasonable action upon the part of the carriers to keep freight cars moving and to eliminate terminal congestion is manifestly in the public interest, and should not only be approved but encouraged by the Commission Export Free Time, 47 I. C. C. 162, 196.

(v) Should the cost of an unusual and expensive terminal service, performed with special equipment not owned by the carriers, be absorbed by them? Unless the transportation rates were made to include such special service it is clearly not incumbent on the carriers to absorb these costs out of their revenues. Handling of Heavy Articles, 47 I. C. C. 323, 334.

(w) Carriers can not be compelled to give the use of their terminal facilities to competing lines, but this does not mean that they may not be required to perform, upon just and reasonable terms, switching service between connecting lines and industries located on their own rails. Switching Absorptions, 47 I. C. C. 583, 586.

(x) There can be no justification for a policy that permits certain terminals to be congested with a surplus of freight while at the same time a near-by terminal has not enough traffic to keep it busy. N. Y. Harbor Case, 47 I. C. C. 643, 733.

(y) Complainant sought under section 3 of the act to have the service of the C. B. & Q., extend to the city of Hastings, Minn., by the use of the terminal facilities of the C. M. & St. P. The city of Hastings, with a population of about 5,000 is situated on the south bank of the Mississippi River, 28 miles south of Minneapolis, and is connected with the north bank by the high bridge, used for wagon and pedestrain travel. Shipments are trucked between the industries of Hastings and the Burlington over the high bridge. The Milwaukee and the Burlington use jointly a double track south from Minneapolis to a point in the newer part of Hastings. The distance from the end of the Milwaukee yard limits to the Burlington connection is about a mile. In February and March, 1919, about 250 car loads of ice were interchanged to the Burlington. The record indicates that it would be to the decided interest of Hastings to have the Burlington traffic handled over the Milwaukee terminals, and the Commission finds that such service would be in the public interest within the meaning of the statute. The other test is whether the use of the Milwaukee terminal facilities by the Burlington is practicable, without substantially impairing the ability of the Milwaukee to handle its own traffic. The Commission is of the opinion that the terminal switching service of the Milwaukee at Hastings is a part of its terminal facilities, and that the Commission may require the use of such terminal facilities by another carrier or carriers under the conditions prescribed in the act. HELD, defendants will be expected to arrange promptly for the use of the Milwaukee terminal facilities, including main line tracks, by the Burlington from its point of connection with the Milwaukee on the north bank of the river at Hastings to the town of Hastings on the south bank and to the side tracks of the respective industries. Hastings Commercial Club v. C. M. & St. P. Ry., 69 I. C. C. 489.

(z) Use of the terminal facilities or main-line tracks of the Pennsylvania R. R., at York, Pa., by the Western Maryland Ry., not shown to be in the public interest. York Mfrs. Asso. v. P. R. R. Co., 73 I. C. C., 40.

(aa) In determining what is "in the public interest" in a given case, as antecedent to the affirmative exercise of

this broad grant of power, the commission must take into consideration not only the interests of the particular shippers located at or near the terminal involved but also the interests of the carriers and of the general public. York Mfrs. Asso. v. P. R. R. Co., 73 I. C. C., 40, 49.

(bb) Practice of the Pennsylvania R. R. and the Western Maryland Ry. of each extending to the other the use of its tracks to effect terminal receipt and delivery of freight within a limited zone in York, Pa., while refusing to extend such use at other industries similarly located within the city but without the zone, found to result in undue prejudice. York Mfrs. Asso. v. P. R. R. Co., 73 I. C. C., 40, 50.

(cc) Arrangement sought whereby the Kansas City Southern would be required to interchange traffic with its competitor, the Southern Pacific, at Port Arthur, Tex., legally possible only through a condemnation of the terminals of the K. C. S. for use by the S. P., which has access thereto provided the traffic moves via Beaumont, Tex. HELD, prayer equivalent to establishment of a through route and joint rate embracing less than the full length of the K. C. S., and since no better service would accrue to Port Arthur interests or the general public, the K. C. S. should not be required to afford such facilities to other roads. Port Arthur Chamber of Commerce v. T. & F. S. Ry., 73 I. C. C., 361.

(dd) Paragraph (4) of section 3 of the act applies to the opening of terminals by requiring a switching arrangement as well as by requiring a physical use. Port Arthur Chamber of Commerce v. T. & F. S. Ry. Co., 73 I. C. C., 361, 362, 363.

(ee) Where a carrier has spent large sums in developing its terminal facilities at a given point it is entitled to use them to obtain the maximum amount of revenue compatible with reason and the public interest. It should not be required to afford such facilities to other roads at a nominal compensation, nor should control of its business be restricted by governmental regulation unless it appears that some compelling public interest would thereby lawfully be served. Port Arthur Chamber of Commerce v. T. & F. S. Ry. Co., 73 I. C. C., 361, 364.

(ff) The interstate commerce act formerly provided that section 3 should "not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business." As amended by the transportation act, 1920, that proviso was omitted and a paragraph inserted under which the commission may require the use of one corrier's terminal facilities by another when in the public interest, where it is practicable and does not substantially impair the ability of the terminal carrier to handle its own business. Team Track Switching at Argentine, 73 I. C. C., 367, 370.

(gg) Paragraph (4) of section 3 of the act, in substance, authorizes the commission when found "to be in public interest and practicable," to require joint use of terminals at reasonable compensation to carrier owning such terminals. Authority of commission under this paragraph is dependent upon showing of public interest. Miller Paper Co. v. P. R. R. Co., 80 I. C. C. 314, 317.

(hh) Section 3 requires railroad companies to furnish "equal facilities for the interchange of traffic between their respective lines." provided that this should not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier, engaged in like business." If the carrier, however, does not rest behind that statutory shield, but chooses voluntarily to throw the terminals open to many branches of traffic, it to that extent makes the yard public. Having made the yard a facility for many purposes and to many patrons, such railroad facility is within the provision of section 3 of the statute which prohibits the facility from being used in such manner as to discriminate against patrons and commodities. The carriers cannot say that the yard is a facility open for the switching of cotton and wheat and lumber, but cannot be used as a facility for the switching of coal. Whatever may have been the rights of the carriers in the first instance, whatever may be the case if the yard was put back under the protection of the proviso of section 3, the carriers cannot open the yard for most switching purposes and then debar a particular shipper from a privilege granted the great mass of the public. In

substance that would be to discriminate not only against the tendering railroad but also against the commodity which is excluded from a service performed for others. L. & N. R. Co. v. U. S. 35 Sup. Ct. 696, 701; 238 U. S. 1, 59 L. ed.

(iijj) Two railway carriers who are joint owners of a considerable portion of the terminals in a certain city used by them in common, and who manage them as a whole and deal with them in the same way as they would if their title were joint in every part, may not be compelled by the Interstate Commerce Commission, under the equal facilities requirement of the Interstate Comerce Act, §3, respecting the interchange of traffic, which is qualified by the proviso that it "shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business," to discontinue as discriminatory their practice of refusing to switch interstate traffic to and from the tracks of a third carrier entering that city on the same terms which they contemporaneously maintain with respect to similar shipments to and from their own respective tracks in said city, although, instead of each carrier doing its own switching over the terminals used in common, they switch jointly through a single agency for both, each paying substantially as it would if it did its own work alone, since what is done is not reciprocal switching, but the use of a joint terminal in the natural and practical way. Louisville & N. R. R. v. U. S., 37 Sup. Ct. 61.

ALL OTHER CITATIONS

Merchants' & Mfrs.' Ass'n v. Penn. R. R. Co., 23 I. C. C. 474, 476; Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 21 I. C. C. 304, 309; Buffalo Union Furnace Co. v. L. S. & M. S. Ry. Co., 21 I. C. C. 620, 627, 630; Baltimore Butchers' Live Stock Co. v. P. B. & W. R. R. Co., 20 I. C. C. 124, 128; Southern Produce Distributers v. Wabash R. R. Co., 20 I. C. C. 458, 460, 462; Mosson Co. v. Penn. R. R. Co., 19 I. C. C. 30; Associated Jobbers of Los Angeles v. A. T. & S. F. Ry. Co., 18 I. C. C. 310, 316; Enterprise Fuel Co. v. Penn. R. R. Co., 16 I. C. C. 219, 224; Chamber of Commerce of N. Y. v. N. Y. C. & H. R. R. R. Co., 27 I. C. C. 238, 240; New England Investigation, 27 I. C. C. 560, 608; St. Louis, Springfield & Peoria R. R. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 237; Morris Iron Co. v. B. & O. R. R. Co., 26 I. C. C. 240, 244; Chamber of Commerce of New York v. N. Y. C. & H. R. R. Co., 24 I. C. C. 55, 75; Railroad Commission of Arkansas v. St. L. I. M. & S. Ry. Co., 24 I. C. C. 293, 295; Waverly Oil Works Co. v. P. R. R. Co., 28 I. C. C. 621, 624, 625, 628; Omaha Grain Exchange v. A. T. & S. F. Ry. Co., 28 I. C. C. 664; Switching at Baltimore, Md., 30 I. C. C. 581, 583; Botsford & Barrett v. P. R. R. Co., 29 I. C. C. 469, 472; Wabash Sand & Gravel Co. v. V. R. Co., 31 I. C. C. 344, 346; Hoover, Owens Rentschler Co. v. C. H. & D. Ry. Co., 31 I. C. C. 550, 551; Penn. Co. v. United States (1914), 214 Fed. 445; Iowa & S. W. R. R. Co. v. C. B. & Q. R. R. Co., 32 I. C. C. 172, 174, 175; Pennsylvania Co. v. United States, 35 Sup. Ct. Rep. 370, 375; 236 U. S. 351; 59 L. Ed.; City of Nashville v. L. & N. R. R. Co., 33 I. C. C. 76; Financial Relations, Etc., L. & N. R. R. Co., 33 I. C. C. 168, 199, 204; Iowa & Southwestern Ry. Co. v. C. B. & Q. R. R. Co., 32 I. C. C. 172, 175; Louisville Board of Trade v. L. & N. R. R. Co., 40 I. C. C. 679; New York Harbor Case, 47 I. C. C. 643, 734; International Transportation Co. v. N. Y. C. R. R., 49 I. C. C. 201.

§3½. Employment of Agents.

See Agency.

IMPORTANT CASES SINCE 1908

(a) There is no reason why carriers at a common terminal may not intrust to a joint agent work allotted elsewhere to the carriers' immediate employes. New York Merc. Exch. v. B. & O. R. R., 36 I. C. C., 156, 162.

§4. Publication of Terminal Charges.

See Tariffs.

CASES 1887-1908

(a) Terminal companies to publish tariffs. Enterprise Transportation Co. v. Pa. R. R. Co., 12 I. C. C. 326.

(b) A terminal charge altho absorbed must be published in tariff. Leonard v. C. M. & St. P. Ry. Co., 12 I. C. C. 492.

IMPORTANT CASES SINCE 1908

(c) Separte charges should be made for (1) handling ore from rail of vessel to car; (2) handling ore from rail of vessel to storage yard; (3) storage of

ore while held in storage yard; (4) handling ore from storage yard to car; (5) road haul from ore docks to point of interchange with the private industry tracks and placing it at point or points of unloading within the inclosure of the industrial plant. Iron Ore Rate Cases, 41 I. C. C. 181, 207.

(d) Under the provisions of section 6 of the Act all terminal privileges and facilities extended to shippers must be specifically authorized by tariff and can not be inferred. Rule 10 of Tariff Circular 18-A requires that if the charges of a switching or terminal road are to be absorbed by a connecting line the tariff of the connecting road must specifically state that its rate includes such terminal service and that the connecting road will absorb such charges of the switching road as is published and filed with the Interstate Commerce Commission. This rule further provides that if the switching road's charges are to be added to the charges of a connecting road the tariff of such connecting road must clearly state that the shipments are subject to switching charges named in tariffs on file with the Commission. Moore Stave Company v. Morgan's Louisiana & Texas Railroad & Steamship Co., 41 I. C. C. 472, 473.

(e) While it is generally true that the published transportation rates cover receipt, transportation, and delivery, this can not be construed as preventing the publication of separate terminal charges for peculiar terminal services. Handling of Heavy Articles, 47 I. C. C. 323, 333.

(f) By section 6 carriers subject to the Act are required to file with the Commission schedules showing "all terminal charges * * *, all privileges or facilities granted or allowed and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the * * * shipper, or consignee." Guyton & Harrington Mule Co. v. L. & N. R. R., 50 I. C. C. 546, 549.

ALL OTHER CITATIONS

I. C. C. v. Stickney, 215 U. S. 98, 105, 30 Sup. Ct. 66, 54 L. ed. 112; Mobile Chamber of Commerce v. M. & O. R. R. Co., 23 I. C. C. 417, 424; Schultz-Hansen Co. v. S. P. Co., 18 I. C. C. 234, 237. N. Y. C. & H. R. R. Co. v. General Electric Co. (N. Y. Trial Term, 1914), 146 N. Y. Supp. 322, 326; Industrial Railways Case, 29 I. C. C. 212, 236; Southern R. o. v. Prescott, 36 Sup. Ct. 469, 472; 240 U. S. 632, 60 L. ed. 836; Greenwald v. New York Cent. & H. R. R. Co., 159 N. Y. S. 15, 16.

§5. Reasonableness of charges.

See Bridge Tolls; Evidence §57½; Reasonableness of Rates.

CASES 1887-1908

(a) The imposition at one city of a terminal charge on live stock, while no such charge is imposed on dead freight, is not necessarily an unjust discrimination against live stock within the Act to Regulate Commerce, §3. Cattle Raisers' Asso. v. Fort Worth & D. C. R. Co., 7 I. C. C. 513.

(aa) The imposition of a terminal charge for the shipment of livestock to one market, if just and reasonable, is not an undue preference within the Act to Regulate Commerce, §3, because no terminal charges are imposed for livestock shipped to a competing city. Cattle Raisers' Asso. v. Fort Worth & D. C. R. Co., 7 I. C. C. 513.

(b) A decision of the Supreme Court sustaining the view of the Commission as to the illegality of certain terminal charges, but dismissing the proceeding on account of a subsequent reduction in the through rate, which had been made from certain territory, and which reduction amounted to more than the terminal charges involved, and authorizing the Commission to commence proceedings to correct any unreasonableness in the rate resulting from the additional terminal charge, as to any territory to which the reduction referred to did not apply,—does not estop the Commission from further proceeding and investigation as to the legality of a terminal charge for the future, without the institution of a new proceeding, as the Commission is not functus officio; and the mere use by the Supreme Court in its decree of the word "commencing," with reference to further proceedings, is not construed to require the formal institution of a new proceeding. The case will, therefore, stand reopened for further investigation and order, with leave to complainant to show to what territory the through rate reduction applied. Cattle Raisers' Asso. v. Chicago, B. & O. R. Co., 10 I. C. C. 83.

(c) Upon the facts and circumstances disclosed by the record, HELD, that the terminal charge of $2 per car exacted by defendants for the delivery of live stock at the Union Stock Yards in Chicago with respect to shipments from points without the State of Illinois is unjust and unreasonable and unduly discriminatory, and that such charge should not exceed $1 per car. Cattle Raisers' Asso. v. C. B. & Q. R. R. Co., et al., 12 I. C. C. 507.

IMPORTANT CASES SINCE 1908

(d) Reasonable compensation for terminal service may be tested to some extent by charges for similar service in the same general territory and under similar conditions. In re Wharfage Charges at Galveston, 26 I. C. C. 695, 702

(e) Rail carriers are not warranted in giving any advantage out of the rates to a competitive port except such as will fairly measure the greatest service the terminal facilities at such port may perform. In re Wharfage Charges at Galveston, 26 I. C. C. 695, 704.

(f) Rates covering substantial distances are practically never balanced to such a degree of nicety as to reflect differences resulting from small variations in switching and line movements over the different routes. Brown v. B. & M. R. R., 27 I. C. C. 47, 53.

(g) Expense of providing terminals in large cities and of operating those terminals may offset greater volume of business handled. Iowa State Board of R. R. Com'rs v. A. E. R. R. Co., 28 I. C. C. 193, 200.

(h) That a rate increase is for the purpose of securing a greater division, deemed a fair return, to a terminal line, is no justification for the increase. Rates on Crushed Stone, 29 I. C. C. 136, 137, 138.

(i) It has been frequently recognized by the courts and the Commission that the terminal facilities of a carrier are of special value to it, and this fact may be reasonably reflected in the amount of compensation derived from the use of those terminals by connecting lines. Switching at Arcade, N. Y., 30 I. C. C. 501, 503.

(j) If a carrier holds itself out as ready to permit the use of its tracks at a certain charge, it follows that having elected to perform the service, the charge therefor must be reasonable, and the Commission may determine what is the reasonable charge. The concluding proviso of section 3 can impose no obligation to prevent absorption. In determining what is a reasonable rate for such a service the Commission should take into consideration the circumstance that the use of the rate means that the terminal road is deprived of the line haul; but this means nothing more than that the charge should be an adequate one for the movement over the terminal considered by itself. The Act itself imposes no requirement on the Commission that in determining such a reasonable charge it must in some way or other take into calculation the factor that the charge may be absorbed by a competitor road. Seattle Chamber of Commerce v. G. N. Ry. Co., 30 I. C. C. 683, 690.

(k) In determining what is a reasonable rate for the interchange movement, the Commission should take into consideration the circumstance that the use of the rate means that the terminal road is deprived of the line haul. Seattle Chamber of Commerce v. G. N. Ry. Co., 30 I. C. C. 683, 690.

(l) With the growth of terminal areas and the consequent increase of terminal expenses, there may be a growing need for a separation of the charges for line hauls from the charges for terminal services, and a graduation of charges for terminal services so that each industry within the terminal area will pay in proportion to the service it receives in addition to the line haul, if such a system should in the future be deemed to be preferable to what now obtains; but before that could be done there would have to be a separation of the cost of the line haul from the cost of the terminal service, and a complete reconstruction of rates. Car Spotting Charges, 34 I. C. C. 609, 620.

(m) The Commission strongly favors the analysis of service and rates as an aid to their measurement and comparison. But it holds that, where a terminal service has heretofore been treated by the carriers as a part of the transportation service covered by the freight rate, and regularly performed by them, they may not now segregate that service and assign to it a separate charge without tak-

ing into consideration, in order to justify such charge, the entire through service of which it forms a part and the compensation heretofore received for such through service. Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 61.

(n) Carriers can not segregate a terminal service heretofore treated as a part of transportation service covered by the freight rate, and assign to it a separate charge, without taking into consideration the entire through service of which it forms a part and the compensation heretofore received for such through service. Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 61.

(o) In the absence of tariff provisions to the contrary the line-haul of a particular carrier includes the receipt or delivery of carload freight only at industries or other points located upon its own rails. The right to impose a reasonable and nondiscriminatory charge in addition to the line-haul rate for terminal services performed by connecting carriers has been affirmed by numerous decisions of the Commission and courts. Boardman & Co. v. S. P. Co., 37 I. C. C. 81, 85.

(p) Under a schedule of rates constructed upon the theory that under all circumstances and conditions rail carriers are bound to perform a service upon private spur and industrial tracks without charge in addition to the regular transportation or line-haul, a charge in addition to the charge for the line haul may be just and reasonable, and failure to impose such a charge might even be unjustly discriminatory. Boardman & Co. v. S. P. Co., 37 I. C. C. 81, 86.

(q) Compensation on a tariff rate or charge basis better befits an arrangement for the interchange of service than one for physical use. Louisville Board of Trade v. L. & N. R. R. Co., 40 I. C. C., 679, 686.

(r) While it is generally true, that the published transportation rates in this country cover receipt, transportation, and delivery, this has not been construed, as preventing the publication of separate terminal charges for peculiar terminal services. Handling of Heavy Articles 47 I. C. C. 323, 333.

(s) Failure to accord adequate recognitions in the rate structure to the heavy and ever-increasing expense of terminal operation does not necessarily lead to conclusion that the carriers rates are unduly prejudicial or otherwise unlawful. N. Y. Harbor Case, 47 I. C. C. 643, 735.

(t) Where it is not known how much less cost attaches to the services rendered in reswitching and in handling less than carload traffic, for which the respective charges are $1.50 per car and 8 cents per ton, minimum $1 per car and the carrier is a means to increase earnings it should ascertain whether or not these classes of service are bearing their fair share of its expenses without undue burden upon interstate commerce. National Tube Co. v. Lake Terminal, 55 I. C. C. 469, 484.

(u) Terminal service presents one of the greatest operating problems which now confront the railroads of the country. They should be more efficiently performed, and it may be that their costs are not adequately reflected in the rates. New England Divisions, 62 I. C. C. 513, 529, 654.

(v) For services that a carrier may render or procure to be rendered off its own line, or outside the mere matter of transportation over its own line, it may charge and receive compensation. If a terminal charge be in and of itself just and reasonable it cannot be condemned or the carrier required to change it on the ground that it, taken with prior charges of transportation over the lines of the carrier or of connecting carriers, makes the total charge to the shipper unreasonable. That which must be corrected and condemned is not the just and reasonable terminal charge, but those prior charges which must of themselves be unreasonable in order to make the aggregate of the charge from the point of shipment to that of delivery unreasonable and unjust. I. C. C. v. Stickney, 215 U. S. 98, 105, 109, 30 Sup. Ct. 66, 54 L. ed. 112.

(w) A carrier is under no obligation to charge for terminal services. Business interests may justify it in waiving any such charge, and it will be considered therefore to have waived it unless it makes plain to both the shipper and the Commission that it is insisting upon it. I. C. C. v. Stickney, 215 U. S. 98, 105, 30 Sup. Ct. 66, 54 L. ed. 112.

ALL OTHER CITATIONS

In re Wharfage Charges at Galveston, 26 I. C. C. 695; Gilmore & Co. v. C. & N. W. Ry. Co., 25 I. C. C. 403, 405. Seattle Chamber of Commerce v. G. N. Ry. Co., 30 I. C. C. 683, 692; People's Fuel & Supply Co. v. G. T. W. Ry. Co., 30 I. C. C. 657, 661; Buffalo, Attica & Arcade R. R. Co. v. B. & S. R. R. Corp., 31 I. C. C. 583, 585; N. Y. Harbor Case, 47 I. C. C. 643, 708; Chicago Warehouse & Terminal Co. v. Terminal Charges, 55 I. C. C. 363, 371; Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 189; St. Louis Chamber of Commerce v. B. & O., 57 I. C. C. 639, 653; Absorption of Terminal Charges at Galveston, Tex., 59 I. C. C. 490; New England Divisions, 61 I. C. C. 513, 564; Koenig Coal Co. v. H. V. Ry., 63 I. C. C. 392; Terminal Charges on Grain at Texas Ports, 64 I. C. C. 629; Fruits and Vegetables to Duane St., N. Y., 66 I. C. C. 135; American Farm Bureau v. A. & R. R. R. Co., 80 I. C. C. 232.

§5a. Reparation.

See Reparation.

CASES 1887-1908

(a) The decision of the Supreme Court sustaining the view of the Commission as to the unlawfulness and excessiveness of a terminal charge, but dismissing the proceeding on account of a subsequent reduction in the through rate, which amounted to more than the terminal charge, constitutes no bar to submission of proof before the Commission upon the question of reparation, covering the period elapsing prior to the reduction in the through rate referred to, which question had been properly held open by the Commission pending determination of the other branch of the case. Cattle Raisers' Asso. v. Chicago, B. & Q. R. Co., 10 I. C. C. 83.

§6. What are public terminals.

IMPORTANT CASES SINCE 1908

(a) Where traffic is local to defendant and no traffic advantage over other lines can be gained by preferring either pier, to say that one and not the other may be considered the carrier's terminal would invite the fictitious creation of terminals as an expedient to secure favorable rates. National Dock & Storage Warehouse Co. v. B. & M. R. R., 38 I. C. C. 643, 650.

(b) The regulating statute lays a duty upon the carriers to furnish team-track and other terminal service only to an extent that is fully responsive to the reasonable requirements of the public; and this duty is neither subordinate to nor modified by the closing clause of section 3, which protects the carriers against the use of their terminals by others engaged in like business. Tulsa Traffic Asso. v. St. L. S. F. Ry., 49 I. C. C. 644, 647.

(c) Location of commercial industries the physical layout of the terminal tracks, the area of the terminal service, the volume of traffic and the reasonable requirements of the public, at Tulsa, Okla., are not at this time such as will justify compelling the defendant to open its team tracks to traffic brought to and taken from that point by other lines of railway. Tulsa Traffic Asso. v. St. L. S. F. Ry., 49 I. C. C. 644, 648.

(d) Terminal railroad association should properly be regarded as the individual terminals of each of its constituent lines. Swift & Co. v. Director General, 56 I. C. C. 309, 314.

(e) Cars and trains are facilities. Hastings Commercial Club v. C. M. & St. P. Ry., 69 I. C. C. 489, 494.

(f) If that which aids or assists in the prompt transportation of freight is a railroad facility, a switch engine used only and entirely for handling freight at a terminal is clearly a terminal facility. A railroad with terminal tracks, signaling devices, and all other necessary instrumentalities but lacking motive power to operate over such tracks can not be said to have complete and adequate terminal facilities. Hastings Commercial Club v. C. M. & St. P. Ry., 69 I. C. C. 489, 494.

(g) The cases are numerous holding that depots, platforms, spur or side tracks, station grounds, and elevators are parts of railroad facilities. Hastings Commercial Club v. C. M. & St. P. Ry., 69 I. C. C. 489, 494.

(h) Team track delivery is a service rendered by carriers in receiving and delivering car load freight in connection with their own line business and is over tracks owned by the carriers. It is a service for which no separate tariff charge is provided and which is analogous to freight depot service for less car

load freight. A freight depot owned and maintained by a carrier is a terminal facility for use in handling business from its own line and can not, under Section 3 of the statute, be used for handling business from other lines without its consent. Team Track switching at Argentine, 73 I. C. C. 367, 370.

ALL OTHER CITATIONS

Federal Sugar Refining Co. v. B. & O. R. R. Co., 17 I. C. C. 40, 47; R. R. Com. of Arkansas v. St. L. I. M. & S. Ry. Co., 24 I. C. C. 292, 295; Buffalo, Rochester, & Pittsburgh Ry. v. Pennsylvania Co., 29 I. C. C. 114; Traffic Bureau of Nashville, Tenn., v. L. & N. Ry. Co., 28 I. C. C. 533, 541; Baltimore Chamber of Commerce v. B. & O. R. R., 45 I. C. C. 40, 49; National League of Commission Merchants of the U. S. v. P. R. R., 49 I. C. C. 85, 86; Live Stock Loading and Unloading Charges, 58 I. C. C. 164, 168.

III. STATUS OF TERMINAL ROADS.

§7. In general.

CASES 1887-1908

(a) The imposition by a state of a condition, upon giving permission to lay railroad tracks in the streets of a city, that such tracks shall be public and open to the use of citizens; and a regulation by the state of the switching rates to be charged by such railroad in the city,—do not clearly show an unconstitutional interference with or regulation of commerce between the states, although cars engaged in interstate traffic may be switched over such tracks. State of Iowa v. Chicago, M. & St. P. R. Co., 4 I. C. R. 425.

IMPORTANT CASES SINCE 1908

(b) The term "facility" as used in section 3 of the Act, also includes reciprocal trackage rights over terminal tracks. City of Nashville v. L. & N. R. R. Co., 33 I. C. C., 76, 85.

(c) What is true of a terminal owned jointly by two carriers is also true where there are seven joint owners, since each owns a substantial interest in the belt line. Richmond Chamber of Commerce v. S. A. L. Ry., 44 I. C. C. 455, 461.

(d) Where a belt railway is found to be a switching agency employed by the line-haul carriers in completion of contracts between carriers and shippers, its charges should be a part of the freight charge made to the shipper and not in addition thereto. Absorption of Switching Charges at Fort Worth, 61 I. C. C. 73, 76.

ALL OTHER CITATIONS

I. C. C. v. Stickney, 215 U. S. 98, 108, 30 Sup. Ct. 66, 54 L. ed. 112; Portland Lumber Co. v. O. W. R. R. & N. Co., 21 I. C. C. 292, 294; Manufacturing Ry. Co. v. St. L., I. M. & St. Ry. Co., 21 I. C. C. 304; Eichenberg v. S. P. Co., 14 I. C. C. 250, 264, 267; sustained, 219 U. S. 498, 31 Sup. Ct. 279, 55 L. ed. 310; St. Louis, Springfield & Peoria R. R. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 235, 239; State v. H. B. & T. Co. (Tex. Civ. App., 1914), 166 S. W. 83; Vandalia Ry. Co. v. Public Service Commission (Ind. 1914) 106 N. E. 371, 372; Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 279; Eastern Talc. Co. v. C. & E. I. R. R. Co., Unrep. Op. A-816; Atchison Topeka & Santa Fe Ry. Co. v. Kansas City Stock Yards Co., 33 I. C. C. 92, 100; Richmond Chamber of Commerce v. S. A. L. Ry., 44 I. C. C. 455, 457, 459, 460; New York Harbor Case, 47 I. C. C. 643, 664; Crushed Rock from Pixleys, Mo., 48 I. C. C. 479, 577; California Canneries Co. v. S. P. Ry., 51 I. C. C. 500, 501, 504; Chicago Live Stock Exchange v. A. T. & S. F. Ry., 52 I. C. C. 209, 212; St. Louis Chamber of Commerce v. B. & O. R. R. Co., 57 I. C. C. 639, 652; Wharfage, Handling and Storage Charges, 59 I. C. C. 488.

§8. Definition of "Terminal Charges."

IMPORTANT CASES SINCE 1908

(a) "Terminal charges," as used in section 6, refers to the American method of making rates, and comprehends service rendered after delivery. Associated Jobbers of Los Angeles v. A. T. & S. F. Ry. Co., 18 I. C. C. 310, 315.

ALL OTHER CITATIONS

Car Spotting Charges, 34 I. C. C., 609, 620.

§9. Allowances.

See Allowances.

IMPORTANT CASES SINCE 1908

(a) Where an industry has continuously for years performed terminal or spotting services and apparently has preferred to do so it can not now be heard in a demand for compensation from the carriers for such past services. Empire

Steel & Iron Co. v. Director General, 56 I. C. C. 158, 180.

ALL OTHER CITATIONS

Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 101, 108; Manufacturers' R. R. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100, 104, 105; Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 190.

§10. Discrimination.

See Discrimination; Facilities and Privileges §21.

CASES 1887-1908

(a) Nor is the imposition at some locality of a terminal charge upon live stock, while no similar charge is imposed upon dead freight, necessarily a discrimination, under the 3d section, against live stock and in favor of dead freight. Cattle Raisers' Association v. Fort Worth & D. C. R. Co., 7 I. C. C. 513.

(aa) The imposing by a carrier of a terminal charge at one live stock market, while it does not impose a similar charge at another competing market, is not necessarily an undue preference under the 3d section of the Act. Cattle Raisers' Association v. Fort Worth & D. C. R. Co., 7 I. C. C. 513.

IMPORTANT CASES SINCE 1908

(ab) If a carrier recognizes the right of a track owner to accord the use of its siding to one shipper the carrier must treat alike all users of the siding. Section 2 of the act expressly prohibits a carrier from charging greater or less compensation for a like and contemporaneous service dependent upon the individual served. Bartlett Haywood Co. v. B. & O. R. R. Co., 40 I. C. C. 151, 155.

(b) Where character of terminal services performed for consignees under the same rate differs widely discrimination results therefrom. Iron Ore Rate Case, 41 I. C. C. 181, 204.

(c) Refusal of trunk lines to maintain joint rates, including terminal and spotting services to and from the Thomas Iron Company's furnace tracks at Hokendauqua, Pa., while maintaining such rates, including terminal services at competitive furnace points in eastern Pennsylvania, found unduly prejudical. Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 190, 191.

ALL OTHER CITATIONS

Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 111; Car Spotting Charges, 34 I. C. C. 609, 619.

§11. Through routes and joint rates.

See Tap Lines; Through Routes and Joint Rates.

IMPORTANT CASES SINCE 1908

(a) It cannot be that the law was intended to mean that a competing rail line may now be built between important commercial centers served by a railroad long established and possessing adequate and valuable terminals at both points, and "by making a physical connection" "at an arbitrary point near its terminus" be accorded the right of access to those terminals for originating and delivering freight hauled by it and which the carrier owning the terminals is not only prepared but anxious to carry at rates and under rules and regulations that are subject to all of the requirements and restrictions of the Act. Louisville Board of Trade v. L. & N. R. R. Co., 40 I. C. C., 679, 690.

(b) In view of the parenthetical clause in paragraph (4) of section 15 of the act, the limitation put upon the commission's authority to establish through routes and joint rates does not apply where the commission finds it to be in the public interest to require one carrier to afford another carrier the use of its terminals. Port Arthur Chamber of Commerce v. T. & F. S. Ry., 73 I. C. C., 361, 363.

(c) In determining what is in the public interest in a given case, as antecedent to the affirmative of the broad grant of power in paragraph 4 of section 3 of the act, the Commission must take into consideration not only the interests of the particular shippers located at or near the terminal involved but also the interests of the carriers and of the general public. Miller Paper Co. v. P. R. R. Co., 80 I. C. C. 314, 317.

(d) Complainant, Upper Merion & Plymouth R. Co., alleged that the Pennsylvania and P. & R., refused to establish with complainant through routes and joint rates, fares and charges, and just, reasonable and equitable divisions thereof. Complainant operates 6.16 miles of track, maintains public team tracks holds itself out as a common carrier and has served all who have applied. It files

tariffs and makes the usual reports to the Commission. Bills of lading are issued by complainant on local shipments but not on those going to trunk line interchanges. Demurrage is handled directly between the trunk lines and the shippers. HELD, complainant is a common carrier subject to the act, may lawfully receive compensation from its trunk line connections for service performed on interstate shipments, either in the form of divisions or absorption of switching charges. Upper Merion & Plymouth R. Co. v. Pennsylvania R. R. Co. 81 I. C. C. 191.

(e) An order of the Commission requiring the Pennsylvania Co. at New Castle, Pa., to switch cars for the Buffalo, Rochester and Pittsburg Ry., does not amount to a compulsory taking of the use of the terminals of the Pennsylvania company by another road, within the inhibition of section 3 of the Act, since the order gives the Rochester road no right to run its cars over the terminals of the Pennsylvania company, or to use or occupy its stations or depots for purposes of its own, and there is no requirement that the Rochester Company be permitted to store its cars in the yards of the Pennsylvania Company or to make use of its freight houses, or other facilities; but simply that the Pennsylvania Company receive and transport the cars of the Rochester Company over its terminals at New Castle in the same manner and with the same facilities that it affords to other railroads connecting with the Pennsylvania railroad at the same point. Penn. Co. v. U. S. 35 Sup. Ct. Rep. 370, 376; 236 U. S. 351, 49 L. ed.

ALL OTHER CITATIONS

Mfrs. Ry. Co. v. St. L. I. M. & S. Ry., 32 I. C. C. 100, 104, 105; St. Louis Chamber of Commerce v. B. & O. R. R. Co., 57 I. C. C. 639, 652, 654.

THREAD RATE

IMPORTANT CASES SINCE 1908

(a) The Virginia cities' rates are line rates, extending thread-like from east to west. Massie & Pierce Lumber Co. v. N. & W. Ry. Co., 33 I. C. C., 14, 22.

THROUGH ROUTES AND JOIT RATES

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
§1a. State Legislation.
§2. What is through route or "common arrangement."
§3. What is joint rate.
§3½. Participation in through traffic.
II. ESTABLISHMENT BY CARRIER.
§4. In general.
§5. Dispute over divisions.
§6. Circuitous routes.
§7. Obligation to carry.
§7½. State courts and laws.
§8. Relation to similar points.
§9. Right to favor own line.
§10. Status of intermediate carrier.
§11. What is satisfactory route.
(1) In general.
(2) When through route ordered or denied.
III. BILLS OF LADING.
§12. Issuance in general.
IV. REASONABLENESS AND DISCRIMINATION.
§13. In general.
§13a. Burden of proof.
§13½. Factor of the rate.
§14. Divisions.
§15. Exceeding combination of intermediates.
§15½. Rate via other routes.
§16. Reparation.
§16½. State rates.
V. TARIFFS AND CONSTRUCTION.
§17. In general.
§18. Application of proportional rate.
§19. Breaking transit.
§20. Change in rate while shipment at transit point.
§20a. Combination rule.
§20½. Concurrences.
§20¾. Different classifications applicable.
§21. Intermediate clause.
§22. What is legal rate.
§23. Procedure.
§23a. Court action.
VI. RIGHT TO WITHDRAW.
§24. In general.
VII. DUTY TO FURNISH FACILITIES
§25. In general.
§26. Restriction of routes or traffic.

CROSS REFERENCES

See Adjacent Foreign Country; Advanced Rates §7 (6); Basing Points and Lines; Branch Lines VI; Differentials §4; Electric Lines II; Equalization of Rates; Express Companies XI; Facili-

ties and Privileges §18; Foreign Commerce; Lighterage IX; Local Rates and Combinations; Long and Short Hauls; Minimums; Panama Canal Act; Passenger Fares and Facilities §14; Proportional Rates; Rail and Water Rates; Reconsignment; Routing and Misrouting §3, §4, §5½; Tap Lines III; Terminal Facilities §11; Water Carriers IV.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Adjacent Foreign Country; Interstate Commerce Commission I; Jurisdiction of Commission.

CASES 1887-1908

(a) If jurisdiction exists under the act to compel the establishment of a through rate, and the facts are such as to support the claim, the Commission could not order the establishment of such a rate without having before it as parties all the roads composing the proposed line. Rend v. C. & N. W. R. Co. 2 I. C. C. 313, 316.

(b) The Commission is not invested with authority to establish through routes, nor to fix through rates, between connecting lines. The English Act of 1873, amendatory of the Act of 1845, did confer such authority upon the English Commission; but our Act to Regulate Commerce contains no such provisions, and confers no such authority. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(c) Neither at common law nor under the Act of Congress of June 15, 1866 (U. S. Rev. Stat. §5258), or the Interstate Commerce Act of Feb. 4, 1887, can a common carrier be compelled to make through traffic arrangements with connecting lines. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. R. Co. (C. C. D. Ky.) 2 I. C. R. 351; Overruling decision of the Interstate Commerce in the same case, 2 I. C. R. 102; Little Rock & M. R. Co. v. East Tennessee, V. & G. R. Co. (Com.) 2 I. C. R. 454.

(d) A court of equity has no power, either at common law or under the Interstate Commerce Act, to compel a railroad company to enter into a contract with another company for a joint through rate or a joint through routing of freight and passengers. Little Rock & M. R. Co. v. St. Louis, I. M. & S. R. Co. (C. C. E. D. Ark.) 2 I. C. R. 763.

(e) The Commission is not invested with authority to establish through routes nor to fix through rates between connecting lines. Mattingly v. Pennsylvania Co. 2 I. C. C. 806, 812.

(f) Through rates and through billing are matters of agreement among carriers engaged in interstate commerce and, as was decided in the case of The Little Rock & Memphis Railroad Company v. The East Tennessee, Virginia & Georgia Railroad Company, 2 Inters. Com. Rep. 454, 3 I. C. C. Rep. 1, the Commission has no power under the Statute to compel them against their consent to enter into arrangements for through rates and for through billing. Capeheart & Smith v. Louisville & Nashville R. Co., 3 I. C. R. 278.

(g) The Interstate Commerce Commission has no power to compel carriers against their consent to enter into arrangements for through rates and for through billing. Capehart v. Louisville & N. R. Co. (Com.) 3 I. C. R. 278.

(h) Through rates and through billing are matters of agreement among carriers and the Commission has no power under the statute to compel them against their consent to enter into arrangements for through rates and for through billing. Capehart v. L. & N. R. Co., 3 I. C. C. 278, 280.

(i) The power to establish joint "through rates" for connecting carriers is included within the power of the State to regulate rates of charges for transportation of freight by railroads. Burlington, C. R. & N. R. Co. v. Dey (Iowa) 3 I. C. R. 584.

(j) A railroad company is not compelled to enter involuntarily into contract relations with other companies, by a statute requiring the adoption of joint rates, or in default thereof the fixing of such rates by railroad commissioners, as in the latter case the obligation of the company as to the rates is one imposed by law and not by contract. Burlington, Cedar Rapids & N. H. Co. v. Dey, 3 I. C. R. 584.

(k) The violation, by giving special rates, of schedules of joint rates for through shipments from points in the United States to points in Canada, which have been established and filed with the Interstate Commerce Commis-

sion and posted in the carrier's office cannot be punished by the United States government so far as the violation was committed wholly or partly in Canada. United States v. Knight (D. C. S. D. Ill.), 3 I. C. R. 801.

(l) The total rate for through carriage over two or more lines, whether made by the addition of established locals, or of through and local rates, or upon a less proportionate basis, is the through rate that is subject to scrutiny by the regulating authority. How the rate is made, is only material as bearing upon the legality of the aggregate charge; and how any reduction may be accomplished, is matter for the carriers to determine among themselves. Trammell v. Clyde S. S. Co. (Com.) 4 I. C. R. 120.

(m) Joint through rates are matters of contract or agreement among carriers engaged in interstate commerce, and the Commission has no power under the statute to compel them to enter into an arrangement for such through rates. Independent Refiners Asso. v. W. N. Y. & P. R. Co., 4 I. C. C. 163, 180.

(n) "No power exists at common law, and none is given by the Act to Regulate Commerce, to compel connecting railroad companies to unite in a joint tariff, or to enter into a through rate arrangement for transportation, unless they desire to do so. They cannot be compelled to abandon the full control of their separate roads; and neither of them is bound to adjust its own local tariff to suit the other." Case Quoted: 4 Inters. Com. Rep. 257, 52 Fed. Rep. 912, Chicago & N. W. R. Co. v. Osborne. See also 2 Inters. Com. Rep. 389, 2 L. R. A. 325, 37 Fed. Rep. 630, Kentucky & I. Bridge Co. v. Louisville & N. R. Co.; 2 Inters. Com. Rep. 765, 41 Fed. Rep. 563, Little Rock & M. R. Co. v. St. Louis, I. M. & S. R. Co., Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co., 4 I. C. R. 332.

(o) Through rates are matters of contract between carriers composing through lines, and the Commission has no power to compel connecting carriers to contract with each other. Commercial Club of Omaha v. C. R. I. & P. R. Co., 6 I. C. C. 647, 677.

(pq) While through routes and reduced through rates, which would facilitate the movement of traffic and thereby benefit the public, or in some cases prevent by the unreasonable refusal of carriers to unite in granting such facilities, and the statute was apparently designed to require connecting carriers to join in the formation of through routes at lower aggregate rates than a combination of locals, the machinery necessary to accomplish that purpose is not provided, and the Commission has repeatedly called attention to this defect in the law. New York N. & H. R. Co. v. Platt, 7 I. C. C. 323.

(r) Complainant attacked rates from Memphis, New Orleans, Dallas and other southern and southwestern points to Kearney, Neb., as unjust and unreasonable. No joint through rates were published or filed, the defendants either denied or did not admit that the shipment and carriage was continuous, and no proof was submitted by complainant showing that defendants made a through route in fact by their course of business. Rates charged were the combination on Omaha, Neb. HELD, the Commission has no power to compel a through route, and, no issue of law or fact having been presented over which the Commission has jurisdiction, complaint dismissed. Gustin v. I. C. R. Co., 7 I. C. C. 376.

(s) The Interstate Commerce Commission has no jurisdiction to grant relief under a complaint alleging that freight rates between points on connecting lines, representing the aggregate of a joint rate of some of the carriers and the local rate of another, are unreasonable, unjust, and unlawful, where the joint rate, though incidentally attacked in the complaint, is not referred to in the testimony, and no joint through rates including the latter's line have been published or filed, and the defendants either deny or do not admit that the shipment is continuous, and no proof is submitted that they may make a through route in fact by their course of business, as the Commission has no power to compel a through route. Gustin v. Illinois C. R. Co., 7 I. C. C. 376.

(t) Freight rates from Memphis, New Orleans, Dallas and other southern and southwestern points to Kearney, Neb., made up of rates to and from Omaha, were alleged to be unreasonable, unjust, and unlawful, but no joint through rates were published or filed, the defendants either denied or did not admit that the shipment and carriage was continuous, and no proof was sub-

mitted by complainant showing that defendants make a through route in fact by their course of business. HELD, That the Commission has no power to compel a through route, and, no issue of law or fact having been presented over which the Commission has jurisdiction, the complaint should be dismissed. Gustin v. Illinois Central R. Co., 7 I. C. C. 376.

(u) It is well settled that the Commission has no authority to order a through route or a through rate; that can only be by agreement of the carriers themselves. Gustin v. I. C. R. Co., 7 I. C. C. 376, 379.

(v) The Interstate Commerce Commission in a proceeding to correct an unreasonable freight rate to a particular city may, where the carriers forming the through line elect to divide the entire rate and designate a certain rate for the performance of a certain service which is performed by a particular carrier, deal with such carrier and such charge irrespective of the other charges making up the entire rate. Cattle Raisers' Asso. v. Fort Worth & D. C. R. Co., 7 I. C. C. 513.

(w) In the matter of the rates for a continuous route operated by a single carrier, and the rates for a continuous route operated by more than one carrier the law is the same with the sole exception that the Commission may prescribe the measure of publicity which the carriers shall be required to give of their rates and fares on such continuous line or route, while such requirement, as well as the line operated by one carrier, is specified in the law itself; but such exception does not go to the form, substance, maintenance, or application of the rates in any degree whatsoever. Consolidated Forwarding Co. v. Southern P. Co. 9 I. C. C. 182.

(x) While the Commission has approved wherever established the system of through rates by connecting lines, with rates for the longer distances something below the sums of the locals, it is a matter which depends upon agreement and joint arrangements of the roads forming the through lines, and the Commission has no authority to enforce such arrangements. If the through rates are not unreasonable, the Commission can not condemn the same on account of the divisions thereof to the various roads forming the through lines, the law and the public being alike served by rates in the aggregate reasonable, and not affected by their distribution. Charlotte Shippers Asso. v. Southern Ry., 11 I. C. C. 108, 128.

(y) The Act to Regulate Commerce does not authorize the Commission to compel the establishment of joint rates by connecting carriers, nor to prescribe the divisions of joint rates or the conditions of interchange in case the connecting carriers fail to agree in respect thereto; and it follows, notwithstanding the combination rates complained of are unjust and unreasonable, and the general shipping situation is such as to work a practical monopoly in favor of the Standard Oil Company, that relief cannot be afforded by the Commission, and the complaint must be dismissed. Fred G. Clark Co. v. Lake Shore & M. S. R. Co., 11 I. C. C. 558.

(z) The N. Y., N. H. & H. R. Co., called the New Haven Co., refuses to make and maintain joint through rates on petroleum and its products from Cleveland, O., Pittsburg, Pa., and other points in Pennsylvania and Ohio, to points reached by its line in New England, and on all such traffic insists upon exacting the local charges from junction points with other carriers to the various destinations. The New Haven Co. does participate in through rates to New England points on other traffic generally. Ordinarily the rate to Boston applies to points in Massachusetts and Connecticut, including junction points with the New Haven Co., and it results that its refusal to join in through rates on petroleum and its products operates to increase the rate by the amount of its local charge. The Standard Oil Co. brings crude oil by pipe line to its seaboard refineries and sends the refined oil and the products by tank steamers to distributing stations at Wilson Point, Conn., and India Point, R. I., and also has distributing stations at New London, Conn., and East Boston, Mass. From the distributing stations the oil and products are shipped out locally to interior points. Independent shippers, like complainants, are obliged to send shipments by rail to the same destinations. The combination rates on petroleum and its products from Cleveland and Pittsburg to points reached by the New Haven Co. result in unreasonable and unjust rates. The refusal of the New Haven Co. to consent to and participate in through rates on that

traffic is unjust and unreasonable, and the situation is such as to operate greatly to the advantage of the Standard Oil Co. There is no competitive relation between petroleum and its products on the one hand and other articles of traffic on the other, and the failure of the New Haven Co. to provide joint rates on petroleum and its products, while maintaining joint rates on other traffic, does not constitute wrongful preference and advantage. The Act to Regulate Commerce does not authorize the Commission to compel the establishment of joint rates by connecting carriers, nor to prescribe the divisions of joint rates or the conditions of interchange in case the connecting carriers fail to agree in respect thereto; and it follows, notwithstanding the combination rates complained of are unjust and unreasonable and the general shipping situation is such as to work a practical monopoly in favor of the Standard Oil Company, that relief can not be afforded by the Commission and the complaint must be dismissed. Fred G. Clark Co. v. Lake Shore & M. S. R. Co. et al., 11 I. C. C. 559.

(aa) The Commission can neither prescribe a rate for the future, nor determine the division of a through rate. Clark v. L. S. & M. S. R. Co., 11 I. C. C. 558, 574.

(bb) The Act does not require carriers to make joint rates and the Commission has no power to compel such rates. Clark Co. v. L. S. & M. S. R. Co., 11 I. C. C. 558, 580.

(bba) The Interstate Commerce Commission has discretion as to establishment of through routes and joint rates. Loup Creek Colliers Co. v. Virginia Ry. Co. 12 I. C. C. 471.

(cc) The power of the commission over a complaint requesting establishment of through routes, is not divested by the subsequent establishment of through service. Enterprise Transportation Co. v. Pa. R. R. Co., 12 I. C. C. 326.

(dd) Where, at the time a complaint requesting the establishment of a through route was filed, a through route had been abandoned and for a time thereafter was not in operation, the re-establishment of through service will not divest the Commission of its jurisdiction. Enterprise Transportation Co. v. Pennsylvania R. R. Co., 12 I. C. C. 326.

(ee) The fifteenth section of the amended act, provides, not that the Commission shall, but that it may, after hearing upon complaint, establish through routes and joint rates. It seems plain that the intention of the statute was to confer upon the Commission certain discriminatory power under which it might inquire whether, in the interest of the public, the through routes asked for ought to be established. Enterprise Transportation Co. v. Pennsylvania R. R., 12 I. C. C. 327, 332.

(ff) It is certainly doubtful whether a through route over which no joint rate applies is the kind of a through route whose existence, under the fifteenth section, will divest the Commission of jurisdiction. Such a route is a defacto arrangement. No legal notice of it is required. It may be established and discontinued by the carriers at their pleasure. The shipper at the initial point has no means of ascertaining from tariffs there on file the cost of the through transportation or the conditions which may be attached to it. There is certainly good ground for holding that the through route which the Commission should establish under the fifteenth section carries with it, under all circumstances, a joint rate, and that the kind of a route which will divest the Commission of its jurisdiction in this particular must be as beneficial to the public as the route which the Commission may otherwise establish. Enterprise Transportation Company v. Pennsylvania R. R., 12 I. C. C. 327, 334.

(gg) The law does not require the Commission in all cases where no through routes and joint rates exist to establish them, but only empowers it to do so in proper cases with the manifest intent of giving effect to the general purposes of the act by securing reasonable facilities to the public and preventing unreasonable and unjust rates, practices and discriminations, and in the exercise of this authority the Commission is bound by the same considerations of justice and fairness as it is in the exercise of the rate making power in other respects. Loup Creek Colliers Co. v. Virginia Ry., 12 I. C. C. 471, 477.

IMPORTANT CASES SINCE 1908

(hh) The Commission has no power under section 15, to prevent the cancellation of through routes and joint rates voluntarily established by the carriers

when the circumstances and conditions are such as would not warrant an order to compel such arrangements if not already in effect. The Ogden Gateway Case, 35 I. C. C. 131, 140.

(ii) The Commission can not prescribe joint through rates from points in an adjacent or nonadjacent foreign country to points in the United States, but can control the charges for that portion of the service rendered by carriers in the United States. Carlowitz & Co. v. C. P. Ry., 46 I. C. C. 290, 292.

(jj) Under the commerce clause of the constitution the Congress has full and complete power to regulate the operations of carriers engaged in interstate commerce. This power may be delegated in an appropriate manner to a body designated by the Congress, as has been done in the Act to Regulate Commerce to the extent there set forth. That Act imposes upon the carriers subject to its provisions, including the defendants, the duty of establishing "through routes and just and reasonable rates applicable thereto. "Among other things" every unjust and unreasonable charge" for any service rendered in the transportation of property 'is prohibited and declared to be unlawful"; unjust discrimination is "prohibited and declared to be unlawful"; and it is unlawful to "subject any particular person, company, firm, corporation, or locality, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." The Commission created by the act is "authorized and required to execute the provisions of this act," and "any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier," may complain "of anything done or omitted to be done by any common carrier subject to the provisions of this act in contravention of the provisions thereof." Railroad Comm. of La. v. A. H. T. Ry. Co., 48 I. C. C. 312, 359.

(kk) The fact that some portions of the lines composing proposed through routes are wholly within one state is not sufficient to defeat the application of the power conferred upon the Commission under section 15 of the Act to Regulate Commerce, as amended, to establish thru routes and prescribe reasonable maximum joint rates, where, as in this case, such carriers are subject to jurisdiction of the Commission and maintain local rates applicable to the interstate traffic involved. Thorpp v. B. & L. E. R. R., 49 I. C. C. 43, 52.

(ll) The railroads should be regarded more and more as one national system, and the time may not be far distant when the Commission should proceed to the establishment of joint through class and commodity rates lower than the combination of locals between practically all points in the country. Intermediate Rate Asso. v. Director General, 61 I. C. C. 226, 246.

(mm) The Commission is vested with specific authority to initiate rates that will protect revenues, and where carriers will suffer depletion of revenue by reason of the establishment of new joint rates, appropriate measures can be taken for their protection. Intermediate Rate Asso. v. Director General, 61 I. C. C. 226, 246.

(nn) That periods of congestion and car shortage may occur at times and thus render temporarily unavailable the customary through routes provided by carriers is anticipated in the act, under which the Commission is authorized to establish temporary through routes, either upon application of shippers or upon its own initiative, without complaint and without the delays incident to formal hearing. Boston Wool Trade Asso. v. A., T. & S. F. Ry. Co., 62 I. C. C. 228, 230.

(oo) The act does not confer upon the Commission the power to prescribe minimum rates over a through route where one of the carriers is a water line. Rail-and-Water Rates from Atlantic Seaboard, 63 I. C. C. 267, 275.

(pp) But because a common carrier is engaged in interstate commerce it does not follow that it may be required to maintain joint interstate rates and through routes as a matter of course. Under the law the establishment of such rates and routes depends upon a showing that they are necessary or desirable in the public interest. Hood Coal Co. v. M. V. T. Co., 73 I. C. C. 54, 57.

(qq) Because a common carrier is engaged in interstate commerce it does not follow that it may be required to maintain joint interstate rates and

through routes as a matter of course. Under the law the establishment of such rates and routes depends upon a showing that they are necessary or desirable in the public interest. Hood Coal Co. v. M. V. T. Co., 73 I. C. C., 54, 57.

(rr) In view of the parenthetical clause in paragraph (4) of section 15 of the act, the limitation put upon the commission's authority to establish through routes and joint rates does not apply where the commission finds it to be in the public interest to require one carrier to afford another carrier the use of its terminals. Port Arthur Chamber of Commerce v. T. & F. S. Ry. Co., 73 I. C. C., 361, 363.

(ss) The commission has no authority to prescribe joint rates over routes partly within Canada, but can require the participating carriers operating within the United States to cancel their concurrences in rates found unreasonable or in violation of the act. United Paperboard Co. v. C. N. Rys., 74 I. C. C. 733, 737.

(tt) Limitation in paragraph (4) of section 15 of act, with respect to power of commission to establish through routes, applied to "any carrier by railroad" only. Southeastern Express Co. v. Amer. Ry. Exp. Co. 78 I. C. C. 126, 129.

(uu) Where factor of through rate is assailed, and carriers parties to factors not in issue are not joined as defendants, commission has jurisdiction to examine and pass upon lawfulness of factor attacked. Petroleum and Petroleum Product, 78 I. C. C. 162, 166.

(vv) Act provides that commission may and shall establish joint rates whenever deemed necessary or desirable in public interest. Mere desire to extend markets, unsupported by any substantial indication of a public need, affords no adequate foundation for requiring establishment of additional through routes and joint rates. Western Coal Rates, 80 I. C. C. 434.

(ww) The general provision of paragraph (4), section 1, that carriers shall establish through routes and reasonable rates applicable thereto, is subordinated to specific provisions of section 15 for establishment of through routes and joint rates. Tidewater Paper Mills Co. v. B. T. R. R. Co., 80 I. C. C. 493, 497.

(xx) The commission has no power to prescribe minimum rates over a through route where one of the carriers is a water line, except where such water line is owned or controlled by a rail carrier. Roasted Coffee from Atlantic Seaboard, 83 I. C. C. 131, 134, 135.

(yy) Shipment originated at Bunker, Mo., consigned to shipper's order notify complainant, at Leeper, Mo., and subsequently reforwarded under new bill of lading to El Paso, Tex. On complaint alleging unreasonableness of through rate because of Bunker-Leeper component, contention that inbound and outbound movements were separate and distinct, and that since rate beyond Leeper is not assailed the commission has no jurisdiction to consider intrastate movement to that point. HELD: Defendants' position untenable. Shipment was not unloaded at Leeper but moved to El Paso in original car, and prepaid expense bill for movement beyond Leeper shows point and date of shipment as Bunker, Mo., and date of original movement. Mid-Continent Equip. & Mach. Co. v. M. S. R. R. Co., 83 I. C. C. 393, 394.

(zz) Section 15 (3) of the act authorizes commission to establish through routes and joint rates applicable to transportation of property where one of the carriers is a water line. However, by that same section and paragraph it is provided that commission shall not "have right to establish any route, classification, or practice, or any rate, fare, or charge when transportation is wholly by water." Boston Wool Trade Asso. v. A., T. & S. F. Ry. Co., 83 I. C. C., 445, 448, 449.

(3a) Commission can not require establishment or maintenance of joint rates between United States and Canada. But where joint rates are in effect and there is no proposal to withdraw them save for purpose of substituting other and higher rates of same character, and commission finds in an appropriate proceeding that increases in such joint rates proposed in schedules published and filed with it have not been justified, it is not only within its power but its duty to require their cancellation. Sand and Gravel from Canada, 83 I. C. C. 451, 458, 460, 463.

(3b) The carriers deny that the Commission has the power to compel them to establish through routes and joint rates. It is admitted that all the complaining carriers were interstate railroads and were engaged otherwise in interstate

commerce. It is undisputed that for many years there has been over the lines of two of these carriers a through route to Paducah via Cairo, and over the other a through route via Memphis; and that on all the lines there were through rates. But it is contended that if a carrier establishes a through route and joint rate with its connections, it creates in effect a relation of partnership; that this relation must be entered into, if at all, voluntarily; and that to "compel a carrier chartered by a state" to enter into such a relation with a carrier chartered in another state violates the Fifth Amendment of the federal Constitution. The complaining carriers having engaged in this particular commerce, it is clear that Congress has power to regulate it. Atlantic Coast Line Case, 219 U. S. 186, 31 Sup. Ct. 164, 55 L. ed. 167, 31 L. R. A. (N. S.), 7. No reason appears why the regulation might not take the form of compelling the substitution of a joint rate for a through rate made by a combination of local rates or by a combination of a local rate with a joint rate to an intermediate point. Cincinnati, New Orleans & Texas Railway v. Interstate Commerce Commission, 162 U. S. 184, 16 Sup. Ct. 700, 40 L. ed. 935. So far as the orders relates to the existing routes via Cairo and Memphis respectively it did no more than this: It substituted for the through rate of 22 cents (made up on two of the lines of a combination of a joint rate or local rate of 16 cents to Cairo with a local rate on the Illinois Central of 6 cents from Cairo to Paducah), a joint rate of 16 cents from the "blanket territory" to Paducah; thus reducing the existing through rate. The carrier connecting at Cairo (the Illinois Central) and all but one of the carriers connecting with these complainants in the "blanket territory", acquiesced in the order establishing this joint rate. The Illinois Central's share of the 22-cent rate was its local rate of 6 cents. If these complaining carriers cannot reach satisfactory agreements with the Illinois Central as to what its share of the 16-cent rate should be, they may, under section 15 of the Act to Regulate Commerce (Comp. St. 1916, §8583), apply to the Commission for an appropriate order. In respect to the Rock Island the situation is similar. St. L. S. W. Ry. v. U. S., 38 Sup. 49, 51.

ALL OTHER CITATIONS

I. C. C. v. H. S. S. Co., 224 U. S. 474, 483, 32 Sup. Ct. 556, 56 L. ed. 849; Sunderland Bros. Co. v. St. L. & S. F. R. R. Co., 23 I. C. C. 258, 261; In Re Wharfage Charges at Galveston, 23 I. C. C. 535, 546; In re Investigation of Alleged Unreasonable Rates on Meats, 23 I. C. C. 656, 662; Missouri & Illinois Coal Co. v. I. C. R. R. Co., 22 I. C. C. 39, 49; In Re Transportation by C. & O. Ry. Co., 21 I. C. C. 207, 209; Mfr's. Ry. Co. v. St. L. I. M. & S. Ry. Co., 21 I. C. C. 304, 312, 313; C. & C. Traction Co. v. B. & O. S. W. R. R. Co., 20 I. C. C. 486, 490; Order of Commission enjoined, B. & O. S. W. R. R. Co., U. S., 195 Fed. 962; Southern California Sugar Co. v. S. P. L. A. & S. L. R. R. Co., 19 I. C. C. 6, 10; Spring Hill Coal Co. v. Erie R. R. Co., 18 I. C. C. 508, 509; Baer Bros. Mercantile Co. v. M. P. Ry. Co., 17 I. C. C. 225, 228; Kindelon v. S. P. Co., 17 I. C. C. 251, 266; Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co., 17 I. C. C. 479, 480; Black Horse Tobacco Co. v. I. C. R. R. Co., 17 I. C. C. 588, 590; Enterprise Fuel Co. v. Penn. R. R. Co., 16 I. C. C. 219, 220; Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co., (Prouty, Comm'r, concurring opinion.) 15 I. C. C. 460, 467; Pacific Coast Lumber Co. v. N. P. Ry. Co., 14 I. C. C. 51, 53; Chicago & Milwaukee Electric R. R. Co. v. I. C. R. R. Co., 13 I. C. C. 20, 27; Cardiff Coal Co. v. C. M. & St. P. Ry. Co., 13 I. C. C. 460, 466; Leonard v. K. C. S. Ry. Co. and K. C. & Westport Belt Ry. Co., 13 I. C. C. 573, 579; I. C. C. v. L. & N. R. R. Co., 33 Sup. Ct. 185, 189; U. S. v. P. & A. R. & N. Co., 33 Sup. Ct. 443, 449; Baer Bros. Mercantile Co. v. D. & R. G. R. R. Co., 200 Fed. 614, 620; Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 108; Rates on Cottonseed and its Products, 28 I. C. C. 219, 221; People's Fuel & Supply Co. v. G. T. W. Ry. Co., 27 I. C. C. 24, 28; Jubitz v. S. P. Co., 27 I. C. C. 44, 46; Pulp & Paper Mfrs. Traffic Asso. v. C. M. & St P. Ry. Co. 27 I. C. C. 83, 96, 98; Truckers Transfer Co. v. C. & W. Ry. Co., 27 I. C. C. 275; Arkansas Pass Channel & Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403, 414; Lumber Rates from Memphis and other Points to New Orleans, 27 I. C. C. 471, 486; Wichita Falls System, Joint Rate Cases, 26 I. C. C. 215, 222; St. Louis, Springfield & Peoria R. R. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 238; Morris Iron Co. v. B. & O. Ry. Co., 26 I. C. C. 240; David Bros. Lumber Co. Ltd. v. C.

R. I. & P. Ry. Co., 26 I. C. C. 257, 259; Augusta & Savannah Steamboat Co. v. O. S. S. Co., 26 I. C. C. 380, 384; Disher Hoop & Lumber Co. v. St. L. & S. F. R. R. Co., 26 I. C. C. 488, 490; Texas Cement Plaster Co. v. St. L. & S. F. R. R. Co., 26 I. C. C. 508, 510; Kansas City, Mo., and Kansas City, Kan., v. K. C. & T. Co., 24 I. C. C. 22, 26; Commercial Club of Superior, Wis., v. G. N. Ry. Co., 24 I. C. C. 96, 112; Flour S. S. Co., v. L. V. R. R. Co., 24 I. C. C. 179, 184, 185; D. & R. G. Ry. Co. v. Baer Bros. Mercantile Co., 209 Fed. 577, 580; Marble Rates from Vermont Points, 29 I. C. C. 607, 608; Lumber Rates, Oregon and Washington to Eastern Points, 29 I. C. C. 609, 618; In re Express Rates, 28 I. C. C. 132, 137; Waverly Oil Works Co. v. P. R. R. Co., 28 I. C. C. 621, 629, 630; C. C. C. & St. L. Ry. Co. v. Hayes (Ind., 1914), 104 N. E. 581, 584; T. & P. Ry. Co. v. American Tie & T. Co., 34 Sup. Ct. 885, 889; 234 U. S. —, 58 L. ed.—; Hammerschmidt & Franzen Company v. C. & N. W. Ry. Co., 30 I. C. C. 71, 83; Merchants' & Mfrs. Asso. v. C. R. R. Co. of N. J., 30 I. C. C. 396, 401; Wichita Board of Trade v. A. & S. Ry. Co., 29 I. C. C. 376; Rates on Green Fruit from Idaho, etc., 29 I. C. C. 650, 651; Pacific Nav. Co. v. S. P. Co., 31 I. C. C. 472, 476; Switching at Galesburg, Ill., 31 I. C. C. 294, 299; Manufacturers' Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100, 105; American Nat'l Live Stock Assn' v. S. P. Co., 32 I. C. C. 438, 439; New York Dock Ry. v. B. & O. R. R. Co., 32 I. C. C. 568, 573, 574; Decatur Nav. Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 286; C. O. & P. Ry. v. C. & N. W. Ry. 33 I. C. C. 573, 576; Berger-Crittenden Co. v. C. M. & St. P. Ry. Co. (Wis., 1915), 150 N. W. 496, 499; Grain Rates From Milwaukee, 33 I. C. C. 417, 424; Stone's Express v. B. & M. R. R. 33 I. C. C. 638, 641; Federal Sugar Refining Co. v. C. R. R. of N. J., 35 I. C. C. 488, 490; Black and White Transp. Co. v. M. P. Ry., 37 I. C. C. 244, 248; Port Huron & Duluth S. S. Co. v. P. R. R., 40 I. C. C. 335, 337; Hayden Bros. Coal Corporation v. Denver & Salt Lake R. R. Co. 39 I. C. C. 100, 104, 112; Morgantown v. Kingwood Division, 40 I. C. C. 509, 510; Graham & Gila County Traffic Asso. v. A. E. R. R. Co., 40 I. C. C. 573, 578; Fruits and Vegetables from Texas Points, 40 I. C. C. 673, 674; Louisville Board of Trade v. L. & N. R. R., 40 I. C. C. 679, 689; Railroad Commission of Louisiana v. A. H. T. Ry. Co., 41 I. C. C. 83, 124; St. Louis Southwestern Ry. Co. v. United States 234 Fed. 668; Lusk v. Atchison (Mo., 1916), 186 S. W. 703; Tampa Fuel Co. v. A. C. L. R. R. Co., 43 I. C. C. 231, 233; Paducah Bd. of Trade v. I. C. R. R., 43 I. C. C. 537, 540; Gulf Atl. S. S Co. v. A. C. L. R. R., 46 I. C. C. 309; Himmelberger-Harrison Lumber Co. v. St. L. & S. F. R. R., 46 I. C. C. 480; National Wood Growers' Asso. v. B. G. R. R. Co., 48 I. C. C. 587, 589; C. M. & St. P. Ry. v. G. N. Ry., 49 I. C. C. 302, 305; Baltimore & Carolina S. S. Co. v. A. C. L. R. R., 49 I. C. C. 176, 184, 185; Romann & Bush Pig Iron & Coke Co. v. C. & O. R. R., 49 I. C. C. 338; Colonial Nav. Co. v. N. Y. N. H. & H. R. R., 50 I. C. C. 625, 630; Denver & S. L. R. Co. v. Chicago, B. & Q. R. R., (Co., 1918), 171 Pac. 74; Western Pacific R. R. Co., v. S. P. Co., 55 I. C. C. 71, 73; Chicago, Lake Shore and South Bend Ry. Co. v. Director General, 58 I. C. C. 647, 653; Beaver Sand Co. v. Director General, 66 I. C. C. 285, 289; Hood Coal Co. v. M. V. T. Co., 73 I. C. C. 54, 57; Southeastern Express Co. v. Amer. Exp. Co., 78 I. C. C. 126, 141; United States v. P. Koieng Coal Co., (Mich., 1923) 291 Fed. 385; The New York Harbor Case, 47 I. C. C. 643, 722; Miller Paper Co. v. P. R. R. Co., 80 I. C. C. 314, 317; New Mexico Central Ry. Co. v. A. T. & S. F. Ry. Co., 81 I. C. C. 718, 720, 721.

§1a. State Legislation.

CASES 1887-1908

(a) The interstate commerce law does not apply in case of a shipment from one State to another where the several lines over which the freight passes have not established a joint tariff of rates so as to subject them to penalties imposed by the law for its violation; consequently carriers so situated are not exempt from a State statute imposing a penalty upon a common carrier who refuses to deliver freight upon tender of the charges specified in the bill of lading. Gulf, Colorado & Santa Fe Ry. Co. v. C. O. Nelson 7 I. C. C. App. XIV.

§2. What is through route or "Common Arrangement."

See Crimes; Tariffs §10.

CASES 1887-1908

(a) When railroad companies make a through and continuous line and offer it for the use of the public, they cannot

rid themselves of responsibility for unjust charges by breaking the haul in two and calling themselves carriers on the separate ends of their line. Brady v. Pennsylvania R. Co., 2 I. C. R. 78.

(b) The Pennsylvania Railroad Company operates a part of a through line which it joins in making, and owns a controlling interest in the capital stock of the Pittsburgh, Cincinnati & St. Louis Railway Company by which the other part is operated. HELD, that the Pennsylvania Railroad Company cannot free itself from the responsibility of excessive through rates by getting behind the corporate existence of the other company as a separate carrier. Brady v. Pennsylvania R. Co., 2 I. C. R. 78.

(c) Through and continuous lines imply through rates, which must be reasonable. Brady v. Pennsylvania R. Co. (Com.) 2 I. C. R. 78.

(d) The rate of 30½ cents per 100 pounds on wheat, flour and mill stuffs from Minneapolis via Milwaukee to New York and common billing points, established by the defendants and their connecting lines February 1, 1888, was a through rate. Milwaukee Chamber of Commerce v. Flint & Pere Marquette R. Co., 2 I. C. R. 393.

(e) A rate is none the less a through rate when freight is shipped upon a through bill of lading from the point of origin to destination, accompanied by a waybill showing the route over which it is to pass, with the percentages of all the other lines set forth on the waybill, because the initial carrier charges its local rate as part of the total rate and the remaining lines charge an agreed rate made by percentages. Milwaukee Chamber of Commerce v. F. & P. M. R., 2 I. C. C. 393, 398.

(f) The words "common control, management, or arrangement," as found in the Act to Regulate Commerce, §1, apply to a case where the initial carrier furnishes the shipper with a car specially fitted up for his business, which is taken over connecting roads on special through time tables. Boston Fruit & P. Exch. v. New York & N. E. R. Co. (Com.) 3 I. C. R. 493.

(g) The receipt successively by two or more carriers for transportation, of traffic shipped under through bills for continuous carriage over their lines, is assent to a "common arrangement" for continuous carriage or shipment; and previous formal arrangement between them is not necessary to bring such transportation under the terms of the Interstate Commerce Law. Trammell v. Clyde Steamship Co. (Com.), 4 I. C. R. 120.

(h) The phrase "common control, management, or arrangement for continuous carriage or shipment" in the first section of the act was intended to cover all interstate traffic, carried through all interstate traffic, carried through er lines. The receipt successively by two or more carriers for transportation of traffic shipped under through bills for continuous carriage over their lines is assent to a common arrangement for such continuous carriage or shipment and previous formal arrangement between them is not necessary to bring such transportation under the terms of the law. Trammell v. Clyde Steamship Co. 4 I. C. C. 120, 139.

(i) Where two or more roads forming a continuous connecting line between points in different states bill and carry interstate traffic through to certain stations on the last road forming such line, neither the roads together nor any one of them can evade the obligations of the Act by declaring that as to such traffic destined to such stations on such terminal road it is a local carrier. Trammell v. Clyde Steamship Co., 4 I. C. C. 121, 139.

(j) The 1st section of the Act to Regulate Commerce provides that it "shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or party by railroad and party by water where both are used under a common control, management, or arrangement, for a continuous carriage or shipment, etc." The Georgia Railroad extends from Atlanta to Augusta. The Georgia Railroad Co. requested its connections, that in issuing bills of lading to its local stations, no rates be inserted east of Atlanta. There is no agreement on the part of said Company for any such joint tariff, as implies a reduced rate from Cincinnati, Ohio, to its local stations. On the contrary, that company collects and retains its entire local rates on all freight shipped from Cincinnati to its local stations. HELD: That there is no such "arrangement for a continuous carriage or shipment" existing between said company and its connections, as to

bring the rates which are charged to said local stations, within the first sectiin of the Act to Regulate Commerce. Case Cited: 4 Inters. Com. Rep. 257, 52 Fed. Rep. 912, Chicago & N. W. R. Co. v. Osborne Interstate Commerce Commission v. Cincinnati N. O. & T. P. R. Co., 42 I. C. R. 332.

(k) When goods are shipped through from Cincinnati, Ohio, to local stations on the Georgia Railroad, the initial carrier at Cincinnati issues through bills of lading, and quotes through rates. Said rates, however, are arrived at by adding to the rates from Cincinnati to Atlanta, the full local rates of the Georgia Railroad from Atlanta to said local stations. The Georgia R. Co. receives the goods at Atlanta, and transports them continuously to its local stations; but it demands and collects its full local rates from Atlanta to said local stations. HELD: That the mere reception, and continuous transportation, by the Georgia R. Co., of freight which comes to it over other lines of railroads, destined to its local stations, for which the initial carrier has issued through bills of lading and quoted through rates, does not constitute such an "arrangement" as is contemplated by the first section of the Act to Regulate Commerce, where the through rates, so quoted, allow to that company its full local rates. Interstate Commerce Commission v. Cincinnati N. O. & T. P. R. Co., 42 I. C. R. 332.

(l) There must be a "common arrangement" between connecting companies, such as the making of a joint tariff, before a "new line" can be formed; and the "line" so formed under the joint tariff of connecting companies is one which is separate and independent from that of either of the connecting companies. Case Cited: 4 Inters. Com. Rep. 257, 52 Fed. Rep. 912, Chicago & N. W. R. Co. v. Osborne. Interstate Comerce Commission v. Cincinnati N. O. & T. P. R. Co., 4 I. C. R. 332.

(m) There is no "common arrangement," or "joint tariff," between the Georgia Railroad Company and its connections, as to traffic to its local stations. On the contrary, there is an express refusal by that company to make any "common arrangement" whatever, in regard to that traffic. The Georgia Railroad Company demands and collects its full local rates on all shipments to its local stations. Whether shipments come from points west of Atlanta, or originate at Atlanta, the rate is precisely the same; and, as to the Georgia Railroad, the carriage is the same. Interstate Commerce Commission v. Cincinnati N. O. & T. P. R. Co., 4 I. C. R. 332.

(n) Social Circle is a local station on the Georgia Railroad, 52 miles east of Atlanta, and 119 miles west of Augusta. The Georgia Railroad Company refuses to adopt a joint through tariff from Cincinnati to Social Circle; and charges its full local rate from Atlanta to Social Circle. The rate from Cincinnati to Social Circle is a combination rate; and it is arrived at by adding to the rate from Cincinnati to Atlanta, the full local rate of the Georgia Railroad from Atlanta to Social Circle. The rate thus made from Cincinnati to Social Circle is greater than the joint through tariff rate from Cincinnati to Augusta; but that fact constitutes no violation of the "long and short haul" clause of the Act to Regulate Commerce; because the two rates are not made "over the same line." The rate to Augusta is made by the "line" formed by a "common arrangement" between said three companies for a joint tariff between those points. The rate to Social Circle is made greater than the rate to Augusta, by the Georgia Railroad Company demanding its full local rate on its own road; which road is separate and independent from the "line" made by said three companies. Cases Cited: 4 Inters. Com. Rep. 257, 52 Fed. Rep. 912, Chicago & N. W. R. Co. v. Osborne; 4 Inters. Com. Rep. 247, 53 Fed. Rep. 229, United States v. Mellen. Interstate Commerce Commission v. Cincinnati N. O. & T. P. R. Co., 4 I. C. R. 332.

(o) The continuity of the carriage of freight over a line formed by two or more roads is not broken in fact and cannot be broken in law by the charge of a local rate by one or more of such roads as its proportion of the through rate. Troy Bd. of Trade v. Alabama Midland R. Co. (Com.) 4 I. C. R. 348.

(p) The successive receipt and forwarding in ordinary course of business, by two or more carriers, of interstate traffic shipped under through bills for continuous carriage over their lines, is

assent to a "common arrangement" for such carriage within the meaning of the Act to Regulate Commerce, without previous express agreement between them. Troy Bd. of Trade v. Alabama Midland R. Co. (Com.) 4 I. C. R. 348.

(q) The successive receipt and forwarding in ordinary course of business by two or more carriers of interstate traffic shipped under through bills for continuous carriage over their lines, is assent to a "common arrangement" for such carriage within the meaning of the Act to Regulate Commerce without previous express agreement between them, and the obligations imposed by the statute cannot be evaded by the demand of the local charge for the haul over its own road by one or more of such carriers or by the declaration on the part of one or more of said carriers that as to the transportation over its road it is a local and not a through carrier. (Reaffirming the doctrine laid down in Georgia R. Com. v. Clyde SS. Co. 4 Inters. Com. Rep. 120) Board of Trade v. Alabama Midland R. Co., 4 I. C. R. 348.

(r) The receipt, forwarding, and delivery of traffic by connecting carriers clearly establishes the existence of a common arrangement between the carriers for continuous carriage or shipment. Phelps & Co. v. T. & P. R. Co., 4 I. C. C. 363, 368.

(s) A railroad company which enters into the carriage of foreign freight by agreeing to receive the goods by virtue of foreign through bills of lading, and to participate in through rates and charges, thereby becomes part of a continuous line by its arrangement for a continuous carriage or shipment from one state to another, and thus becomes amenable to the Federal act in respect to such interstate commerce. Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission (U. S. Sup.), 5 I. C. R. 391.

(sa) A railroad company operating a road wholly within one state makes such road part of a continuous line, and becomes a party to an arrangement for the continuous carriage or shipment of interstate traffic, when it carries such traffic under through bills of lading issued by another common carrier and participates with such other carrier in through rates and charges thereon, and such railroad company is subject to the provisions of the act to regulate commerce and to regulation by the Interstate Commerce Commission. C., N. O. & T. P. R. Co. v. Inters. Com. Commission, 5 I. C. R. 391.

(t) The successive receipt and forwarding in ordinary course of business by two or more carriers of interstate traffic shipped under through bills for continuous carriage over their lines, is assent to a "common arrangement" for such carriage within the meaning of the Act to Regulate Commerce without previous express agreement between them, and the obligations imposed by the statute cannot be evaded by the demand of the local charge for the haul over its own road by one or more of such carriers, or by the declaration on the part of one or more of said carriers that as to the transportation over its road it is a local, and not a through, carrier. (Reaffirming the doctrine laid down in Georgia R. Com. v. Clyde SS. Co. 4 Inters. Com. Rep. 120, 5 I. C. C. Rep. 324.) Board of Trade of Troy, Ala. v. Ala Mid. Ry. Co. et al., 6 I. C. C. 2.

(u) Joint through routes and rates are ordinarily the subject of agreement between the participating carriers; but when this is established, and until finally abrogated or changed, they are required by the statute to be kept open to public use. Consolidated Forwarding Co. v. Southern P. Co., 9 I. C. C. 182.

(v) A railway company, stage transportation company, and a hotel association which furnishes accommodations to passengers are not competent in law to form through rates and establish joint rates as provided in section 6 of the Act to Regulate Commerce, and the circular or tariff under which the rates and tickets in question are provided cannot be regarded as a joint tariff established by connecting carriers under that Act. Wylie v. Northern P. R. Co., 11 I. C. C. 145.

(w) Through Route is a continuous line of railway formed by an arrangement, express or implied, between connecting carriers. Re Through Routes & Through Rates, 12 I. C. C. 163.

(x) Through billing is an indication of through route over which through rate applies. Re Through Routes and Through Rates, 12 I. C. C. 163.

(y) Where a through route has been formed the rate charged is a through rate, and the shipment will move upon the rate existing at the time it is billed by the initial carrier. In the matter of through routes and through rates, 12 I. C. 164, 165.

(z) A through route is a continuous line of railway formed by an arrangement, express or implied, between connecting carriers. It must have a rate for every service it offers; and as the route is a new unit-one line formed by two or more connecting lines—so its rate for every service is a unit, even though it be divided between the several carriers arranging themselves into the through route. In the matter of through routes and through rates, 12 I. C. C. 164, 166.

(aa) Existence of a through route is to be determined by the incidents and circumstances of the shipment, such as the billing, the transfer from one carrier to another, the collection and division of transportation charges, or the use of a proportional rate to or from junction points or basing points. These incidents named are not to be regarded as exclusive of others which may tend to establish a carriers course of business with respect to through shipments. In the matter of through routes and through rates, 12 I. C. C. 164, 167.

(bb) Through carriage implies a through rate. This is equally true whether the through rate be published as a whole by the joint action of the connecting carriers, or, in the absence of a joint arrangement, be published in portions by the several carriers. The route being one, a charge for a service over it is a charge for a single service, all the terms of which must be fixed at one and the same time; that is, at the time the initial carrier enters into the engagement for the service. The rate is either a joint through rate made by arrangement by the parties to the through route, or it is a combination through rate consisting of the separately established rates, fares, and charges applied to the through transportation. This, sum, however, is a single rate for a single service, and a contract for through transportation is a contract for transportation at the through rate, whether jointly or separately established, in force at the time the shipment is billed. Through routes and through rates, 12 I. C. C. 164, 167.

(cc) When goods shipped under a through bill of lading, from a point in one state to a point in another, are received in transit by a state common carrier, under a conventional division of charges, such carrier must be deemed to have subjected its road to an arrangement for a continuous carriage or shipment within the meaning of the act. When the Commission speaks of a through bill of lading it is referring to the usual method in use by connecting companies, and must not be understood to imply that a common control management, or arrangement might not be otherwise manifested. Through routes and through rates, 12 I. C. C. 164, 167.

(dd) Whatever other facts or incidents of a shipment may serve to prove the existence of a through route, a through bill of lading is, as to the carriers recognizing it, conclusive evidence of the existence of such through route. Through routes and through rates, 12 I. C. C. 164, 168.

(ee) The total rate or charge for a through carriage over two or more lines, whether made by the addition of established locals, or of through and local rates, or upon a less proportionate basis, is the through rate that is subject to scrutiny by the regulating authority. Where two or more roads forming a continuous connecting line between points in different states bill and carry interstate traffic through to certain stations on the last road forming such line, neither the roads together, nor any one of them, can evade the obligations of the Act by declaring that as to such traffic it is a local carrier. Through routes and through rates, 12 I. C. C. 164, 169.

(ff) The law regards the substance of things, and a palpable device for evasion of the law will not be allowed to accomplish its purpose. The facts that the carriage is continuous, that the traffic is through interstate traffic, and that the carrier in due and ordinary course of business accepts and forwards it, are sufficient to establish responsibility under the law. The receipt successively by two or more carriers for transportation of traffic shipped under through bills for continuous carriage or shipment,

and previous formal arrangement between them is not necessary to bring such transportation under the terms of the law. Through routes and through rates, 12 I. C. C. 164, 170.

(gg) Where through billings is given by the originating carrier and is recognized by all connecting carriers to destination, there is in existence a through route over which a through rate applies, which through rate is ascertained from the tariffs of the participating carriers at the date of shipment; and when such rate is made up of the sum of the locals, the locals apply as of the date of shipment. Any increase in the through rate so made after the date of shipment, or any decrease therein, is not applicable to such through shipment. In the matter of through routes and through rates, 12 I. C. C. 164, 171.

IMPORTANT CASES SINCE 1908

(hh) A through route in the sense in which this term is generally used embraces two or more lines of railroad moving traffic under conventional agreements at rates or fares made applicable for the through service; nor may a carrier take any steps that will deprive passengers of the right to use its rails between any two points on the line at the regularly established fares. The Ogden Gateway Case, 35 I. C. C. 131, 142.

(ii) Shipment by boat from New York, N. Y., to Albany, N. Y., thence rail to interstate destination, rail carrier advancing water charges, found not a through shipment; there being no common control, management, or arrangement for continuous carriage from New York to ultimate destination. Amendt Milling Co. v. M. C. R. R. Co., 83 I. C. C., 585.

ALL OTHER CITATIONS

Mutual Transit Co. v. U. S., 178 Fed. 664, 666, 667; C. B. & Q. Ry. Co. v. U. S., 157 Fed. 831, 833; Citizens of Somerset v. Washington Ry. & Electric Co., 22 I. C. C. 187, 191; Kenworthy & Son v. U. P. R. R. Co., 21 I. C. 515, 517; R. R. Commission of Nev. v. S. P. Co., 19 I. C. C. 238, 252; Baer Bros. Mercantile Co. v. M. P. Ry. Co., 17 I. C. C. 225, 226, 228; Indiana Steel & Wire Co. v. C. R. I. & P. Ry. Co., 16 I. C. C. 155; Nollenberger v. M. P. Ry. Co., 15 I. C. C. 595, 598; Memphis Freight Bureau v. F. S. & W. R. R. Co., 13 I. C. C. 1. 8; Pittsburg, etc., Ry. Co. v. Mitchell (Inc. 1910), 91 N. E. 735, 740; Fisher v. G. N. Ry. Co., 49 Wash. 205, 209, 95 Pac. 77; People's Fuel & Supply Co. v. G. T. W. Ry. Co., 27 I. C. C. 24, 38; Commercial Club of Omaha v. A. & S. R. Ry. Co., 27 I. C. C. 302, 318; Lesser-Goldman Cotton Co. v. St. L. I. M. & S. Ry. Co., 27 I. C. C. 496, 497; Augusta & Savanah Steamboat Co. v. O. S. S. Co. of Savanah, 26 I. C. C. 280, 283; Kansas City v. K. C. V. & T. Ry. Co., 24 I. C. C. 22, 26; Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179; Baer Bros. Merc. Co. v. D. & R. G. R. R. Co., 34 Sup. Ct. 641, 645; 233 U. S. 479, 58 L. ed.; Swift & Co. v. P. R. R. Co., 29 I. C. C. 464; Ross v. M. C. R. R. Co. (Me., 1914), 90 Atl. 711; Oklahoma Portland Cement Co. v. O. L. & G. Ry., 32 I. C. C. 238, 243; Grain & Hay Exchange v. P. Co., 32 I. C. C., 409, 410, 411; Lourie Mfg. v. C. N. R. R. Co., 42 I. C. C. 448, 450; Wistar, Underhill & Nixon v. C. & O. Ry., 43 I. C. C. 254, 256; Waverly Oil Works Co. v. P. R. R. 45 I. C. C. 216; Live Stock Comm. Co. v. C. B. & Q. R. R., 47 I. C. C. 287, 320; State-Smith v. Chicago, M. & St. P. Ry., (Minn. 1917), 165 N. W. 869; Owens Bottle Machine Co. v. B. & O. R. R., 55 I. C. C. 122, 129; Gill v. Director General, as Agent, 59 I. C. C. 119, 120.

§3. **What is Joint Rate.**

See Infra §3½.

CASES 1887-1908

(a) When a combined rate, evidenced by a through bill of lading, from the point of origin to destination, has every substantial constituent of a through rate it is not necessary that it should be formally "quoted" by one of the carriers to another who is engaged in the making of it, in order to constitute it a through rate. Names are nothing in such a transaction; the law looks at the elements and substance of the transaction itself. Milwaukee Chamber of Commerce v. Flint & P. M. R. Co. (Com.), 2 I. C. R. 393.

(b) A rate is none the less a through rate when freight is shipped upon a through bill of lading from the point of origin to destination, accompanied by

a waybill showing the route over which it is to pass, with the percentages of all the other lines set forth on the waybill, because the initial carrier charges its local rate as part of the total rate and the remaining lines charge an agreed rate made by percentages. Milwaukee Chamber of Commerce v. Flint & Pere Marquette R. Co., 2 I. C. R. 393.

(c) The joint "tariffs" contemplated by the Act to Regulate Commerce, §6, providing that where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several carriers establish joint tariffs of rates or fares, copies of such joint tariffs shall be filed with the Commission,—are those established by agreement and mutual consent of the several carriers, as distinguished from the mere aggregate of the separate rates of the several carriers for transportation over their respective routes. New York, N. H. & H. R. Co. v. Platt, 7 I. C. C., 323.

(d) Rates established by a single carrier upon its route and shown on individual tariffs, and joint rates over continuous lines or routes operated by more than one carrier shown on joint tariffs, are the rates authorized by section 6 of the act, and required to be posted at stations and filed with the Commission. The word "joint" and the express reference in the statute to the several carriers over a continuous line and the joint tariffs which they establish, import concurrence and assent in fixing aggregate rates for a combined service, as distinguished from the separate rates of a single carrier for transportation upon its route. N. Y. N. H. & H. R. Co., v. Platt, 7 I. C. C. 323, 329.

(e) A carrier which has published and filed its rates as the law requires may combine such rates with the lawfully established rates of a connecting carrier or carriers, and thus announce the aggregate amount for which traffic will be transported from points on its railroad to points on the line of such connecting carrier or carriers; but one carrier cannot lawfully add to the duly established rates of another carrier any amount it pleases less than its own local rates, and publish and use that sum as a through rate to points on the line of such other carrier without its consent. Such a through rate is not a joint rate, for joint rates can be made only by concurrence or consent; nor is it a combination rate, for one of its component parts has no legal existence or sanction as a separate or local charge; there must be lawful rates upon each of the roads before there can be a lawful combination of rates. N. Y. N. H. & H. R. Co. v. Platt, 7 I. C. C. 323, 331.

(f) In the absence of some agreement or understanding with a connecting line by which a joint tariff of rates is authorized, a given carrier cannot lawfully publish or apply any other rates than those which it fixes for transportation between points reached by its railroad; and the rates so fixed are the only lawful rates which such carrier can charge for any transportation service which it may perform, whether the traffic carried is destined to points on its own road or to points on the line of some other carrier. N. Y. N. H. & H. R. Co. v. Platt, 7 I. C. C. 323, 331.

(g) Joint rates maybe so divided between the carriers that each receives less than its established local rate, or so that the full local charge is secured by one or more of the carriers, the other party or parties accepting less than local rates, but whatever the basis of division, the essential feature of such rates is that the connecting carriers have agreed or mutually consented to carry traffic over the connecting line for a less aggregate charge than the sum of their established local rates. N. Y. N. H. & H. R. Co. v. Platt, 7 I. C. C. 323, 333.

(h) There is no question that where a joint rate has been made and filed as such over any through route, such rate takes effect as one charge, and shipments must be carried through on the rate in force at the time of billing. Through routes and through rates, 12 I. C. C. 164, 166.

IMPORTANT CASES SINCE 1908

(i) The "joint rate" referred to in section 6 of the Act relating to the publishing of rates does not apply to the combined rates on shipments from United States inland points through Atlantic ports via ocean carriers to European points, since the Commission has no jurisdiction over ocean carriers. To permit the making of joint rates, in the

strict sense used in the section between such points, would open the way for rebates and other discriminatory practices, since in publishing a joint rate under section 6 the carriers are not compelled to publish their divisions of the same and by a manipulation of divisions the ocean carriers might obtain an inequitable portion thereof wherewith to "induce" traffic. The rail carriers must therefore, on such traffic publish their rates from inland points to Atlantic ports. Cosmopolitan Shipping Co. v. Hamburg-American Packet Co., 13 I. C. C. 266, 280.

(j) Joint line means two or more lines of railroad not under same management or control. R. R. Comm. of Louisiana v. St. L. S. W. Ry. Co., 34 I. C., C., 472, 478.

ALL OTHER CITATIONS

Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 185; Fitzsimmons-Palmer Co. v. American Express Co., Unrep. Op. A-900; Old Dominion Co. v. Director General, 63 I. C. C. 43, 45.

§3½. Participation in Through Traffic. See Discrimination §7; Interstate Commerce Commission §2; §3.

CASES 1887-1908

(a) Respondent is engaged with other carriers in the through transportation to Chicago of freight from numerous points on its road, including Springfield and Marshall, and it cannot lawfully call itself merely a local carrier from Marshall, while engaged in through carriage from Springfield and other points on its line, and thereby justify higher rates to Chicago for the shorter distance from Marshall than for the longer distance from Springfield and more distant points of shipment. Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission, 162 U. S. 184, 40 L. ed. 935, 5 Inters. Com. Rep. 391, 16 Sup. Ct. Rep. 700, cited and applied. Violation of Act to Reg. Comm. By St. L. & S. F. Ry. Co. 8 I. C. R. 290.

(aa) The Pennsylvania Railroad Company operating a part of a through line which it joins in making, and owning a controlling interest in the capital of the Pittsburg, Cincinnati & St. Louis Railway Company, by which the other part is operated, cannot free itself from responsibility of excessive through rates by getting behind the latter company as a separate carrier. Brady v. Pennsylvania R. Co. (Com.) 2 I. C. R. 78.

(ab) The Cincinnati, New Orleans & Texas Pacific Railway Company, the Western & Atlantic Railroad Company, and the Georgia Railroad Company have formed "a new and independent line," by the adoption of a joint through tariff from Cincinnati to Augusta; but such "new line" is distinct and separate from that of either of the railroads named. Case Cited: 4 Inters. Com. Rep. 257, 52 Fed. Rep. 912, Chicago & N. W. R. Co. v. Osborne. Interstate Commerce Commission v. Cincinnati N. O. & T. P. R. Co., 4 I. C. R. 332.

(b) Several railroad companies which bill and carry freight from points in one state to points in another will not be heard to say that the carriage by each is local and that they are not engaged in interstate commerce, for the purpose of avoiding the requirements of the Interstate Commerce Act. Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co. (C. C. App. 5th C.) 582, Rev'g, 4 I. C. R. 332.

(c) The continuity of the carriage of freight over a line formed by two or more roads is not broken in fact and cannot be broken in law by the charge of a local rate by one or more of such roads as its proportion of the through rate. Troy Bd. of Trade v. Alabama M. R. Co., 6 I. C. C. 1.

(d) A shipment of live stock on a through rate from one state to another is interstate, notwithstanding the limitation of the liability of the several carriers to their own lines. Houston & Texas Central Ry. Co. et al. v. Williams 7 I. C. C. App. XLIV.

(e) A shipment of property under a through bill of lading from a point in one state to a point in another state is not an interstate shipment where the contract obligates the initial carrier to carry only to a point on its own road within the same state and no through rate for transportation is fixed. Houston & Texas Central Ry. Co. v. Davis, 7 I. C. C. App. XLIV.

(f) The defendant companies, by joint tariffs, established through lines from St. Louis and Springfield to Eureka Springs, and by an arrangement with the Harrison Transportation Company,

attempted to extend by wagon carriage such through lines to Harrison, Berryville, and many other points in Arkansas not reached by either or any line of railroad, charging much less to Eureka Springs on goods to be so forwarded, than on the same goods from same points of origin for Eureka Springs proper. HELD: The provisions of the Act to Regulate Commerce do not apply to transportation by team or wagon, and neither the joint tariffs nor the arrangement of defendants with the Harrison Transportation Company constitute substantially dissimilar circumstances and conditions nor make them joint carriers with said Transportation Company, nor carriers at all beyond Eureka Springs, and such unequal charges to Eureka Springs constitute unjust discrimination, and subject complainants, their business and Eureka Springs, to unreasonable disadvantage and give undue preference to Harrison, and such other localities and shippers. Cary v. Eureka Springs R. Co., 7 I. C. C. 286.

(g) Defendant companies by joint tariffs, established through lines from St. Louis and Springfield, Mo., to Eureka Springs, Ark., and by an arrangement with the Harrison Transportation Company, attempted to extend by wagon carriage, such through lines to Harrison, Berryville and many other points in Arkansas not reached by either or any line of railroad, charging much less to Eureka Springs on goods to be so forwarded, than on the same goods from same points of origin for Eureka Springs proper. HELD: The provisions of the Act do not apply to transportation by team or wagon, and neither the joint tariffs nor the arrangement of defendants with the Harrison Transportation Company constitute substantially dissimilar circumstances and conditions nor make them joint carriers with said Transportation Company, nor carrier at all beyond Eureka Springs, and such unequal charges to Eureka Springs constitute unjust discrimination, and subject complainants, their business and Eureka Springs, to unreasonable disadvantage and give undue preference to Harrison, and such other localities and shippers. Cary v. Eureka Springs R. Co., 7 I. C. C. 286.

(h) A shipment of cattle consigned to a point without the state to be forwarded by continuous shipment through connecting carriers and for which a through rate is charged to be paid at the point of destination, constitutes interstate commerce, although the carrier receiving them limits its liability to its own line. Gulf, Western Texas & Pacific R. R. Co. v. Barry, 8 I. C. C. App. XLIX

(i) Arrangment for continuous carriage outside of state subjects carrier to the provisions of the Act. Pennsylvania Millers' State Asso. v. Philadelphia & R. R. Co., 8 I. C. C. 531.

(j) It is well settled that a railway company whose road is wholly within the bounds of a single state, when it voluntarily engages as a common carrier in interstate commerce by making an arrangement for a continuous carriage or shipment of goods and merchandise, is subjected, so far as such traffic is concerned, to the regulations and provisions of the Act. Pennsylvania Millers' State Asso. v. P. & R. R. Co., 8 I. C. C. 531, 549.

IMPORTANT CASES SINCE 1908

(k) Carriers having elected to join in through routes and joint fares can not be heard to say that possibilities of reciprocity as between themselves and smaller possibilities of reciprocity as between each of them and complainant justify the discrimination complained of. Western Pacific R. R. Co. v. S. P. Co., 55 I. C. C. 71, 81.

(l) Carrier may not rely upon a technical construction of one portion of the Act to justify a violation of another provision. Consideration must be given not alone to section 15, but also to the provision of the Act which makes it the duty of carriers to establish through routes and just and reasonable rates and charges applicable thereto, and that which forbids undue prejudice with respect to the interchange of traffic between connecting carriers. Gillespie Coal Co. v. I. T., 62 I. C. C. 335, 337.

(m) Carriers whose rails do not connect at interchange points may join in the establishment of through routes and joint rates and may employ a switching line to effect transfer of traffic between their rails The extent to which each shall participate in compensating the switching line under such an arrangement is largely a matter of agreement between the employing carriers. In the

absence of agreement to the contrary it would not seem unfair that the expense should be shared equally. Minneapolis & St. Louis R. R. Co. v. P. & P. U. Ry. Co., 68 I. C. C. 412, 417.

(n) Fact that combination through rates are composed of proportional factors, the use of each of which is dependent upon use of other factor or factors, does not invest them with character of joint through rates. Van Dusen Harrington Co. v. Director General, as Agent, 78 I. C. C. 729, 731.

(o) The mere participation by connecting carriers in a joint through rate does not make all of them partners, nor liable for discrimination resulting from the grant by one of them for transit privilege the payment for which is retained by the carrier granting it. Central R. Co. of New Jersey v. United States, 42 Sup. Ct. 80.

ALL OTHER CITATIONS

State v. H. B. & T. Co. (Tex. Civ. App., 1914), 166 S. W. 83; Pacific Nav. Co. v. I. C. R. R. Co., 31 I. C. C. 587, 606; Greenham Co. v. L. & N. R. R. Co., 31 I. C. C. 699, 707; Rates on Grain Milled in Transit, 35 I. C. C. 27, 32;

II. ESTABLISHMENT BY CARRIER.

See Common Carrier; Proportional Rates; Tap Lines §4.

§4. In General.

CASES 1887-1908

(a) If a rate when made by one company as a single rate would in law be unobjectionable, it would equally be so when made by several as a joint rate. The policy of the law and the convenience of business favor the making of joint rates; and the more completely the whole railroad system of the country can be treated as a unit, as if it were all under one management, the greater will be the benefit of its service to the public and the less the liability to unfair exactions. Martin v. C. B. & Q. R. R. Co., 2 I. C. C. 32, 38.

(b) The Interstate Commerce Law does not undertake to require a common carrier subject to its provisions to establish through routes and through rates with all connecting lines, merely because it may have done so with some of them. Kentucky & I. Bridge Co. v. Louisville & N. R. Co. (C. C. D., Ky.), 2 I. C. C. 351. Overruling decision of the Interstate Commerce Commission in the same case, 2 I. C. R. 102.

(c) The seventh section makes it unlawful for any common carrier, subject to the provision of the Act, "to enter into any combination, contract, or agreement, express, or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination," etc. It is no violation of said section, for a railroad company to enter into contracts with other companies for the establishment of through routes, and through rates, for the continuous carriage of interstate traffic. Such contracts are in no wise inconsistent with the things forbidden by said section. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(d) Where the charter of a railroad company provided "that any and all such railroad, or railroads, hereafter constructed, may connect and join with the road, hereby contemplated," the connection thus authorized is a physical, and not a business connection, and it does not require an interchange of traffic at the point of junction. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(e) Arrangements in respect to thru freight traffic, and joint through rates or charges, as well as the forms of bills of lading, and the apportionment to be made for such joint traffic rates, and of losses or damage to freight in course of transit, are all matters of private arrangements. Such arrangements, which usually include the reciprocal interchange of cars, and the use of each other's tracks and terminal facilities, are prompted by considerations varied and complex. In some instances, and between some companies, they may be mutually desirable and beneficial, while in other cases, and with other connecting lines, they might be prejudicial, and injurious to the interest of one, or both, and companies in the latter situation cannot properly claim, as a matter of right, what the former have acquired under, and by virtue of, private contract or arrangement. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(f) It is clear that from the provisions of section six of the Act, two or more common carriers, may lawfully enter into contracts, or agreements for the establishment of through routes at or upon joint through rates; because copies of such contracts and agreements, and of the joint tariffs of such carriers, are required to be filed with the Commission. If, in the exercise of the right, thus impliedly, if not expressly recognized, a common carrier, by private arrangements forms a through route, and establishes joint through rates, with certain connecting lines, it cannot be compelled to concede to all other connecting railroads the same or equal through rates, on traffic which the latter may offer for transportation. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(g) No authority is conferred upon common carriers of interstate commerce, to issue through tickets to passengers, or through bills of lading for property, at through rates, over connecting lines, in the absence of such arrangements between the companies. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(h) The Act does not undertake to create between connecting lines such an agency, or "quasi" partnership relation, as is necessarily involved in agreements, or arrangements, for the establishment of through routes, and the making of through rates; as such arrangements exist by contract, express or implied, the fact that a common carrier enters into them, with one or more connecting lines, does not impose upon such carrier, the duty, or obligation, to make the same or like contracts, with all other lines. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(i) Contracts by a railroad company with other companies for the establishment of through routes and through rates for the continuous carriage of interstate traffic do not violate §7 of the Act to Regulate Commerce, prohibiting a combination to prevent the carriage of freights from being continuous. Kentucky & I. Bridge Co. v. Louisville & N. R. Co. (C. C. Ky.), 2 I. C. R. 351.

(j) Through rates, like any other agreement that parties competent to contract may make, admit of a very great variety in the forms they assume; and such rates, when reasonable and fairly adjusted in their relations to local business, are greatly favored in the law because they furnish cheapened rates and greater facilities to the public, while at the same time they give increased employment and earnings to a larger number of carriers. Milwaukee Chamber of Commerce v. F. & P. M. R., 2 I. C. C. 393, 398.

(k) The active competition of rail carriers for the transportation of freight, thereby giving them the benefit of a participation in it and lowering the rates for the benefit of the producer and consumer, and furnishing many outlets to markets, is one of the results contemplated by the Act to Regulate Commerce and which it has intended to promote. New Orleans Cotton Exchange v. Illinois Central R. Co., 2 I. C. R. 777.

(l) Through rates in interstate traffic are the subject of agreement among carriers who transport the freight, and for their existence are dependent upon such agreement; and one of the features of such rates usually is that each carrier receiving the freight pays the charges upon it of the carrier delivering it. In the Matter of the Application of F. W. Clark 2 I. C. R. 796.

(m) It is indispensably necessary in interstate traffic that the consent of each of several lines over which freight is to be carried should be had in the establishment and operation of through rates. Such rates are the subject of agreement, and for their existence depend upon agreement. In the Matter of the Application of F. W. Clark, 2 I. C. C. 797.

(n) Railroad companies are not compelled to make through lines at through rates with connecting lines in the absence of any provision of law to establish such through lines, or fix the terms on which they are to be obtained. In the Matter of Alleged Excessive Freight Rates and Charges on Food Products, 3 I. C. C. 93, 106.

(o) The making or not making of through rates on the part of connecting rail carriers is entirely a matter of agreement between them, in which they consult their own business interests, and under the Act the Commission has no power to compel them to make through

rates. King & Company v. N. Y. N. H. & H. R. Co., 3 I. C. C. 272, 277.

(p) In making contracts for through transportation of passengers, the initial carrier may lawfully prefer a road going through to the point of destination to one going only part of the way, an arrangement with which would necessitate further arrangements to reach the desired point. Little Rock & M. R. Co. v. East Tennessee, V. & G. R. Co. (C. C. W. D. Tenn.), 4 I. C. R. 261.

(q) Other connecting carriers are not entitled to through billing and rating and to the use of tracks and terminals of a carrier which has voluntarily made an arrangement giving these advantages to one connecting carrier. Little Rock & M. R. Co. v. St. Louis & S. W. R. Co. (C. C. App 8th C.), 4 I. C. R. 854.

(r) Through rates are matters of contract between carriers composing the through lines, and connecting carriers cannot be compelled by the Interstate Commerce Commission to contract with each other. Commercial Club v. Chicago R. I. & P. R. Co., 6 I. C. C. 647.

(s) A carrier subject to the Act to Regulate Commerce cannot, in the absence of a joint tariff established by agreement or understanding with a connecting line as contemplated by §6, lawfully publish any other rates for transportation between points on its own line as to traffic destined to points on the connecting line than those fixed for traffic not destined beyond its own line. New York, N. H. & H. R. Co. v. Platt, 7 I. C. C. 323.

(t) The Commission has no doubt of the right of carrier to agree upon thru rates which shall be different from and lower than the sum of the locals. The principle has frequently been considered and applied in cases passed on by the Commission. N. Y. N. H. & H. R. v. Platt, 7 I. C. C. 323, 335.

(u) Freight carried defendants from New Orleans to either Atlanta or La Grange, Ga., is through freight and entitled to through service, and the manner in which they conduct the service cannot alter the character of such freight so as to make that carried for La Grange partly local, while the freight to Atlanta is wholly through. Calloway v. Louisville & Nashville R. Co., 7 I. C. C. 431.

(v) Carriers who have engaged under their tariffs and course of business in the through transportation of traffic from Chicago and other points to Kearney, Nebr., over continuous lines formed by their connected roads are required by the Act to Regulate Commerce to make their rates on such transportation reasonable and otherwise in conformity with the state statutes; and such duty is not avoided by the fact that the rate to Kearney may be combinations of rates to and from Omaha. Gustin v. Atchison, T. & S. F. R. Co., 8 I. C. C. 277.

(w) If a railroad company cannot secure other than an unreasonably low share of a joint rate to a seaport on another road, it may be justified in declining to join in such a rate, especially when it can take the traffic to a seaport reached by its own road; but a carrier engaged in transportation over the through line finds no such justification when it is able to secure for itself a share of the joint rate which fully equals the rate established by it for purely local service over like distances on its own road. Savannah Bureau of F. & T. v. Louisville & N. R. Co., 8 I. C. C. 377.

(x) Joint through rates and routes are ordinarily the subect of agreement between the participating carriers, but when they have been established, and until finally abrogated or changed, they are required by the statute to be kept open to public use. Consolidated Forwarding Company v. S. P. Company, 9 I. C. C. 182, 205.

(y) There is no competitive relation between petroleum and its products on the one hand and other articles of traffic on the other, and the failure of the New Haven Company to provide joint rates on petroleum and its products, while maintaining joint rates on other traffic, does not constitute wrongful preference and advantage. Fred G. Clark Co. v. Lake Shore & M. S. R. Co., 11 I. C. C. 558.

(z) Every joint rate is a matter of agreement between the parties to it. This agreement must determine what rate shall be charged, what division of this rate each carrier shall receive, upon what conditions the exchange of this traffic and the adjustment of these divisions shall be conducted. No just order can be made and enforced unless the

authority making that order has the right in case the railways do not themselves agree, to determine these various questions. Clark Co. v. L. S. & M. S. R. Co., 11 I. C. C. 558, 579.

IMPORTANT CASES SINCE 1908

(aa) Divisions are not essential to legalize a joint rate. Germain Co. v. N. O. & N. E. R. R. Co., 17 I. C. C. 22, 24.

(bb) Carriers should establish thru routes and joint rates so that there may be the freest movement of traffic without the necessity of reshipment. Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 76.

(cc) Carriers should freely interchange freight between their respective lines to the end that interstate commerce may move without interruption or delay. Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 184.

(dd) Section 1 imposes on carriers the duty to establish through routes and make reasonable rates applicable thereto. Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 184.

(ee) A carrier cannot say that a certain through route and joint rate has been inadvertently established when the same was in effect for over a year, during which time at least 42 cars moved via that route. Joint Rates on Grain via Minnesota Transfer, 26 I. C. C. 595, 597.

(ff) The provision of section 15, that the shipper shall in all instances have the right to determine over which of several competing lines his freight shall be transported, is not a flexible rule of law to be expanded or contracted to meet the needs of carriers under varying situations which may or may not be their own creation, and the Commission has promulgated nothing in the nature of exceptions thereto or exemptions therefrom. Concentration of Cotton at Points in Arkansas, 29 I. C. C. 106, 108.

(gg) The law requires the establishment and maintenance of through routes and joint rates in order that traffic may be moved, whether in greater or lesser volume and for long or short distances, without the delays or other handicaps of reshipment. It recognizes the carrier's right to its own long haul, hence it releases it from the obligation to participate in a through route between any two points which does not include all or substantially all of its line or lines between those points, except when an unreasonably long or circuitous route would otherwise be created; but it goes further, and where through routes and through rates have been established, reposes in the shipper the right to dictate how his shipments must be routed, both as to terminal carriers and intermediate carriers. Concentration of Cotton at Points in Arkansas, 29 I. C. C. 106, 108.

(hh) Where a complainant petitioning for the establishment of through routes and joint rates is not yet participating in interstate traffic, the fact that no fares are published nor rates filed with the Commission is no bar to the complaint. Pac. Nav. Co. v. S. P. Co., 31 I. C. C. 472, 477.

(ii) Where a common carrier asks establishment in connection with it of through routes and joint rates, the burden of proof rests with such complainant to show that it has sufficient financial responsibility to undertake properly the service in which it asks to share. Eastern Shore Development S. S. Co. v. B. & O. R. R. Co, 32 I. C. C. 238, 242.

(jj) A carrier has no right, by refusing through routes and joint rates, to dictate to its shippers markets for purchase or sale, or in any other way to restrict fair competition. Lumber to C. M. & St. P. Ry. Stations, 38 I. C. C. 587, 589.

(kk) The public interest at the point of delivery is to be considered as well as that at point of origin. Mason Valley Mines Co. v. W. P. R. R., 64 I. C. C. 477, 482.

(ll) Under ordinary conditions the practice of making through rates by adding to a rate for a long distance the full local rate from the basing point to destinations a relatively short distance beyond disapproved. Edwards & Bradford Lumber Co. v. Director General, as Agent, 64 I. C. C. 503, 506.

(mm) Carriers whose rails do not connect at interchange points may join in the establishment of through routes and joint rates and may employ a switching line to effect transfer of traffic between their rails. Minneapolis & St. Louis R. C. Co. v. P. & P. U. Ry., 68 I. C. C. 412, 417.

(nn) To compel the application of short line rates over indirect and longer

routes merely as a means of providing a channel of doubtful benefit to comparatively few shippers, would lay an unnecessary expense upon the railroads against the interest of the public as a whole. When joint rates that are neither unreasonable nor unduly prejudicial are maintained over direct routes adequate response is made to the reasonable requirements of the public, and carriers should not be required to perform wasteful transportation by maintaining the same rates over indirect and more circuitous routes, Michigan Railroad Co. v. P. M. R. R., 74 I. C. C. 489, 500.

(oo) Where a carrier holds itself out to carry traffic to and from a certain point, it must reach that point either over its own facilities or through those of others. Where two carriers join in the publication of joint rates and establish through routes via two junctions where their rails do not meet, there is a holding out to the public of intermediate carriage between their respective lines which must be protected. Switching Charges at Peoria, 77 I. C. C. 43, 47.

(pp) General provision of paragraph (4), section 1, that carriers shall establish through routes and reasonable rates applicable thereto, is subordinated to specific provision of section 15 for establishment of through routes and joint rates. Tidewater Paper Mills Co. v. B. T. R. R. Co., 80 I. C. C. 493, 497.

(qq) The language of Congress is explicit that commerce shall flow without hindrance or delay over through routes and upon reasonable through rates. Krauss Bros. Lumber Co. v. G. M. & N. R. Co., 87 I. C. C. 412, 413.

(rr) The Act imposes upon common carriers subject to its provisions the duty of establishing a prescribed mode the rates, whether individual or joint, to be charged for the transportation in interstate commerce of property over their lines; the rates so established are obligatory upon carrier and shipper and must be strictly observed by both until changed in the mode prescribed. U. S. v. Miller, 223 U. S. 599, 602, 32 Sup. Ct. 323, 56 L. ed. 568.

ALL OTHER CITATIONS

Stonega Coke & Coal Co. v. L. & N. R. R. Co., 23 I. C .C. 17, 26; R. R. Comm. of La. v. St. L. S. W. Ry. Co., 23 I. C. C. 31, 34; Southern Illinois Millers' Ass'n v. G. H. & S. A. Ry. Co., 23 I. C. C. 512, 513; In Re Advances on Coal, 23 I. C. C. 618; In Re Advances on Meats and Packinghouse Products, 23 I. C. C. 656, 669; Missouri & Illinois Coal Co. v. I. C. R. R. Co., 22 I. C. C. 39, 44, 46; Bluefied Shippers' Ass'n v. N. & W. Ry. Co., 22 I. C. C. 519, 532; Traffic Bureau of Merchants' Exchange of San Francisco v. S. P. Co., 19 I. C. C. 259, 261; Isbell-Brown Co. v. L. S. & M. S. Ry. Co., Unrep. Op. 231; Hamilton v. American Express Co., Unrep. Op. 355; Haverhill Box Board Co. v. B. & A. R. R. Co., 28 I. C. C. 336, 338; Truckers' Transfer Co. v. C. & W. C. Ry. Co., 27 I. C. 275; Louisville & Nashville Railroad Coal and Coke Rates, 26 I. C. C. 20; Coal Rates on the Stony Fork Branch, 26 I. C. C. 168, 173; Wichita Falls System Joint Coal Rate Cases, 26 I. C. C. 215, 223; St. Louis, Springfield & Peoria R. R. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 234; Blakely Southern R. R. Co. v. A. C. L. R. R. Co., 26 I. C. C. 344, 348, 349, 350; Augusta & Savannah Steamboat Co. v. O. S. S. Co., 26 I. C. C. 380, 387; Texas Cement Plaster Co. v. St. L. & S. F. R. R. Co., 26 I. C. C. 508, 510; Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., 26 I. C. C. 630, 634; Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 26 I. C. C. 638, 647; In Re Wool, Hides, and Pelts, 25 I. C. C. 185, 191; Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 185; Swift & Co. v. P. R. R., 29 I. C. C. 464; Town of Pelham v. A. C. L. R. R. Co., 28 I. C. C. 433, 434; Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 674, 677; Milwaukee Produce & Fruit Exchange v. Crosby Transportation Co., 30 I. C. C. 653, 655; Iowa & Southwestern Ry. Co. v. C. B. & Q. R. R. Co., 32 I. C. C. 172; Campbell's Creek Coal Co. v. A. A. R. R., 33 I. C. C. 558, 561; Chamber of Commerce, Houston, Texas, v. I. & G. N. Ry. Co., 32 I. C. C. 247, 254; Oklahoma Portland Cement Co. v. A. L. & G. Ry. Co., 32 I. C. C. 221, 225; Switching Charges on Coal and Coke, 32 I. C. C. 444, 448; New York Dock Ry. v. B. & O. R. R. Co., 32 I. C. C. 568, 574; Campbell's Creek Coal Co. v. A. A. R. R. Co., 33 I. C. C. 558, 561; Stone's Express v. B. & M. R. R., 33 I. C. C. 638, 641; Penn. Paraffine Works v. P. R. R. Co., 34 I. C. C. 179,

192; Crook, Son & Co. v. N. Y. C. & St. L. R. R. Co., Unrep. Op. 2217; Kansas City Missouri Nav. Co. v. C. & O. Ry. Co., 34 I. C. C. 67, 73; Oak Hills, Colo., Coal, 45 I. C. C. 455, 460; Traffic Bureau of Knoxville, Tenn., v. B. & O. R. R., 49 I. C. C. 205, 217; Chicago, Lake Shore & South Bend Ry. Co. v. Director General, 58 I. C. C. 647, 652; Herman Gross v. Director General, 58 I. C. C. 604.

§5. Dispute on Division .

See Advanced Rates, §7 (6); Divisions, §4; Terminal Facilities, §9.

CASES 1887-1908

(a) Defendant published a schedule purporting to be a joint tariff of rates on coal from a point on its road to a number of destinations reached by the complainant railroad company, whereby the complainant company received its full local charges to said destinations from junction points with defendant's road, and the defendant accepted the remainder, which was in each instance less than its established local rate from the place of shipment to the point of connection. Complainant, which also carried coal to the same destinations by a longer route over its own rails, thereby securing greater compensation than was afforded from coal coming to it by defendant's road, refused to unite in the rates named by defendant in said so-called joint tariff, and protested against the use of such rates by a connecting carrier as unauthorized and unlawful for want of mutual consent. HELD: That the complaint should be sustained and the defendant company be required to cease and desist from publishing or applying through rates to points on complainant's lines which are less than the sums of their respective local charges. New York, N. H. & H. R. Co. v. Platt, 7 I. C. C. 323.

IMPORTANT CASES SINCE 1908

(b) Shippers may not be deprived of just through rates merely because carriers can not agree upon a division of joint rates. Williamette Lumbermen's Asso. v. S. P. Co., 51 I. C. C. 250, 261.

(c) The failure of carriers to agree upon divisions is no justification for the cancellation of joint rates. Cancellation of through rates on apples from Pacific coast, 69 I. C. C. 679, 680.

(d) The fact that the carriers have been unable to agree upon a satisfactory division of the joint rate is no excuse for the cancellation of a rate. The Act provides a method for adjusting such controversies in instances where carriers can not reach an agreement. Limestone from Illinois Points to St. Louis, Mo., v. M. P. R. R., 74 I. C. C. 345, 348.

(e) A disagreement between carriers as to divisions is not a justification for the cancellation of joint rates. Cancellation of Joint Rates from and to Green Hill, S. C., on the Alcolu R. R., 74 I. C. C. 571, 573.

(f) Fact that carriers are unable to agree upon satisfactory divisions is no excuse for the cancellation of joint rates. The act provides a method for adjusting such controversies in instances where carriers can not reach an agreement. Limestone from Illinois Points, 74 I. C. C. 345, 348.

(g) A disagreement between carriers as to divisions is not a justification for the cancellation of joint rates. The matter may be presented to the Commission in the manner prescribed by the Act for adjusting such controversies. Cancellation of Joint Rates from and to Green Hill, S. C., 74 I. C. C. 571, 574.

(h) Disagreement between carriers as to divisions does not justify cancellation of through routes and joint rates. The Act provides the means by which such matters may be brought before the Commission, and the shipping public must not be made to suffer because of such disagreements. Fruits and Vegetables from Texas Points, 74 I. C. C. 575, 579.

(i) One of the duties of a common carrier is to participate in such joint rates as the public interest requires. This is an incident of their public undertaking, and equity does not necessarily demand that they be compensated by larger divisions in the instances where it might be more advantageous to confine traffic to their own lines. U. S. War Department v. A. & S. Ry., 77 I. C. C. 317, 355.

ALL OTHER CITATIONS

Chamber of Newport News v. S. Ry. Co., 23 I. C. C. 345, 356 Germain Co. v. N. O. & N. E. R. R. Co., 17 I. C. C. 22, 24; Delray Salt Co. v. C. St. P. M. & O. Ry. Co., 16 I. C. C. 507, 511; Celina Mill

& Elevator Co. v. St. L. S. W. Ry. Co., 15 I. C. C. 138, 142; Gentry v. A. T. & S. F. Ry. Co. ,13 I. C. C. 171, 172; Truckers' Transfer Co. v. C. & W. C. Ry. Co., 27 I. C. C. 275, 279; Rates on Corn Milled at Oenonta, N. Y., 27 I. C. C. 367, 369; Board of R. R. Commissioners of Montana v. D. & R. G. R. R. Co., 27 I. C. C. 522, 524; Wichita Business Assn. v. K. C. M. & O. Ry Co., 29 I. C. C. 669; Okahoma Grain Rates, 28 I. C. C. 462; United States Gypsum Co. v. St. L. & S. F. R. R. Co., Unrep. Op., A-310; Financial Relations etc., L. & N. R. R., 33 I. C. C. 168, 216; Fullerton-Powell Hardwood Lumber Co. v. T. & P. Ry. Co., Unrep. Op. A-895; Coal from Toluca, Ill., 37 I. C. C. 230, 231; Passenger Fares from Milwaukee, Wisc., 38 I. C. C. 98, 100; Lake and Rail Rate Cancellations, 38 I. C. C. 201, 202; Oak Hills, Colo., Coal, 45 I. C. C. 455, 460; Nebraska Colorado Grain, 50 I. C. C. 79, 80; Limestone from Illinois Points, 74 I. C. C. 345, 347; Waste Paper from Long Island R. R., 83 I. C. C. 35.

§6. Circuitous Routes.

See Advanced Rates, §18 (8); Long and Short Hauls, §9.

IMPORTANT CASES SINCE 1908

(a) Distance is an important element in determining whether a routing is satisfactory, since a circuitous route involving a longer haul and therefore greater delay would not be, ordinarily, as desirable as a direct one. Pacific Coast Lumber Mfrs. Assn. v. N. P. Ry. Co., 14 I. C. C. 51, 54.

(b) Generally speaking, shippers are entitled to a reasonable charge by the direct line of transportation, and an unreasonable rate by the direct line cannot be allowed for the purpose of permitting a circuitous line to engage in the business at a reasonable profit. Grain Rates in Central Freight Assn. Territory, 28 I. C. C. 549, 558.

(c) Carriers whose mileage exceeds that of the short line by not less than 15 per cent should be granted authority to meet the rates of the short line and to carry higher rates to intermediate points not less than 800 miles distant from Galveston. Rates on Tropical Fruit from Gulf Ports, 30 I. C. C. 621, 632.

(d) To compel the application of short-line rates over indirect and longer routes, merely as a means of providing a channel of doubtful benefit to comparatively few shippers, would lay an unnecessary expense upon the railroads against the interest of the public as a whole. When joint rates that are neither unreasonable nor unduly prejudicial are maintained over direct routes adequate response is made to the reasonable requirments of th public, and carriers should not be required to perform wasteful transportation by maintaining the same rates over indirect and more circuitous routes. Kansas City Hay Dealers Asso. v. C. G. W., 49 I. C. C. 377.

(e) A circuitous route is defined as one which exceeds the short line by at least 15 per cent. Michigan Railroad Co. v. P. M. R. R., 74 I. C. C. 489, 500.

(f) Other elements being similar, when haul of substantial distance is involved, it can hardly be said that route 388 miles in length is unreasonably long as compared with route of 304 miles, particularly when former is single line and the latter two-line movement. New Mexico Central Ry. Co. v. A. T. & S. F. Ry. Co., 81 I. C. C. 718, 721.

(g) The law does not require a carrier with a long route to meet the rate of a short-line competitor Columbus Board of Trade v. A. C. L. R. R. Co., Unrep. Op. 2062.

ALL OTHER CITATIONS

In Re Advances on Meats and Packinghouse Products, 23 I. C. C. 656, 662; Edwards & Bradford Lumber Co. v. C. B. & Q. R. R. Co., 25 I. C. C. 93, 94, 95; In Re Lumber Rates, 25 I. C. C. 50, 51; In re Southern Ry. Co., 25 I. C. C. 407, 410; McCollough v. L. & N. R. R. Co., 25 I. C. C. 48, 49; In re Coal Rates to Milwaukee and other Wisconsin Points, 27 I. C. C. 223, 228; Transcontinental Rates from Group F., 28 I. C. C. 1, 4; Haverhill Box Board Co. v. B. & A. R. R. Co, 28 I. C. C. 336; U. S. v. U. P. R. R. Co., 28 I. C. C. 518, 522; Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co., 28 I. C. C. 563, 567; Merchants and Mfrs. Asso. v. C. R. Co., 30 I. C. C. 396, 400, 401; Cement Rates from Mason City, Iowa, 30 I. C. C. 426, 428; Marble Rates from Vermont Points, 29 I. C. C. 607; Rates on Hogs from Sioux Falls, S. D., Unrep. Op. A-840; Wilson-Leuthold Lbr. Co. v. C. M. & St. P. Ry. Co., 34 I. C. C. 146, 148.

§7. Obigation to Carry.

CASES 1887-1908

(a) Every continuous rail line or route authorized by the sixth section of the Act is of necessity constituted by two or more separate roads uniting by voluntary agreement and fixing joint through rates over the lines thus formed. Such a route is in every instance as definite and specific a physical line as is either of the separate roads which constitute it. The formation of through routes is not compulsory, but when established and so long as they exist, the obligations, restraints, and regulations of the law attach to them in all respects as fully as to a line composed of a single road. Consolidated Forwarding Co. v. S. P. Co., 9 I. C. C. 183, 205.

(b) While defendant carrier was entitled to insist upon the application of the through rate to the through shipment on its line to Hope, Ark., instead of applying the sum of local rates based upon Texarkana, Ark., which sum was less than the published through charge, it could not lawfully refuse to receive and carry complainant's freight to Texarkana under the local rate to that point, even though the complainant's attempt to ship its freight to Texarkana was for the purpose of having it subsequently reshipped from that point by another line to Hope, Ark. Hope Cotton Oil Co. v. Texas & P. R. Co., 10 I. C. C. 696.

(c) The amendment of June 29, 1906, makes it the duty of carriers subject to the Act to establish through routes and just and reasonable rates applicable thereto, and invests the Commission with authority, under certain conditions, to put in operation such through routes and joint rates where the carriers have refused to do so. Enterprise Navigation Company v. Pennsylvania R. R., 12 I. C. C. 327, 332.

(d) There are joint responsibilities assumed by carriers when they publish a joint rate, and one of those obligations is to treat that rate as a unit and to treat the shipment thereunder as a unit, and this, not because of any contractual relation between the shipper and the originating carrier but because the act of the originating carrier in accepting the shipment in conformity with its tariff provisions was the act of all its connections joining in that tariff. Pacific Purchasing Co. v. C. & N. W. Ry., 12 I. C. C. 549, 552.

(e) If a shipper, when he delivers a certain number of pounds of freight at a freight depot to be transported over a through route formed by the carriers themselves under their own agreement, can not be assured that such shipment will move under the rate legally established, there is no value whatsoever in the policy of the carriers and of the law under which through routes are established. Pacific Purchasing Co. v. C. & N. W. Ry., 12 I. C. C. 549, 552.

IMPORTANT CASES SINCE 1908

(f) Under the statute it is the undoubted right of any shipper to have his carload traffic transported from and to interstate points at through rates and without the requirement of unloading and reloading at his expense at points of connection of different carriers. Carriers are required to establish through routes, keep these routes open and in operation, furnish the necessary facilities for transportation, and make reasonable and proper rules of practice as between themselves and shippers. St. Louis, Springfield & Peoria R. R. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 234.

(g) Carriers having elected to join in through routes and joint fares can not be heard to say that possibilities of reciprocity as between themselves and smaller possibilities of reciprocity as between each of them and complainant justify the discrimination complained of. Western Pacific R. R. Co. v. S. P., 55 I. C. C. 71, 81.

(h) Where a carrier holds itself out to carry traffic to and from a certain point, it must reach that point either over its own facilities or through those of others. Where two carriers join in the publication of joint rates and establish through routes via junctions where their rails no not meet, there is a holding out to the public of intermediate carriage between their respective lines which must be protected. Switching Charges at Peoria, 77 I. C. C. 43, 47.

ALL OTHER CITATIONS

Corporation Commission of Oklahoma v. C. R. I. & P. Ry. Co., 17 I. C. C. 379, 382; Standard Lime & Stone Co. v. Cumberland Valley R. A. Co., 15 I. C. C. 620; Meridian Fertilizer Factory v. T. & P. Ry. Co., 26 I. C. C. 351, 352; C. &

N. W. Ry. Reconsignment Rules, 29 I. C. C. 620, 624; Oklahoma Portland Cement Co. v. A. L. & G. Ry. Co., 32 I. C. C. 221, 225; United States v. S. V. Ry. Co., 53 I. C. C. 607, 618; Coal from West Virginia mines to the South, 59 I. C. C. 486, 487.

§8. Relation to Similar Points.
See Relative Rates.

CASES 1887-1908

(a) Neither competition nor the need of greater revenue can operate to justify unjust discrimination, as is evidenced by a through rate on traffic from a competing locality higher than the combination of separately established charges to and from another competing locality on the direct through ine. Hilton Lumber Co. v. Wilmington & W. R. R., 9 I. C. C. 17, 35.

(b) Complainant attacked rates charged on furniture, carloads, from Chicago and Duluth to Norfolk, Nebr., as unreasonable. Norfolk is reached by the C. St. P. M. & O., F. E. & M. V., and U. P. There is no through rates from and to the points in question via the C. & N. W. Sioux City and C. St. P. M. & O., although through rates are published via C. & N. W., U. P., and C. & N. W., and F. E. & M. V., although the former route is shorter. Through rates are also in effect to Lincoln, Nebr., a point beyond Norfolk, and also to Columbus, Nebr. HELD: The failure of the C. St. P. M. & O. to publish through frieght rates from Chicago, Ill., and other points to Norfolk, Nebr., while such through rates are established and published by that company in connection with other carriers to other points on its line in Nebraska amounts to unlawful discrimintion against Norfolk. HELD: Further, rates from Chicago to Norfolk should not exceed those to Columbus, Nebr., and rates from Duluth should not exceed the rate from Duluth to Emerson, Nebr., an intermediate point, plus the local rate from Emerson to Norfolk, Nebr. Johnson v. C. St. P. M. & O. Ry., 9 I. C. C. 221.

(c) Complainant attacked rates from Memphis, Tenn., to local points in Arkansas on the St. Louis Southwestern Ry., and from such points on said lines to Memphis as unjustly discriminatory compared with the rates locally in Arkansas. Generall speaking, it may be stated that rates between Memphis and points in Arkansas on the Iron Mountain are the bridge tolls higher than those for equal distances specified in the Arkansas Commission's schedule. While reductions were made between Memphis and points on the Iron Mountain, corresponding reductions were not made by the defendant in its rates between Memphis and local points in Arkansas. HELD: Defendant's rates on cotton from local points in Arkansas to Memphis are not required to be reduced, but it is directed that the relation of cotton rates from such points to Memphis and St. Louis be made more uniform from particular stations. Defendant's rates from local points in Arkansas to Memphis on traffic other than cotton are not disturbed, but defendants is recommended to consider revision of its rates to Memphis on livestock and cottonseed. Defendant's rates from Memphis to points in Arkansas, as compared with the Arkansas Commission mileage rates, including those applying from Little Rock and Pine Bluff, Ark., are held to constitute a discrimination for which it is doubtful whether defendant can be held responsible, and in that respect complainants contention is not sustained: but it is found and decided that defendant's rates from Memphis to local points in Arkansas are in many instances unreasonably high and should be reduced. In the Matter of Freight Rates between Memphis and Points in Arkansas, 11 I. C. C. 180.

IMPORTANT CASES SINCE 1908

(d) The interests of carriers are not alone concerned in a matter of through routes and joint rates. A carrier cannot close such a route and cancel a rate applicable thereto to obtain a long haul, when to do so would be to the detriment of shippers and consumers of the territory involved. Public policy supersedes the rights of carriers. Missouri Millers' Club v. St. L. & S. F. R. R. Co., 26 I. C. C. 630, 633.

(e) A carrier has no right, by refusing through and joint rates, to dictate the markets from which shippers on its line must purchase, or the territory to which industries on its line must sell, or in any other way to restrict fair competition. Lumber to C. M. & St. P. Ry. Stations, 38 I. C. C. 587, 589.

(f) Proposed cancellation of joint

rates on coal from L. & N. R. R. points in eastern Kentucky and Tennessee and southwestern Virginia to points in Minnesota, South Dakota and Wisconsin, leaving in effect combinations which became higher than the joint rates due to the application of general increases to the separate factors, found not justified. The joint rates, voluntarily established by carriers, have been long in force, and while they have never borne a definite relationship to the rates from southern Illinois, carriers are not warranted in creating an undue prejudice on the one hand simply to bring about a uniformity of rates on the other. Coal from Kentucky, Tennessee, and Virginia, 73 I. C. C. 447.

ALL OTHER CITATIONS

Males Co. v. L. & H. R. R. R. Co., 17 I. C. C. 280, 281, 282; Cedar Rapids & Iowa City Ry. & Light Co. v. C. & N. W. Ry. Co., 13 I. C. C. 250, 255; Shelby County Washed Coal Co. v. C. B. & Q. R. R. Co., Unrep. Op. 565; Central Commercial Co. v. L. & N. R. R. Co., 27 I. C. C. 114; Sheridan Chamber of Commerce v. C. B. & Q. R. R., 26 I. C. C. 638, 645; Campbell's Creek Coal Co. v. A. A. R. R., 33 I. C. C. 558; Sioux City Com. Club v. C. B. & Q. R. R., 41 I. C. C. 518; Beaver Valley Milling Co. v. A. T. & S. F. Ry. Co., 41 I. C. C. 533, 538; J. J. Stehley v. Director General, 64 I. C. C. 59; Wagner & Steiner v. Director General, 68 I. C. C. 138; Farmers Elevator Co. of Southern Lake Co., Ind., v. C. I. & L. Ry., 68 I. C. C. 159; Great Lakes Dredge & Dock Co. v. Director General, 68 I. C. C. 274; General Porcelain Co. v. Director General, 68 I. C. C. 322; Humble Pipe Co. v. Director General, 68 I. C. C. 651; Oliphant Johnson Coal Co. v. C. & E. I. R. R., 69 I. C. C. 1; Oscar Mayer & Co. v. C. M. & St. P. Ry., 69 I.C. C. 519; Refinite Co. v. Director General, 69 I. C. C. 724; Clay County Coal Operators Asso. v. C. & M. R. Co., 81 I. C. C. 414.

§9. Right to Favor Own Line.

See Discrimination, §7; §10; Origin of Traffic.

CASES 1887-1908

(a) The action of a carrier in diverting through traffic from a shorter route over which it participates in carriage, so as to secure for itself greater aggregate revenue through a long haul by a different route over which it is also engaged in transportation, sometimes results in discriminations and prejudices, both as to rates and facilities; and inequality of treatment of shippers and localities, having no other justification than this end, is indefensible. Colorado Fuel & Iron Co. v. S. P. Co., 6 I. C. C. 488, 516.

IMPORTANT CASES SINCE 1908

(b) A carrier may in its own interest, if it so desires, carry for a longer distance over its own line than would be necessary if carried over the line of its competitors, in order to obtain a portion of the competitive business upon terms that will afford some profit. It does not necessarily follow, however, that a carrier not competing for traffic in this way thereby subjects itself to an order compelling it to do so. Hydraulic Press Brick Co. v. St. L. & S. F. R. R. Co., 13 I. C. C. 342, 347.

(c) The Commission has little sympathy with and will not ordinarily lend its aid to, an effort by road to secure traffic that is reasonably tributary to another road by compelling the latter to join with it in through routes and rates, but will not permit the theory as to what traffic is tributary to a road to be pushed to such an extreme as to impose an undue burden upon shippers. C. & C. Traction Co. v. B. & O. S. W. R. R. Co., 20 I. C. C. 486, 492.

(d) A trunk line carrier which purchases a branch line road is justified in canceling through joint rates with another carrier when such cancellation will tend to move traffic entirely over its own line at reasonable and nondiscriminatory rates to the exclusion of the former two-line haul. In Re Proposed Rates on Lumber, 20 I. C. C. 575, 580.

(e) The statute provides that in establishing joint rates and through routes each carrier against which the order is made shall be given the benefit of the long haul by its own line "unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established." The Commission cannot therefore establish in every case a through route and a joint rate, but must work under the limitation imposed by the Act of Congress as above set forth. In Re Investigation of Alleged Unreasonable Rates on Meats, 23 I. C. C. 656, 662.

(f) The carriers owe a duty to establish and maintain through routes and joint rates so that there may be the freest movement of traffic without the necessity of reshipment. In the formation of these through routes, however, the law recognizes the right of the carrier to protect its own long haul, and it may not be required against its own will to participate in a through route between any two points which does not include all, or substantially all, of its line or lines between those points, except when an unreasonably long or circuitous route would otherwise be established. Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 76.

(g) The Commission does not condemn reasonable nondiscriminatory transit rates and privileges or the practice of carriers of reducing their reasonable rates on inbound raw material in consideration of receiving the outbound shipment of manufactured product, but does condemn as unreasonable and discriminatory the addtion thereto of any sum as a penalty to be forfeited if the outbound traffic does not move over the same line which handled the inbound raw material. May Bros. v. Y. & M. V R. R., 26 I. C. C. 323, 328.

(h) The law upholds a carrier in retaining tonnage to its line where the transportation can be performed with reasonable dispatch and without undue discrimination. Suffern Grain Co. v. I. C. R. R., 27 I. C. C. 192, 194.

(i) The cancellation of through routes not justified by determination of delivering carrier to protect its own mills from competition of mills on other lines. Rates on Corn Milled at Oneonta, 27 I. C. C. 367, 369.

(j) It does not lie within the proper exercise of the carriers' power arbitrarily to dictate where grain or other products shall be sold and what the delivering line shall be. Toledo Produce Exchange v. A. A. R. R. Co., 27 I. C. C. 536, 544.

(k) The law upholds the carrier in retaining tonnage on its line where the transportation can be performed with reasonable dispatch and without undue discrimination. It is also settled that the Commission's authority under section 15 of the Act to establish in the first instance, or to continue in force voluntarily established through routes and joint rates, is limited to the extent that it may not require a carrier, without its consent, to embrace in such through route substantially less than the entire length of its railroad between the termini of the through route, unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established. West Coast Lumber Mfrs. Assn. v. T. E. R. R., 45 I. C. C. 227, 229.

(l) While it is clearly in the interest of carriers to restrict delivery to points on their own lines, they should not be permitted to do so when the result is to restrict in number the markets that otherwise would be available to shippers. Kansas City Hay Dealers Asso. v. C. R. I. & P. Ry., 49 I. C. C. 350.

(m) Section 15 of the act provides that in establishing joint rates a carrier may not be required to embrace in the through route substantially less than the entire length of its line between the terminal of the proposed through route unless such inclusion would result in an unreasonably long route compared with another practicable through route which could otherwise be established. Routing on sheep from K. C. M. & O. Texas points to Kansas City, 69 I. C. C. 4, 6.

(n) A carrier endeavoring to restrict its local markets to mines on its own lines unless higher rates are paid, is not justified in refusing to maintain reasonable joint rates from other producing districts. Coal from B. & L. E. R. R. stations to B. R. & P. Ry. stations, 73 I. C. C. 5, 6.

(o) Arrangement sought whereby the Kansas City Southern would be required to interchange traffic with its competitor, the Southern Pacific, at Port Arthur, Tex., legally possible only through a condemnation of the terminals of the K. C. S. for use by the S. P., which has access thereto provided the traffic moves via Beaumont, Tex. HELD, prayer equivalent to establishment of a through route and joint rate embracing less than the full length of the K. C. S. and since no better service would accrue to Port Arthur interests or the general public, the K. C. S. should not be required to afford such facilities to other roads. Port Arthur Chamber of Commerce v. T. & F. S. Ry., 73 I. C. C. 361.

(p) In the absence of a showing that the public interest would suffer by

routing traffic through a specified point, a carrier should be allowed to handle traffic in its possession over its own line as far as it can. Routing of Coal from Western Maryland Mines to Eastern Destinations. 74 I. C. C. 127.

(q) While the law does not permit the commission to require rail carriers to establish through routes which result in the short-hauling of one carrier which has a reasonably direct route of its own, it is not a necessary conclusion, when such routes and joint rates are established, that local rates are fair divisions for the carrier which is short-hauled. U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 317, 355.

(r) In absence of undue prejudice or an unduly circuitous route, the commission can not, because of jurisdictional limitation contained in paragraph (4) of section 15 of the act, require a carrier to turn traffic over to a connecting line when to do so would require it "to participate in a through route embracing substantially less than entire length of its line." The New York Harbor case, 47 I. C. C., 643, 722. Miller Paper Co. v. P. R. R. Co., 80 I. C. C. 314, 317.

(s) A carrier originating traffic or receiving it from its connections should be allowed to carry it as far as it can before delivering it to a connecting line, if the public interest does not suffer thereby. Intermediate routing via North Dakota junctions on transcontinental traffic. 81 I. C. C. 272, 275.

(t) The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest establish through routes, joint classifications, and joint rates, fare or charges, applicable to the transportation of passengers or property, and the divisions of such rates, fares or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. In establishing any such through route the Commission shall not require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad which lies between the termini of such proposed through route, unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established. New Mexico Central Ry. v. A. T. & S. F. R. Co., 81 I. C. C. 718, 720.

(u) With certain exceptions, a carrier may insist, as to traffic which it originates, upon including in a through route so much of its line as lies between points of origin and destination, provided such route is not unreasonably long. But a carrier has no right, under guise of reserving to itself the long haul, to restrict markets in which shippers may dispose of their products. Transit on Lumber and Forest Products, 83 I. C. C. 451, 458.

(v) A carrier is entitled to handle traffic originated by it over the route which will give it the long haul provided that such route is reasonable and practicable. Board of Railroad Commissioners of Montana v. C. M. & St. P. Ry., 88 I. C. C. 183, 184.

ALL OTHER CITATIONS

Van Natta Bros. v. C. C. C. & St. L. Ry. Co., 23 I. C. C. 1, 5; In Re Advances in Rates From Chicopee, Mass., 23 I. C. C. 263; Red River Oil Co. v. T. & P. Ry. Co., 23 I. C. C. 438, 447; Tap-line Case, 23 I. C. C. 549, 650; Rates on Cottonseed and its Products, 28 I. C. C. 219; Rates on Plaster and Gypsum Rock, 27 I. C. C. 67; Salt Rates from Wisconsin to Iowa, etc., 27 I. C. C. 526, 529; Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 648; Blue Grass Lumber Co. v. L. & N. R. R. Co., 26 I. C. C. 438, 444; Omaha Grain Exchange v. C. B. & Q. R. R. Co., 26 I. C. C. 553, 558; Joint Rates on Grain via Minnesota Transfer, 26 I. C. C. 595, 598; Commercial Club of Superior v. G. N. Ry. Co., 24 I. C. C. 96, 113; Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 191; Southwestern Shippers Traffic Assn. v. A. T. & S. F. Ry. Co., 24 I. C. C. 570, 586; Memphis Grain & Hay Assn. v. S. L. & S. F. R. R. Co, 24 I. C. C. 609, 615; Wichita Board of Trade v. A. T. & S. F. Ry. Co., 29 I. C. C. 376, 379; Lumber Rates, Oregon and Washington to Eastern Points, 29 I. C. C. 609, 612, 614; Rates on Green Fruit from Idaho, Oregon and Utah, 29 I. C. C. 650; Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 677, 679; Rates on Cottonseed and Its Products, 28 I. C. C. 219, 221; United States v. U. P. R. R. Co., 28 I. C. C. 518, 523, 524; Paducah Board of Trade v. I. C. R. R. Co., 28 I. C. C. 583, 591; Waverly Oil Works Co. v. P. R. R. Co., 28 I. C. C. 621, 630; Lumber Rates from North

Pacific Coast Points, 30 I. C. C. 111, 113, 114; Merchants & Mfrs. Asso. v. C. R. R. Co. of N. J., 30 I. C. C. 396, 399; Concentration of Cotton at Points in Arkansas, 29 I. C. C. 106, 108; Marble Rates from Vermont Points, 29 I. C. C. 607, 608; Downie Pole Co. v. N. P. Ry. Co., 31 I. C. C. 142, 143; Wheeler Lumber Bridge & Supply Co. v. A. T. & S. F. Ry. Co., 30 I. C. C. 343, 344; Cement Rates from Mason City, 30 I. C. C. 426, 429, 430; Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 578; St. L. I. M. & S. Ry. Co. v. U. S., 217 Fed. 80, 84; Oklahoma Portland Cement Co. vs. O. L. & G. Ry. Co., 32 I. C. C. 221, 225; Lumber Rates from Oregon and Washington to Eastern Points, 31 I. C. C. 191, 192; New York Dock Ry. v. B. & O. R. R. Co., 32 I. C. C. 568; North American Smelting Co. v. B. & O. R. R. Co. Unrep. Op. A-804; Cancellation of Routes in Connection with Wool and Mohair to Eastern Points, Unrep. Op. A1844; Columbia Gold Min. Co. v. O. W. R. R. & Nav. Co., 35 I. C. C. 42, 43; The Ogden Gateway Case, 35 I. C. C. 131, 141; Grain to California Points 38 I. C. C. 367, 368, 369; Lumber to C. M. & St. P. Ry. Stations 38 I. C. C. 587, 589; Export Grain to Gulf Ports, 40 I. C. C. 280; Grain to Arkansas Points, 40 I. C. C. 49, 52; Fruits and Vegetables from Texas Points, 40 I. C. C. 673, 674; Louisville Board of Trade v. L. & N. R. R. Co. 40 I. C. C. 679, 689; Jackson Chamber of Commerce v. N. Y. C. R. R. Co., 42 I. C. C. 155, 156; Rawson-Works Lumber Co. v. N. P. Ry., 42 I. C. C. 303, 306; I. & S. W. Ry. v. C. B. & Q. R. R., 42 I. C. C. 389; West Coast Lumber Mfrs. Assn. v. T. E. R. R., 45 I. C. C. 227, 230, 234, 235; National Wool Growers' Asso. v. B. G. R. R. Co., 48 I. C. C. 587, 589; Petroleum from Oklahoma Points, 48 I. C. C. 737; National Lumber Co. v. A. F. & S. R. R., 50 I. C. C. 133, 134; Kaw River Sand & Gravel Co. v. A. T. & S. F. Ry., 51 I. C. C. 350, 354; Kaw River Sand & Material Co. v. A. T. & S. F. Co., 53 I. C. C. 28, 31; Inman Akers & Inman v. Hines, 55 I. C. C. 146, 148; Cancellation of Joint Rates with Gulf, Mobile & Northern R. R., 59 I. C. C. 45; Gill v. Director General, as Agent, 59 I. C. C. 119, 120; Coal from West Virginia Mines to Southern Points, 59 I. C. C. 486, 487; Coal to Atlanta, Ga., via Cartersville and W. & A., 60 I. C. C. 509; Miller Paper Co. v. P. R. R. 62 I. C. C. 705, 708; Northern Potato Traffic Asso. v. B. & O. R. R. Co., 61 I. C. C. 680, 686; Boston Wool Trade Asso. v. A., T. & S. F. Ry. Co., 61 I. C. C. 228, 229; Routing on Coal from Western Maryland Ry. Mines, 66 I. C. C. 103, 108; Mason Valley Mines Co. v. W. P. R. R., 64 I. C. C. 477; Southeastern Express Co. v. Amer. Ry. Exp. Co., 78 I. C. C. 126, 129; Tidewater Paper Mills Co. v. B. T. R. R. Co., 80 I. C. C. 493, 497; Fort Smith S. & R. R. R. v. A. C. R. R., 87 I. C. C. 617, 621.

§10. Status of intermediate carrier.

IMPORTANT CASES SINCE 1908

(a) There is no provision in the law for the establishment of through rates by absorbing the local rates of another carrier for the purpose of establishing through routes over a through route composed of two or more carriers over which through route no joint through rate has been fixed by agreement. Coal Rates on the Stony Fork Branch, 26 I. C. C. 168, 173.

(b) Connecting carriers need not accept carload of miscellaneous freight without checking contents. Dubuque Shippers Assn. v. C. & N. W. Ry. Co. 26 I. C. C. 565, 566.

ALL OTHER CITATIONS

Southern Illinois Millers' Ass'n. v. L. & N. R. R. Co., 23 I. C. C. 672, 677, 678.

§11. What is satisfactory route.

(1) In general.

See Supra §1.

IMPORTANT CASES SINCE 1908

(a) The purpose of section 15 of the Act relating to the establishment of through routes and joint rates is to afford relief to a shipping community and not to aid carriers to acquire strategic advantages in their contests with one another. While a railroad company is competent to file a complaint under the clause in question and to demand an order establishing said routes and rates with its connections, its right to such relief is to be tested by the needs of the community which it seeks thus to serve and not by the fact that stations on its line in such community have not been accorded such routes and rates by connecting lines. Chicago & Milwaukee Electric R. R. Co. v. I. C. R. R. Co., 13 I. C. C. 20, 26

(b) Railroads of the country are called upon to so unite themselves that they will constitute one national system; they must establish through routes,

keep these routes open and in operation furnish necessary facilities of such transportation, make reasonable and proper rules of practice as between themselves and the shippers and as between each other. Missouri & Illinois Coal Co. v. I. C. R. R. Co., 22 I. C. C. 39, 46.

(c) In every case in which the establishment or cancellation of a route is involved, the needs of the public or the community and the adequacy of the available facilities are questions of primary importance. If it is proposed to cancel an existing route, it is proper to consider whether or not the Commission could have required the establishment of the route as an original proposition. The Commission would not order the establishment of an additional route unless a carrier, shipper, or a community directly interested requested it; nor is there any reason why it should require the maintenance of such a route where carriers parties thereto desire its discontinuance and shippers directly interested do not protest, and where it appears that the community will be adequately served if the cancellation is allowed to be made effective. Ocean and Rail Rates to Charlotte, N. C., 38 I. C. C. 405, 410.

(d) When it is showed that a through route is a great convenience to shippers, add materially to available transportation facilities, and is therefore a substantial benefit to commerce, it must be held to satisfy the test of public necessity. Under these conditions through routes found justified in this case. Lourie Mfg. Co. v. C. N. R. R. Co., 42 I. C. C. 448, 452.

(e) Whether joint rates must be ordered established and maintained depends upon such matters as public demand or necessity and whether or not the absence of joint rates is detrimental or obstructive to the public interest and the ends of justice between the parties. Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 162.

(f) Where there is no apparent necessity or demand on the part of shippers for the establishment of through routes and joint rates, and where there is absence of unjust or unreasonable rates, practices or discriminations, the Commission can not view with favor an effort to require the establishment of such routes and rates merely to enable a carrier to wrest from its connections, or an agent to wrest from its principal, greater compensation. C. M. & St. P. Ry. v. U. P. R. R., 88 I. C. C. 312, 316.

ALL OTHER CITATIONS

Public Service Comm. of Wash. v. N. P. Ry. Co., 23 I. C. C. 256; In Re Advances on Meats and Packing-house Products, 23 I. C. C. 656, 662; Missouri & Illinois Coal Co., v. I. C. R. R. Co., 22 I. C. C. 39, 44; Gile & Co. v. S. P. Co., 22 I. C. C. 298, 301; Mfgrs. Ry. Co. v. St. L. I. M. & S. Ry. Co, 21 I. C. C. 304, 315; Cincinnati & Columbus Traction Co. v. B. & O. S. W. R. R. Co., 20 I. C. C. 486, 494; Florida Cotton Oil Co. v. C. of G. Ry. Co., 19 I. C. C. 336, 338; Gulf Coast Navigation Co. v. K. C. S. Ry. Co., v. K. C. S. Ry. Co., 19 I. C. C. 544, 548; D. & R. G. R. R. Co. v. I. C. C., 195 Fed. 968, 973; Enterprise Fuel Co. v. Penn. R. R. Co. 16 I. C. C. 219, 222, 224; In the Matter of Through Passenger Routes via Portland, Ore., 16 I. C. C. 300, 302, 303; Crane R. R. Co. v. P. & R. Ry. Co., 15 I. C. C. 248, 254; Anthony v. Phila. & Reading Ry. Co., 14 I. C. C. 581, 584; Memphis Freight Bureau v. F. S. & W. R. R. Co., 13 I. C. C. 1, 8; Mansfield Lumber Co. v T. & G. R. R. Co., 26 I. C. C. 138; Omaha Grain Exchange v. C. B. & Q. R. R. Co., 26 I. C. C. 553, 557; Corporation Commission of Oklahoma v. K. C. M. & O. Ry. Co., 32 I. C. C. 384; New York Dock Ry. v. B. & O. R. R. Co., 32 I. C. C. 568, 574, 575; Rates for Transportation of Anthracite Coal, 35 I. C. C. 220; Elmore-Benjamin Coal Co. v. C. & O. Ry. 36 I. C. C. 528; Union Lumber Co. v. G. C. & S. F. Ry., 36 I. C. C. 670; Ocean and Rail Rates to Charlotte, N. C. 38 I. C. C. 405, 410; Chattanooga Implement & Mfg. Co. v. L. & N. R. R. Co., 40 I. C. C. 146, 148; Conner Lumber & Land Co. v. G. N. Ry., 43 I. C. C. 243; West Coast Lumber Mfrs. Asso. v. S. P. & S. Ry., 45 I. C. C. 230, 234; C. M. & St. P. Ry. v. G. N. Ry., 49 I. C. C. 302, 306; Kansas City Hay Dealers Asso. v. C. G. W. R. R., 49 I. C. C. 372, 377; United States v. S. V. Ry., 53 I. C. C. 607, 610; Hillsboro Coal Co. v. C., C., C. & St. L. R. Co., 81 I. C. C. 216.

§11 (2) When through route ordered or denied

CASES 1887-1908

(a) While through routes and reduced through rates, which would facilitate the movement of traffic and thereby

benefit the public, are in some cases prevented by the reasonable refusal of carriers to unite in granting such facilities, and the statute was apparently designed to require connecting carriers to join in the formation of through routes at lower aggregate rates than a combination of locals, the machinery necessary to accomplish that purpose is not provided, and the Commission has repeatedly called attention to this defect in the law. N. Y. N. H. & N. R. Co. v. Platt, 7 I. C. C. 323, 338.

(b) The St. Louis S. W. R. Co. should not be required to make through rates via Memphis merely because it has established through rates from more southerly stations, Kendalls and points south via Gale or Thebes, Cairo or East St. Louis. Re Freight Rates between Memphis and Points in Arkansas, 11 I. C. C. 180.

(c) Complainant attacked refusal of New Haven Company to make joint through rates on petroleum and its products from Cleveland, O., Pittsburgh, Pa., and other points in Pennsylvania and Ohio to points reached by its lines in New England. The New Haven Company does participate in through rates to New England points on other traffic generally. Ordinarily the rate to Boston applies to points in Massachusetts and Connecticutt and it results that its refusal to join in through rates on petroleum and its products operates to increase the rate by the amount of its local charge. The Standard Oil Company brings crude oil by pipe line to its seaboard refineries and sends the refined oil and the products by tank steamers to distributing stations at Wilson Point, Conn., and India Point, R. I., from the distributing stations the oil and products are shipped out locally to interior points. Independent shippers, like complainant, are obliged to send shipments by rail to the same destinations. The combination rates on petroleum and its products from Cleveland and Pittsburgh to points reached by the New Haven result in unreasonable and unjust rates. There is no competitive relation between petroleum and its products on the one hand and the other articles of traffic on the other, and the failure of the New Haven to provide joint rates on petroleum and its products while maintaining joint rates on other traffic, does not constitute wrongful preference and advantage. The Act does not authorize the Commission to compel the establishment of joint rates by connecting carriers, nor to prescribe the divisions of joint rates or the conditions of interchange in case the connecting carriers fail to agree in respect thereto; and it follows, notwithstanding the combination rates complained of are unjust and unreasonable and the general shipping situation is such as to work a practical monopoly in favor of the Standard Oil Company, that relief can not be afforded by the Commission, complaint dismissed. Fred G. Clark Company v. L. S. & M. S. Ry., 11 I. C. C. 558.

(ce) On complaint of failure by defendants to establish a through route and joint rate on beef cattle from points on the International & Great Northern Railroad in Texas to New Orleans, La., it appeared that formerly a through route and joint rate of 45 cents per 100 pounds, except from Laredo, Tex., from which it was 47 cents, were discontinued by defendants other than the International & Great Northern Railroad Company on October 14, 1906, because of dissatisfaction with the rate divisions; that there is no other practicable route from the points of shipment to New Orleans, and that much inconvenience and loss have resulted to shippers from discontinuance of the route. HELD, that the public interest requires establishment and maintenance of the through route and joint through rates, and that the route and former joint rates should be re-established. No opinion upon the reasonableness of such rates is expressed, and this decision is without prejudice to determination of the question of reasonableness which may be involved in another proceeding now pending. Cattle Raisers' Asso. v. G. H., & S. A. R. Co., 12 I. C. C. 20.

(f) Through routes to New Orleans, La., from points on the International & Great Northern Railroad in Texas, on beef cattle, ordered re-established. Cattle Raisers' Asso. of Tex. v. G. H. & S. A. R. Co., 12 I. C. C. 20.

(g) On complaint of failure by defendants to establish a through route and joint rate on beef cattle from Fort Worth, Tex, to Birmingham, Ala., it appeared that joint rates are established over their line between the points mentioned on fresh meats and packing-house products, but not on other traffic, and that there is no through route or

joint rate for beef cattle by any line from Fort Worth to Birmingham: HELD, That a through route and joint rate thereover of not exceeding 50 cents per 100 pounds should be established and maintained for the transportation of beef cattle, in carloads, from Fort Worth to Birmingham. Birmingham Packing Co. v. Texas & P. R. Co., 12 I. C. C. 29.

(h) Complainant attacked rates charged on beef cattle, from Fort Worth, Tex., to Birmingham, Ala., as unreasonable inasmuch as there were no joint routes or through rates. The lines involved are the T. & P., to Shreveport, La., distance 221 miles, V. S. & P., from thence to Meridian, 312 miles over which through rates are in effect. Beyond Meridian the A. G. S., is used distance 152 miles. Through rates are in effect on packing house products, 63c on fresh meats and 48c on other products. There seems to be nothing unnatural in the attempt to transport live animals this distance to a center of population as large as Birmingham. HELD, a through rate should be established not to exceed 50c per 100 pounds. Birmingham Packing Company v. T. & P. R. R., 12 I. C. C. 29.

(i) Through rates to Birmingham, Ala., from Ft. Worth, Tex., on beef cattle, ordered established; it appearing that joint rates are established between the points mentioned, on fresh meats and packing-house products, and that there is no through route or joint rate for beef cattle by any line between such points. Birmingham Packing Co. v. P. & T. R. Co., 12 I. C. C. 29.

(j) Through rates from Ft. Worth, Tex., to Birmingham, Ala., on beef cattle, ordered established. Birmingham Packing Co. v. T. & P. R. Co., 12 I. C. C. 29.

(k) Through rates from points on line of Texas & Pacific Railway in Texas and New Mexico on live stock, held to be required by public interest. American Live Stock Asso. v. T. & P. R. Co., 12 I. C. C. 32.

(l) Complainant attacked refusal of defendants to establish through routes and joint rates on livestock to and from points on the T. & P., over the line of that railway in connection with the lines of other defendants. Previously through routes and joint rates were in effect but they were canceled by the T. & P. Generally speaking, the inability to make through shipments had inflicted hardship and loss upon shippers and seriously interfered with the free movement of live stock through the junction points. The testimony plainly established that the refusal of the T. & P., to continue these joint rates did, by putting upon the shipper the burden of providing for the transfer of his stock at the junction point, occasion annoyance, delay, expense and loss to the shipping public. The only reason for refusing to establish through routes and joint rates is that the T. & P., did not desire to have its equipment moved off its rails. HELD, through routes and joint rates should be established, the measure of the rates to be those in effect prior to the time complaint was filed. American National Livestock Asso. v. T. & P. Ry., 12 I. C. C. 32.

(m) Through rates from Jamestown, R. I., to Philadelphia, for fish, ordered established. Enterprise Transportation Co. v. Pennsylvania R. R. Co., 12 I. C. C. 326.

(n) The complainant, located at Page, W. Va., on the Virginian Railway, 9 miles from its junction with the Chesapeake & Ohio, applies for the establishment of through routes and joint rates, with divisions thereof, for the transportation, in carloads, of coal and coke over these two roads, from Page to destinations on the Chesapeake & Ohio outside of West Virginia, such rates in no case to exceed those applied by the Chesapeake & Ohio from the junction point of the two roads and from other points on the line of the last-mentioned carrier in the same rate group. It is conceded that there is now reasonable and satisfactory through movement and handling of through shipments of the traffic involved, and that the through routes are asked for only for the purpose of supporting the application for joint through rates and divisions of the same, it not being shown that either the combination rates applying via the two roads from Page or the Chesapeake & Ohio rates from points on its line are unreasonable, and it further appearing that to make such an order would result in compelling the Chesapeake & Ohio to either discriminate between patrons in the rate group served by it or to reduce its rates materially on an important part of its traffic. Application denied. Loup Creek

Colliery Co. v. Virginian Ry. Co. et al., 12 I. C. C. 471.

(o) Application for the establishment of through routes and joint rates for coal and coke from Page, W. Va., on Virginian railways to destinations on the Chesapeake & Ohio outside of West Virginia, not to exceed those applied to Chesapeake & Ohio from a junction point and other points in the same rate group, which would result in compelling the Chesapeake & Ohio either to discriminate between patrons in the rate group served by it, or to reduce its rate materially on an important part of its traffic,—denied. Loup Creek Colliery Co. v. V. R. Co., 12 I. C. C. 471.

(p) Through rates from Page, W. Va., on the Virginian Railway, 9 miles from its junction with the Chesapeake & Ohio, to destinations on the Chesapeake & Ohio outside of W. Va., on coal and coke, application for through rates denied; it being conceded that there is no reasonable and satisfactory through movement in handling of through shipments, and that the through routes are asked for only for the purpose of supporting the application for joint through rates and divisions of the same, it not being shown that the combination rates are unreasonable. Loup Creek Colliery Co. v. Virginian R. Co., 12 I. C. C. 471.

(q) Through rates to be established only where necessary to secure reasonable facilities to the public, and to prevent unreasonable and unjust rates, practices and discriminations. Loup Creek Colliery Co. v. Virginian R. Co., 12 I. C. C. 471.

(r) Disparity in rates between points on different roads serving shippers of coal in the same territory does not necessarily constitute such inequality as to justify the establishment of joint through rates from points on the road farthest removed from the destination points on the basis of rates from points on the other road at the expense of the latter, especially where its rates are not shown to be unreasonable. Loup Creek Colliery Co. v. Virginian Ry., 12 I. C. C. 471, 472.

(s) Where neither the interests of the public nor the ends of justice as between the parties directly interested will be promoted by the establishment of through routes and joint rates and divisions thereof, a proper case for the exercise of the authority to order through routes and joint rates is not shown. Loup Creek Colliery Co. v. Virginian Ry., 12 I. C. C. 471, 472.

(t) Through rates do not inevitably follow physical connection. McRate Terminal Ry. v. Southern Ry. Co., 12 I. C. C. 545.

IMPORTANT CASES SINCE 1908

(u) The railroads should be regarded more and more as one national system, and the time may not be far distant when the Commission should proceed to the establishment of joint through class and commodity rates, between practically all points in the country. Intermediate Rate Asso. v. Director General, 61 I. C. C. 226, 246.

(v) The prayer for establishment of through routes and joint rates denied where not shown necessary or desirable in the public interest, and its establishment would replace a one-line movement by a joint-like haul involving the delay and expense of three terminal interchanges and force the originating carrier to short haul itself. Phoenix Chamber of Commerce v. Director General, as Agent, 62 I. C. C. 368, 373, 374; Phoenix Chamber of Commerce v. Director General, as Agent, 62 I. C. C. 412, 416.

(w) The Commission has control over car distribution in the public interest and if there is otherwise sufficient reason for the establishment of joint rates from particular points such rates should not be withheld through fear that carrier's car supply may be depleted. Pittsburgh Term, R. R. & Coal Co. v., Director General, as Agent, 63 I. C. C. 179, 182.

(x) In considering a prayer for the establishment of joint rates the effect upon the possible diversion of traffic should be given consideration; but the desire of a carrier to retain traffic to its own lines should not be permitted to outweigh the public interest if the establishment thereof is shown to be necessary or desirable. Mason Valley Mines Co. v. W. P. R. R. Co., 64 I. C. C. 477, 481.

(y) The mere fact that one common-carrier railroad has a physical connection with another is not of itself sufficient ground upon which to base an order requiring the establishment of joint rates over those roads. The question of whether or not they should be established is

one calling for the exercise of the Commission's judgment upon the circumstances and conditions of each particular case, as the act provides that the Commission may and shall establish joint rates "whenever deemed by it to be necessary or desirable in the public interest." Beaver Sand Co. v. Director General, as Agent, 66 I. C. C. 285, 288, 289.

(z) The question of whether or not the establishment of joint rates should be required is one calling for the exercise of the judgment of the Commission upon the circumstances and conditions of each particular case. Beaver Sand Co. v. Director General, 66 I. C. C. 285, 289.

(aa) Fact that interchange facilties are inadequate for convenient operation is not of itself a defense if through routes are shown to be necessary or desirable in the public interest. If inadequate, they may be made adequate to perform the service which the law requires. York Mfrs. Asso. v. P. R. R. Co., 73 I. C. C. 40, 50.

(bb) Complainants ask for reasonable joint rates and through routes on coal, from their mines over defendants to interstate destinations and attacked present rates as unreasonable, unjustly discriminatory and unduly prejudicial. Complainants mines are on sidings of the Monongahela, between Shinnstown, W. Va., and Bingamon Junction, W. Va., bear the West Fork River. Competitors are on the B. & O., across the river and on the Western Maryland between Wyatt, W. Va., and Bingamon Junction. All these mines are in a small area and within the socalled Fairmont district. Local charges of the Monongahela of 30c per ton, minimum $15 per car, to the point of interchange with the Western Maryland, or 40c per ton, minimum $20 per car, to point of interchange with the B. & O., and the district rates beyond, were collected. Competitors shipments are charged only the direct rates. Total mileage of the Monongahela is 130 miles, it transports passenger, freight in car load and less car loads, newspapers, and mail. It does not file tariffs with the Commission or participate in joint rates. Its lines are not adapted to the hauling of heavy freight. It is clear that the shipments from complainants mines to points without West Virginia were continuously in interstate commerce and that by participating therein the Monongahela subjects itself to the provisions of the act. The evidence shows that in addition to the street passenger service the Monongahela conducts an interurban service over its own tracks and over tracks of the W. M., transports freight both in car load and less carloads, and maintains freight stations. HELD, the Monongahela is a common carrier, that the rates in issue are not unreasonable or otherwise unlawful, and that the record does not justify the establishment of through rates and joint rates. Monongahela should promptly comply with section 6, complaints dismissed. Hood Coal Co. v. Monongahela Co., 73 I. C. C. 54.

(cc) In view of the parenthetical clause in paragraph (4) of section 15 of the act, the limitation put upon the commission's authority to establish through routes and joint rates does not apply where the commission finds it to be in the public interest to require one carrier to afford another carrier the use of its terminals. Port Arthur Chamber of Commerce v. T. & F. S. Ry., 73 I. C. C., 361, 363.

(dd) Public interest found to require establishment of through route and joint rates on coal from Sheridan, Wyo., to points on Great Northern in eastern Montana via Sidney. Western Coal Rates, 80 I. C. C. 383, 415.

(ee) Act provides that commission may and shall establish joint rates whenever deemed necessary or desirable in public interest. Mere desire to extend markets, unsupported by any substantial indication of public need, affords no adequate foundation for requiring establishment of additional through routes and joint rates. Western Coal Rates, 80 I. C. C. 383, 415, 434.

(ff) The general provision of paragraph (4), section 1, that carriers shall establish through routes and reasonable rates applicable thereto, is subordinated to specific provisions of section 15 for establishment of through routes and joint rates. Tidewater Paper Mills Co. v. B. T. R. R. Co., 80 I. C. C. 493, 497.

(gg) The law provides that in establishing a through route the Commission may not require a carrier to embrace in such route substantially less than the entire length of its railroad which lies between the termini. It is manifest that there may be instances where two roads connecting at various junctions might form a through route between two points

and that the length of the haul of each would depend upon the junction point at which the interchange is made. In these cases the carrier which originates the traffic is entitled to the long haul. Fort Smith S. R. I. R. R., v. A. C. R. R., 87 I. C. C. 617, 620.

(hh) Where the public interest demands the maintenance of a through route which gives the originating carrier the long haul, the fact that such originating carrier may acquiesce in an arrangement under which it surrenders the long haul to a connection would not prevent the Commission from requiring the maintenance of the route which would be in the public interest. Fort Smith S. & R. R. R. R. v. A. C. R. R., 87 I. C. C. 617, 621.

(ii) Complainant, C. M. & St. P. Ry., sought establishment of through routes and joint rates via the O. W. R. R. & N., from the junction of the two carriers at Plummer, Idaho, or Marengo, Wash., on westbound traffic that originates on its line extending from Chicago, Ill., to Oreg., and points taking same rates. Through routes and joint rates, upon agreed divisions, have for many years been in effect between the two carriers via these interchange points on traffic originating north of the above territory, including that moving across Lake Michigan and destined to points north and west of Pendleton, Oreg., but the traffic here involved, under agreements made years ago between these carriers, moves via Council Bluffs, Iowa, and the U. P. This arrangement has the effect of depriving the Milwaukee of the long haul on the latter traffic, and routing and joint rates via Plummer or Marengo are sought. No dispute exists as to the essential facts. Complete track connections and interchange facilities between these carriers have long been installed and in use at both Plummer and Marengo. The distance from Chicago to Portland via Plummer is 2,214 miles, 49 miles less than via Council Bluffs. The practicability of the desired route is not questioned, and it would compare favorably with that of any of the transcontinental lines that reach the north Pacific coast. The present through rates via Plummer or Marengo are combinations of locals, which place the Milwaukee at a disadvantage in competition for this traffic by its own line. The allegation of undue prejudice arises from that fact that competitors of the Milwaukee enjoy through routes and joint rates to Portland and related points via interchange points with the U. P., in western Washington. These competitive lines may receive traffic from the Milwaukee for such routing, thus affording the latter only the short hauls. It is desirable in the public interest that the efficiency and availability of all the transcontinental lines be conserved and enlarged rather than restricted. The U. P., serves the south and central Pacific coast, as well as the north Pacific coast, while the Milwaukee reaches only the north coast. The Milwaukee was extended to the coast at great expense, its traffic density is lighter than any other transcontinental line, and the spirit of section 15 (4) that if a carrier has unrouted traffic in its possession it should be allowed to handle it by its own line as far as it can unless public interest will suffer thereby, can not be disregarded. There can be no doubt that the needs of the public, more especially in the future development of the northwest, would be more adequately met by the establishment of the additional route. HELD, refusal of defendants to enter into through routes and joint rates with complainant through Plummer or Marengo on traffic hereinbefore described is unreasonable. An appropriate order will be entered requiring their establishment. C. M. & St. P. Ry. v. U. P. R. R., 88 I. C. C. 312.

ALL OTHER CITATIONS

Colorado Coal Traffic Ass'n v. A. T. & S. F. Ry. Co., 22 I. C. C. 264, 266, 267; Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 21 I. C. C. 304; In Re Rates on Lumber and other Forest Products, 21 I. C. C. 455, 456, 457; Burton v. U. V. R. R. Co., 20 I. C. C. 75; Edison Portland Cement Co. v. D. L. & W. R. R. Co., 20 I. C. C. 95; B. & O. S. W. R. R. Co. v. U. S., 195 Fed. 962, 967; City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 175, 177; Florida Cotton Oil Co. v. C. of Ga. Ry. Co., 19 I. C. C. 336, 338; Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co., 17 I. C. C. 479, 481, 485; Kalispell Lumber Co. v. Great Northern Ry. Co., 16 I. C. C. 164, 172; Enterprise Fuel Co. v. Penn. R. R. Co., 16 I. C. C. 219, 223, 224; Crane Railroad Co. v. P. & R. Ry. Co., 15 I. C. C. 248, 253; Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co., 15 I. C. C. 460, 464; Midland Mill & Elevator Co. v. K.

S. W. Ry. Co., 15 I. C. C. 610, 614; Pacific Coast Lumber Mfrs.' Ass'n. v. N. P. Ry. Co., 14 I. C. C. 51, 58, 60; Star Grain & Lumber Co. et al. v. A. T. & S. F. Ry. Co., 14 I. C. C. 364, 367, 373; Memphis Freight Bureau v. F. S. & W. R. R. Co., 13 I. C. C. 1, 9; C. & M. Electric R. R. Co. v. I. C. R. R. Co., 13 I. C. 20, 26; Stedman v. C. & N. W. Ry. Co., 13 I. C. C. 167, 168, 170; Freight Bureau of Little Rock, Ark., v. Midland Valley R. R. Co., 13 I. C. C. 243, 245; Cardiff Coal Co. v. C. M. & St. P. Ry. Co., 13 I. C. C. 460, 465, 470; 471, 472; Benton Transit Co. v. Benton Harbor, St. Joe Ry. & Light Co., 13 I. C. C. 542, 548; Haverhill Box Board Co. v. B. & A. R. Co., 28 I. C. C. 336; Birge-Forbes Co. v. M. K. & T. Ry. Co., 28 I. C. C. 409, 411; Break-Bulk Rates on Grain, 27 I. C. C. 78; In re Export Rates on Flaxseed Products from Minneapolis, 27 I. C. C. 246; Aransas Pass Channel & Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403, 415; Louisville Board of Trade v. I. C. & S. T. Co., 27 I. C. C. 499, 504; Blakely Southern R. R. Co. v. A. C. L. R. R. Co., 26 I. C. C. 344; Omaha Grain Exchange v. C. B. & Q. R. R. Co., 26 I. C. C. 553, 558; Murray Lighterage & Transportation Co. v. D. & H. Co., 25 I. C. C. 388; Partridge & Sons Co. v. P. R. R. Co., 26 I. C. C. 484, 486; Standard Vitrified Brick Co. v. C. B. & Q. R. R. R. Co., 25 I. C. C. 669, 670; In re Investigation and Suspension of Advances for Soft Coal, 24 I. C. C. 43; McCloud River Lumber Co. v. S. P. Co., 24 I. C. C. 89, 94; Birge-Forbes Co. v. G. & W. R. R. R. Co., 28 I. C. C. 409, 411; Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572; Lumber Rates through Ohio River Crossings, 29 I. C. C. 38; Swift & Co. v. P. R. R. Co., 29 I. C. C. 464; Marble Rates from Vermont Points, 29 I. C. C. 607, 608; Memphis Grain & Hay Asso. v. A. A. R. R. Co., Unrep. Op. A408; Feeders' Supply Co. v. M. K. & T. Ry. Co. of Tex., Unrep. Op. A463; Cancellation of Eastbound Joint Rates from Stations on the Bellingham & Northern Ry., Unrep. Op. A522; Merchants' & Mfrs.' Asso. v. C. R. R. Co. of N. J., 30 I. C. C. 396, 401; American Nat'l Live Stock Asso. v. S. P. Co., 32 I. C. C. 438; Corp. Comm. of Oklahoma v. K. C. M. & O. Ry. Co., 32 I. C. C. 384, 386; Omaha Grain Exchange v. C. & A. R. R. 32 I. C. C., 597; E. J. R. R. & T. Co. v. C. R. R. of N. J., 37 I. C. 357; Paducah Board of Trade v. I. C. R. R., 37 I. C. C. 719; Northern Colorado Coal Co. v. C. W. & E. Ry., 38 I. C. C. 73; Hayden Bros. Coal Corp. v. D. & S. L. R. R. 39 I. C. C. 94; Hooker Lime Stone Co. v. N. C. & St. L. Ry., Unrep. Op. 2225; Lafayette Chamber of Commerce v. A. & V. Ry. Co., 39 I. C. C. 619, 631; Providence Fruit & Produce Exchange v. M. St. P. & S. S. M. Ry. Co., 40 I. C. C. 45, 48, Aetna Explosives Co. v. P. C. C. & St. L. Ry., 40 I. C. C. 667; Eastern Shore of Virginia Produce Exchange v. N. Y. P. & N. R. R. Co., 40 I. C. C. 750, 755; Lourie Mfg. Co. v. C. N. R. R. Co., 42 I. C. C. 448, 452; West Coast Lumber Mfrs. Assn. v. T. E. R. R., 45 I C. C. 227, 230, 232, 234; Hayden Bros. Coal Corp. v. D. & S. L. R. R., 45 I. C. C. 236; Coal to South Dakota, 46 I. C. C. 628, 640; St. L. S. W. Ry. v. U. S., 38 Sup. 49; Cape Girardeau Portland Cement Co. v. St. L. & S. F. R. R., 47 I. C. C. 204; Stonega C. & C. Co. v. L. & N. R. R., 47 I. C. C. 282, 284; Tuscaloosa Board of Trade v. A. G. S. R. R. 47 I. C. C. 483, 484; Western Cement Rates, 48 I. C. C. 201, 249; Petroleum from Oklahoma Points, 48 I. C. C. 737, 738; Lourie Mfg. Co. v. C. N. R. R., 49 I. C. C. 64; Thropp v. B. & L. E. R. R., 49 I. C. C. 43, 52, 53; Kansas City Hay Dealers Asso. v. C. R. I. & P. Ry., 49 I. C. C. 350; C. M. & St. P. Ry. v. G. N. Ry., 49 I. C. C. 302, 307; Kansas City Hay Dealers Asso. v. C. G. W. R. R., 49 I. C. C. 372; Eastern Shore of Va. P. Exc. v. W. M. Ry., 50 I. C. C. 60; Aetna Explosives Co. v. A. T. & S. F. Ry., 51 I. C. C. 513; Willamette Valley Lumbermen's Asso. v. S. P. Co., 51 I. C. C. 250, 253, 263; Union Traction Co. v. A. T. & S. F. Ry., 52 I. C. C. 281; Rapson Coal Mining Co. v. C. & S. Ry. Co., 52 I. C. C. 164; South St. Joseph Live Stock Exchange v. C., B. & Q. R. R. Co., 53 I. C. C. 114, 124; Middlesboro Kentucky Coal Operators Asso. v. L. & N. R. R. Co., 53 I. C. C. 269, 274; Kansas City Hay Dealers Asso. v. C. B. & Q. R. R., 52 I. C. C. 408; United States v. S. V. Ry. Co., 53 I. C. C. 607, 678; Bryden Horse Shoe Co. v. L. & N. Ry., 53 I. C. C. 275; Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 162, 174; Beaumont Chamber of Commerce v. A. & V. Ry. Co., 57 I. C. C. 189, 194; St. L. E. T. Ry. Co. v. C., C., & St. L.

Ry. Co., 58 I. C. C. 597, 600; Chicago, Lake Shore & South Bend Ry. Co. v. Director General, 58 I. C. C. 647, 653; Badger Lumber Co. v. A. T. & S. F., 60 I. C. C. 278; Ridge Coal Mining Co. v. M. P., 62 I. C. C. 259; Boston Wool Trade Asso. v. A., T. & S. F. Ry. Co., 62 I. C. C. 228; Seaboard By-Product Coke Co. v. Director General, as Agent, 62 I. C. C. 317, 321; Liberty Oil Co. v. Director General, 64 I. C. C. 289; Phoenix Chamber of Commerce v. Director General, as Agent, 64 I. C. C. 452; Mason Valley Mines Co. v. W. P. R. R. Co., 64 I. C. C. 477, 482; Rate Cancellation from Indiana to Ohio, 66 I. C. C. 449, 450, 451; York Mfrs. Asso. v. P. R. R. Co., 73 I. C. C. 40, 50; Port Arthur Chamber of Commerce v. T. & F. S. Ry., 73 I. C. C., 361, 363; Michigan Railroad Co. v. P. M. R. R. Co., 74 I. C. C. 496; Farmers Square Deal Grain Co. v. Fox & Illinois Union Ry., 74 I. C. C., 593; Fort Worth Freight Bureau v. B. S. L. & W. Ry., 74 I. C. C., 601; Mount Hope Mineral R. R. Co. v. C. R. R. Co. of N. J., 71 I. C. C. 195; J. L. Mott Company v. Pennsylvania R. R. Co. 80 I. C. C. 301; Arizona Cattle Growers Asso. v. A., T. & S. F. Ry. Co., 77 I. C. C. 617; St. Louis & O'Fallon Ry. Co. v. E. St. L. & S. Ry. Co., 81 I. C. C. 538, 541; New Mexico Central Ry. Co. v. A., T. & S. R. Ry. Co., 81 I. C. C. 718; Standard Rice Co. v. G. H. & S. A. Ry. Co., 83 I. C. C. 305.

III. BILLS OF LADING.

See Bills of Lading II; Export Rates and Facilities II; Routing and Misrouting §3.

§12. Issuance in general.

IMPORTANT CASES SINCE 1908

(a) No legal obligation rests on a rail carrier to give a through bill of lading covering movement by water beyond its line, but the practice of withholding through bills of lading, except as to certain preferred water lines, is illegal discrimination. Mobile Chamber of Commerce v. M. & O. R. R. Co., 23 I. C. C. 417, 424.

(b) A bill of lading issued by a rail carrier, covering the inland rail and also the ocean haul, is not strictly a through bill of lading. Mobile Chamber of Commerce v. M. & O. R. R. Co., 23 I. C. C. 417, 425.

(c) The Commission has no more power to require the issuance of through bills of lading to foreign destinations than it has to establish through routes or rates to such destinations, but it does have power to remove unjust discrimination and may require the discontinuance of practices which create such discriminations. Arkansas Pass Channel & Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403, 415.

ALL OTHER CITATIONS

Aransas Pass Channel & Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403, 415; Tampa Board of Trade v. L. & N. R. R. Co., 30 I. C. C. 377, 381.

IV. REASONABLENESS AND DISCRIMINATION.

§13. In general.

See Commodity Rates II; Discrimination §7; Equalization of Rates; Evidence §66; Local Rates & Combinations; Proportional Rates; Reasonableness of Rates §27½; Water Carriers V.

CASES 1887-1908

(a) Complainant charged discrimination in freight rates against Opelika, Ga. and in favor of Montgomery and Columbus, and that the Western Ry. of Alabama refused a through rate and through bills of lading from Opelika to New Orleans on cotton. Dissimilar circumstances and conditions may be made out by the existence of actual competition which is of controlling force in respect to traffic important in amount; and the limitations suggested by this rule are applicable, when the controlling force of water competition is invoked in respect to the second and third sections of the Act, as well as in respect to the fourth. The exceptional circumstance to be proved is actual competition, not possible competition likely to arise if rates are raised "of controlling force"—not when the rail line is the controlling force, but when the competing water line is able to dictate rates which will control the traffic, unless met by the railroad "in respect to traffic important in amount"—not when competition in a single direction or for the transportation of a single article or class of articles exist, but general competition of the character stated, controlling the carriage of the traffic on which the discrimination is made. That railroads have water com-

petition and are compelled to meet it without more, is not sufficient to justify the lesser charge for the greater distance, much less to justify the making of such tariffs as the petitioners seek relief from. Where the petitioners ask that the discrimination against Opelika which it appears unjustly exists in favor of Montgomery and Columbus, be corrected, that is, that the rates to Opelika be reduced, but when the order which they seek would increase the existing discrimination in favor of Opelika as against the local points on each side of it, the relief was refused, as to grant it in a form in which no injustice would be done to other points, and yet conforming to the law, would involve a readjustment so general that other interests and localities are entitled to be first heard and their respective claims considered. Where the rate from Opelika to Savanah via C. & G. C., is 52c, while the rate to the same point by the same system from Montgomery and Columbus is 45c, and Opelika can obtain no other rate to New Orleans at all on cotton, although it has good and ample facilities for the handling of cotton, and the rate from Montgomery to New Orleans is 45c, and local rate from Opelika to Montgomery is 27c, or 72c through to New Orleans, thus cutting off that market, leaving Savanah as the only outlet-an order was made requiring defendants to cease and desist from such denial, the Commission finding from the evidence that through rates and through bills of lading on cotton offered for shipment at Opelika to New Orleans are unjustly and unreasonably refused by the Western Ry. of Alabama while given by said road on other commodities, and at other points similarly situated, and while said defendants connecting lines making the route to New Orleans are ready and willing to unite therein, and finding also, that Opelika is by such action of defendant subjected to undue and unreasonable prejudice and disadvantage. It is no defense against the issuing of such an order that some undisclosed connection of the defendant once made an offer of rebates to the merchants of Opelika for the purpose of getting the business away from what the defendant considered its ordinary and proper channel to New Orleans, it not being averred that the lines to New Orleans will not now unite in making the usual through rates and no reason whatever being stated why through rates and through bills of lading on cotton are not given over the line which forms the aforesaid ordinary and proper channel. HELD, relief denied in the matter of discrimination until the complaint is amended, and granted as to the through rate and through bills of lading. Harwell v. Columbus & Western R. R. 1 I. C. C. 631.

(aa) Complainant attacked the exaction of an unreasonable and extortionate charge of 30c upon the transportation of wheat from Walla Walla, Wash., to Portland, Ore., and asking that it be reduced to 15c. A variety of practical considerations must enter into the making of freight rates by a railroad company, and determine to a great extent in every instance the question whether such rates are reasonable or not. Railroad companies can not be required to make freight rates upon mere theories or conjectures. They have to deal with business as they find it. Where, from the very sparsely settled country through which defendant operates its lines, outside the through business which is furnished to it at Wallula by the N. P., and by the O. S. L. at Umatilla, one of the chief articles of freight on which it must depend is the transportation of wheat to Portland; where, as compared with other roads transporting wheat which pass through more populace communities, in addition to the through freights furnished by their connections, they have a greater variety of local and way freights, and are not compelled to depend, as is the defendant, upon what they receive for the transportation of any one local commodity, such as wheat, and can for this reason alone safely make their rates less on wheat than the defendant; where the wheat hauled by the defendant is transported in sacks—a more expensive mode of shipping and delivering than that usually adopted by other roads with which it has been compared, which is in carloads of solid wheat received from and delivered to elevators along their lines; where the volume of through freights forming a large proportion of the business of the defendant fluctuates very greatly, influenced by causes beyond the control of a remote carrier like the defendant; where

the expense of frequently hauling empty cars to reach wheat before it can be received for carriage back to Portland, largely affects the question of the reasonableness of the rates upon wheat shipped from Walla Walla to Portland, where shortly after the petitions were filed the defendant, as it had a right to do under the statute, reduced its rate from $6 to $5 per ton and made large and general reductions on a large line of freight; and as rates are to a considerable extent so related to each other in the manner in which they are laid for the revenue of a railroad, that the instances are frequent, the present being one, where a change of rate upon one important article of commerce involves the consideration of the relative rates on other articles, and where the defendants lines are phenomenally well situated in their relation to through transportation facilities, and the large field of growing commerce and agriculture, and upon the statement in the answer of the defendant that further reductions on wheat rates are intended to be made by defendant as soon as this can be done, and upon the general course of dealing of defendant, that the rate for the next season on wheat will doubtless be further modified further HELD, that on and after Dec. 15, 1887, the defendant must cease to charge more than 23½c per 100 pounds, or $4.70 per ton on wheat transported by it over its lines from Walla Walla, Wash., to Portland, Ore., during the present grain season. Evans v. O. R. & N. Co., 1 I. C. C. 641.

(ab) That a refusal to give a through rate as for one shipment operates prejudicially to the town desiring privilege, does not make the refusal an unjust discrimination, when the carrier applies the same rule to all towns. Crews v. Richmond & D. R. Co., 1 I. C. R. 703.

(ac) The fact that a refusal to give the through rate as for one shipment operates prejudicially to the town desiring the privilege and favorably to another town does not make the refusal operate as unjust discrimination when the carrier applies the same rule to all towns and accords the privilege to none. Crew v. R. & D. R. R. Co., 1 I. C. R. 703.

(ad) A carrier is not responsible for rates made by connecting road merely because of its giving them in conection with its own rates to parties making through shipments. Crews v. Richmond & D. R. Co., 1, I. C. R. 703.

(ae) When the reasonableness of rates is in question the charges made on long through lines cannot form a just basis for comparison with local rates for relatively short distances. Crews, Danville Chamber of Commerce v. R. & D. R. R. Co., 1 I. C. C. 703, 710.

(b) Complainant attacked rates from Dalton Ga to Knoxville, Johnson City and Bristol, Tenn., on lumber as unreasonable; also that the joint rates on lumber from Dalton to Roanoke and Lynchburgh, Va., as unreasonable. HELD as a rule in the transportation of freight by railroads while the aggregate charge is continually increasing the further the freight is carried, the rate per ton per mile is constantly growing less all the time, making the aggregate charge less in proportion every hundred miles after the first arising out of the character and nature of the service performed and the cost of the service; and thus staple commodities and merchandise are enabled to bear the charges of this mode of transportation from and to the most distant parts of the country. The Act so far from throwing hampering restrictions or obstacles in the way of the operation of this salutory rule, gives it all the aid of its sanction and safeguards providing that the carrier shall be entitled to receive a reasonable compensation for the service performed upon open published rates, against which no competitor can take advantage by allowing shippers secret rebates and drawbacks in order to get the business. In the nature of things joint rates on long hauls usually are, and as a rule should be, lower in proportion to distance than local rates on short hauls of the same commodity. Further HELD, local rates from Dalton to Knoxville Johnson City and Bristol not unreasonable. Joint rates to Roanoke and Lynchburg unreasonable to extent they exceeded 17c to Roanoke and 18 c to Lynchburg. Farrar & Co. v. East Tennessee Virginia & Georgia R. O. 1 I. C. C. 764.

(c) The Joint rates on long hauls usually are, and should be, proportionately lower than local rates on short hauls. Farrar v. East Tennessee, V. & G. R. Co., 1 I. C. R. 764.

(d) The Act to Regulate Commerce aids the rule making the aggregate charge of transportation of freight less in proportion every hundred miles after the first. Farrar v. East Tennessee, V. & G. R. Co., 1 I. C. R. 764.

(da) In the nature of things joint rates on long hauls usually are, and as a rule should be, lower in proportion to distance than local rates on short hauls of the same commodity. Farrar & Co. v. E. Tennessee, Virginia & Georgia R. Co. 1 I. C. C. 764, 767.

(db) One feature of the transportation of freight by railroads in long hauls on joint rates, or what are usually called through rates, unless there be exceptional conditions which modify the rule, is that the rate per ton per mile grows less in proportion to the greater distance, while the aggregate of the rate increases in proportion to such greater distance; but this is not found the case in the local rates of a railroad, where the stations are occasionally grouped, but more usually graded according to distance, except as an incident of rare and highly exceptional conditions of the transportation service. Business Men's Asso. of Minnesota v. C. St. P. M. & O. Ry., 2 I. C. C. 41, 47.

(e) Railroad companies making through and continuous lines cannot rid themselves of responsibility for unjust charges by breaking the haul in two and calling themselves carriers on the separate ends of their line. Brady v. Pennsylvania R. Co. (Com.) 2 I. C. R. 78.

(f) Complainant attacked as unreasonable rates on oil from Washington, Pa. to Baltimore, Md., of 50c whereas rates from Bradford and Clarendon, Pa., and to Olean, N. Y., to Baltimore are 40c, although the distances are about the same, the rate from Washington being a local rate. HELD, rate attacked unreasonable to extent it exceeded 40c. Brady & Co. v. Pennsylvania Co., 2 I. C. C. 78.

(g) Through and continuous lines imply through rates which must be reasonable rates. Brady & Co. v. Pennsylvania Co., 2 I. C. C. 78, 80.

(h) When railroad companies make a through and continuous line and offer it for the use of the public, they can not rid themselves of responsibility for unjust charges by breaking the haul in two and calling themselves carriers on the separate ends of the line. Brady & Co. v. Pennsylvania Co., 2 I. C. C. 78, 81.

(i) Complainant attacked rates from Chicago, Ill., to Lincoln, Neb., as unjust and unreasonable in themselves, and as compared with the rates to Omaha and other competing towns in Nebraska. The Omaha rate is not based alone upon the mileage of the defendant road to that city, but as several lines from Chicago concentrate at Omaha, the mileage of the shortest route is the one which practically governs in the determination of the rate. The rates from Omaha and from Lincoln to interior Nebraska points are so arranged that the rates from Chicago are practically the same whether the freight is handled by jobbers at Omaha or Lincoln. Neither can the ratio of rates charged through the sparsely settled regions of the distant west decrease in proportion to distance without depriving the carriers of necessary revenue, and although this condition may not exist about Lincoln, yet, as the road is almost wholly confined to supplying the necessities of a farming population and the distribution of farm products, the possibilities of such tariff reduction as is made upon roads fed by mineral resources cannot be expected. HELD, complaint dismissed. Lincoln Board of Trade v. B. & M. R. R., 2 I. C. C. 95.

(j) Complainant attacked rates on coal as unduly prejudical from Hocking Valley and Pittsburgh mines to the northwest through Chicago as compared with the proportion of the through rates accepted by the Chicago destination lines on this coal and also because this proportion is lower than the local rate from Chicago. The rates from Chicago in some instances apply through Illinois mines from which points the rates are higher to the destination territory involved. A reduction of the rates on local shipments from Chicago to the proportion received by the northwestern lines upon the division of the through rates from the east, would involve either a general reduction from the entire group under the fourth section of the act, or an abandonment by defendant of the through rates in question, neither of which would benefit the complainant, while both would do great injury to all other interests involved. Under such circumstances the preference is not un-

due, nor is the advantage complained of unreasonable. HELD, complaint dismissed. Rend v. C. & N. W. R. R., 2 I. C. C. 313.

(k) At common law, the refusal of a common carrier to make through traffic arrangements, at, or upon joint through rates, with one connecting railroad company, such as it makes, or enters into, with another connecting line, does not constitute any undue or unreasonable discrimination in charges or facilities. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(l) Section 5258 of the U. S. Rev. Stat. (embracing the Act of June 15, 1866) imposes no duty; it merely permits, or authorizes, the carriage of traffic from one State to another, and to that end, the formation of continuous lines, by mutual agreement. It confers no power to compel a railroad company to make through routes and through rates with one connecting line, because it has, by agreement, made them with another. Kentucky & Indiana Bridge Co. v. Louisvile & Nashville R. Co., 2 I. C. R. 351.

(m) Through rates, like any other agreements that parties competent to contract may make, admit of very great variety in the forms they assume; and such rates, when reasonable and fairly adjusted in their relations to local business, are greatly favored in the Law because they furnish cheapened rates and greater facilities to the public, while at the same time they give increased employment and earnings to a larger number of carriers. Milwaukee Chamber of Commerce v. Flint & Pere Marquette R. Co., 2 I. C. R. 393.

(n) A through rate does not unjustly discriminate against an intermediate point because less proportionally than the rate from such point to the common destination. Milwaukee Chamber of Commerce v. Flint & P. M. R. Co., (Com.) 2 I. C. R. 393.

(o) As through rates are made by the American system of roads, agreed percentages of the total rate, considerably less in amount than the local rates of the respective roads receiving such percentages, are usually a leading feature of such through rates, and it is eminently proper, as a general rule, that this should be so. Milwaukee Chamber of Commerce v. F. & P. M. R. Co., 2 I. C. C. 393, 398.

(p) Where a rate is in itself a through rate, and made up of percentages to an intermediate point on a long haul, the circumstances and conditions of transportation must be rarely exceptional indeed, to be of such controlling force as to warrant any considerable excess of such a rate in amount, over a percentage of a through rate for an equal distance, along the same line, by way of the same point, to a more distant point. Milwaukee Chamber of Commerce v. F. & P. M. R., 2 I. C. C. 393, 399.

(q) The transportation by a railroad company to a certain point on its line, of freight received from a connecting carrier which had reserved the right to forward the property by any carrier it might select, especially where the freight thereon was to be paid at the point of destination by the purchaser, is not a service rendered for the party by whom the through shipment is made, but for the connecting carrier; and therefore there may be an unlawful discrimination between the charges for such service and for a shipment by the same shipper to the same consignee at the same destination over the local line alone. United States v. Tozer (D. C. E. D. Mo.) 2 I. C. R. 597.

(r) An unreasonable adjustment of joint rates for through transportation may constitute an unreasonable discrimination against local traffic. United States v. Tozer, 2 I. C. R. (D. C. E. D. Mo.) 597.

(s) Through rates are not required to be made on a mileage basis, nor local rates to correspond with the divisions of a joint through rate over the same line, mileage is usually an element of importance, and due regard to distance proportions should be observed in connection with the other considerations that are material in fixing transportation charges. McMorran v. Grand Trunk R. Co., 2 I. C. R. 604.

(t) Through rates are not required to be made on a mileage basis, nor local rates to correspond with the divisions of a joint through rate over the same line. McMorran v. Grand Trunk R. Co. (Com.) 2 I. C. R. 604.

(u) Where property is billed from

one station to another with the understanding that it is to be unloaded at an intermediate station, and that whether it shall be reloaded for further carriage will depend upon the volition of the shipper or of anyone who may have become purchaser, the case does not fall within the reasons governing rates on through transportation and the carrier is not at such intermediate points entitled to have the carriage protected as a through shipment as against competitors. Chicago Rock Island & Pacific R. Co. v. Chicago & Alton R. Co., 2 I. C. R. 721.

(v) Where property is to be transported by rail by continuous and uninterrupted carriage from one station to another, there may be sound and legal reasons for making a charge for the through transportation which is less than the sum of the locals for the transportation of like property from point to point between such stations. C. R. I. & P. R. v. C. & A. R., 2 I. C. C. 721, 725.

(w) Through rates are rates supposed to be fixed for through carriage and they differ from the sums of the locals because they are supposed to involve less cost and less labor to the carriers than do the local shipments. There is supposed to be but one loading and unloading. There is supposed to be less time occupied with men and equipment than would be necessary if the same freight were taken the same distance with one or more stoppages and unloadings on the way. It is for these reasons that the lesser aggregate charge for one shipment is made in practice and is justified in the law. C. R. I. & P. R. Co. v. C. & A. R. Co., 2 I. C. C. 721, 725.

(x) In considering such questions concerning the transportation of cotton from Southern States to northern and Eastern mills and Atlantic ports, thru the circumstances and conditions surrounding the traffic in the respective services performed in its carriage by the rail carriers may be, and in these proceedings are found to be, substantially dissimilar and wholly unlike. New Orleans Cotton Exchange v. Illinois Central R. Co., 2 I. C. R. 777.

(y) When questions involve the reasonableness of rates upon the transportation of cotton from the Southern States by all-rail lines to northern and eastern mills and Atlantic ports upon through rates and a long haul, on the one hand, and, on the other, the local rates of rail carriers to a near port upon a short haul at which their service terminates, they having no associated line of steamships for a continuous carriage to ultimate destination, but the cotton so carried by them to such near port being chiefly for export, and all such rail lines penetrating the same territory and competing for the same business, running north, south and east in opposite directions, such questions can only be disposed of on broad lines and not from narrow considerations. New Orleans Cotton Exchange v. Illinois Central R. Co., 2 I. C. R. 777.

(z) The theory of a combination rate made up of a through rate to some point and the local back to another point on the same line, without showing the straight rate on the schedules, although popular with carriers, is an anomaly in rate making. A straight rate to every point on the line and duly shown on the tariff sheets is undoubtedly the correct method. Lehmann Higginson & Co. v. S. P. Co.. 3 I. C. C. 80, 91.

(aa) The joint through rate to Boston on flour is one that is forced upon the all-rail carriers by the competition of a water line not subject to the Act to Regulate Commerce, and is a rate, low as it is, in which there is a small margin of profit to the all-rail carriers, while the combined local rates to Readville, although considerably higher, relate to a service that is wholly different in all its material features, methods and aspects, rendered by the carriers under circumstances and conditions that are substantially dissimilar. King & Co. v. N. Y. N. Haven & H. R. Co., 3 I. C. R. 273.

(bb) Through rates may be lower, proportionately, according to distance than local rates, and this does not necessarily involve unjust discrimination. Capehart v. L. & N. R. R. Co., 3 I. C. C. 278, 282.

(cc) An aggregate through rate is itself an entirety, although made up of agreed percentages, proportions or divisions of the entire rate among the several carriers. S. C. Capehart v. L. & N. R. Co., 3 I. C. C. 278, 282.

(dd) The rate over through lines is

correctly adjusted upon the distance through, and not upon the shorter distances over the several lines. Coxe v. Lehigh Valley R. Co. (Com.), 3 I. C. R. 460.

(ee) Through transportation over connecting lines is favored by the statute, and the rate over such through lines is correctly adjusted upon the distance through, and not upon the shorter distances over, the several lines. Coxe Bros. & Co. v. L. V. R. Co. 3 I. C. C. 460, 472.

(ff) Several railway companies forming a continuous through line carried certain traffic to the terminal point at a 30 cent rate and for the same rate to an intermediate point, and to a point on a branch line more distant than the said intermediate but less distant than said terminal point they maintained a rate of 42 cents on the like traffic: HELD That the roads might lawfully maintain the same rate at the intermediate and terminal points, and that some higher rate might be maintained to the branch line point off the direct through line wihout unjust discrimination. HELD further, that as to the branch line point the complainant was entitled to a refund of the amount paid in excess of a reasonable rate. Lehmann, Higginson & Co. v. Texas & Pacific R. Co. 3 I. C. R. 706.

(gg) Circumstances and conditions which affect the question of reasonable rates on strawberries from points in Florida to New York City, including such characteristics of the traffic and its transportation as volume, weight, bulk, value, perishability, risk, expense of handling and quick carriage in perishable freight trains, and return of empty cars, stated and compared with those surrounding the transportation of oranges and other traffic carried by defendant in the same trains. Upon the facts appearing in this case, HELD, That defendants' rates for services rendered in receiving, forwarding by their perishable freight trains, and delivering strawberries from Florida points to New York City should not exceed $3.33 per hundred pounds or $1.66½ per crate of fifty pounds from Callahan, Fla., to New York, and from Lawley. Hammock Ridge, and other stations more distant from New York than Callahan, the total through rates should not be unreasonably in excess of the charge from Callahan, and should be filed with the Commission and published according to law. Perry v. Fla. Central & Peninsular R. Co., 3 I. C. R. 740.

(hh) Carriers should not treat shipments of traffic intended to be continuous between interstate points as consisting of two kinds of service independent of each other, the one to or from a so called basing or competitive point on a through rate, and the other between the basing or competitive point and a so-called local or intermediate point on a local rate. Perry v. F. C. & P. R. Co., 3 I. C. C. 741, 748.

(ii) The only justification for a through rate less than an intermediate rate on the same articles is the compulsion of rail carriers to accept the reduced compensation or suffer ocean rivals to perform the service, and where the pressure of this alternative is not felt, there is no ground upon which the lower through charge can be excused. Merchants' Union v. Northern P. R. Co. (Com.), 4 I. C. R. 183.

(jj) Comparison of the local freight rate from a terminal to an intermediate point on a carrier's line, with the share which it receives of a joint through rate established with a connecting carrier for hauling freight received from the latter between such points, is not a proper method of determining whether or not the local rate is within the provision of the Interstate Commerce Act, §3, which prohibits undue and unreasonable preference or advantages. Tozer v. United States (C. C. N. D. Mo.), 4 I. C. R. 245.

(kk) No unlawful discrimination against a railroad is effected by the traffic arrangement of a rival road running parallel with it for a considerable distance from their common initial point, by which through tickets are sold to points on the rival road beyond the point of divergence exclusively over the latter, without granting the former any facilities for securing a share of the traffic to such points for the distance which it could carry it. Little Rock & M. R. Co. v. East Tennessee, V. & G. R. Co. (C. C. W. D. Tenn.), 4 I. C. R. 261.

(ll) Where the roads and branches of two companies extend to and penetrate a wheat producing district, from which they make a joint rate for distances of

480 miles, and each company makes the same rate separately from the same district, one for distances of 450 and the other for distances of 650 miles over their respective lines to the same destination, the rates so jointly and separately made must be held excessive for a shorter distance of 311 miles over a less expensive route, from the same district to the same destination. Newland v. Northern P. R. Co., 6 I. C. C. 131.

(mm) Complainant attacked as unreasonable rates on strawberries and vegetables from Charleston, S. C., destined to New York, where delivery is made by the roads at the terminus of the rail line in Jersey and in computing the total cost of transportation to New York, the expense of carriage over from Jersey City is to be added to the rate to that point. The carriers are charging for a less service the compensation which they had presumably deemed adequate for a greater and the rates to Jersey City as applied are prima facie excessive. HELD, rates charged unreasonable to extent they applied the rates from Jersey City to New York on shipments delivered at Jersey City. Truck Farmers' Asso. v. Northeastern R. R. Co. 6 I. C. C. 295.

(nn) Carriers cannot charge through rates on traffic over a line formed by connection of two or more roads, which, as a whole, are less than the rates in force on similar traffic carried under similar conditions in the same direction over either road. Daniels v. Chicago R. I. & P. R. Co., 6 I. C. C. 458.

(oo) The word "line" as used in the statute means a physical line, not a mere business arrangement; and carriers are prohibited from charging through rates on traffic over a line formed by connection of two or more roads which are less as a whole than the rates in force on like traffic carried under similar conditions in the same direction over either of the constituent roads in such line. Daniels v. C. R. I. & P. R. Co., 6 I. C. 458, 476.

(pp) Unreasonable disparity between aggregate rates on hauls of different length to a common destination, whether by one carrier or by more than one jointly, resulting in undue advantage to one locality or business or disadvantage to another, is unlawful. It is lawful for a carrier, within reasonable limits, to accept less per ton per mile upon long hauls than upon short ones, and to widen the disparity between such rates per ton per mile as the difference in distance increases. Hence, the proportion received by some of the carriers out of a long distance through rate is not necessarily the measure of the through rate which such carriers are entitled to make over a materially shorter distance, though such proportion is an important consideration in determining the rightful relation of the two through rates. Colorado Fuel & Iron Co. v. Southern Pacific Co., 6 I. C. C. 488.

(qq) The practice of making through rates on continuous shipments by combination of charges separately established for distant services is unjust. Re Alleged Unlawful Transportation Charges, 6 I. C. C. 624.

(rr) Application of combination rates to through and continuous shipments criticed as unjust. Alleged Unlawful Transportation Charges By I. C. R. Co., 6 I. C. C. 624.

(ss) The through rate over a railroad 18½ miles long (10½ miles in Arkansas and 8 in Missouri) was $1.85, 10 cents per mile. The local charges between the stations in Arkansas were on the basis of 5 cents per mile, any higher charge being unlawful under the statute of the State. On roads of this class in Missouri the rate authorized is 4 cents to the mile. The net earnings are in excess of a moderate return on the actual investment of the railway company, but are less than in former years. HELD, that the through rate is unreasonable and unjust, and HELD, further, that any through rate over the road in excess of $1.20 (6½ cents per mile) is unreasonable and unlawful. Board R. & W. Comrs. of Mo. v. Eureka Springs Ry. Co., 7 I. C. C. 69.

(tt) Freight carried by the Louisville & N. R. Co., from New Orleans, either to Atlanta or La Grange, is through freight, entitled to through service, and the manner in which the service is conducted cannot alter its character so as to make that carried for La Grange partly local, while that to Atlanta is wholly through. Calloway v. Louisville & N. R. Co., 7 I. C. C. 431.

(uu) Rates to noncompetitive points

will not be held to be unreasonably high when made up of the through rate to that competitive point, which, when combined with the local rate from that point to the point of destination, will give the lowest through rate to the non-competitive point, where the carriage of freight to the respective competitive points is remunerative to the carriers to the extent that it pays the expenses of moving. I. C. C. v. Western & Atlanta R. R. Co. 8 I. C. C. App. LXXVII.

(vv) The defendants, having engaged under their tariffs and course of business in the through transportation of traffic from Chicago and other points to Kearney, Neb., over continuous lines formed by their connected roads, are required by the Act to Regulate Commerce to make their rates on such transportation reasonable and otherwise in conformity with the provisions of that statute, and such duty is not avoided by the fact that the rates to Kearney may be combinations of rates to and from Omaha. Gustin v. Atchinson, T. & S. F. R. Co., 8 I. C. C. 277.

(ww) The denial by a railroad company of through joint rates on asbestos material to shippers at an intermediate station, from whom it exacts higher rates, subject such dealers to undue prejudice in their competition with other dealers for the sale of similar material. Chicago Fire Proof Covering Co. v. Chicago & N. W. R. Co., 8 I. C. C. 316.

(xx) The L. & N. Co. makes certain local rates on rosin and turpentine from stations on its P. & A. division in Florida to Pensacola, Fla., and it joins with connecting carriers in making certain through group rates from the same stations to Savanah, Ga. For its service to the junction point the L. & N. exacts shares of the through joint rates to Savannah which greatly exceed its purely local rates for like distances to Pensacola, while the shares accepted by its connecting carriers are reasonably low. Upon consideration of all the facts and circumstances,—HELD. That the shares of the L. & N. Co. in the through rates to Savanah are unreasonable and unjust and operate to make the entire through rates unlawful under sections 1 and 3 of the Act in comparison with the rates to Pensacola. That rates on rosin and turpentine from such P. & A. division stations to Savanah should be adjusted to the rates to Pensacola by adding to the local rates of the L. & N. Co. for the distance to Pensacola which is nearest to the distance from each station to River Junction, the present share accepted by the carriers to Savanah from River Junction; provided, however, that on shipments of turpentine to Savanah from stations east of Mossy Head the L. & N. Co. should have more than its local rate for the like distance to Pensacola, and that such rate should be determined by adding a differential of 6 cents to the L. & N. rate from Sneads to Pensacola, the carriers east of River Junction accepting their present share from such stations east of Mossy Head. Savanah Bureau of F. & T. v. Louisville & N. R. Co., 8 I. C. C. 377.

(yy) Complainants alleged that defendants rates on sugar and other commodities from New York to Chipley and other points in Florida were unlawful as compared with the rates for the greater distances to Pensacola, Mobile and New Orleans, but the evidence was insufficient to warrant a conclusion. Rates charged on bacon and other commodities from Savanah, Ga., to stations in Florida on the L. & N., were not shown to be unlawful in comparison with rates on like traffic to those stations from New Orleans or Pensacola. Defendants rate on uncompressed cotton from stations in Florida on the L. & N., to Savanah was $2.75 per bale at the time of hearing, when complaint was filed, and for some years prior thereto, but subsequent to the hearing this rate was increased to $3.30 per bale. The rates to Mobile and New Orleans were, and still are, $2.00 and $2.50 per bale. HELD that the rate of $2.75 per bale to Savannah was unlawful, and any higher rate on such cotton to Savannah than for the former difference of 25c per bale above the rate in force from the stations same to New Orleans violates section 1 and 3 of the act. The L. & N., makes certain local rates on rosin and terpentine from stations on its P. & A., division in Florida to Pensacola Fla., and it joins with connecting carriers in making certain through group rates from the same stations to Savannah, Ga. For its services to the junction point the L. & N.,

exacts shares of the through joint rates to Savannah which greatly exceed its purely local rates for like distances to Pensacola, while the shares accepted by its connecting carriers are reasonably low. HELD, that the shares of the L. & N., in the through rate to Savannah are unreasonable and unjust and operate to make the entire through rates unlawful under sections 1 and 3 of the act in comparison with the rates to Pensacola. That rates on rosin and turpentine from such P. & A. division stations to Savannah should be adjusted to the rates to Pensacola by adding to the local rates of the L. & N., for the distance to Pensacola which is nearest to the distance from each station to River Junction, the present share accepted by carriers to Savannah from River Junction; provided that on shipments of turpentine to Savannah from stations east of Mosey Head the L. & N., should have more than its local rate for the like distance to Pensacola, and that such rate should be determined by adding a differential of 6c to the L. & N., rate from Sneads to Pensacola, the carriers east of River Junction accepting their present share from such stations east of Mossy Head. Savannah Bureau of Freight & Transportation v. L. & N. R. Co., 8 I. C. C. 377.

(zz) In determining the Danville rate from New Orleans and western points of shipment, the Southern Railway, which dominates the situation, should, instead of adding to the rate to Lynchburg the local back from Lynchburg, recognize that the business is through business upon which Lynchburg, a competitor of Danville, enjoys a low through rate, and upon which Danville itself is entitled to a through rate. Danville v. Southern R. Co., 8 I. C. C. 409.

(3ab) The system of rate-making into southern territory under which, on traffic from St. Louis, Chicago and other points, the rates to Danville are the sums of locals to and from the Ohio River, and the rates to Lynchburg are made on a much lower joint-rate basis, is utterly unreasonable. Rates to Danville should be adjusted with relation to through rates to competitive localities like Lynchburg, and the carriers from points of origin to destination should prorate in these rates if they participate in either Lynchburg or Danville business. Danville v. Southern R. Co., 8 I. C. C. 409.

(3c) Rates consisting of combinations of the through rates for the haul through one town to another and the local rates from such town back to the former, whereby the merchants of the more distant town may compete with the merchants of the nearer at their own doors on equal terms, and are able to undersell them in the territories between the localities, is in violation of §§ 3 and 4 of the Act to Regulate Commerce. Board of Trade of Hampton v. Nashville, C. & St. L. R. Co., 8 I. C. C. 503.

(3d) The rate on roofing slag, carloads, from Leesport, Pa., to Harlem River Station, is $3.40 per ton, of which the carriers to Communipaw, N. J., on the Hudson River, receive $1.30 per ton, the balance, amounting to $2.10 per ton, going to the N. Y., N. H. & H. R. Co. for its service in carrying the slag by its car floats from Communipaw around New York City to its Harlem River Station. Such through rate also applies as a group rate to numerous stations on the N. Y., N. H. & H. R. in what is known as the Hartford group, including Waterbury, Conn. The freight could be transferred by an independent lighterage company from Communipaw to Harlem for 80 cents per ton, and railroads terminating on the New Jersey shore generally allow 60 cents per ton for lighterage to points within New York lighterage limits. HELD, upon all the facts, that the through rate of $3.40 to Harlem River is grossly unreasonable, and is rendered so by the excessive share of $2.10 to the N. Y., N. H. & H. R. Co. for transfer by its car floats from Communipaw to Harlem River; that reasonable compensation for such delivery by car float should not exceed $1.00 per ton, and this added to the share of $1.30 received by the connecting carriers constitutes a reasonable and lawful rate of $2.30 per ton, which the defendant carriers are recommended to put in force; that the complainant is entitled to reparation on a shipment of two carloads of slag to the extent of the difference between the rate charged and the rate found reasonable. The propriety of the $3.40 rate per ton applied as a group rate to all stations in the Hartford group is not passed upon in this proceeding.

Warren-Ehert Co. v. Central R. of N. J., 8 I. C. C. 598.

(3e) Complainant attacked rates charged on lumber from West Virginia and southwestern Virginia to New York, N. Y., as unreasonable and unjustly discriminatory. Lumber in carloads is shipped from points in West Virginia and southwestern Virginia to New York over the N. & W., to Hagerstown, and thence via the P. R. R., to destination, and over the N. & W., to Shenandoah Junction thence via B. & O., under rates made by adding to those of the N. & W., to Hagerstown and Shenandoah Junction a specific or arbitrary of 13 c per 100 pounds charged by the Pennsylvania and B. & O. This specific rate was advanced from 12 to 13c in 1893, and the N. & W., charges were generally increased in 1899 and 1900 about 1½c per 100 pounds. Much lower rates on competing lumber have been and are maintained from neighboring points in the same shipping section to New York by the B. & O., and by the C. & O., connecting with the B. & O., at Staunton and the Pennsylvania at Washington. The N. & W., line is considerably longer than the C. & C., but present rates by the N. & W., yield higher rates per ton per mile than those of the C. & O. The rates from N. & W., points to Philadelphia are 6c lower than those for the 90 miles greater distance to New York, while on the C. & O., the difference in favor of Philadelphia against New York is only 2c. HELD, the through rates attacked are unreasonable and unlawful, and that there should be an aggregate reduction in the through rate of 2½c per 100 pounds. National Wholesale Lumber Dealers Asso. v. N. & W. Ry. 9 I. C. C. 87.

(3f) Lumber in carloads is shipped from points in West Virginia and southwestern Virginia to New York City over the N. & W. Ry. to Hagerstown, and thence via the P. R. R. to destination, and over the N. & W. to Shenandoah Junction and thence via the B. & O. R. R., under rates made by adding to those of the N. & W. to Hagerstown and Shenandoah Junction a specific or arbitrary of 13 cents per 100 lbs. charged by the Penn. and B. & O., respectively, therefrom. This specific rate was advanced from 12 to 13 cents in 1893, and the N. & W. charges were generally increased in 1899 and 1900 about 1½ cents per 100 lbs. Much lower rates on competing lumber have been and are maintained from neighboring points in the same shipping section to New York by the B. & O. and by the C. & O. Ry. connecting with the B. & O. at Staunton and the P. R. R. at Washington. The N. & W. line is considerably longer than the C. & O. line, but present rates by the N. & W. yield higher rates per ton per mile than those of the C. & O. line. The rates from N. & W. points to Philadelphia, Pa., are 6 cents lower than those for the 90 miles greater distance to New York, while on the C. & O. the difference in favor of Philadelphia against New York is only 2 cents. HELD, upon all the facts and circumstances, that the through rates complained of are unreasonable and unlawful, and that there should be an aggregate reduction in the through rates of 2½ cents per 100 lbs. Nat. W. Lumber Dealers' Asso. v. N. & W. Ry. Co. et al., 9 I. C. C. 87.

(3g) The failure of the Chicago, St. Paul, Minneapolis, & Omaha Railroad to publish through freight rates from Chicago and other points to Norfolk, Neb., while such through rates are established and published by that company in connection with other carriers to other points on its line in Nebraska, amounts to unlawful discrimination against Norfolk. Johnson v. Chicago, St. Paul, Minneapolis & Omaha R. Co., 9 I. C. C. 221.

(3h) The rule laid down in Johnston-Larimer D. Co. v. Atchison, T. & S. F. R. Co. 6 I. C. C. Rep. 586, forbidding any higher charge to Wichita than to Kansas City on shipments from Galveston, is, in the light of the decisions of the United States Supreme Court, no longer applicable; and defendants operating lines through Wichita to Kansas City are not prohibited from charging a higher rate to Wichita than to Kansas City, so long as the Wichita rate is reasonable. Lehman-Higginson Grocery Co. v. Atchison, T. & S. F. R. Co., 10 I. C. C. 460.

(3ha) Complainant attacked as unduly discriminatory rates on grain from Cannon Falls, Minn., to Chicago, Ill., as compared with the rates from Minneapolis, Minn., and rates on rye from the same points to Louisville, Ky. With competition for the carriage of grain to and

via Duluth and other northern lake ports, rates of 10c on wheat and 7½c on other grain from Minneapolis to Chicago are as high as can be obtained by the all rail lines between those points, and competition by lines other than defendants from Minneapolis to St. Louis has fixed the rates via all lines 10c, and this controls the rate to Louisville. The rates from Cannon Falls, 48 miles from Minneapolis, to Chicago, East St. Louis and Louisville are also competitive rates, and in its competition with Minneapolis, Cannon Falls is entitled to as low rates to common points as the difference in conditions will permit. In view, however, of the desirability of keeping open the Minneapolis market for Cannon Falls grain, the short distance between those points, and the low rates from Minneapolis forced by competition, it is apparently not unjust that the grain rate from Cannon Falls should be as high as the local rate to Minneapolis plus a 7½c rate therefrom to Chicago, provided the Cannon Falls dealer is not thereby subjected to disadvantage as compared with the Minneapolis grain dealer. HELD, Cannon Falls shipper is subjected to disadvantage as follows: the combination of rates on rye and other coarse grain from Cannon Falls to Minneapolis and Minneapolis to Chicago is ½c less than the straight rate from Cannon Falls to Chicago and is without justification. The favorable location of Cannon Falls with reference to Minneapolis and Duluth and the competitive advantage to which the Cannon Falls dealer is entitled by reason of the route via Duluth, are neutralized to an extent by manipulation of billing at Minneapolis whereby Cannon Falls grain sold in Minneapolis can be reconsigned to Duluth under a substituted billing and the balance of a through rate, resulting in a less total charge from Cannon Falls to Duluth than the charge on a through shipment from Cannon Falls to Duluth. The rate on rye, barley and other coarse grains from Cannon Falls to Louisville or East St. Louis is wrongfully higher than the rate on wheat between the same points. Cannon Falls Elevator Company v. C. G. W. Ry. 10 I. C. C. 650.

(3i) It is well understood that a through rate may properly be less than the sum of the locals to or from a divisional point. St. Louis Hay & Grain Co. v. M. & O. R. R. 11 I. C. C. 90, 101.

(3j) The St. Louis S. W. R. Co. should not be required to make through rates via Memphis merely because it has established through rates from more southerly stations, Kendalls and points south via Gale or Thebes, Cairo or East St. Louis. Re Freight Rates between Memphis and Points in Arkansas, 11 I. C. C. 180.

(3k) This case, involving the reasonableness and justice of freight rates from Chicago, St. Louis, and other Ohio River and Mississippi River points, is similar to, and was held to await the final disposition of, the case of Wilmington Tariff Asso. v. Cincinnati, P. & V. R. Co. 9 I. C. C. Rep. 118, in which proceeding the Commission entered an order requiring correction of rates from the same points to Wilmington, N. C.; but such order the United States circuit court declined to enforce. During the present year the rates from Chicago to Ohio River crossings have been materially reduced on shipments destined to southeastern points, resulting in reduction of through rates from Chicago to Charleston and Wilmington. HELD, that in view of the decision of the circuit court in the Wilmington Case, no enforceable order of relief can be predicated upon the facts shown in this case, and the complaint must be dismissed. Bureau of Freight & Transportation of Charleston, S. C., v. Norfolk & W. R. Co., 11 I. C. C. 235.

(3l) Defendant carries coal to Baltimore destined finally to "points outside the Capes" (largely to New England seaboard points), and shipments of the same coal may also be made to Norfolk an Atlantic seaport. The rate to Baltimore on coal reshipped to "outside the Capes" points is forced by the competition of lines from other mines, and under such rate defendant secures a large annual tonnage via its line to the port of Baltimore. The rate to Baltimore on coal for Norfolk is the local rate to Baltimore. If the shipments to Norfolk and points outside the Capes be regarded as through shipments, on what are in essence through rates, the competition stated might justify a higher rate to Baltimore when the final destination is Norfolk than when it is a point outside the capes; but if this coal is all purely

local to Baltimore, there is much doubt whether, as a matter of law, defendant can charge for the haul to Baltimore more in one case than in the other. City Gas Co. v. Baltimore & O. R. Co., 11 I. C. C. 371.

(3m) The fact that through rates are less than the sum of in and out rates is not of itself a valid ground of objection, nor is it unlawful for defendants to maintain reconsignment rates which are higher in some cases than their proportion of through rates. St. Louis Hay & Grain Co. v. Illinois Cent. R. Co., 11 I. C. C. 486.

(3n) It is well understood that a through rate may properly be less than the sum of the locals to and from a divisional point. St. Louis Hay & Grain Co. v. I. C. R. Co. 11 I. C. C. 486, 493.

(3o) The result of the excessive rate on cotton-piece goods between the Missouri River and Denver, and the application of full locals in making up the through combination rate to New York, Boston, and other eastern points taking the same rate to Denver, is to make the through rate to Denver excessive; and such through rate to Denver, to be reasonable, should not exceed $1.50 per hundred pounds. Kindel v. Boston & A. R. Co., 11 I. C. C. 495.

(3p) The application of combined local charges to a long-distance shipment places a wrongful burden upon the shipper. Kindel v. Boston & A. R. Co., 11 I. C. C. 495.

(3q) Transcontinental rates from eastern points to San Francisco are made in competition with water rates, and are in no sense the measure of the value of the services; but that situation does not justify the carriage of goods to San Francisco at a loss, thereby placing additional burdens on other traffic. Kindel v. Boston & A. R. Co. 11 I. C. C. 495.

(3qa) Complainant attacked rates as unjustly discriminatory and unreasonable charged on ticking, drills, and sheetings from New York to Denver of $2.24 whether carload or less carload, while duck is given a rate of $1.66 carload, and denims $1.79 carload; that denim, duck, drills and sheetings take lower rates to San Francisco, and duck drills, and sheetings take lower rates to Denver than ticking to the same points. HELD, the fact that a carload rating has been established on cotton piece goods from the east to Pacific coast points because of water competition, and the fact that duck and denims have been given carload rates to Salt Lake City and Denver to encourage manufacturing industries at those points, while elsewhere throughout the country the rate on cotton piece goods is the same for any quantity, do not indicate that the action of defendants in denying a carload rating on ticking, drills and sheeting to Denver is unlawful. Defendants rates per hundred pounds on cotton piece goods in less carloads from New York, Boston and other eastern points are $2.24 to Denver and $1.50 to San Francisco. The charge to Denver is a combination of rates from the point of shipment to the Mississippi River, from that river to the Missouri River and Missouri River to Denver. From New York to Chicago, from Chicago to Denver, and from St. Louis to Denver for a long period of years cotton piece goods have been given rates substantially below the rates on first class articles, and throughout the United States greater or less differentials on cotton piece goods under first class have been maintained with one notable exception, namely, from Missouri River to Denver. Transcontinental rates from eastern points to San Francisco are made in competition with water rates, and are in no sense a measure of the value of the service; but that situation does not justify the carriage of goods to San Francisco at a loss, thereby placing additional burdens on other traffic. The rate of $1.50 on cotton piece goods from the east to San Francisco, about 3,400 miles, is assumed to cover the actual cost of service, and that rate for the 1400 to 1600 miles less distance to Denver, and saving the haul of that distance over mountain ranges where fuel and labor are counted more expensive, is found to be reasonable for the transportation from eastern points to Denver. Under the present combination rate to Denver no reduction from local charges is made on account of the through haul of 2,000 miles. Such application of combined local charges to a long distance shipment places a wrongful burden upon the shipper. The exaction of first class rates on cotton piece goods between Missouri River points to Denver in view of the

long prevailing differentials in other parts of the country and other existing conditions is unjust and unreasonable. HELD, the result of the excessive rate on cotton piece goods between the Missouri River and Denver and the application of full locals in making up the through combination rate from New York Boston and other eastern points taking the same rates to Denver is to make the through rate excessive, and such through rate to Denver to be reasonable should not exceed $1.50 per hundred pounds. Kindel v. B. & A. R. R. 11 I. C. C. 495.

(3qb) Defendants' rates per hundred pounds on cotton-piece goods in less than carloads from New York, Boston and other eastern points are $2.24 to Denver and $1.50 to San Francisco. The charge to Denver is a combination of rates from the point of shipment to the Mississippi River, Mississippi River to Missouri River, and Missouri River to Denver. From New York to Chicago, from Chicago to Denver, and from St. Louis to Denver for a long period of years cotton-piece goods have been given rates substantially below the rates on first class articles, and throughout the United States greater or less differentials on cotton-piece goods under first class have been maintained with one notable exception, namely, from Missouri River points to Denver. Transcontinental rates from eastern points to San Francisco are made in competition with water rates, and are in no sense a measure of the value of the service; but that situation does not justify the carriage of goods to San Francisco at a loss, thereby placing additional burdens on other traffic. The rate of $1.50 on cotton-piece goods from the east to San Francisco, about 3400 miles, is assumed to cover the actual cost of the service, and that rate for the 1400 to 1600 miles less distance to Denver, and saving the haul of that distance over mountain ranges where fuel and labor are counted more expensive, is found to be reasonable for the transportation from New York, Boston and other eastern points to Denver. Under the present combination rate to Denver no reduction from local charges is made on account of the through haul of 2,000 miles. Such application of combined local charges to a long distance shipment places a wrongful burden upon the shipper. The exaction of first class rates on cotton-piece goods between Missouri River points and Denver in view of the long-prevailing differentials in other parts of the country and other existing conditions is unjust and unreasonable. HELD, That the result of the excessive rate on cotton-piece goods between the Missouri River and Denver and the application of full locals in making up the through combination rate from New York, Boston and other eastern points taking the same rates to Denver is to make the through rate excessive, and that such through rate to Denver to be reasonable should not exceed $1.50 per hundred pounds. Kindel v. Boston & R. R. Co. et al. 11 I. C. C. 495.

(3r) In October, 1902, complainant shipped over defendant's road and connections a carload of potatoes from Good Thunder, Minn., to Washington, D. C., on which the rate was 46 cents per 100 pounds, and another carload of potatoes from Mankato, Minn., to Scranton, Pa., on which the rate was 50.2 cents per 100 pounds. As there were no through rates in force, the Good Thunder shipment was moved at the combination of the published rates to and from Chicago, and upon the Mankato shipment there was $13.39 overcharge above the published combination rate of 47 cents. In 1889 the "Soo Line" put in through rates on potatoes from St. Paul and Minneapolis to New York, Philadelphia and Boston of 40 cents per 100 pounds, which were met by the American lines. The "Soo Line" kept the rate in force until April, 1898, when it was withdrawn, and in June, 1898, all lines, including the "Soo Line" put in force rates of 37 cents to New York, 40 cents to Boston, 35 cents to Philadelphia, and 34 cents to Baltimore. These rates were not effective from Mankato or from Good Thunder, the first station south of Mankato. By most lines the St. Paul and Minneapolis rates to the eastern points mentioned applied as maximum rates to intermediate points. From September, 1900, to April, 1903, the Chicago Great Western had in force a rate on potatoes from Mankato to eastern seaboard destinations 2 cents higher than from St. Paul and apparently this rate was also used over the Chicago & Northwestern line. Complainant cannot handle potatoes at

Mankato or Good Thunder for these eastern shipments under the Chicago rate combination. At the time of the shipments above specified complaint was shipping over the Great Western and Northwestern at 2 cents above the St. Paul rate. Though the through rates from St. Paul are the result of competition, they have been long in force as normal rates, are reasonable and just, and as high as could properly be applied to this traffic. HELD: That defendant's rates on potatoes in carloads from Mankato and Good Thunder to Washington, Scranton, and other eastern destinations, are unreasonable and unjust, and that the St. Paul rate may also be used, for the purposes of this case, as a standard of comparison. That reasonable and just rates on potatoes in carloads from Mankato and Good Thunder to Washington and Scranton would be 39 cents to Scranton and 38 cents to Washington, and said rates would be 4 cents above the rates from St. Paul; and defendant is also recommended to put in corresponding rates from Mankato and Good Thunder to the various eastern destinations. That complainant is entitled to reparation for excessive rates on the shipments in question. Hoerr v. Chicago, M. & St. P. R. Co. 11 I. C. C. 548.

(3s) There is no competitive relation between petroleum and its products on the one hand, and other articles of traffic on the other; and the failure of the New Haven Company to provide joint rates on petroleum and its products, while maintaining joint rates on other traffic, does not constitute wrongful preference and advantage. Fred G. Clark Co. v. Lake Shore & M. S. R. Co. 11 I. C. C. 558.

(3t) Complaint shipped two carloads of flour from Lamar, Mo., to Hope, Ark., by the St. L. & S. F. R. R. in December, 1903 under a milling-in-transit rate from Pennsboro and Everton, the same rate applying from Lamar, Pennsboro and Everton to Little Rock, Ark., and from that point the flour was carried by the St. L. I. M. & S. Ry. to Hope under the rate in force between those points applying on interstate shipments. This rate from Little Rock to Hope was 42 cents per 100 pounds for a distance of 112 miles, and is the subject of complaint. The Arkansas Commission rate in force on state traffic from Little Rock to Hope is 11 cents. The M. P. and the St. L. I. M. & S. had in effect a through rate from Lamar to Hope of 28 cents, and to this must be added a $3 per car switching charge from complainant's mill to the M. P. tracks in Lamar. The rate by the M. P. line from Lamar to Litle Rock was 20 cents, the same as the rate by the St. L. & S. F. and its connecting line. Defendants subsequently reduced the charge on these carloads of flour from Little Rock to Hope from 42 to 24 cents per 100 pounds, refunding substantially the difference to complainant, and finally offered to reduce to the basis of a 19 cent rate applying from Memphis through Little Rock to Hope, which the tariff specified as the maximum charge between intermediate stations, but such offer of settlement was declined by complainant. This Memphis rate has since been increased to 20 cents. Upon all the facts and circumstances, HELD: That the rate of 42 cents for this service between Little Rock and Hope on interstate shipments of flour was grossly unreasonable; that the rate of 19 cents was, and the rate of 20 cents is, as applied to such service, unreasonable and unjust; and that a reasonable and just rate therefor would be 11 cents per 100 pounds. Complainant awarded reparation. J. W. Moran & Son v. Missouri I. R. Co. et al. 11 I. C. C. 598.

(3u) Complainant attacked as unreasonable rates charged on flour in carloads from Pennsboro and Everton, Mo., milled in transit at Lamar, Mo., and forwarded therefrom to Hope, Ark. Complainant shipped two carloads of flour from Lamar, Mo., to Hope, Ark., by the Frisco in December, 1903, under a milling in transit rate from Pennsboro and Everton to Little Rock, Ark., and from that point the flour was carried by the Iron Mountain to Hope under the rate in force between those points applying on interstate shipments. This rate from Little Rock to Hope was 42c, for a distance of 112 miles and is the subject of complaint. The state rate is 11c. The M. P. and Iron Mountain had in effect a through rate from Lamar to Hope of 28c and to this must be added a $3 per car switching charge from complainants mill to the M. P., tracks at Lamar. The rate via the M. P., from Lamar to Little Rock was 20c the same as the rate by

the Frisco and its connecting line. Defendants subsequently reduced the charge on these carloads of flour from Little Rock to Hope from 42 to 24c, refunding substantially the difference to complainant, and finally offered to reduce to the basis of a 19c rate applying from Memphis through Little Rock to Hope, which the tariff specified as the maximum charge between intermediate stations, but such offer of settlement was declined by complainant. This Memphis rate has since been increased to 20c. HELD, the rate of 42c from Little Rock to Hope unreasonable; rate of 19c and 20c was unreasonable, that a reasonable rate would be 11c; reparation awarded. J. W. Moran & Son v. M. P. Ry. 11 I. C. C. 598.

(3v) While a carrier under the law may decline to join with its connections in the making of joint through routes and rates applicable thereon, or may join in such arrangements with one connection and refuse to do so with another, no carrier can for any reason or purpose lawfully exact unreasonable and unjust rates for any service which it may perform in the transportation or handling of interstate traffic. Moran & Son v. M. P. R. Co. 11 I. C. C. 598, 604.

(3w) There are two routes over which coal may be shipped from the Thacker District, in West Virginia, to Alexandria, Ind.; one by the N. & W. and C. C. C. & St. L., the shorter line, and one by the N. & W., H. V., and L. E. & W. Complainants in 1903 had shipped to them at Alexandria, Ind., eight carloads of coal from the Thacker District, W. Va., over the latter route, and by that line the published rate was $1.90 per ton, while over the other route the rate was $1.65 per ton. November 26, 1903, the rate by the route used was reduced to $1.65, and later the other line lowered its rate to $1.55. Complainants, acting on behalf of the consignor, demanded reparation. The evidence relates solely to the rate itself, and the fact that a lower rate was in force over a competing short line. HELD, that the rate charged is not shown to have been unreasonable, and that, in view of their published tariff, the carriers in the through line over which the coal was carried could not lawfully apply the lower rate in effect over the competing line. J. J. Marley & Son v. Norfolk & W. R. Co. 11 I. C. C. 616.

(3x) It often happens that where traffic moves over two or more railways a certain expense attaches to the interchange of that traffic, which makes reasonable the imposition of a higher rate than if the movement were over a single railroad for the same distance; and it is also true that one road might, as a matter of policy, decline to participate in a low rate which the other road desired to put in effect. Texas Cement Plaster Co. v. St. L. & S. F. R. R. 12 I. C. C. 68, 72.

(3y) Through rates from Kalamazoo, Mich., to Elkhorn, Wis., via Chicago, on silos, conceded to be excessive to the extent of difference between that rate and combination rate on Chicago. Kalamazoo Tank & Silo Co. v. Michigan C. R. R. Co., 12 I. C. C. 154.

(3z) Through rates to Freeport, Ill., via Chicago, from Oil City, Pa., on petroleum products reduced from 25½ cents per 100 to 23 cents, the combination rate. National Petroleum Asso. v. Pa. R. R. Co. 12 I. C. C. 153.

(4a) Through rate to Pemberton N. J. on grain, flour and feed, carloads, from Chicago and other western points, of New York rate plus 5 cents, as compared with the rate to Mt. Holley, N. J. 6 miles west, which takes New York rate on account of developed water competition,—held excessive and prejudical, where former differential against Pemberton was 2 cents. DeCou v. Pennsylvania R. Co. 12 I. C. C. 160.

(4b) A unit, even though divided between several carriers arranging themselves into through route. Re Through Routes & Through Rates, 12 I. C. C. 163.

(4c) Through rates to South Omaha, Neb., via East St. Louis, from Hollow Rock, and other Tennessee ponts, on cooperage products, alleged to be unreasonable when compared with rates on such commodities when destined for Alexandria, Mo., or Keokuk, Iowa; the South Omaha rate being a combination of the 14 cent rate of the Nashville C. & St. L. and Illinois Central, plus the local rate of 10 cents of the C. B. & Q., whereas the Keokuk or Alexandria rate was a joint rate of 19 cents, 14 cents to the first two carriers, and 5 cents to the C. B. &

Q., no complaint being made of the C. B. & Q. rate, and it appearing that some years ago the division gave the C. B. & Q. its full local from East St. Louis to Keokuk or Alexandria, and the two eastern carriers two cents less than the joint rate to East St. Louis; but the divisions as now made gives these two roads the same earnings on cooperage products carried from Tennessee points to East St. Louis, whether destined to South Omaha, Alexandria, or Keokuk. Complaint dismissed. Omaha Cooperage Co. v. N. C. & St. L. R. Co., 12 I. C. C. 250.

(4d) Through rates to Hope, Ark., via Texarkana, from points north of Shreveport, La., on the T. & P. Railway, 30 cents per 100 held unreasonable and reduced to 17½ cents, the sum of the locals, with minimum carload rate of 30,000 pounds. Hope Cotton Oil Co. v. T. & P. R. Co., 12 I. C. C. 265.

(4c) Through rate to Reno, Nev., from Marquette, Neb., on grain, necessity, for not shown. Poor Grain Co. v. C. B. & Q. R. Co., 12 I. C. C. 469.

(4f) Establishment of through rates in United States, justified by disparity between points on different roads serving shippers of coal in same territory. Loup Creek Colliry Co. v. Virginian R. Co., 12 I. C. C. 471.

(4g) A through rate for transportation over a line composed of two or more separate roads greater than would be reasonable and sufficient if the same transportation were over a single road is not in all cases unjust. Loup Creek Colliery Co. v. Virginian Ry., 12 I. C. C. 471, 477.

(4h) While the joint through rate over a line composed of several roads often is and should be less than the sum of the local or individual rates, this is not always so, especially where the through line is composed of only two roads, one of which performs only a short haul. Loup Creek Colliery Co. v. Virginian Ry., 12 I. C. C. 471, 478.

IMPORTANT CASES SINCE 1908

(4i) The plain, unmistakable requirement of the law is that through traffic shall be subject to just, reasonable and non-discriminatory through rates. Hammerschmidt & Franzen Co. v. C. & N. W. R. R. Co., 30 I. C. C. 71, 82.

(4j) While recognizing the carrier's standpoint of preserving the integrity of through rates, the Commission must also look to the means employed for this purpose and rates to and from gateways used as factors in constructing through rates must be no more than reasonable. Peanut Rates to Oklahoma City, Okla. 30 I. C. C., 346, 347.

(4k) To apply to a reconsigned shipment a higher specific through rate to final destination than was applicable to such destination on direct shipment, held not unreasonable. Great Western Sugar Co. v. Y. & M. V. R. R. Co., 34 I. C. C. 45, 46.

(4l) By forming through routes and publishing through rates applicable thereto carriers merge their lines into one route or line so far as the particular traffic covered by such rates is concerned As a single through route or line they cannot withhold from some points on that route valuable services which they voluntarily perform at other points on that route. Rates on Grain Milled in Transit, 35 I. C. C. 27, 32.

(4m) In a situation where through rates are sought from the farm to the market, with transit arangements at milling points, a comparison of the results obtained under a rate system made by adding the charge on rough rice into the milling points to the charges on the clean rice out, for the purpose of determining the relative advantages of respective milling points, appears to be reasonable and proper. Southern Rice Growers' Assn. v. T. & N. O. R. R., 43 I. C. C. 90, 94.

(4n) The mere existence of combination rates rather than joint rates between certain points, without a showing of unreasonableness or undue prejudice, does not of itself make out a case justifying corrective measures. Connor Lumber & Land Co. v. G. N. Ry., 43 I. C. C. 243, 246.

(4o) It is not practicable to have rates into and out of all jobbing points so constructed that the resulting through charges from the factory to ultimate destination are the same via all jobbing centers. Advantages of location, competitive conditions, the volume and flow of traffic, and numerous other considerations come into play, and must be given due weight in determining the

adjustment of rates into and out of different jobbing points. Wichita Wholesale Furniture Co. v. A. T. & S. F. Ry., 44 I. C. C. 339, 344.

(4p) Too much emphasis should not be placed upon the separate factors entering into the composition of rate scales The important problem is the determination of the reasonableness and nondiscriminatory character of the entire parts. Western Cement Rates, 48 I. C. C. 201, 235.

(4q) A fair measure of the reasonableness of a through rate which exceeds the aggregate of the intermediate rates is the lowest combination which would apply if the through rate were cancelled. International Paper Co. v. B. & M. R. R., 49 I. C. C. 31, 33.

(4r) Somewhat higher rates for hauls over routes composed of two or more lines, not under common management and control, than for hauls over one line or over two or more lines under a common management and control, are reasonable. Royster Guano Co. v. A. C. L. R. R., 50 I. C. C. 34, 43.

(4s) A shipper is not to be denied a reasonable rate over a through route merely because a lower rate could have been secured by the use of another route. Gosline & Co. v. Director General, 55 I. C. C. 220, 223.

(4t) A charge is not necessarily unlawful because it is made up of two separately published charges. The real question is as to the propriety of the aggregate charge. American Wholesale Lumber Asso. v. Director General, as Agent, 66 I. C. C., 393, 397.

(4u) Proof that a carrier is not earning operating expenses on its State and interstate freight traffic as a whole does not establish that the joint interstate rates on a particular commodity if reduced in accordance with findings in Reduced Rates, 1922, 68 I. C. C., 676, would be less than just and reasonable. Reduced Rates, 1922, 73 I. C. C. 189, 191.

(4v) In 58 I. C. C. 549 and 60 I. C. C., 453, the commission required the removal of an undue prejudice against the Ottawa, Ill., district and an undue preference of Gray's Summit, Silica, and Pacific, Mo., in the rates on silica sand to points east of the Indiana-Illinois State line. Upon further hearing carriers required to revise their rates to correct departures from the fourth section of the act. Silica Sand Producers' Traffic Asso. v. Director General, as Agent, 73 I. C. C., 549.

(4w) Testimony to the effect that commodity rates are not ordinarily maintained on the traffic and in the territory here involved and that the class rates charged represent the normal basis. HELD: Such evidence falls short of a satisfactory rebuttal of the presumption of unreasonableness inhering in joint rates which exceed the aggregate of intermediates. Pitsburgh Steel Co. v. Director General, as Agent, 73 I. C. C., 555, 556.

(4x) Respondents proposed to increase their rates on soft coal, carloads, from mines on the Cumberland & Manchester to points in central territory, the Southeast and Northwest Cumberland & Manchester, respondent, is a short line extending from Barbourville, Ky., to Manchester, Ky., 22.9 miles. Coal constitutes about 90 per cent of its tonnage. Rates from points on respondents line to destinations on the L. & N., are joint rates, and are made by adding certain published arbitraries over the rates from the junction point. Respondent favors the application of the through rates provided it receives adequate divisions out of the through rates. No attempt was made to justify the increased through rates to the destination territories. The record is devoid of any evidence tending to prove the present through rates unreasonably low. HELD, increased rates not justified. Bituminous coal from mines on the C. & M. R. R., 74 I. C. C. 723.

(4y) The mere fact that a carrier participates as an originating carrier in joint rates in connection with which a transit arrangement is allowed at points off its line does not make it guilty of undue prejudice by failing to accord transit to a point on its line. C. R. R. Co. of N. J. v. United States, 257 U. S., 247. Compression of Cotton, 77 I. C. C. 184, 188.

(4z) Participation in joint rates do not make connecting carriers partners. They can be held jointly and severally responsible for unjust discrimination only if each carrier has participated in some way in that which causes the unjust discrimination. If this were not so, the

legality or illegality of a carriers practice would depend, not on its own act, but on the acts of its connecting carriers. If that rule should prevail, only uniformity in local privileges and practices or the cancellation of all joint rates could afford to carriers the assurance that they were not in some way violating the provisions of section 3. What Congress sought to prevent by that section as originally enacted, was not differences between localities in transportation rates, facilities and privileges, but unjust discrimination between them by the same carrier or carriers. Storage in transit rules at Minnesota Transfer, 78 I. C. C. 265, 268.

(5a) In determining reasonableness of through charge it is proper to consider its components, not withstanding the through charge itself is first to be considered. Armour & Co. v. C. of G. Ry. Co., 81 I. C. C. 33, 36.

(5b) Where the issue is whether the joint rates as such are free from undue prejudice and preference; it would constitute no defense to show that the divisions of certain of the carriers participating in the rates are reasonable or otherwise not violative of the act. Clay County Coal Operators Asso. v. C. & M. R. R. Co., 81 I. C. C. 414, 419.

(5c) Evidence tending to prove inadequacy of tariff allowance for transportation service undertaken by shipper on behalf of carrier does not establish unreasonableness of through charge. Swift & Co. v. Director General, as Agent, 81 I. C. C. 677.

(5d) Rates assailed as unduly prejudicial were participated in by defendant and another carrier; defendant using joint route for this particular traffic instead of its own rails exclusively over another route, due to longer haul over latter route. Contention that as to issue of undue prejudice the second participating carrier is a necessary party, not sustained. Defendant, having its own rails between points involved, is not compelled to resort to joint route. As between these two carriers, defendant is clearly rate-making line and responsible for undue prejudice, if any, resulting from rate adjustment in controversy. Second participating carrier is proper but not necessary party. Southern Appalachian Coal Operators v. L. & N. R. R. Co., 83 I. C. C. 136, 139.

(5e) In determining whether rates are unreasonable, consideration can not be confined to one component; the through charge must be examined. Cairo Asso. of Commerce, 62 I. C. C., 701; Silica Sand Producers Asso., 63 I. C. C., 217; Western Meat Co. v. Director General, as Agent, 83 I. C. C. 218, 220.

(5f) Through rates may not be condemned as unreasonable merely because constructed upon combination. Barnes Automobile Co. v. D., T. & I. R. R. Co., 83 I. C. C., 350, 352.

(5g) The shipper is concerned primarily with the reasonableness of the through rate he has to pay and not the factors composing the rate. This principle is in no way altered because one of the factors is a switching rate. It may be that the switching rate was unreasonable but that is a matter with which the complainant is not concerned. It has been damaged when it paid the unreasonable rate. International Harvester Co. v. N. Y. C. R. R., 88 I. C. C. 368, 372.

(5h) Although the existence of water competition may justify railroad carriers in granting to dealers in a commodity at a certain point the privilege of unloading and rebilling, and reshipping to further points at through rates from the point of initial shipment, it does not necessarily follow that the particular privilege granted does not give to such dealers an undue preference or advantage over dealers at other points to whom the same privilege is not extended, but the question is one of fact to be determined by the Interstate Commerce Commission under the power conformed by section 4 of the Interstate Commerce Act. Nashville Grain Exchange v. United States, 234 Fed. 699.

ALL OTHER CITATIONS

Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 16 I. C. C. 56, 69, 70, 71. In Re Advances on Meats and Packing-House Products, 23 I. C. C. 656, 669; Brook-Rauch Mill & Elevator Co. v. St. L. I. M. & S. Ry. Co., 22 I. C. C. 249; Railroad Commission of Nevada v. N. C. O. Ry. and S. V. Ry. Co., 22 I. C. C. 205; Hettler Lumber Co. v. G. & S. I. R. R. Co., 21 I, C. C. 14; In Re Investigation and Suspension Docket 28, 21 I. C. C. 455, 456; Texico Transfer Co. v. L. & N. R.

R. Co., 20 I. C. C. 17; Bayou City Rice Mills v. T. & N. O. R. R. Co., 18 I. C. C. 490, 493; Commercial Club of Omaha v. Anderson & Saline River Ry. Co. 18 I. C. C. 532, 536; Blodgett Milling Co. v. C. M. & St. P. Ry. Co., 17 I. C. C. 587; Avery Manufacturing Co. v. A. T. & S. F. Ry. Co., 16 I. C. C. 20, 22; Allen & Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 283, 294; Grand Rapids Plaster Co. v. P. M. R. R. Co., 15 I. C. C. 68, 69; Venus v. St. L. I. M. & S. Ry. Co., 15 I. C. C. 136, 137; Marble Falls Insulator Pin Co. v. H. & T. C. R. R. Co., 15 I. C. C. 167, 169; Jones & Sons Co. v. B. & A. R. R. Co. 15 I. C. C. 226; Thomas v. C. M. & St. P. Ry. Co., 15 I. C. C. 584, 585; Advance Thresher Co. v. O. & N. W. R. R. Co., 15 I. C. C. 599, 601; Flint & Walling Mfg. Co. v. L. S. & M. S. Ry., 14 I. C. C. 336, 337; Stock Yards Cotton & Linseed Meal Co. v. St. L. S. W. Ry. Co., 14 I. C. C. 530, 531; Morti v. C. M. & St. P. Ry. Co. 13 I. C. C. 513, 515; K. C. S. Ry. Co. v. Albers Comm. Co., 79 Kan. 59, 99 Pac. 819; Iola Portland Cement Co. v. M. K. & T. Ry Co., Unrep. Op. 1; Columbus Iron Works v. C. of Ga. Ry. Co., Unrep. Op. 265; Southwestern Laundry Machinery Co. v. W. R. R. Co., Unrep. Op. 477; Jefferson Lumber Co. v. A. B. & A. R. R. Co., Unrep. Op. 534; Boston Chamber of Commerce v. A. T. & S. F. Ry. Co., 28 I. C. C. 230, 232; Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 110; Board of Trade of Carrollton, Ga. v. C. of Ga. Ry. Co., 28 I. C. C. 154, 165; People's Fuel & Supply Co. v. G. T. W. Ry. Co., 27 I. C. C. 24, 28; Jubitz v. S. P. Co., 27 I. C. C. 44; Pulp & Paper Mfrs. Traffic Asso. v. C. M. & St. P. Ry. Co., 27 I. C. C. 83, 98; Chamber of Commerce of N. Y. v. N. Y. C. & H. R. R. R. Co., 27 I. C. C. 238, 241; Commercial Club of Omaha v. A. & S. Ry. Co., 27 I. C. C. 302. 317; Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. 639, 656; State of Kansas v. A. T. & S. F. Ry. Co., 27 I. C. C. 673; Louisville & Nashville Railroad Coal and Coke Rates, 26 I. C. C. 20; In re Proportional Rates on Excelsior and Excelsior Wrappers, 26 I. C. C. 44, 45; Mansfield Hardwood Lumber Co. v. T. & G. R. R. Co., 26 I. C. C. 138; Public Service Commission of Washington v. N. P. Rv., 26 I. C. C. 272; May Bros. v. Y. & M. V. R. R. Co., 26 I. C. C. 323, 328; Blakely Southern R. R. Co. v. A. C. L. R. R. Co., 26 I. C. C. 344, 348, 350; New Kentucky Coal Co. v. L. & N. R. R. Co., 26 I. C. C. 417; Diamond Crystal Coal Co. v. M. C. R. R. Co., 26 I. C. C. 434; Disher Hoop & Lumber Co. v. St. L. & S. F. R. R. Co., 26 I. C. C. 488, 489; Sheridan Chamber of Commerce v. C. B. & Q. R. R. C., 26 I. C. C. 638, 647; Edwards & Bradford Lumber Co. v. C. B. & Q. R. R. Co., 25 I. C. C. 93, 95; In re Mine Ratings, 25 I. C. 286, 295; In re Advances in Class and Commodity Rates, 25 I. C. C. 401, 402; Lindsay & Co. v. G. N. Ry. Co., 25 I. C. C. 424; Wichita Board of Trade v. A. T. & S. F. Ry. Co., 25 I. C. C. 625; Santa Rosa Traffic Assn. v. S. P. Co., 24 I. C. C. 46, 48; Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 184; Consolidated Fuel Co. v. A. T. & S. F. Ry. Co., 24 I. C. C. 213, 215; American Dynalite Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A-13; Nixon & Knox v. C. of G. Ry. Co., Unrep. Op. A-22; Rosenblatt & Son v. C. M. & St. P. Ry. Co., Unrep. Op. A-32; Berthold & Jennings Lumber Co. v. M. & O. R. R. Co., Unrep. Op. A-41; Fullerton Lumber Co. v. C. M. St. P. Ry. Co., Unrep. Op. A-42; Fullerton Lumber Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-95; Baker & McDowell Hardware Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-44; Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 680; Transcontinental Rates from Group F, 28 I. C. C. 1, 4; Interior Iowa Cities Case, 28 I. C. C. 64, 69, 73; Colorado Mfrs. Assn. v. A. T. & S. F. Ry., 28 I. C. C. 82, 83; Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co. 28 I. C. C. 193, 202, 563, 568; Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 213; Boston Chamber of Commerce v. A. T. & S. F. Ry. Co., 28 I. C. C. 230, 232, 234; California-Nevada Lumber Rates, 29 I. C. C. 313, 315; Omaha-Oklahoma Fresh Meat Rates, 28 I. C. C. 454, 458; Scott-Mayer Commission Co. v. C. R. I. & P. Ry. Co., 28 I. C. C. 529, 532; Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 562; Mercantile Lumber and Supply Co. v. St. L. S. W. Ry. Co., 28 I. C. C. 701, 702; Hudson & Rigby v. H. & B. R. R. Co., Unrep. Op. A215; Lindsay Bros. v. C. B. & Q. R. R. Co., Unrep Op. A230; Smith Lumber Co. v. S. P. Co., Unrep. Op. A389; Duluth Log Rates, 29 I. C. C. 420, 422; Thompson v. A. T. & S. F. Ry. Co, 31 I. C. C. 138; Hughes' Creek Coal Co. v. K. & M. Ry. Co., 31 I. C. C. 10; Elevations Allowances at St. Louis and

East St. Louis, 30 I. C. C. 696, 699; Metropolis Commercial Club v. I. C. R. R. Co., 30 I. C. C. 40, 41; Seattle Shingle Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 364, 369, 370; Cement Rates from Mason City, 30 I. C. C. 426, 429; Oklahoma Portland Cement Co. v. O. L. & G. Ry. Co., 32 I. C. C. 221, 225; Switching Charges on Coke and Coal, 32 I. C. C. 444, 448; Pittsburgh & Southwestern Coal Co v. W. P. T. Ry. Co., 31 I. C. C. 660, 663; Wisconsin & Arkansas Lum. Co. v. St. L. I. M. & S. Ry., 33 I. C. C. 33, 43; Meridian Fertilizer Factory v. A. & S. Ry. Co., 33 I. C. C. 160; St. Matthews Produce Exchange v. L. & N. R. R. Co., 32 I. C. C. 233, 236; Baltimore Switching Charges, 32 I C. C. 376, 378; Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 594; Tilford-Hunt Lumber Co. v. H. & S. R. R. Co., Unrep. Op. A-772; Shaffmaster v. N. O. & N. E. R. R. Co., Unrep. Op. A-774; Cranston Lumber Co v. N. C. R. R. Co., Unrep. Op. A-779; Kansas City Bridge Co. v. DeQueen & E. R. R. Co., Unrep. Op. A-782; Lewis Mfg. Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-819; Beck & Corbett Iron Co. v. K. C. S. Ry. Co., Unrep. Op. A-836; Russell Bros. v. C. R. & P. Ry. Co., Unrep. Op. A-863; Fitzsimmons-Palmer Co. v. American Express Co. Unrep. Op. A-900; Rates on Fresh Fruits and Vegetables to Seattle, Wash., and Other Points, Unrep. Op. A-912; Goldfield Cases, 34 I. C. C. 360, 376; City of Danville, Va. v. S. Ry., 34 I. C. C. 430, 440; Stock & Sons v. C. M. & St. P. Ry, 34 I. C. C. 481; Spartanburg Chamber of Commerce v. S. Ry., 34 I. C. C. 484; Alton Box Board & Paper Co. v. I. T. R. R., 35 I. C. C. 1; Northern Pine Mfgs. Asso. v. C. & N. W. Ry. Co., 33 I. C. C., 360, 365; Lake Line Application Under Panama Canal Act 33 I. C. C. 699, 707; Lehigh Portland Cement Co. v. B. & O. S. W. R. R., 35 I C. C. 14; Louisiana Cent. Lumber Co. v. C. B. & Q. R. R., 35 I. C. C. 38; Diehl Lumber Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 1992; Rutter & Co. v. C. & N. W. Ry., 36 I. C. C. 272, 279; Henderson Commercial Club v. I. C. R. R. Co., 36 I. C. C. 20, 26; Traffic Bureau of Knoxville, Tenn. v. C. M. O. & T. P. Ry., 37 I. C. C. 687; Paducah Board of Trade v. C. B. & Q. R. R., 37 I. C. C. 743; Mutual Oil Co. v. A. T. & S. F. Ry., 38 I. C. C. 591; Ulland Coal Co. v. L. & N. R. R. 38 I. C. C. 704; Fresh Meat and Packing-House Product Rates, 38 I. C. C. 665, 668; Eastern Oregon Lum. Producers Assn. v. C. B. & Q. R. R., 39 I. C. C. 316; Providence Fruit & Produce Exch v. M. St. P. & S. Ste. M. Ry., 40 I. C. C. 45; Duffney Brick Co. v. B. & M. R. R., 39 I. C. C. 118, 125; Globe Soap Co. v. A. & S. Ry., 40 I. C. C. 121; Procter & Gamble Distributing Co. v. A. & V. Ry. Co., 40 I. C. C. 367, 372; Richmond Commercial Club v. L. & N. R. R., 40 I. C. C. 451; Purity Oats Co. v. C. B. & Q. R. R. Co., 40 I. C. C. 531, 532; Chattanoohee Lumber Co. v. A. C. L. R. R., 40 I. C. 541; Graham & Gila County Traffic Asso. v. A. E. R. R. Co., 40 I. C. C. 573, 586, 587; Eastern Shore of Virginia Produce Exchange v. N. Y. P. & N. R. R. Co., 40 I. C. C. 750, 754, 755; Sanford Day Iron Works v. L. & N. R. R. Co., 41 I. C. C. 10, 12; Lafayette Chamber v. L. W. R. R. Co., 41 I. C. C. 297, 301; Walsh & Weidner Boiler Co. v. C. H. & D. Ry. Co, 41 I. C. C. 457, 458; Coates Bros. v. C. B. & Q. R. R., 41 I. C. C. 681; Lehigh Portland Cement Co v. B. & O. S. W. R. R. Co., 42 I. C. C. 406; 411; Brick from New Hampshire Stations 42 I. C. C. 231; Wichita Business Assn. v. A. & V. Ry., 42 I. C. C. 237; Northern Mercantile Co. v. A. E. R. R. Co., 42 I. C. C. 290; Rawson Works Lumber Co. v. N. P. Ry. Co., 42 I. C. C. 303; Mebius & Dreischer Co. v. Central California Traction Co. v. 42 I. C. C. 599; Sunderland Bros. Co. v. A. N. Ry., 42 I. C. C. 641; Hormel & Co. v. C. G. W. R. R., 43 I. C. C. 23; Stearns Lumber Co. v. C. & N. W. Ry. Co., 43 I. C. C. 215; Bay State Milling Co. v. Grt. Lakes Transit Corpn., 43 I. C. C. 338; Grain Products via Great Lakes, 43 I. C. C. 550, 554; Consumers Co. v. M. St. P. & S. Ste. M. Ry. Co., 43 I. C. C. 561, 565; Johnstown, Pa. Switching, 43 I. C. C. 654; Duluth Dockage Absorption, 44 I. C. C. 300, 302; The Alaska Investigation, 44 I. C. C. 680, 704; Stanton Co. v. N. P. Ry., 45 I. C. C. 583; Buffalo Grain Cases, 46 I. C. C. 570, 582; Whiteville Lumber Co. v. A. C. L. R. R. Co., 46 I. C. C. 622; Western Pine Mfrs. Association v. C. I. & W. R. R., 46 I. C. C. 650, 654, 655; Allentown Portland Cement Co. v. M. & M. T. Co., 46 I. C. C. 492, 494; Van Dusen Harrington Co. v. C. M. & St. P. Ry., 47 I. C. C. 59; Lewis Co. v. L. & B. R. R., 47 I. C. C. 79; New York Harbor Case, 47 I. C. C. 643, 714; Thropp v. B. & L. E. R. R., 49 I. C. C. 43; Lamb-Fish Lum. Co. v. A. C. & Y. Ry., 49 I. C. C.

187; Dawson Produce Co. v. A. C. L. R. R., 49 I. C. C. 291; Kansas City Hay Dealers Asso. v. C. R. I. & P. Ry., 49 I. C. C. 350; Montgomery Ward & Co. v. P. C. C. & St. L. Ry., 50 I. C. C. 526; Williams Co. v. Penn. Co., 50 I. C. C. 531; Eastern Shore of Va. Produce Exch. v. A. & St. L. R. R., 50 I. C. C. 436; Kentucky Lumber Co. v. St. L. S. F. Ry., 51 I. C. C. 203; Darby Coal Sales Co. v. C. & O. Ry., 51 I. C. C. 370; Sun Company v. T. & O. C. Ry., 52 I. C. C. 12; Kettle Driver Co. v. M. P. Ry., 52 I. C. C. 73; Pease Grain & Seed Co. v. C. R. I. & P. Ry., 51 I. C. C. 189; Grasselli Chemical Co. v. M. L. & T. R. R. & S. S. Co., 53 I. C. C. 145; Nashville Bridge Co. v. N., C. & St. L. Ry. 53 I. C. C. 371; Seaboard By-Product Coke Co. v. Director General, 53 I. C. C. 598, 602; Paducah Board of Trade v. Director General, 53 I. C. C. 559; United Paperboard Co. Inc. v. Director General, 53 I. C. C. 569; Orange Rice Milling Co. v. Director General, 55 I. C. C. 19; Peoria Board of Trade v. A. T. & S. F. Ry., 55 I. C. C. 42; Sugar Land Mfg. Co. v. B. S. I. & W., 56 I. C. C. 212; E. I. DuPont de Nemours & Co. v. Director General, 55 I. C. C. 347; National Tube Co. v. Lake Terminal, 55 I. C. C. 469, 479; Memphis Southwestern Investigation, 55 I. C. C. 515, 539; Virginia- Carolina Chemical Co. v. Director General, 55 I. C. C. 583; Burnham-Munger-Root Dry Goods Co. v. Director General, 58 I. C. C. 73, 75; I. & S. Docket 1170, Soft Coal From Sewell Valley R. R. Stations, 58 I. C. C. 261; American Flourspar Mining, Leasing & Transportation Co. v. Director General, 56 I. C. C. 267; Tuffli Bros. Pig Iron & Coke Co. v. L. & N., 57 I. C. C. 491; Taylor & Smith v. Director General, 57 I. C. C. 520; Northern Potato Traffic Asso. v. C., B. & Q. R. R. Co., 58 I. C. C. 211, 221; Gill v. Director General, 59 I. C. C. 119, 120; The South Lumber Co. v. Director General 59 I. C. C. 495; Swift & Co. v. Director General, 59 I. C. C. 551; Jacob H. Decker & Sons v. Director General, 59 I. C. C. 585; Little Fork Coal Co. v. E. & K., 59 I. C. C. 693; Lodwick White Coal Co. v. Director General, 58 I. C. C. 530; Wharton Steel Co. v. Director General, as Agent, 59 I. C. C. 11 (23); National Fire-proofing Co. v. Director General, as Agent, 59 I. C. C., 673, 677; Perry County Coal Corporation v. Director General, 60 I. C. C. 250; Oklahoma Producing & Refining Corp. v. Director General, 60 I. C. C. 255; Newton Oil Mill v. Director General, 60 I. C. C. 433; Ryan Fruit Co. v. S. P., 60 I. C. C. 733; Oklahoma Petroleum & Gasoline Co. v. Director General, 60 I. C. C. 750; Seaboard By-Product Coke Co. v. Director General, 62 I. C. C. 317; Coal from Cumberland R. R. to Southeastern Points, 61 I. C. C. 132, 141; Three Lakes Lumber Co. v. W. W. Ry. Co., 61 I. C. C. 408; Logs from Baltimore, Mich., 61 I. C. C. 496; Substitution for increases in Rates, 61 I. C. C. 518, 520; Cameron-Hogg Lumber Co., v. Director General, as Agent, 62 I. C. C. 218; Cairo Asso. of Commerce v. Director General, as Agent, 62 I. C. C. 701, 702; Certain-Teed Products Corp. v. A. T. & S. F., 63 I. C. C. 65; Western Stoneware Co. v. C. B. & Q., 63 I. C. C. 215; Matthiessen & Hegeler Zinc Co. v. Director General, 63 I. C. C. 301; Michigan Builders Supply Co. v. Director General, 63 I. C. C. 349; Vulcan Detinning Co. v. Director General, 63 I. C. C. 145; Beaumont Chamber of Commerce v. Director General, 63 I. C. C. 151; Best Clymer Mfg. Co. v. L. & N. R. R., 63 I. C. C. 207; Silica Sand Producers Assn. v. C. B. & Q. R. R., 63 I. C. C. 217; Bell Lumber Co. v. Director General, 63 I. C. C. 225; Peerless Coal Co. v. A. T. & S. F., 63 I. C. C. 335, 337; Atlantic Refining Co. v. Director General, 64 I. C. C. 61, 702; Merchants Coal & Coke Co. v. Director General, 64 I. C. C. 73; Rates to, from, and between points south of the Ohio River, 64 I. C. C. 107, 133; Le Prestre Miller Stock Farms v. Erie R. R. Co., 64 I. C. C. 149; Pittsburgh Term. R. R. & Coal Co. v. Director General, as Agent, 63 I. C. C. 179; Edwards & Bradford Lumber Co. v. Director General, 64 I. C. C. 503, 506; General Iron Works v. Director General, 64 I. C. C. 532; Tribune, Incorporated, v. B. A. & P. Ry., 64 I. C. C. 557; National Refining Co. v. Director General, 64 I. C. C. 704; Pioneer Pole & Shaft Co. v. Director General, 64 I. C. C. 744; Cincinnati Abattoir Co. v. Director General, 66 I. C. C. 65; Nye Schneider Fowler Co. v. Director General, 66 I. C. C. 145; Darling & Co. v. Director General 66 I. C. C. 149; Midcontinent Equipment & Machinery Co. v. C. & A. R. R. 66 I. C. C. 151; Union Traction Company of Indiana v. Director General, 66 I. C. C. 157; Oxford

Paper Co. v. Director General, 66 I. C. C. 159; West Kentucky Coal Bureau v. I. C. R. R., 66 I. C. C. 228; Roundup Coal Mining Co. v. Director, 66 I. C. C. 249; American Creosoting Co. v. Director General, 66 I. C. C., 54; Southern Hardwood Traffic Asso. v. Director General, 66 I. C. C., 67; Jerpe Commission Co. v. Director General, as Agent, 66 I. C. C. 131; Grasselli Chemical Co. v. Director General 66 I. C. C. 263; Morris & Co. v. Director General 66 I. C. C. 282; E. I. Du Pont de Nemours & Co. v. Director General, 66 I. C. C. 291; Fairmont & Cleveland Coal Co. v. Director General, as Agent, 66 I. C. C. 293; Weaver Brothers Lumber Co. v. Director General, 66 I. C. C. 297; United Verde Extension Mining Co. v. U. V. & P. Ry. 66 I. C. C. 377; Rate Cancellation from Indiana to Ohio, 66 I. C. C. 449, 450, 451; Beaumont Chamber of Commerce v. A. & W. Ry. Co., 66 I. C. C., 544; Wofford Oil Co. v. Director General, 66 I. C. C., 601; International Nicle Co. v. Director General, 66 I. C. C., 627, 631; West Coast Grocery Co. v. Director General, as Agent, 66 I. C. C., 679; The General Porcelain Co. v. Director General, 66 I. C. C., 681; Gulf City Manufacturing Co. v. Director General, 66 I. C. C., 763; Proctor & Gamble Co. v. A. N. R. R. Co., 68 I. C. C. 121; Tutweler & Brooks v. Southern Railway Co., 68 I. C. C. 311; Cape Girardeau Portland Cement Co. v. Director General, 68 I. C. C. 635; Kerr & Co. v. Director General 68 I. C. C. 653; Central Refractories Co. v. Director General 69 I. C. C. 676; Lumber from California to Minnesota and Wisconsin, 69 I. C. C. 721; Kansas Rock Salt Co. v. A. T. & S. F. Ry., 69 I. C. C. 745; Empire Refineries Co. v. Director General, 73 I. C. C. 37; Chicago Coal Merchants Asso. v. Director General, 73 I. C. C. 161; Jiffy Dessert Co. v. Direcor General, 73 I. C. C. 525; Sligo Iron Store Co. v. Western Maryland Ry. Co., 73 I. C. C. 551; Hewitt Wilcox Coal Co. v. Director General, 73 I. C. C. 643; Class and Commodity Rates from Illinois and other States, 73 I. C. C. 59; Farm Wagons to Louisiana Points, 73 I. C. C. 547; Starbeck v. Director General, as Agent, 73 I. C. C. 719; Melcroft Coal Co. v. Director General, 74 I. C. C. 39; Chicago Springfield Coal Co. v. Director General, 74 I. C. C. 131; Daniel Green Felt Shoe Co. v. Director General, 74 I. C. C. 363; Pratt Engineering & Machine Co. v. M. & O. R. R., 74 I. C. C. 383; Sligo Furnace Co. v. C. & N. W. Ry. 74 I. C. C. 463; Petroleum to Memphis and Ohio River points, 77 I. C. C. 73; Cement from Oglesby, La-Salle and Dixon, Ill. Hannibal and Ilasco Junction, Mo., to certain Kentucky junction points 77 I. C. C. 164; Magnolia Petroleum Co. v. Director General, as Agent, 74 I. C. C. 133; New England Paper & Pulp Traffic Asso. v. Hoosac Tunnel & Wilmington R. R. Co., 77 I. C. C. 115; Virginia Carolina Chemical Co. v. A. C. L. R. R., 78 I. C. C. 107; Pfitzenmayer Construction Co. v. Director General, 78 I. C. C. 287; Continental Gin Co. v. Director General, 78 I. C. C. 369; Chicago Fire Brick Co. v. C. & E. I. R. R., 78 I. C. C. 371; Borden Sales Company v. Director General, 78 I. C. C. 462; Cord or Pulpwood from Elberton & Eastern R. R. to Canton, N. C., 78 I. C. C. 593; Hendrie & Boltoff Mfg. & Supply Co. v. C. B. & Q. R. R., 78 I. C. C., 609; Standard Oil Co. v. A. E. R. R. Co., 78 I. C. C. 705; American Fibre Package Co. v. Director General, 80 I. C. C. 43; Cincinnati Grain & Hay Exchange v. A. & R. Ry., 80 I. C. C. 114; Potatoes Carloads from D. & R. G. W., Station in Colorado to E. P. & S. W., Station in New Mexico, 80 I. C. C. 191; Increased Rates on Saw-Logs and Bolts from Copper Range R. R., 80 I. C. C., 590; Lumber from California to Minnesota and Wisconsin, 80 I. C. C. 595; Craig Mountain Lumber Co. v. G. N. Ry. Co., 77 I. C. C. 156; Compressed of Cotton, 77 I. C. C. 184, 188; Du Pont de Nemours & Co. v. Director General, as Agent, 80 I. C. C. 46; Saginaw & Manistee Lumber Co. v. A. T. & S. F. Ry. Co., 80 I. C. C. 487; Tidewater Paper Mills Co. v. B. T. R. R. Co., 80 I. C. C. 493; Wichita Board of Commerce v. Director General, 81 I. C. C. 423; Swift & Company v. Director General 81 I. C. C. 677; Boren Stewart Co. v. B. & O. R. Co., 83 I. C. C. 215; Electric Point Mining Co. v. Director General, as Agent, 78 I. C. C. 21; Hammond v. M. C. R. R., 78 I. C. C. 87; Somers v. N. Y.; O. & W. Ry. Co., 78 I. C. C. 243; United States v. Illinois Cent. R. Co., 44 Sup. Ct. 189; Wyoming Ry. Co. v. United States, 44 Sup. Ct. 189; Western Coal Rates, 80 I. C. C. 383, 415; Marshall v. P. R. R. Co., 80 I. C. C. 653; Wichita

Board of Commerce v. Director General, as Agent, 81 I. C. C. 423, 425; Grain and Products to Texas, 83 I. C. C. 695; Jackson Paper Co. v. A. & V. Ry., 87 I. C. C. 529; Aluminum Co. v. Director General, 87 I. C. C. 615; Beaver Sand Co. v. Director General, 88 I. C. C. 115; Board of Railroad Commissioners of Montana v. C. M. & St. P. Ry., 88 I. C. C. 183; Darling & Company v. Director General, 88 I. C. C. 208; Wyoming Sugar Co. v. Director General, 88 I. C. C. 213; Oklahoma Southwestern Ry. v. St. L. & S. F. Ry., 88 I. C. C. 235; Hollingshead Company v. D. S. W. Ry., 88 I. C. C. 659; Indiana Public Service Commission v. A. T. & S. F. Ry., 88 I. C. C. 728; Continental Coffee Co. v. A. T. & S. F. Ry., 89 I. C. C. 159; Roberts Cotton Oil Company v. Butler County R. R., 89 I. C. C. 255; Atlantic Refining Co. v. A. B. & A. Ry., 89 I. C C. 279; Petroleum from Kansas, Missouri and Oklahoma to Belleville, Ill., 89 I. C. C. 295.

§13a. Burden of proof.

See Burden of Proof.

CASES 1887-1908

(a) Where several companies join in joint tariff those making greater charges must justify it. Boston & A. R. Co. v. Boston & L. R. R. Co., 1 I. C. R. 571.

(b) Where a proportion of a through rate for part of a through haul is greatly disproportionate to the balance of the through rate, the knowledge of the circumstances and conditions (if any) justifying such disproportionate rate being peculiarly in the possession of the carrier, the burden is on the carrier to make proof of such justifying circumstances and conditions. Board of Trade of Troy, Ala v. Ala. Mid. Ry. Co. et al., 6 I. C. C. 2.

IMPORTANT CASES SINCE 1908

(c) Proposed cancellation of combination rule, providing where no through rates are published and there are effective separately established rates to and from junctions, the through rate will be computed by deducting specific amounts from each factor and adding a specific amount to the resulting sum of the factors, in connection with rates defined territories to points in Arkansas and certain border points in Missouri, Oklahoma, and Louisiana, found not justified. While the combination rule may be undesirable as a tariff rule, that fact alone does not justify its elimination unless carriers publish joint or proprotional rates in lieu thereof to prevent unwarranted increases. Cancellation of Combination Rule to the Southwest, 74 I. C. C. 505.

(d) The burden of proof to show that increased joint rates are just and reasonable is cast upon the carriers by the statute. Bituminous Coal from Mines on C. & M. R. R., 74 I, C. C. 723, 725.

(e) In determining the reasonableness of a joint rate the rate must be considered in its entirety. Wichita Board of Commerce v. Director General 81 I. C. C. 423, 425.

ALL OTHER CITATIONS

Cairo Asso. of Commerce, 62 I. C. C. 701; Silica Sand Producers Asso., 63 I. C. C. 217; Western Meat Co. v. Director General, as Agent, 83 I. C. C. 218, 220; Coal to Minnesota points, 88 I. C. C. 631, 639.

§13½. Factor of the rate.

See Class Rates §2; Proportional Rate.

CASES 1887-1908

(a) The apportionment of rates to different parts of a through line do not determine the charge to the public, but may be significant on the question of reasonable rates for the whole distance. Brady v. Pennsylvania R. Co., 2 I. C. R. 78.

(b) It is not a violation of the law for a carrier to accept a less division of a through rate for traffic going over its road than the charges to the stations it serves; the circumstances and conditions are substantially different, and the service entirely dissimilar. Rice Robinson & Witherop v. W. N. Y. & P. R. R. Co., 2 I. C. C. 298, 301.

(c) Under the exceptional circumstances requiring such through rates, shippers locally, from Chicago, of Ohio and Pennsylvania coal cannot justly insist upon rates no higher than the division of such through rates which appertains to the lines running northwest from that city—the circumstances under which the through rate is made being such that it cannot be differently adjusted. Rend v. Cg. & Northwestern R. Co., 2 I. C. R. 313.

(d) In the absence of through traf-

fic arrangements between two railroad companies, the one has the right to treat freights tendered to it by the other as local business, and to charge for the transportation thereof its local rates to destination; and in doing so, no discrimination is made against the other company, on the traffic it carries. Nor does the company, charging local rates on such freights, make, or give, any undue or unreasonable preference to other lines, or to the traffic they handle, with whom it has agreements for through routing, an dat through joint rates which may be lower than its local rates to the same points; because the service in the two cases is not the same, or identical. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(e) The difference between proportions of through rates along the same lines should be fairly reasonable in amount and properly graded in their application and not such as to injure or suppress business in one locality in order that it may be stimulated and built up in another. Milwaukee Chamber of Commerce v. F. & P. M. R., 2 I. C. C. 393, 399.

(f) Through rates are not necessarily illegal which when divided between carriers give them less than their local rates, provided that the through rate itself is not less than some one of the locals, or so low as to burden other business with part of the cost of the business upon which it is imposed. L. Lippman & Co. v. I. C. R. 2 I. C. C. 414, 415.

(g) Complainant attacked as unjust and unreasonable rates over the Grand Trunk from Port Huron, Mich., to Buffalo, N. Y., because disproportionate to the through rate from Chicago to Buffalo. Rate charged 8c per hundred pounds on grain and 10c on grain products from Port Huron and 15c from Chicago. HELD that though the local rate from Port Huron to Buffalo might be regarded as disproportionate on the basis of distance alone, other considerations are involved, and in view of the terminal and ferry expenses at Port Huron, the Niagara Bridge charges and the Buffalo terminal charges, all of which are borne by the Grand Trunk alone upon business originating at Port Huron, the complaint against the 8c rate on grain is not sustained; but no good reason having been shown for a higher rate on grain products, that portion of the complaint is sustained, and the products ordered to be carried at the same rate as grain. McMorran & Co. v. G. T. R. R. of Canada, 2 I. C. C. 604.

(h) Through rates are not necessarily illegal which, when divided between carriers, give them less than their local rates, provided that the through rate itself is not less than some one of the locals, or unjustly discriminating against individuals or localities, or so low as to burden other business with part of the cost of the business upon which it is imposed. Lippman v. Illinois C. R. Co. (Com.) 2 I. C. R. 414; Chicago, R. L. & P. R. Co. v. Chicago & A. R. Co. (Com.), 2 I. C. R. 721.

(i) The proportion of one carrier in a through rate upon a long haul often is, and frequently well may be, considerably less than its local rate for hauling the same freight over its own line, without there being any unjust discrimination, unlawful preference or extortion involved in such a method. New Orleans Cotton Exchange v. I. C. R. R. 2 I. C. C. 777, 786.

(j) Through rates on long hauls more usually than local rates on short hauls encounter water competition and are made lower in proportion to distance by this cause as well as other causes which have been repeatedly discussed and considered by the Commission; and the doctrine contended for by petitioner in this proceding, that an estimated proportion of the through rate must not be less according to distance than the local rate from an intermediate point to another point named in the line covered by the through rate, has often been held by the Commission to be untenable. See Detroit Board of Trade et al. v. The Grand Trunk Railway Company and others, 2 Inters. Com. Rep. 202, 2 I. C. C. Rep. 320; New Orleans Cotton Exchange v. The Illinois Central Railroad Company et al. 2 Inters. Com. Rep. 777, 3 I. C. C. Rep.. 534. Pougekeepsie Iron Co. v. N. Y. C. & H. R. Co., 3 I. C. R. 248.

(k) The doctrine that an estimated proportion of a through rate must not be less according to distance than the local rate from an intermeidate point to an-

other point named in the line covered by the through rate, is untenable. Poughkeepsie Iron Co. v. New York C. & H. R. R. Co. (Com.) 3 I. C. R. 248.

(l) An estimated proportion of the through rate may be less according to distance than the local rate from an intermediate point to another point named in the line covered by the through rate. Poughkeepsie Iron Co. v. N. Y. C. & H. R. Co. 3 I. C. C. 248, 253.

(m) The joint through tariff rates established by two or more carriers over their lines or any parts thereof cannot be made the basis by which the reasonableness of the local rates on either line can be determined. Chicago & N. W. R. Co. v. Osborne (C. C. App. 8th Co.), 4 I. C. R. 257.

(n) The apportionment of a rate to different parts of a through line does not determine the charge to the public, but it may be significant on the question of a reasonable rate for the whole distance. James & Abbott v. C. P. R. Co. 4 I. C. C. 274, 281.

(o) The fact that a carriers proportion of a through rate is its local for the haul over its own road or is a fixed amount, which remains the same for all points of origin or destination of traffic reached by the through line, can not relieve it from joint responsibility as a component of the through line, if the entire rate be violative of the law. Board of Trade of Troy, Ala v. A. M. R. Co., 4 I. C. C. 348, 350.

(p) Where a proportion of a through rate for part of a through haul is greatly disproportionate to the balance of the through rate, the knowledge of the circumstances and conditions justifying such disproportionate rate being peculiarly in the possession of the carrier, the burden is on the carrier to make proof of such justifying circumstances and conditions. Board of Trade of Troy, Ala., v. A. M. R. Co., 4 I. C. C. 348, 357.

(q) A local rate which is presumably adopted as covering both the initial and final expense of a local haul, is prima facie excessive as part of a through rate over a through line composed of two or more carriers. Board of Trade of Troy, Ala., v. A. M. R. Co., 4 I. C. C. 348, 357.

(r) When a proportion of a through rate for part of a through haul is greatly disproportionate to the balance of the through rate, the burden is on the carrier to make proof of justifying circumstances and conditions. Troy Bd. of Trade v. Alabama M. R. Co., 6 I. C. C. 1.

(s) Although one of two connecting carriers may lawfully accept less for its compensation on a shipment over both roads than for local delivery to the point at the end of its line, a charge of more than twice as much in the latter case is exorbitant. Cordele Machine Shop v. Louisville & N. R. Co., 6 I. C. C. 361.

(t) The proportion received by some of the connecting carriers out of a long distance through rate is not necessarily the measure of the through rate which such carriers are entitled to make over a materially shorter distance, although such proportion is an important consideration in determining the rightful relation of the two through rates. Colorado Fuel & I. Co. v. Southern P. Co., 6 I. C. C. 488.

(u) The through rate over long routes is almost never a fair test of what the rate per ton per mile ought to be upon local divisions of that route. Board of Railroad Commissioners of Kentucky v. C. N. O. & T. P. R. Co., 7 I. C. C. 380, 383.

(v) When rates established to apply between points within a single State are applied as part of combination rates on transportation between different States, such State rates, as well as the interstate rates with which they are combined, must be published at stations and filed with the Commission as provided in §6 of the Act to Regulate Commerce. Re Export Rates from Points East and West of Miss. River, 8 I. C. C. 185.

(w) The necessities of carriers often demand, and traffic conditions frequently warrant them in exacting, a share of through rates, which gives them more per mile than that which results to a connecting carrier from a division accepted by it. Gustin v. Atchison, T. & S. F. R. Co., 8 I. C. C. 277.

(x) If a railroad company can not secure other than an unreasonably low share of a joint rate to a seaport on another road, it may be justified in declining to join in such rate, especially when it can take the traffic to a seaport reach-

ed by its own road; but a carrier engaged in transportation over the through line finds no such justification when it is able to secure for itself a share of the joint rate which fully equals the rate established by it for purely local service over like distances on its own road. Savannah Bureau of Freight & Transportation v. L. & N. R. Co., 8 I. C. C. 377, 406.

(y) Rates for the terminal portion of a through haul, which are a continuation to the end of the haul of mileage rates, are, in the absence of exceptional conditions, reasonable and proper. The general rule applicable to through hauls, indeed, is that, while the aggregate rate increases with the length of haul, the rate per ton per mile decreases. Board of Trade of Hampton, Fla. v. N. C. & St. L. Ry. 8 I. C. C. 503, 527.

(z) Although a shipper or consignee has no direct interest in the way a joint rate is divided between the carriers, nor in the amount of the division received by each carrier, he is entitled, nevertheless, to inquire into such division when he complains that the joint rate is unlawful, for the amount received by the different carriers may be significant upon the reasonableness of the aggregate charge; and when an unlawful rate results from some arbitrary share or division exacted by one of the carriers, the Commission will find the facts and state its conclusions with respect to such share or division. Warren-Ehret Co. v. Central R. R. of New Jersey, 8 I. C. C. 598.

(za) When an unlawful joint rate results from some arbitrary share or division exacted by one of the carriers, the Commission will find the facts and state its conclusions with respect to such share or division. Warren-Ehret Co. v. Central R. of New Jersey, 8 I. C. C. 598.

(aa) Although a shipper or consignee has no direct interest in the way a joint rate is divided between the carriers, nor in the amount of the division received by each carrier, he is entitled, nevertheless, to inquire into such division when he complains that the joint rate is unlawful, for the amount received by the different carriers may be significant upon the reasonableness of the aggregate charge. Warren-Ehret Co. v. Central R. of New Jersey, 8 I. C. C. 598.

IMPORTANT CASES SINCE 1908

(bb) A shipper whose through rate is reasonable and non-discriminatory cannot complain of the division thereof. It does not follow that the component parts of a carrier's through rates are beyond the regulation and control of the Commission. It sometimes happens that a through rate is unreasonable because of the excessive character of a component proportional rate, and the Commission's authority to reduce the unreasonable through rate by reducing the excessive proportional rate is beyond question; but where a proposed through rate is found reasonable and there is no evidence that it is discriminatory a component proportional cannot be attacked. Malt Rates to New Orleans, La. 30 I. C. 587, 590.

(cc) It is not the separate factors in a through rate, but the rate of charge as a whole, to which the test of reasonableness must be applied. People's Fuel & Supply Co. v. G. F. W. Ry. Co., 30 I. C. C. 657, 659.

(dd) Commission has power to make corrections of single factor of through rate. Northern Pine Mfrs. Asso. v. C. & N. W. Ry. Co., 33 I. C. C., 360, 365.

(ee) A shipper has no legal grievance with respect to his through traffic, unless compelled to pay excessive charges for the through service. If the through charges are lawful in the sense that they are reasonable charges for the through service, a shipper can not predicate unlawfulness of one of the component parts of the through charges by alleging that it is excessive compensation to that carrier for that part of the through service. He pays for the completed service, and it is no concern of his how the charges are divided, so long as the through charges for the through carriage are reasonable. Northern Pine Mfrs. Ass'n v. C. & N. W. Ry., 33 I. C. C. C. 360, 365.

(ff) Generally speaking, the public and the Commission are interested only in the through charge; but where carrier is also shipper, payment of a special and abnormal division challenges attention. Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 11.

(gg) One factor of a combination rate yielding somewhat high earnings found not exorbitant when consideration given to the fact that the distance was short and the country traversed mountainous. Burns & Knapp v. B. S. & K. R. Ry. Co., 62 I. C. C. 345, 347.

(hh) Combination rate charged on rubber shoddy from Plymouth, Mass., to East Cambridge, Mass., during Federal control, found unreasonable to extent that the factor from South Station, Boston, Mass., to East Cambridge, exceeded lower proportional rate subsequently established. Reparation awarded. Boston Woven Hose & Rubber Co. v. Director General, as Agent, 73 I. C. C., 13.

(ii) On through movements a portion of a rate can not be considered by itself and without regard to its relation to the entire rate for the through haul. Goss v. Director General, as Agent, 73 I. C. C. 649, 653.

(jj) Combination rates on steel plates and tank material, k. d., from Leetsdale, Pa., to Dubberly and Mansfield, La., found not unreasonable due to the fifth class differential assessed for the factor Leetsdale to St. Louis, Mo. A lower commodity differential contemporaneously was in effect from Pittsburgh territory, in which Leetsdale is located, but no shipments have been made thereunder, and it is therefore a paper rate. Furthermore, iron and steel articles are generally rated fifth-class in this territory. Gulf Refining Co. of La. v. Director General, as Agent, 73 I. C. C., 729.

(kk) Fact that a component of a through rate is found unreasonable does not establish the unreasonableness of such through rate. New Orleans Board of Commissioners v. Director General, as Agent, 77 I. C. C. 664, 667, 668.

(ll) In determining the reasonableness of a through rate it is proper to consider its components, notwithstanding the through charge itself is first to be considered. Armour & Co. v. C. of Ga. R. Co. 81 I. C. C. 33, 36.

(mm) In examining into the reasonableness of a combination rate or charge the Commission is not precluded from looking to the several factors thereof in an effort to locate unreasonableness in the total charge. Wilson & Company v. Director General 81 I. C. C. 39, 41.

(nn) Where the Commission decides that a local rate between two points in the same state, used as part of a joint through rate, is excessive, it has power to direct its reduction when used in making up the through rate. D. & R. G. Ry. Co. v. Baer Bros. Mercantile Co., 209 Fed. 577, 580.

ALL OTHER CITATIONS

Interior Iowa Cities Case, 28 I. C. C. 64, 73, 74; Scott-Mayer Commission Co. v. C. R. I. & P. Ry. Co., 28 I. C. C. 529, 532; Mercantile Lumber & Supply Co. v. St. L. S. W. Ry Co., 28 I. C. C. 701, 702; Obion Hardware Co. v. V. R. R. Co., Unrep. A162; Daugherty, McKey & Co. v. F. E. C. Ry. Co., Unrep. Op. A253; Poehlman Bros. Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 89, 92; Malt Rates to New Orleans, La., 30 I. C. C. 587, Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 707, 709, 710; Obion Hardware Co. v. C. I. & S. R. R. Co., Unrep. Op. A-838; Fleischner, Mayer & Co. v. N. P. R. R. Co., Unrep. Op. A-889; Michigan Bean Jobbers' Asso. v. G. R. & I. Ry., 33 I. C. C. 318, 321; St. Matthews Produce Exchange v. L. & N. R. R. Co., 32 I. C. C. 233, 236, 237; Fleischner, Mayer & Co. v. N. P. Ry. Co., Unrep. Op. A-869; Goodner Malone Co. v. M. P. R. R. Co., Unrep. Op. A-907; C. M. & St. P. Ry. Co. v. State Public Utilities Comm'n. (Ill. 1915), 108 N. E., 729, 731; Bascom-Porter Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 2091; Northern Pine Mfgs., Asso. v. C. & N. W. Ry. Co., 33 I. C. C. 360, 365; R. R. Comrs. of Iowa v. A. T. & S. F. Ry. Co., 34 I. C. C. 111, 113; Merchants Exch. of St. Louis v. B. & O. R. R., 34 I. C. C. 341; Florence Wagon Works v. M. P. & G. Ry. Co., 36 I. C. C. 650; McLean Lum. Co. v. A. T. & N. Ry., 37 I. C. C. 520; Davis v. M. St. P. & St. Ste. M. Ry., 37 I. C. C. 523; Connors-Weyman Steel Co. v. S .A. L. Ry., Unrep. Op. 2103; Robinson Clay Product Co. v. P. Co., Unrep. Op. 2108; Ohio Valley Tie Co. v. L. & N. R. R. Co. Unrep. Op. 2131; Sturges Bros. v. A. T. & S. F. Ry. Co., Unrep. Op. 2226; Buckeye Lumber Co. v. N. P. Ry. Co., Unrep. Op. 2230; Wellington Mines Co. v. C. & S. Ry., 39 I. C. C. 201; Ludowici-Celadon Co. v. E. J. & E. Ry., 39 I. C. C. 407; Templeton & Sons v. C. I. & S. R. R., 39 I. C. C. 335; Pillsbury Flour Mills Co. v. G. N. Ry., 39 I. C. C. 353; Williams Stave Co. v. La. Ry. & Nav. Co., 39 I. C. C.

553; Lafayette Chamber of Commerce v. A. & V. Ry., 39 I. C. C. 619; Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co., 39 I. C. C. 224, 235; Dallas Chamber of Commerce v. A. T. & S. F. Ry. Co., 40 I. C. C. 619, 643; Royal Milling Co. v. G. N. Ry., 41 I. C. C. 29; Montague Mailing Co. v. I. C. R. R. 42 I. C. C. 357; Stevens Grocer Co. v. St. L. I. M. & S. Ry. Co., 42 I. C. C. 396, 398; Wells-Higman Co. v. C. B. & Q. R. R., 42 I. C. C. 480; Southeastern Lumber, 42 I. C. C. 548, 558; Traffic Bureau, Toledo Commerce Club v. C., H. & D. Ry. Co., 43 I. C. C. 446, 457; Green v. A. & V. Ry. Co., 43 I. C. C. 662, 667; Internat. Paper Co. v. M. C. R. R., 45 I. C. C. 30; Du Pont de Nemours Powder Co. v. P. & R. Ry. Co., 44 I. C. C. 531, 532; Cadillac Lumber Exchange v. A. A. R. R. Co., 44 I. C. C. 750, 752; Adams v. C. & S. Ry., 45 I. C. C. 69, 70; Hudson River Lumber Co. v. L. & P. Ry., 45 I. C. C. 571; Swift & Co. v. B. & O. R. R., 45 I. C. C. 8, 11; Cairo Bd. of Trade v. C. C. C. & St. L. Ry., 46 I. C. C. 343, 350; Woolworth v. U. P. R. R., 46 I. C. C. 437, 439; Indianapolis Chamber of Commerce v. C. C. C. & St. L. Ry., 46 I. C. C. 547, 556; Crown Williamette Paper Co. v. S. P. Co., 47 I. C. C. 44, 45; Live Stock from Nashville, Tenn., 48 I. C. C. 227, 281; Otis Elevator Co. v. N. Y. C. R. R. Co., 48 I. C. C. 487, 489; Knight Woolen Mills v. D. & R. G. R. R. Co., 48 I. C. C. 501, 504; McCaull-Dinsmore Co. v. C. B. & Q. R. R., 48 I. C. C. 507; Carolina Wood Products Co. v. S. Ry. Co., 48 I. C. C. 582, 586; Algonite Stone Mfg. Co. v. A. T. & S. F. Ry. Co., 48 I. C. C. 689, 699; Boorman-Power Lum. & Imp. Co. v. C. R. I. & P. Ry., 48 I. C. C. 695; Meeds Lumber Co. v. A. G. S. R. R., 49 I. C. C. 87; Lamb-Fish Lumber Co. v. A. C. & Y. Ry., 49 I. C. C. 187, 195; Mayfield & Graves County Commercial Club v. I. C. R. R., 49 I. C. C. 419; Marsh & Truman Lumber Co. v. L. & N. R. R., 49 I. C. C. 605; Bainbridge Oil Co. v. M. & B. R. R., 51 I. C. C. 9; Cincinnati Grain & H. Co. v. P. C. C. & St. L. R. R., 51 I. C C 248; Kentucky Lumber Co. v. St. L. & S. F. Ry., 50 I. C. C. 22; Clearfield Lumber Co. v. C. & O. Ry., 50 I. C. C. 93; Elizabethton Flooring Co. v. E. T. & W. N. C. R. R., 50 I. C. C. 137; Gamble Robinson Fruit Co. v. F. E. C. Ry., 50 I. C. C. 301; Knopke Bros. v. C. & A. R. R., 50 1 C. C. 465, 467; Bowman & Co. v. C. R. I. & P. Ry., 51 I. C. C. 177; Walter A. Zelnicker Supply Co. v. Mallory Steamship Co., 52 I. C. C. 363; E. I. DuPont de Nemours Powder Co. v. D. & R. G. R. R., 52 I. C. C. 427; Ryan & Newton Co. v. F. E. C. Ry. Co., 53 I. C. C. 232; Watters-Tonge Lumber Co. v. L. & N. R. R. Co., 53 I. C. C. 315, 317; R. R. Com'rs. of Iowa v. M. & St. L. R. R. Co., 53 I. C. C. 484, 490; Merchants Freight Bureau v. A. C. L. R. R., 55 I. C. C. 119, 120; Crown Williamette Paper Co. v. Director General, 56 I. C. C. 682; Assets Realizing Mines Corp. v. A. T. & S. F. Ry. Co., 57 I. C. C. 39; Du Pont de Nemours Powder Co. v. Director General, 57 I. C. C. 54, 57; New York & Pennsylvania Co. v. Director General, 58 I. C. C. 124, 129; Koenig Coal Co. v. G. T. Ry. Co., 57 I. C. C. 241; Whitehouse Barrel Co. v. Director General, 57 I. C. C. 753; Heider Mfg. Co. v. B. & O. R. R. Co., 58 I. C. C. 184, 185; Bretney Co. v. Director General as Agent, 58 I. C. C. 217; Royal Bank of Canada v. S. A. L. 59 I. C. C. 367; National Fireproofing Co. v. Director General, as Agent, 59 I. C. C. 673, 677; Swift & Co. v. C. N., 60 I. C. C. 747; Swift & Co. v. Director General, 62 I. C. C. 166; George Pottery Co. v. Director General, as Agent, 60 I. C. C. 372, 685; Newton Oil Mill v. Director General, as Agent, 60 I. C. C., 433; Electric Coal Co. v. Director General, as Agent, 60 I. C. C. 683, 685; Aluminum Ore Co. v. Director General 62 I. C. C. 498; United Paperboard Co. (Inc.) v. M. C. R. R. Co., 62 I. C. C. 43; Silica Sand Producers Asso. v. C., B. & Q. R. R. Co., 63 I. C. C. 217, 218; Rumble & Wensel Co. v. Director General, as Agent, 64 I. C. C. 199; Edwards & Bradford Lumber Co. v. Director General, as Agent, 64 I. C. C. 503; Coral Ridge Clay Products Co. v. Director General, 66 I. C. C. 172; Bedford Cut Stone Co. v. Director General, as Agent, 66 I. C. C. 26; Fairmont & Cleveland Coal Co. v. Director General, 66 I. C. C. 293; General Chemical Co. v. Director Genral, as Agent, 66 I. C. C. 443; Choate Oil Corp. v. Director General, as Agent, 66 I. C. C. 562; Burns & Knapp v. B. S. & K. R. Ry. Co., 74 I. C. C. 111; Parkersburg Rig & Reel Co. v. M. K. & T. Ry. Co. of Tex., 74 I. C. C. 695; Armour & Co. v. Director General, as Agent, 74 I. C. C. 745; United States of America v. Director General, 80 I. C. C. 143; Pacific Coast Shippers' Asso. v. Director General, as Agent, 78

I. C. C. 10; Hammond v. M. C. R. R., 78 I. C. C. 87; Cole Creamery Co. v. Director General, as Agent, 78 I. C. C. 91; Petroleum and Petroleum Products, 78 I. C. C. 162; 166; Williamette Paper Co. v. Director General, as Agent, 78 I. C. C. 273. North Packing & Provisions Co., 73 I. C. C. 749; Geisel Mfg. Co., 80 I. C. C. 193; Tidewater Paper Mills Co. v. B. T. R. R. Co., in 80 I. C. C. 493; Marshall v. P. R. R. Co., 80 I. C. C. 653; Inland Empire Paper Co. v. S. I. Ry. Co., 81 I. C. C. 603, 604, 607, 608; Kelly Company v. A. B. & A. Ry., 81 I. C. C. 621.

§14. Divisions.

See Divisions §4; Evidence §13 (2).

CASES 1887-1908

(a) The total charge for transportation is all that concerns the shipper, and not the percentages allowed by agreement to one or more of the connecting carriers in a through line. Carriers voluntarily enter into agreements for through shipments over connecting roads, and the division of the through rate is part of their mutual agreement which the parties to the arrangement adjust themselves, and the adjustment of which does not affect the shipper. Boston Chamber of Commerce v. L. S. & M. S. R. R. Co., 1 I. C. C. 754, 760.

(bc) The public has no interest in the division railroads make among themselves of their joint earnings from transportation over through lines. It is the reasonableness of the through rate, not of any division or part of it, that the complainants have a right to insist upon. Brady v. Pennsylvania Co., 2 I. C. C. 78, 80.

(d) Under exceptional circumstances requiring through rates via Chicago westward from points in a coal-mining district extending across the whole State of Illinois, which is properly treated as one point in making rates, shippers locally, from Chicago, of Ohio and Pennsylvania coal, cannot justly insist upon rates no higher than the division of such through rates which appertains to the lines running northwest from that city,—the circumstances under which the through rate is made being such that it cannot be differently adjusted. A reduction of their rates on that basis would involve either a general reduction from the entire group, under the short-haul clause of the Interstate Commerce Law, or an abandonment by defendant of the through rates in question, neither of which would benefit complainant, while both would do great injury to all other interests involved. Under such circumstances the preference is not undue, nor is the advantage complained of unreasonable. Rend v. Chicago & N. W. R. Co. (Com.) 2 I. C. R. 313.

(e) Through rates are not necessarily illegal which when divided between carriers give them less than their local rates, provided that the through rate itself is not less than some one of the locals, or unjustly discriminating against individuals or localities, or so low as to burden other business with part of the cost of the business upon which it is imposed. Lippman & Co. v. Illinois Central R. Co., 2 I. C. R. 414.

(f) The Commission prescribed a through rate on peaches from New Jersey and Delaware to Boston, Mass. Motion filed for rehearing upon the claim that some of the other defendants construed the decision of the Commission as justifying them in insisting that the freight charge prescribed should be divided among the carriers on a mileage basis merely. HELD, the decision of the Commission could not fairly be construed as justifying the claim that the single freight charge between the interstate points should be divided on a mileage basis. The Commission can prescribe the through rate as an entirety, the rate to be reasonably and fairly divided among the several carriers by themselves. Motion for rehearing overruled. Boston Fruit & Produce Exchange v. N. Y. & N. E. R. Co., 3 I. C. C. 604.

(g) Divisions of a joint rate among the carriers are sometimes inquired into for the purpose of ascertaining, from the divisions, whether a rate unreasonable in itself may not be traced to the inequality of such divisions. Perry v. F. C. & P. R. Co., 3 I. C. C. 740, 744.

(h) Divisions of a through rate need not be considered on the question of the way in which the through rate is affected by an arbitrary differential. Toledo Produce Exch. v. Lake Shore & M. S. R. Co. (Com.), 3 I. C. R. 830.

(i) While the share which a carrier receives out of a joint or through rate over a line of which its road is a part is

not necessarily the measure of reasonable rates by such carrier for a similar length of haul over its own road, it is proper in any case under the statute to use the aggregate joint or through rate in force over such line as a basis of comparison in determining the legality of rates charged by such carrier over its own road. Daniels v. Chicago, R. I. & P. R. Co., et al, 6 I. C. C. 458.

(j) The necessities of carriers often demand, and traffic conditions frequently warrant them in exacting, a share of through rates which gives them more per mile than that which results to a connecting carrier from the division accepted by it. Gustin v. A. T. & S. F. R. Co., 8 I. C. C. 277, 288.

(k) Although a shipper or consignee has no direct interest in the way a joint rate is divided between the carriers, nor in the amount of the division received by each carrier, he is entitled, nevertheless, to inquire into such division when he complains that the joint rate is unlawful, for the amount received by the different carriers may be significant upon the reasonableness of the aggregate charge; and when an unlawful rate results from such arbitrary share or division exacted by one of the carriers, the Commission will find the facts and state its conclusions with respect to such share or division. Warren-Ehret Company v. C. R. R. of N. J. 8 I. C. C. 598, 604.

(l) Divisions of joint rates are usually less than the corresponding locals, and almost without exception not greater; and while a case may arise in which such a division could with propriety be made greater than the local or straight rate, no such case is presented where the total through rates on competitive traffic exceed the sum of charges to and from immediate points. Hilton Lumber Co. v. Wilmington & Weldon R. Co., 9 I. C. C. 17.

(m) Generally speaking, the public is not interested in the division of a through rate, and the Commission, therefore, has no authority to condemn the division of the rate, unless a part of the through line and the article shipped have a common ownership, and a grossly excessive division is made for the purpose of paying a rebate. Re Transportation of Salt, 10 I. C. C. 148.

(n) The share of the through rate for the transportation of salt from producing points in Michigan to points on the Missouri River, which is allowed to the boat line on Lake Michigan, the controlling interest in which is owned by the same persons who own a controlling interest in the corporations producing salt at the point named, and which share amounts to from 30 to 33 1-3 per cent of the through rate, and is considerably higher than the former charge of carrying salt on Lake Michigan, but which increase is partly accounted for by the fact that additional services are included,—is not so grossly disproportionate to the value of the additional through services as to amount to a rebate in favor of the salt interests which control the boat line. Re-Transportation of Salt, 10 I. C. C. 148.

(o) It should be borne in mind that, generally speaking, the public is not interested in the division of a through rate, and the Commission, therefore, has no authority to condemn the division of a rate, unless a part of the through line and the article shipped have a common ownership, and a grossly excessive division is made for the purpose of paying a rebate. Re transportation of Salt, 10 I. C. C. 148, 171.

(p) Divisions of through rate among carriers forming through route, does not affect unity of rate. Re Through Routes & Through Rates, 12 I. C. C. 163.

(q) A division of a joint rate is not conclusive evidence of discrimination. Omaha Cooperage Co. v. N. C. & St. L. R. Co., 12 I. C. C. 251, 252.

(r) Divisions of joint rate on beef cattle from Ft. Worth, Tex., to Birmingham, Ala., in view of terminal charges of receiving and delivering lines, and ferry charge of intermediate line, made upon mileage basis. Birmingham Packing Co. v. T. & P. R. Co., 12 I. C. C. 500.

(s) Terminal expense taken into consideration on division of joint rate. Birmingham Packing Co. v. T. & P. R. Co., 12 I. C. C. 500.

(t) Terminal charge may be considered in divisions of through rates. Birmingham Packing Co. v. T. & P. Ry. Co., 12 I. C. C. 500.

IMPORTANT CASES SINCE 1908

(u) Where the Commission orders a carrier to establish through routes and

joint rates, it will not specify the connecting carriers, but will leave defendant to negotiate with the various connecting carriers in such a manner as will enable it to best protect its own interest in securing divisions, so long as the rates and routes put into effect by it are reasonable. Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co., 15 I. C. C. 460, 467.

(v) The Commission has many times expressed the view that the division received by a carrier as its share of a joint rate is not conclusive evidence of the unreasonableness of the joint rate involved. Wichita Board of Trade v. A. T. & S. F. Ry. Co., 25 I. C. C. 625, 631.

(w) Ordinarily much weight cannot be given to comparisons of divisions of joint rates. West Virginia Rail Co. v. B. & O. R. R. Co., 26 I. C. C. 622, 625.

(x) One of the duties of a common carrier is to participate in joint rates as the public interest requires. This is an incident of their undertaking and equity does not necessarily demand that they be compensated by larger divisions in the instances where it might be more advantageous to confine traffic to their own lines. Pittsburgh & West Virginia Ry. v. P. L. E., 61 I. C. C. 272, 283.

(y) In determining whether or not a complainant has been damaged by the exaction of unreasonable or unduly preferential reshipping rates the total through charges paid from point of origin must be considered. Edwards & Bradford Lumber Co. v. Director General, 64 I. C. C. 503, 505.

(z) Cancellation of joint rates can not be justified on the ground that the divisions thereof are unsatisfactory. If satisfactory divisions can not be agreed upon between carriers, that matter may be presented to the Commission in an appropriate proceeding. Routing Restrictions on Lumber, 66 I. C. C. 56.

(aa) While the law does not permit the commission to require rail carriers to establish through routes which result in the short hauling of one carrier which has a reasonably direct route of its own, it is not a necessary conclusion, when such routes and joint rates are established, that local rates are fair divisions for the carrier which is short hauled. U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 317, 355.

(bb) The Commission cannot deny a carrier a reasonable division out of joint rates because of past or present derelictions, or even the fear of further violations of the law. L. & P. Ry. Co. v. United States, 209 Fed. 244, 254.

ALL OTHER CITATIONS

In Re Advances on Meats and Packing-house Products, 23 I. C. C. 656, 661; Chamber of Commerce of Newport News v. S. Ry. Co., 23 I. C. C. 345, 346; Colonial Salt Co. v. M. I. & I. L., 23 I. C. C. 358, 368; Merchants' & Mfrs. Assn. v. P. R. R. Co., 23 I. C. C. 474, 478; Southern Illinois Millers' Ass'n v. L. & N. R. R. Co., 23 I. C. C. 672, 673; Copper Queen Consolidated Mining Co. v. B. & O. R. R. Co., 18 I. C. C. 154, 156; Star Grain & Lumber Co. v. A. T. & S. F. Ry. Co., 14 I. C. C. 364, 370; Topeka Traffic Assn. v. A. & V. Ry. Co., 27 I. C. C. 428, 436; Railroad Coal and Coke Rates, 26 I. C. C. 20, 21; Rates from the Walsenburg Coal Field, 26 I. C. C. 85, 90; New Pittsburgh Coal Co. v. H. V. Ry. Co., 26 I. C. C. 121, 122, 123; Rates on Common Brick to Canada, 26 I. C. C. 129, 131; Board of Trade of Winston-Salem v. N. & W. Ry. Co., 26 I. C. C. 146, 150; Lumber from Louisiana to North Atlantic Points, 26 I. C. C. 186, 190; Texas Cement Plaster Co. v. St. L. & S. F. R. R. Co., 26 I. C. C. 508, 509; Withdrawal of Joint Rates on Grain via Minnesota Transfer, 26 I. C. C. 595, 598; Lake-and-Rail Rates from Central Freight Assn. Territory, 26 I. C. C. 671, 672; Southern Furniture Mfrs. Assn. v. S. Ry. Co., 25 I. C. C. 379, 383; Lindsay & Co. v. G. N. Ry. Co., 25 I. C. C. 424, 428; Port Huron & Duluth S. S. Co. v. P. R. R. Co., 40 I. C. C. 335, 337; Dyes from New York, N. Y. 40 I. C. C. 546, 549; Sandstone, Minn., Missouri River Building Stone Rates, 28 I. C. C. 269, 273; Malt Rates to New Orleans, La., 30 I. C. C. 587, 590; Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 707, 710; Campbells Creek Coal Co. v. A. A. R. R., 33 I. C. C. 558, 561; Rate on Lumber and Other Forest products, 32 I. C. C. 484, 485; Union Bag & Paper Co., v. D. & H. Co., Unrep. Op. 814; Allentown P. Cement Co. v. M. M. & M. Trans. Co., 46 I. C. C. 492, 493; Potatoes from Kansas Points, 49 I. C. C. 525. Lumber from the Southeast, 50 I. C. C. 191, 197. Lumber Rates from Pacific Coast, 63 I. C. C. 125; Peerless Coal Co. v. A., T. & S. F. Ry. Co., 63 I. C. C. 335, 337; Cambria

Steel Co. v. Director General, 64 I. C. C. 737, 742; Internatonal Nickel Co. v. Director General, as Agent, 66 I. C. C., 627, 628, 631.

§15. Exceeding combination of intermediates.

See Comparative Rates; Evidence §13 (3); §13 (5); Local Rates and Combinations; Long and Short Hauls §6¾.

CASES 1887-1908

(a) In the nature of things joint rates on long hauls usually are, and as a rule should be, lower in proportion to distance than local rates on short hauls of the same commodity. Farrar & Co. v. E. Tenn., Va. Ga. R. Co., 1 I. C. R. 764.

(b) Although the share which a carrier receives out of a through rate over a line of which its road is a part is not necessarily the measure of reasonable rates by such carrier for a similar length of haul over its own road, the aggregate through rate in force over such line may properly be used as a basis of comparison in determining the legality of rates charged by such carrier over its own road. Daniels v. Chicago, R. I. & P. R. Co., 6 I. C. C. 458.

(c) A through rate over a railroad 18½ miles long lying partly in Arkansas and partly in Missouri, of 10 cents per mile, while the local charges as allowed by statute in one state are 5 cents per mile and in the other 4 cents per mile, is unreasonable and unjust, where the net earnings are in excess of a moderate return on the actual investment. Railroad & W. Comrs. v. Eureka Springs R. Co., 7 I. C. C. 69.

(c) Usually the charge for a single transportation service from one place to another should not exceed the lowest combination of rates established for consecutive services covering the whole distance between the two places. Savannah Bureau of Freight v. C. & S. R. Co., 7 I. C. C. 601, 609.

(e) The exaction by a carrier of shares of through joint rates greatly in excess of its purely local rates for the same service makes the entire through rate unjust and unreasonable as compared with the local rates, and a violation of §§1 and 3 of the Act to Regulate Commerce. Savannah Bureau of Freight v. Louisville & N. R. Co., 8 I. C. C. 377.

(f) The through rate on lumber from Wilmington to Philadelphia, Jersey City, and Boston via Norfolk or Portsmouth is unreasonable, and violates §§ 3, 1, and 2 of the Act to Regulate Commerce, where it is greater than the aggregate local rates on transportation of lumber under similar circumstances and conditions. Hilton Lumber Co. v. Wilmington & Weldon R. Co. 9 I. C. C. 17.

(fa) The local rates on lumber from Wilmington to Norfolk or Portsmouth, Va., added to the rates in force from Portsmouth or Norfolk to Philadelphia, Jersey City and Boston, produce lower aggregate charges than the through rates in effect on lumber carried by the connecting defendant carriers from Wilmington direct to Philadelphia, Jersey City and Boston via Portsmouth and Pinners Point, adjacent to Norfolk. This results from the fact that the arbitrary or proportion of the through rate from Wilmington exacted by the carriers north of Portsmouth or Norfolk is greater than their rates on shipments from Norfolk or Portsmouth. The rates to Philadelphia, Jersey City and Boston from Norfolk or Portsmouth are made to meet water competition, and such competition also exists for traffic from Wilmington to Northern seaport cities. Lumber manufacturers in Wilmington and Norfolk and vicinity compete actively for the sale and shipment of lumber to northern markets. The circumstances and conditions applying on the transportation of lumber from Portsmouth, Norfolk and vicinity to Philadelphia Jersey City and Boston on traffic originating at those points and at Wilmington are substantialy similar, or if any difference exists it is in favor of the through Wilmington busines. HELD —That the through rates from Wilmington to Philadelphia, Jersey City and Boston, to the extent that they exceed the sum of rates from Wilmington to Norfolk or Portsmouth and from the latter points to the northern cities mentioned, are unjust and wrongfully prejudical to Wilmington shippers in violation of sections three, one and two of the Act to regulate commerce., Hilton Lumber Co. v. Wilmington & W. R. R. Co. et al. 9 I. C. C. 17.

(fb) The lumber shippers are unjustly discriminated against by a through rate to Philadelphia, Jersey City and Boston via Portsmouth and Pinners Point which is greater than the aggregate local rates on lumber from Wilmington to Norfolk or Portsmouth Va. added to the rates in force from the latter places to Philadelphia, Jersey City, and Boston, where the local rates from Norfolk or Portsmouth to the named northern points are made to meet water competition; and such competition also exists in traffic to Wilmington from northern seaports; and the circumstances and conditions applying to the transportation of lumber from Portsmouth Norfolk, and vicinity to the northern points, on the traffic originating there and at Wilmington, are substantially similar. Hilton Lumber Co. v. Wilmington & Weldon R. Co., 9 I. C. C. 17.

(g) Complainant attacked through commodity rate of 55c at estimated weight of 8,500 pounds unreasonable charged on two cows and a calf from Newport, Vt. to Pawtucket, R. I. It appears the local rate from Newport to Worcester, Mass., distance 235 miles is 45c, estimated weight 3,300 pounds and from Worcester Mass. to Pawtucket, distance 39 miles is 12c estimated weight 7,500 pounds. HELD, under the general rule of using the combination of local rates where they aggregate a less amount than the through rate, defendant paid the resulting overcharge, complaint dismissed. Sayles v. N. Y. N. H. & H. R. R. 9 I. C. C. 492.

(h) Complaint desired to ship cotton seed in carloads from Louisiana station on defendant's line to Hope, Ark., at the sum of local rates based upon Texarkana, Ark., which sum was less than the published through charge, but defendant refused to apply its local rate to Texarkana, which was 12½ cents per 100 pounds, on such through shipments, and also refused to allow complainant to ship locally to Texarkana under the 12½ cent rate in force to that point. HELD: That while defendant was entitled to insist upon the application of the through rate to the through shipment to Hope, it could not lawfully refuse to receive and carry complainant's freight to Texarkana under its local rate to that point, and that complainant is entitled to reparation for damages resulting from its inability to ship 640 tons of cotton seed to Hope which it had contracted for and desired to have transported over defendant's line. Hope Cotton Oil Co. v. Texas & P. R. Co. 10 I. C. C. 697.

(i) Silos from Kalamazoo, Mich., to Elkhorn, Wis., via Chicago, joint through rate of 28 cents per 100 pounds, while combination rate to Chicago at same time is only 17 cents, conceded to be excessive to the extent of difference. Kalamazoo Tank & Silo Co. v. M. C. R. R. Co., 12 I. C. C. 154.

(j) Complaint alleged that defendants' joint through rate of 67 cents per 100 pounds on cotton seed, in carloads, from points north of Shreveport, in Louisiana, on the T. & P. Ry. via Texarkana to Hope, Ark., on the St. L., I. M. & S. Ry., is unreasonable and unduly discriminatory and that a just and reasonable rate would be a through rate equal to the sum of the present local rates in and out of Texarkana, which is 17½ cents per 100 pounds. After complaint was filed, defendants put in effect between the points of origin in Louisiana and Hope a joint through rate of 30 cents per 100 pounds on cotton seed in carloads, with a minimum weight of 30,000 pounds per car. HELD, upon the record, that the present through rate of 30 cents is unreasonable and that it should not exceed 17½ cents the sum of the locals, with a minimum carload weight of 30,000 pounds. Hope Cotton Oil Co. v. Texas & Pacific Ry. Co., Et al. 12 I. C. C. 266.

(k) Complainant attacked defendants joint through rate of 67c commodity, on cotton seed, carloads, from points north of Shreveport, La., on the T. & P., via Texarkana, to Hope, Ark., on the Iron Mountain as unreasonable and unduly discriminaory, and that a just and reasonable rate would be the sum of the present local rates to and out of Texarkana, which was 17½c. Defendants put in effect a joint through rate of 30c. HELD, present rate of 30c unreasonable to extent it exceeded 17½c. Hope Cotton Oil Co. v. T. & P. Ry. 12 I. C. C. 266.

(l) The Commission can make no general ruling that through rates must not exceed the sum of the locals; each case must be disposed of upon its own merits. Coffeyville Vitrified Brick &

Tile Co. v. St. L. & S. F. Ry. 12 I. C. C. 498, 499.

(m) A carrier may, because of commercial conditions or competition, establish at a given point an especially low rate, but it does not necessarily follow that all like traffic that moves through that point in the same direction must be given the benefit of that low rate, and while a through rate that is higher than the sum of the local rates between the same point is prima facie unreasonable, it can not be reduced to equal such sum of locals except through lawful change in tariff. Morgan et al. v. Mo. Kans. & Tex. Ry. Co. et al., 12 I. C. C. 525.

(n) Through traffic not necessarily entitled to benefit of low rates at intermediate points, although a through rate that is higher than the sum of local rates is prima facie unreasonable. Morgan v. M. A. & T. R. Co., 12 I. C. C. 525.

IMPORTANT CASES SINCE 1908

(o) That the through rate should not exceed the sum of the locals is a doctrine well established, but it does not follow as a corollary that the sum of the locals should always be reduced to equal the through rates. Williams Co. v. V. S. & P. Ry. Co., 16 I. C. C. 482, 485.

(p) Some time since the Commission announced the rule that it would consider a joint through rate prima facie unreasonable if it exceeded the shipment of the local rates between the same points. It has since become necessary, in order to do more complete justice, to extend the application of the rule so that except in special and unusual circumstances, and respecting fully the limitations placed in tariffs upon the use of basing, proportional or arbitrary rates the fair measure of the reasonableness of a joint through rate that exceeds the combination between the same points via the same route is the lowest combination that would lawfully apply if the joint through rate were canceled. Windsor Turned Goods Co. v. C. & O. Ry. Co., 18 I. C. C. 162. 164.

(q) Where a local rate for a short local haul is added to a rate for a considerable distance to make a through rate, the principle should be invoked that the local rate should be considered in connection with the entire haul. In other words, the through charge should bear a proper relation to the total distance involved. While distance is not the sole factor to be considered, it is manifest that the application of the full locals as parts of the through rate may be unreasonable and unjustly discriminatory. St. Matthews Produce Exchange v. L. & N. R. R. Co., 32 I. C. C. 233, 236, 237.

(r) Generally accepted principle of rate making that through rates should be less than the sum of the intermediate Rates. Chattanooga Packet Co. v. I. C. R. R. Co., 33 I. C. C., 384, 392.

(s) Until shortly prior to the movement of this shipment it had been the carriers general practice to apply to shipments, which were in fact through shipments from eastern seaboard territory to interior destinations in Texas, combination rates based on Galveston which were lower than the joint rates in effect for the through movement. The carriers by consciously participating in the practice of rebilling prior to that period and thereafter by the establishment of joint rates made the combination of locals the measure of what they deemed appropriate rates on traffic from Atlantic Seaboard territory to interior Texas points. Taylor & Smith v. Director General, 57 I. C. C. 520, 522.

(t) A joint rate in excess of the aggregate of the intermediate rates subject to the act is prima facie unreasonable. M. L. Davis v. G. C. & S. F. Ry., 68 I. C. C. 303, 304.

(u) When distances are relatively great, and when transfer at rate breaking points is not attended by unusual costs, the combination basis, using local rates, ordinarily is abnormal and unscientific and often discriminatory. The Commission has generally recognized that through rates should be less than the combinations. Pacific Creamery Co. v. A. T. & S. F. Ry., 68 I. C. C. 340, 342.

(v) Joint rates can not be condemned solely because, when originally established they were based on combinations of intermediate rates. Silica Sand Producers Asso. v. C. B. & Q. R. R., 73 I. C. C. 588, 589.

(w) Rates on scrap iron from Hot Springs and Pine Bluff, Ark., to Quincy, Ill., exceeded the aggregate of interme-

diate rates based on East St. Louis, Ill. Reparation awarded and measure of maximum reasonable rates prescribed. Standard Rail & Steel Co. v. M. P. R. R. Co., 73 I. C. C., 219.

(x) Fifth-class rate on hoop steel from Glassport, Pa., to Manor, Pa., during Federal control, found unreasonable to extent it exceeded the aggrgate of intermediate rates to and from Homestead Junction, Pa. Reparation awarded. Pittsburgh Steel Co. v. Director General, as Agent, 73 I. C. C., 555.

(y) Rates which are higher than the aggregate of intermediate rates are prima facie unreasonable, Burns & Knapp v. B. S. & K. R. Ry. Co., 74 I. C. C. 112.

(z) It is a generally accepted principle of rate making that through rates should be less than the sum of the intermediate rates. U. S. War Department v. A. & S. Ry., 77 I. C. C. 317, 356.

(aa) Through rates higher than the aggregate intermediates are prima facie unreasonable, but the prima facie presumption is rebuttable. Virginia- Carolina-Chemical Co. v. A. C. L. R. R. Co. 78 I. C. C. 107, 108.

(bb) In justification of rate assessed in excess of aggregate of intermediate rates, defendant submitted evidence of increase in operating costs and decrease in revenue during period of movement. HELD: General observations such as these are not sufficient to overcome presumption of unreasonableness where joint rates exceed aggregate of intermediates. Henderson Lumber Co. v. Director General, as Agent, 80 I. C. C. 83, 84.

(cc) A joint through rate in excess of the aggregate of intermediate rates is prima facie unreasonable, but the presumption is rebuttable. Green Lumber Co. v. A. A. R. R. Co., 80 I. C. C. 185, 189.

(dd) When assessment of a switching charge in connection with transit results in greater aggregate compensation to carrier than sum of intermediate rates, it can not be considered that section 4 has thereby been violated, for services performed are not the same in the two instances. Transit involves an additional service on part of carrier for which separate charge may be made; the switching charge is an additional expense incident to transit service. Detroit Board of Trade v. W. Ry. Co. 80 I. C. C. 717, 720, 721.

(ee) A joint rate which exceeds the sum of the intermediate rates contemporaneously in effect is prima facie unreasonable. Tulsa Paper Co. v. C. M. & St. P. Ry. 81 I. C. C. 293.

(ff) Through rates may not be condemned as unreasonable merely because constructed upon combination. Barnes Automobile Co. v. D., T. & I. R. R. Co., 83 I. C. C. 350, 352.

(gg) A rate that exceeds the aggregate of intermediates is prima facie unreasonable, but that presumption is rebuttable by a showing that the joint rate is not intrinsically unreasonable. Fidelity Lumber Co. v. L. & P. Ry. Co., 83 I. C. C. 499, 500.

ALL OTHER CITATIONS

R. R. Com. of Nev. N. C. O. Ry. Co., 22 I. C. C. 205, 210; McLean Lumber Co. v. L. & N. R. R. Co., 22 I. C. C. 349, 352; National League of Commission Merchants v. A. C. L. R. R. Co., 20 I. C. C. 132, 134; Caldwell v. C. I. & L. Ry. Co., 20 I. C. C. 412; Rosenblatt & Sons v. C. & N. W. Ry. Co., 20 I. C. C. 447; Hartman Furniture & Carpet Co. v. C. R. I. & P. Ry. Co., 20 I. C. C. 496; Alpha Portland Cement Co. v. Penn. R. R. Co. 20 I. C. C. 640, 643; Bott Bros. Mfg. Co. v. C. B. & Q. R. R. Co., 19 I. C. C. 136; Greater Des Moines Committee v. C. M. & St. P. Ry. Co., 18 I. C. C. 73, 80; Milburn Wagon Co. v. L. S. & M. S. Ry. Co., 18 I. C. C. 144, 145; Stevens Grocer Co. v. G. R. & I. Ry. Co., 18 I. C. C. 147, 148; Noble v. V. S. & P. Ry. Co., 18 I. C. C. 224, 225; Ryan v. G. N. Ry. Co., 18 I. C. C. 226, 227; Rosenblatt & Sons v. C. & N. W. Ry. Co., 18 I. C. C. 261, 262; Winona Carriage Co. v. Penn. R. R. Co., 18 I. C. C. 334, 335; Gund & Co. v. C. B. & Q. R. R. Co., 18 I. C. C. 364, 369; Contact Process Co. v. N. Y. C. & St. L. R. R. Co., 17 I. C. C. 184; Awbrey & Semple v. G. H. & S. A. Ry. Co., 17 I. C. C. 267, 271; White Bros. v. A. T. & S. F. Ry. Co., 17 I. C. C. 288, 289; Kimberly v. C. & O. Ry. Co., 17 I. C. C. 335, 336; Lindsay Bros. v. B. & O. S. W. R. R. Co., 16 I. C. C. 6, 8; Dayton Chamber of Commerce v. C. M. & St. P. Ry. Co., 16 I. C. C. 82, 83; Gil-

christ v. L. E. & W. R. R. Co., 16 I. C. C. 318, 319; Wells-Higman Co. v. G. R. & I. Ry. Co., 16 I. C. C. 339; Scully Steel & Iron Co. v. L. S. & M. S. Ry. Co., 16 I. C. C. 358; Stock Yards Cotton & Linseed Meal Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 366, 367; Blodgett Milling Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 384; Barrett Mfg. Co. v. Graham & Morton Transportation Co., 16 I. C. C. 399; Empire Oil Works v. C. M. & St. P. Ry. Co., 16 I. C. C. 401; Kurtz v. Penn R. R. Co., 16 I. C. C. 410; Lindsay Bros. v. G. R. & I. Ry. Co., 16 I. C. C. 441, 442; Smith Mfg. Co. v. C. M. & G. Ry. Co., 16 I. C. C. 447, 448; Humbird Lumber Co. v. N. P. Ry. Co., 16 I. C. C. 449; Carlin's Sons Co. v. B. & O. R. R. Co., 16 I. C. C. 477; Lindsay Bros. v. M. C. R. R. Co., 15 I. C. C. 40, 41; Lindsay Bros. v. G. R. & I. Ry. Co., 15 I. C. C. 182, 183; Keich Mfg. Co. v. St. L. & S. F. R. R. Co., 15 I. C. C. 230, 231; Michigan Buggy Co. v. G. R. & I. Ry. Co., 15 I. C. C. 297, 299; Lindsay Bros. v. L. S. & M. S. Ry. Co., 15 I. C. C. 284, 285; Matthews Mfg. Co. v. Y. & M. V. R. R. Co., 15 I. C. C. 436, 438; Hartman Furniture & Carpet Co. v. W. C. Ry. Co., 15 I. C. C. 530, 531; Kindel v. N. Y. N. H. & H. R. R. Co., 15 I. C. C. 555, 558; American Cigar Co. v. C. M. & St. P. Ry. Co., 15 I. C. C. 618; Oshkosh Logging Tool Co. v. C. & N. W. Ry. Co., 14 I. C. C. 109; Montgomery Freight Bureau v. Western Ry. of Ala., 14 I. C. C. 150; Flaccus Glass Co. v. C. C. C. & St. L. Ry. Co., 14 I. C. C. 333, 334; Montgomery Freight Bureau v. M. & O. R. R. R. Co., 14 I. C. C. 374, 375; Minneapolis Threshing Machine Co. v. C. M. & St. P. Ry. Co., 14 I. C. C. 536; Wilson v. C. M. & St. P. Ry. Co., 14 I. C. C. 549; Sylvester v. Penn. R. R. Co., 14 I. C. C. 573; Hardenberg, Dolson & Gray v. N. P. Ry. Co., 14 I. C. C. 579; Momsen & Co. v. Gila Valley, Globe & Northern Ry. Co., 14 I. C. C. 614, 615; Laning-Harris Coal & Grain Co. v. M. P. Co., 13 I. C. C. 154, 158; Coomes v. C. M. & St. P. Ry. Co., 13 I. C. C. 192, 194; Hydraulic Press Brick Co. v. St. L. & S. F. R. R. Co., 13 I. C. C. 347; Marshall-Weells Hardware Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 10; American Cigar Co. v. L. S. & M. S. Ry. Co., Unrep. Op. 17; American Hide & Leather Co. v. Pa. Co., Unrep. Op. 22; Anderson Vehicle Co. v. L. S. & M. S. Ry. Co., Unrep. Op. 23; Clinton Bridge & Iron Works v. C. M. & St. P. Ry. Co., Unrep. Op. 24; International Harvester Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 26; Delray Salt Co. v. M. C. R. R. Co., Unrep. Op. 27; Minneapolis Dry Goods Co. v. Wis. Cent. Ry. Co., Unrep. Op. 31; Armour Car Lines v. St. L. & S. F. R. R. Co., Unrep. Op. 32; Acme Cement Plaster Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 46; Kingman & Co. v. C. H. & D. Ry. Co., Unrep. Op. 53; Southern Sewer Pipe Co. v. L. & N. R. R. Co., Unrep. Op. 54; Virginia-Carolina Chemical Co. v. S. A. L. Ry., Unrep Op. 57; Menasha Woodenware Co. v. Wis. Cent. Ry. Co., Unrep. Op. 73, 74, 76; Menasha Woodenware Co. v. C. & N. W. Ry. Co., Unrep. Op. 75, 77; Seattle Frog. & Switch Co. v. N. P. Ry. Co., Unrep. Op. 79; Union Match Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 80; Clemons Produce Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 101; Wilson v. O. R. & Nav. Co., Unrep. Op. 107; Shadbolt & Boyd Iron Co. v. C. I. & L. Ry. Co., Unrep. Op. 108; Vaughn Mfg. Co. v. P. C. C. & St. L. Ry. Co., Unrep. Op. 121; Pioneer Pole & Shaft Co. v. C. H. & D. Ry. Co., Unrep. Op. 123; Ryan & Newton v. S. P. Co., Unrep. Op. 127; National Sewing Machine Co. v. C. C. & L. R. R. Co., Unrep. Op. 129; Barlow v. M. P. Ry. Co., Unrep. Op. 134; Heinz Co. v. N. Y. C. & St. L. R. R. Co., Unrep. Op. 136; American Plow Co. v. P. M. R. R. Co., Unrep. Op. 144; Farmers' Handy Wagon Co. v. P. M. R. R. Co., Unrep. Op. 149; Scully Steel & Iron Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 156; Nitrate Agencies Co. v. I. C. R. R. Co., Unrep. Op. 163; Sunderland Bros. Co. v. C. B. & Q. R. R. Co., Unrep Op. 165; Vote-Berger Co. v. Ft. W. C. & L. R. R. Co., Unrep. Op. 183; Stock Yards Cotton & Linseed Meal Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 213; American Plow Co. v. P. M. R. R. Co., Unrep. Op. 219; Stockbridge Elevator Co. v. A. A. R. R. Co., Unrep. Op. 221; Michael Bros. v. I. C. R. R. Co., Unrep. Op. 228; Jordan Co. v. C. B. & Q. R. R. Co., Unrep. Op. 233; Copper Queen Consolidated Mining Co. v. M. L. & T. R. R. & S. S. Co., Unrep Op. 235; Heinz Co. v. P. M. R. R. Co., Unrep. Op. 236; Nehrbass Casket Co. v. P. C. C. & St. L. Ry. Co., Unrep Op. 238; Watson Co. v. N. Y. C. & St. L. R. R. Co., Unrep. Op.

240; Miller & Co. v. G. H. & S. A. Ry. Co., Unrep. Op. 249; Menasha Woodenware Co. v. W. C. Ry. Co. Unrep. Op. 252; Medberry Findeisen Co. v. C. & N. W. Ry. Co., Unrep. Op. 263; Noble v. T. St. L. & W. R. R. Co., Unrep Op. 272; Fuller & Johnson Mfg. Co. v. C. & N. W. Ry. Co., Unrep Op. 278; Dreyfus Bros. v. L. & N. R. R. Co., Unrep. Op. 281; Fitzsimmons-Palmer Co. v. L. & N. R. R. Co., Unrep. Op. 295; Fleisher (Inc.) v. L. H. & St. L. Ry. Co., Unrep. Op. 297; Red Wing Sewer Pipe Co. v. M. P. Ry. Co., Unrep. Op. 302; Benton v. St. L. & S. F. R. R. Co., Unrep. Op. 304; Johnston & Co. v. L. & N. R. R. Co., Unrep. Op. 308. Manitou Mineral Springs Co. v. D. & R. G. R. R. Co., Unrep. Op. 312; Rosenblatt v. O. R. R. & Nav. Co., Unrep. Op. 314; Rassman v. C. M. & St. P. Ry. Co., Unrep. Op. 316; Berlin Machine Works v. B. & O. S. W. R. R. Co., Unrep. Op. 321; Fuller & Johnson Mfg. Co. v. C. H. & D. Ry. Co., Unrep. Op. 324; Rosenblatt & Sons v. C. M. & St. P. Ry. Co., Unrep. Op. 325; Standard Oil Co. v. B. & O. C. T. R. R. Co., Unrep. Op. 335; Stacy & Sons v. C. B. & Q. R. R. Co., Unrep. Op. 343; Dian Lumber Co. v. P. & N. W. R. R. Co., Unrep. Op. 347; Northern California Lumber Co. v. S. P. Co., Unrep. Op. 353; International Purchasing Co. v. N. O. & N. E. R. R. Co., Unrep. Op. 374; Underwood Veneer Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 376; Ludowici-Celadon Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 386; Voss-Barbee Mfg. Co. v. E. R. R. Co., Unrep. Op. 388; Galesburg Grocery Co. v. C. B. & Q. R. R. Co., Unrep. Op. 393; Southern Iron & Equipment Co. v. L. & N. R. R. Co., Unrep. Op. 397; Marion Guano Co. v. C. C. C. & St. L. Ry. Co., Unrep. Op. 406; Humboldt Brick Mfg. Co. v. C. B. & Q. R. R. Co., Unrep. Op. 409; Williams & Voris Lumber Co. v. L. & N. R. R. Co., Unrep. Op. 413; Old Dominion Copper Mining & Smelting Co. of Ariz. v. N. O. Ry. Co., Unrep. Op. 416; Menasha Woodenware Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 424; Chesnutt Lumber Co. v. L. & N. R. R. Co., Unrep. Op. 440; Ludowici-Celadon Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 447; Central Commercial Co. v. L. & N. R. R. Co., Unrep. Op. 448; Western Lime & Cement Co. v. M. St. P. & S. Ste. M. Ry. Co., Unrep. Op. 456; American Lumber & Mfg. Co. v. L. Ry. & Nav. Co., Unrep. Op. 470; Rehberg & Co. v. N. & W. Ry. Co., Unrep. Op. 479; Young & Wann Supply Co. v. L. & N. R. R. Co., Unrep. Op. 480; Dawson Bros. v. A. T. & S. F. Ry. Co., Unrep. Op. 486; Lindsay Bros. v. G. R. & I. Ry. Co., Unrep. Op. 489; Gund Brewing Co. v. C. M. & St. P. Ry. Co., Unrep. Op 501; Standard Oil Co. v. E. J. & E. Ry. Co., Unrep. Op. 502; Arkansas Fertilizer Co. v. B. & O. R. R. Co., Unrep. Op. 507; American Milling Co. v. L. H. & St. L. Ry. Co., Unrep. Op. 515; Dowd Knife Works v. M. C. & C. R. R. Co., Unrep. Op. 523; Arizona Ry. Com. v. E. P. & S. W. Co., Unrep. Op. 526; Gulf Coast Cotton Oil & Refining Co. v. N. O. & N. E. R. R. Co., Unrep. Op. 532; Hunt v. L. & N. R. R. Co, Unrep. Op. 536; Janesville Barb Wire Co. v. C. & N. W. Ry Co., Unrep. Op. 537; Anheuser-Busch Brewing Ass'n v. E. P. & S. W. Co., Unrep. Op. 547; Baird Lumber Co. v. L. & N. R. R. Co., Unrep. Op. 549; De Camp Fuel Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 556; Columbian Iron Works v. A. G. S. R. R. Co., Unrep. Op. 557; Dickinson & Co. v. K. & M. Ry. Co., Unrep. Op. 587; Phillips Co. v. G. T. Ry. Co., Unrep. Op. 590; Vincennes Bridge Co. v. B. & O. S. W. R. R. Co., Unrep. Op. 597; Walsh & Weidner Brewing Boiler Co. v. A. G. S. R. R. Co., Unrep. Op. 598; Interstate Grain Co. v. C. & N. W. Ry. Co., 22 I. C. C. 34, 35; R. R. Com. of Nev. v. N. C. O. Ry. Co., 22 I. C. C. 205, 210; McLean Lumber Co. v. L. & N. R. R. Co., 22 I. C. C. 349, 352; Bluefield Shippers' Asso. v. N. & W. Ry. Co., 22 I. C. C. 519, 532; League of Commission Merchants v. A. C. L. R. R. Co., 20 I. C. C. 132, 134; Caldwell Co. v. C. I. & L. Ry. Co., 20 I. C. C. 412; Rosenblatt & Sons v. C. & N. W. Ry. Co., 20 I. C. C. 447; Hartman Furniture & Carpet Co. v. C. R. I. & P. Ry. Co., 20 I. C. C. 496; Alpha Portland Cement Co. v. Penn. R. R. Co., 20 I. C. C. 640, 648; Lull Carriage Co. v. C. K. & S. Ry. Co., 19 I. C. C. 15, 17; Bott Bros. Mfg. Co. v. C. B. & Q. R. R. Co., 19 I. C. C. 136, 137; Milburn Wagon Co. v. L. S. & M. S. Ry. Co., 18 I. C. C. 144, 145; Stevens Grocery Co. v. G. R. & I. Ry. Co., 18 I. C. C. 147, 148; Windsor Turned Goods Co. v. C. & O. Ry. Co., 18 I. C. C. 162, 164; Noble v. V. S. & P. Ry. Co., 18 I. C. C. 224, 225; Ryan v. Gt. N. Ry. Co., 18 I. C. C. 226, 227; Rosenblatt v. C. & N. W. Ry. Co., 18 I. C. C. 261, 262, 263; Winona Carriage Co. v. P. R. R.

Co., 18 I. C. C. 334, 335, 336; Germain Co. v. N. O. & N. E. R. R. Co., 17 I. C. C. 22, 24; Contact Process Co. v. N. Y. C. & St. L. R. R. Co., 17 I. C. C. 184; Aubrey & Semple v. G. H. & S. A. Ry. Co., 17 I. C. C. 267, 271, 272; White Bros. v. A. T. & S. F. Ry. Co., 17 I. C. C. 288, 289; Stock Yards Cotton & Linseed Meal Co. v. M. K. & T. Ry. Co., 17 I. C. C. 295; Kimberly v. C. & O. Ry. Co., 17 I. C. C. 335, 336; Lindsay Bros. v. B. & O. S. W. R. R. Co., 16 I. C. C. 6, 8, 9; Dayton Chamber of Commerce v. C. M. & St. P. Ry. Co., 16 I. C. C. 82, 83; Gilchrist vs. I. E. & W. R. R. Co., 16 I. C. C. 318, 319; Wells-Higman Co. v. G. R. & I. Ry. Co., 16 I. C. C. 339; Scully Steel & Iron Co. v. L. S. & M. S. Ry. Co., 16 I. C. C. 358; Stock Yards Cotton & Linseed Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 366, 367; Blodgett Milling Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 384; Barrett Mfg. Co. v. Graham & Morton Transportation Co., 16 I. C. C. 399; Empire Oil Works v. C. M. & St. P. Ry. Co., 16 I. C. C. 401; Kurtz v. Penn. Co., 16 I. C. C. 410, 415; Lindsay Bros. v. G. R. & I. Ry. Co., 16 I. C. C. 441, 442; Smith Mfg. Co. v. C. M. & G. Ry. Co., 16 I. C. C. 447, 448; Humbird Lumber Co. v. N. P. Ry. Co., 16 I. C. C. 449; Carlin's Sons Co. v. B. & O. R. R. Co., 16 I. C. C. 477; Williams Co. v. V. S. & P. Ry. Co., 16 I. C. C. 482, 485; Winters Metallic Paint Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 562, 563; Porter v. St. L. & S. F. R. R. Co., 15 I. C. C. 1, 4, 6; Lindsay Bros. v. M. C. R. R. Co., 15 I. C. C. 40, 41; Lindsay Bros. v. G. R. & I. Ry. Co., 15 I. C. C. 182, 183; Keich Mfg. Co. v. St. L. & S. F. R. R. Co., 15 I. C. C. 230, 231; Michigan Buggy Co. v. G. R. & I. Ry. Co., 15 I. C. C. 297, 299; Lindsay Bros. v. L. S. & M. S. Ry. Co., 15 I. C. C. 284, 285; Matthews Mfg. Co. v. Y. & M. V. R. R. Co., 15 I. C. C. 436, 438; Hartman Furniture & Carpet Co. v. W. C. Ry. Co., 15 I. C. C. 530, 531; Kindel v. N. Y. N. H. & H. R. R. Co., 15 I. C. C. 555, 558; American Cigar Co. v. C. M. & St. P. Ry. Co., 15 I. C. C. 618; Oshkosh Logging Tool Co. v. C. & N. W. Ry. Co., 14 I. C. C. 109, 112, 113, 114; Montgomery Freight Bureau v. Western Ry. of Ala., 14 I. C. C. 150, 151, 152; Flaccus Glass Co. v. C. C. C. & St. L. Ry. Co., 14 I. C. C. 333, 334, 335; Randolph Lumber Co. v. Seaboard Air Line Ry., 14 I. C. C. 338, 339; Montgomery Freight Bureau v. M. & O. R. R. Co., 14 I. C. C. 374, 375; Minneapolis Threshing Machine Co. v. C. M. & St. P. Ry. Co., 14 I. C. C. 536; Sylvester v. Penn. R. R. Co., 14 I. C. C. 573, 574; Hardenberg, Dolson & Gray v. N. P. Ry. Co., 14 I. C. C. 579, 580; Momsen & Co. v. Gila Valley, Globe & Northern Ry. Co., 14 I. C. C. 614, 615; Laning-Harris Coal & Grain Co. v. M. P. Ry. Co., 13 I. C. C. 154, 158; Coomes v. C. M. & St. P. Ry. Co., 13 I. C. C. 192, 194; Hydraulic Press Brick Co. v. St. L. & S. F. R. R. Co., 13 I. C. C. 342, 347; Anguish v. C. M. & St. P. Ry. Co., Unrep. Op. 64; White Bros. v. S. P. Co., Unrep. Op. 84; Bayou City Rice Mills v. H. & T. C. R. R. Co., Unrep. Op. 90; Hartman Furniture Co. v. C. Gt. W. Ry. Co., Unrep. Op. 115; Swift & Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 130; American Smelting & Refining Co. v. O. S. L. R. R. Co., Unrep. Op. 162; Minneapolis Iron Store Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 172; Bamble Bros. v. C. M. & St. P. Ry. Co., Unrep. Op. 173; New England Furniture & Carpet Co. v. M. C. R. R. Co., Unrep. Op. 243; Medberry Findeisen Co. v. C. & N. W. Ry. Co., Unrep. Op. 263; Berlin Machine Works v. B. & O. S. W. R. R. Co., Unrep. Op. 321; Crabtree v. O. R. & Nav. Co., Unrep. Op. 357; Ludowicci-Celadon Co. v. C. & M. V. R. R. Co., Unrep. Op. 385; McCord Mercantile Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 398; Sunderland Bros. Co. v. M. K & T. Ry. Co., Unrep. Op. 400; Chattanooga Wagon Co. v. M. & O. R. R. Co., Unrep. Op. 429; Pierce v. D. M. & N. Ry. Co., Unrep. Op. 401; Southern Shuttle & Bobbin Co. v. T. F. Ry. Co., Unrep. Op. 407; Torrey Cedar Co. v. C. & N. W. Ry. Co., Unrep. Op. 420; Idaho Lime Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 553; Franke Grain Co. v. L. S. & M. S. Ry. Co., Unrep. Op. 554; Interior Iowa Cities Case, 28 I. C. C. 64, 74; Iowa State Board v. A. E. R. R. Co., 28 I. C. C. 193, 202; Boston Chamber of Commerce v. A. T. & S. F. Ry. Co., 28 I. C. C. 230, 232; Jubitz v. S. P. Co., 27 I. C. C. 44, 45, 46; Pulp & Paper Mfrs' Traffic Assn. v. C. M. & St. P. Ry. Co., 27 I. C. C. C. 83, 96; Washington Milling Co. v. N. & W. Ry. Co., 27 I. C. C. 546, 547; Rates on Cement for Paving and Roofing, 26 I. C. C. 11, 12; Appalachia Lumber Co. v. L. & N. R. R. Co., 25 I. C. C. 193, 194, 195; In re Advances on Potatoes, 25 I. C. C. 247, 248; Kessler Co. v. L. & N. R. R.

Co., 25 I. C. C. 397; Arabol Mfg. Co. v. S. B. Ry. Co., 25 I. C. C. 429, 431; R. R. Com. of Oregon v. S. P. Co., 24 I. C. C. 273, 274; Lumbermen's Exchange of St. Louis v. A. & S. R. Ry. Co., 24 I. C. C. 220, 225; St. Louis Blast Furnace Co. v. V., Ry. Co., 24 I. C. C. 361; Asbury Smith Logsdon v. I. C. R. R. Co., 24 I. C. C. 624; Paine Lumber Co. v. C. C. C. & St. L. Ry. Co., 24 I. C. C. 626; Tusten Seed & Produce Co., Ltd., v. V. S. & P. Ry. Co., Unrep. Op. A-5; Gund Brewing Co. v. C. M. & St. P., Ry. Co., Unrep. Op. A-11; U. S. Gypsum Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-25; Alderman & Sons Co. v. A. C. L. R. R. Co., Unrep. Op. A-33; Mekus v. W. R. R. Co., Unrep. Op. A-34; Powell & England v. G. N. Ry. Co., Unrep. Op. A-37; Beebe Co. v. O. W. R. R. & N. Co., Unrep. Op. A-62. Charles Weisse & Co. v. C. H. & D. Ry. Co., 29 I. C. C. 374; California Nevada Lumber Rates, 28 I. C. C. 313, 315; Florence Wagon Works v. S. Ry. Co., Unrep. Ops. ...., A106; New Roads Oil Mill & Mfg. Co. v. T. & P. Ry Co., A120; Christy Fire Clay Co. v. M. P. Ry. Co., A125; Woolworth & Co. v. L. & N. R. R. Co., A132; Hobbs Hardware Co. v. A. T. & S. F. Ry. Co., A176; Ewing Coal Co. v. A. C. R. R. Co., A196; Clark Coal & Coke Co. v. C. T. H. & S. E. Ry. Co., A198; Weaks Iron Works & Supply Co. v. St. L. I. M. & S. Ry. Co., A201; Waterman Lumber & Supply Co. v. T. & G. Ry Co., Unrep. Ops. .... A269; Archer Daniels Linseed Co. v. C. M. & St. P. Ry. Co., A277; Barnes Grocer Co. v. St. L. I. M. & S. Ry. Co., A283; Stearns & Culver Lumber Co. v. L. & N. R. R. Co., A320; Lindsay Bros. v. G. R. & I. Ry. Co., A326; Hull Co. v. E. J. & R. Ry. Co. A340; French Battery & Carbon Co. v. L. S. & M. S. Ry. Co., A373; Hess v. U. P. R. R. Co., A385; Davis Sewing Machine Co. v. P. C. C. & St. L. Ry. Co., Unrep. Op. A236; Butler Paper Co. v. N. Y. C. & H. R. R. R. Co. Unrep. Op. A267; Wagner & Sons v. Sugarland Ry. Co., Unrep. Op. A287; Patent Vulcanite Roofing Co. v. C. C. C. & St. L. Ry. Co., Unrep. Op. A306; Smith Mfg. Co. v. C. & N. W. Ry. Co., Unrep. Op. A318; Curll v. C. & O. Ry. Co., Unrep. Ops. .... A347; Maine Spinning Co. v. B. & M. R. R., A350; Butler Paper Co. v. B. & A. R. R. Co., A372; Miller & Co. v. G. C. & S. F. Ry. Co., Unrep. Op. A380; Wichita Board of Trade v. A. & S. Ry. Co., 29 I. C. C., 376, 377; Kroll Lumber Co. v. G. N. Ry. Co., Unrep. Op. A428; Wells Lumber Co. v. G. & S. I. R. R. Co., Unrep. Op. A434; Warfield-Pratt-Howell Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A437; Tusten Seed & Produce Co. v. V. S. & P. Ry. Co., Unrep. Op. A442; Rockford Lumber & Fuel Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A446; Chattanooga Sewer Pipe & Fire Brick Co. v. A. G. S. R. R. Co., Unrep. Op. A450; Caddo River Lumber Co. v. C. & C. R. R., Unrep. Op. A455; Spokane Cycle & Supply Co. v. S. I. Ry. Co., Unrep. Op. A461; Lee Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A499; Flanley Grain Co. v. M. P. Ry. Co., Unrep. Op. A503; Nevada Hills Mining Co. v. S. P. Co., Unrep. Op. A526; Sharon v. C. V. R. R. Co., Unrep. Op. A532; Boeckeler Lumber Co. v. T. R. R. Asso. of St. L., Unrep. Op. A533; Kulzer v. G. N. Ry. Co., Unrep. Op. A540; Godwin v. Y. & M. V. R. R. Co., 31 I. C. C. 25, 27, 29; Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 352, 356; Alderman & Sons Co. v. A. C. L. R. R. Co., A-548; Chattanooga Bottle & Glass Mfg. Co. v. N. C. & St. L. Ry. Unrep. Op. A-575; American Lumber & Mfg. Co. v. D. T. & I. Ry. Co. Unrep. Op. A-584; Atwood-Stone Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-599; Bass & Harbour Co. v. M. O. & G. Ry. A-628; Flanley Grain Co. v. C. B. & Q. R. R. Co., Unrp. Op. A-638; Crane-Johnson Co. v. G. N. Ry. Co., Unrep. Op. A-640; Lee Broom & Duster Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-650; Application of Fonthill Gravel Co., Ltd. (Can. Ry. Comm.), File 18265.3; Sunderland Bros. Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-705; Miller & Co. v. Wabash R. R. Co., Unrep. Op. A-722; Dewey Bros. Co. v. B. & O. S. W. R. R. Co., Unrep. Op. A-738; Class Rates Between Stations in Louisiana, 33 I. C. C. 302; Memphis Freight Bureau v. St. L. I. M. & S. Ry., 33 I. C. C., 472; Milburn Wagon Co. v. A. A. Ry. Co., 32 I. C. C., 582, 589; Berry Lumber & Stave Co. v. L. & N. R. R. Co. Unrep. Op. A-771; Meeds Lumber o. A. C. Ry. Co., Unrep. Op. A-829; Jeffries v. N. O. M. & C. R. R. Co., Unrep. Op. A-831; Peden Iron & Steel Co. v. S. P. Co. Atlantic S. S. Lines, Unrep. Op. A-869; Bartlette Co. v. M. St. P. & S. Ste. M. Co., Unrep. Op. A-887; Wilson Produce Co. v. N. & W. Ry. Co., Unrep. Op. A-905; American Naval Stores Co. v. L. & N. R. R. Co., Unrep. Op. A-922; New England

Fish Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-924; Hughes & McCoy v. C. R. I. & P. Ry. Co., Unrep. Op. A-935; Miller & Co. v. W. R. R. Co., Unrep. Op. A-942; Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co., 33 I. C. C. 472, 475; Board of Trade of Kansas City v. C. M. & St. P. Ry. Co., 34 I. C. C. 208; Producers Fruit Co. v. S. P. Co. Unrep. Op. 1891; Hynes Elevator Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 1895; American Linseed Co. v. C. & N. W. Ry. Co., Unrep. Op. 1934; Virginia-Carolina Chemical Co. v. L. & N. R. R. Co., Unrep. Op. 1948; Hammer v. A. C. L. R. R. Co., Unrep. Op. 1956; Cement Rates From West Coplay, Pa., Unrep. Op. 1990; Texas Unit Construction Co. v. N. O. T. & M. R. Co., Unrep. Op. 2003; Marty & Co. v. C. B. & Q. R. R. Co., Unrep. Op. 2008; Pacific Fruit Exchange v. A. T. & S. F. Ry. Co., Unrep. Op. 2026; Jergens Co. v. P. C. C. & St. L. Ry. Co., Unrep. Op. 2085; Swift & Co. v. T. & P. Ry. Co., Unrep. Op. 2094; Atlantic Lumber Co. v. N. S. R. Co., Unrep. Op. 2099; McCaull-Dinsmore Co. v. M. P. Ry. Co., 35 I. C. C. 69, 71; Nebraska Bridge Supply & Lumber Co. v. A. G. S. R. R. Co., 35 I. C. C. 90, 93; Taylor & Co. v. Wabash R. R., 37 I. C. C. 540; Elm City Lum. Co. v. A. C. L. R. R. 37 I. C. C. 571; Indiana Veneer & Lum. Co. v. St. L. I. M. & S. Ry., 37 I. C. C. 579; Bradley Timber & Ry. Supply Co. v. C. N. Ry., 37 I. C. C. 583; Through Rates to Points in Louisiana and Texas, 38 I. C. C. 153, 162, 163, 164; Pillsbury Flour Mills Co. v. C. R. I. & P. Ry. Co., 38 I. C. C. 290; Standard Lum. Co. v. S. G. Ry., 38 I. C. C. 301, 303; McCaull-Dinsmore Co. v. N. P. Ry., 38 I. C. C. 305; Sheboygan Mineral Water Co. v. C. & N. W. Ry., 38 I. C. C. 491; Dare Lum. Co. v. N. S. R. R., 38 I. C. C. 507; Smith Lum. Co. v. N. S. R. R., 38 I. C. C. 508; Wilcox v Erie R. R., 38 I. C. C. 583; Oklahoma Fuel Co. v. M. K & T. Ry., 38 I. C. C. 585; Nordstrom v. C. M. & St. P. Ry. Co. Unrep. Op. 2145; Kerr-Murray Mfg. Co. v. Wabash R. R. Co. Unrep. Op. 2150; Coe, Converse & Edwards v. B. & O. S. W. R. R. Co., Unrep. Op. 2151; Reynolds Tobacco Co. v. N. & W. Ry. Co., Unrep. Op. 2181; National Pickle & Canning Co. v. C. R. I. & P. Ry. Co., Unrep. Op. 2189; Joseph Iron Co. v. M. L. & T. R. R. & S. S. Co., Unrep. Op. 2208; Florence Wagon Works v. S. Ry. Co., Unrep. Op. 2210; Marietta Knitting Co. v. N. C. & St. L. Ry., Unrep. Op. 2233; Arnold & Co. v. K. C. S. Ry. Co., Unrep. Op. 2238; Cummings v. B. & M. R. R. Co., Unrep. Op. 2247; Through Rates to Points in Louisiana and Texas, 38 I. C. C. 153, 160, 162, 163, 164; Standard Lumber Co. v. S. G. Ry. Co., 38 I. C. C. 301, 303; Broderick & Bascom Rope Co. v. L. & N. R. R., 39 I. C. C. 213; Memphis Freight Bureau v. St. L. I. M. & S. Ry., 39 I. C. C. 224, 236, 247; Stearns & Culver Lum. Co. v. C. M. & St. P. Ry., 39 I. C. C. 470; Forbes Mfg. Co. v. L. V. R. R. 39 I. C. C. 566; Granby Mining & Smelting Co. v. A. T. & S. F. Ry., 39 I. C. C. 635; Virginia-Carolinia Chemical Co. v. L. & N. R. R., 39 I. C. C. 658; Woodson & Graves v. Virginian Ry., 40 I. C. C. 80; Practor & Gamble Distributing Co. v. A. & V. Ry., 40 I. C. C. 367; Cities of Marshall and Jefferson, Tex. v. T. & P. Ry. Co., 39 I. C. C. 249, 254; Thompson, Ritchie & Co. v. V. S. & P. Ry. Co., 39 I. C. C. 287, 290; Hessig-Ellis Drug Co. v. L. & N. R. R. Co., 39 I. C. C. 459, 467, 468; Settle & Co. v. A. G. S. R. R. Co., 39 I. C. C. 592, 596; Reynolds Tobacco Co. v. L. & N. R. R. Co., 39 I. C. C. 600, 607; Bowie Lumber Co. v. M. L. & T. R. R. & S. S. Co., 39 I. C. C. 609, 610; McKee & Bliven Co. v. I. C. R. R. Co., 39 I. C. C. 627; Atlantic Lumber Co. v. A. C. L. R. R. Co., 39 I. C. C. 639; American Enameled Brick & Tile Co. v. R. R. R. Co., 39 I. C. C. 653, 657; Anderson Tully Co. v. A. & V. Ry. Co., 39 I. C. C. 734; Proctor & Gamble Distrib. Co. v. A. & V. Ry., 40 I. C. C. 373; Joseph Iron Co., v. M. L. & T. R. R. & S. S. Co. 40 I. C. C. 525, 526; North Dakota Metal Culvert Co. v. G. N. Ry., 40 I. C. C. 537; Dallas Chamber of Commerce v. A. T. & S. F. Ry., 40 I. C. C. 619, 634; Union Saw Mill Co. v. St. L. I. M. & S. Ry. Co., 40 I. C. C. 661, 665; Prussia Hardware Co. v. C. H. & D. Ry., 40 I. C. C. 747; Sanford-Day Iron Works v. L. & N. R. R., 41 I. C. C. 10, 12; Lafayette Chamber of Commerce v. L. W. R. R. 41 I. C. C. 297, 299, 300; Stacy v. S. Ry., 41 I. C. C. 654, 656; McCaull-Dinsmore Co. v. S. D. C. Ry. Co. 41 I. C. C. 663, 664, 667; Chicago House Wrecking Co. v. I. C. R. R. Co., 41 I. C. 720; Bagdad Land & Lumber Co. v. N. Y. C. R. R. Co., 41 I. C. C. 729; American Box Co. v. M. L. & T. R. R. & S. S. Co., 42 I. C. C. 19; Dreyfus Bros. v. L. & N. R. R. Co., 42 I.

C. C. 173; Boldt Co. v. B. & O. R. R. Co., 42 I. C. C. 175; McLean Lumber Co. v. A. B. & A. R. R. Co., 42 I. C. C. 247; Brick from New Hampshire Stations, 42 I. C. C. 231, 236; Northern Mercantile Co. v. A. E. R. R. 42 I. C. C. 290, 293; Kyle v. M. K. & T. Ry. Co., 42 I. C. C. 335; Southeastern Lumber, 42 I. C. C. 548, 554, 558; Van Voorhies & Co. v. A. T. & S. F. Ry. Co., 42 I. C. C. 732; Bagdad Land & Lumber Co. v. G. R. & I. Ry. Co., 43 I. C. C. 251, 252; Scott Paper Co. v. A. C. R. R. Co., 44 I. C. C. 503, 505, 525; Hollingshead & Blei Co. v. St. L. I. M. & S. Ry., 45 I. C. C. 153, 154; Iola Portland Cement Co. v. M. K. & T. Ry., 45 I. C. C. 167, 168; De Wilde & Sons v. C. & N. W. Ry., 45 I. C. C. 207, 208; Herrick Refrig. Co. v. C. G. W. R. R., 46 I. C. C. 421, 422; Nye Schneider Fowler Co. v. C. & N. W. Ry., 45 I. C. C. 115, 116; Wichita Traffic Bureau v. A. T. & S. F. Ry., 45 I. C. C., 143, 145; Swift & Co. v. Erie R. R., 45 I. C. C. 554, 556; Commercial Club of Mitchell, So. Dak. v. A. & W. Ry., 46 I. C. C. 1, 7; Heckle v. C. B. & Q. R. R., 46 I. C. C. 513; Western Pine Mfrs. Asso. v. C. I. & W. R. R. Co., 46 I. C. C. 650, 655; Lake Charles Rice Milling Co. of La. v. S. P. Co., 46 I. C C. 661, 663; Weisse & Co. v. C. & N. W. Ry., 47 I. C. C. 16; Farmers' Elevator & Mercantile Co. v. M. P. Ry., 47 I. C. C. 25; Conquest & Son v. S. A. L. Ry., 47 I. C. C. 517, 519, 523; Alabama Packing Co. v. L. & N. R. R., 47 I. C. C. 524, 529; Nappanee Lumber & Mfg. Co. v. B. & O. R. R. Co., 48 I. C. C. 13, 15; Oriental Textile Miss. v. A. & V. Ry. Co., 48 I. C. C. 31, 33, 34; Butters Lumber Co. v. A. C. L. R. R., 48 I. C. C. 475; Carolina Wood Products Co. v. S. Ry., 48 I. C. C. 582; Alabama Packing Co. v. L. & N. R. R. Co., 48 I. C. C. 596, 599; Sunderland Bros. v. A. T. & S. F. Ry., 49 I. C. C. 665, 667; Fort Smith Com. Co. v. K. C. S. Ry., 50 I. C. C. 135; Carriers v. A. & N. R. R. R., 50 I. C. C. 280; Illinois Supply & C. Co. v. C. P. & St. L. R. R., 50 I. C. C. 449; Swift & Co. v. A. T. & S. F. Ry., 50 I. C. C. 479; International Paper Co. v. B. & M. R. R., 49 I. C. C. 31, 33; Durham Coal & Iron Co. v. C. of G. Ry., 49 I. C. C. 103; Dawson Produce Co. v. A. C. L. R. R., 49 I. C. C. 291, 300, 301; Fies & Sons v. L. & N. R. R., 49 I. C. C. 393; Natchez Chamber of Commerce v. Y. & M. V. R. R., 49 I. C. C. 631, 634; Zelnicker Supply Co. v. C. & N. W. Ry., 51 I. C. C. 90; Sunderland Bros. Co. v. C. B. & Q. R. R., 51 I. C. C. 185; Virginia-Carolina Chem. Co. v. M. C. R. R., 51 I. C. C. 172; American Refining Co. v. St. L. S. F. Ry., 51 I. C. C. 179; American Cyanamid Company v. M. C. R. R., 51 I. C. C. 236, 237; Rice Potato Co. v. B. & O. R. R., 51 I. C. C. 364, 368; Clearfield Lumber Co. v. C. & O. Ry., 50 I. C. C. 93; Carolina Portland Cement Co. v. L. & N. R. R. 50 I. C. C. 98; Aetna Explosives Co. v. C. & E. I. R. R., 50 I. C. C. 106; Fort Smith Commission Co. v. K. C. S. Ry., 50 I. C. C. 135; Storm Lake Tank & Silo Co. v. L. Ry. & N. Co., 50 I. C. C. 198, 200; Carriere v. A. & N. R. R. R., 50 I. C. C. 280; Illinois Supply & Construction Co. v. C. P. & St. L. R. R., 50 I. C. C. 449; Williams Co. v. P. Co., 50 I. C. C. 531, 536; California Walnut Growers Asso. v. A. & R. R. R., 50 I. C. C. 558, 569; Young Grain Co. v. T. St. L. & W. R. R., 51 I. C. C. 523; Doyle Kidd Dry Goods Co. v. C. R. I. & P. Ry., 52 I. C. C. 18; Bruer & Son v. N. C. & St. L. Ry., 51 I. C. C. 25; Standard Oil Co. (Ky.) v. N. Y. C. R. R., 51 I. C. C. 140; Pease Grain & Seed Co. v. C. R. I. & P. Ry., 51 I. C. C. 189; Johnston v. A. T. & S. F. Ry., 51 I. C. C. 356, 359; Davis Sewing Machine Co. v. P. C. C. & St. L. Ry., 51 I. C. C. 441; Du Pont de Nemours Powder Co. v. P. R. R., 51 I. C. C. 453; Advance Bag Co. v. C. C. C. & St. L. Ry., 51 I. C. C. 467; Boldt Co. v. C. B. & Q. R. R., 51 I. C. C. 491, 492; Valrey-Wolter Co. v. B. & O. R. R., 51 I. C. C. 493; Aetna Explosives Co. v. A. T. & S. F. Ry., 51 I. C. C. 513; Aetna Explosives Co. v. S. Ry., 51 I. C. C. 633; Heider Mfg. Co. v. C. G. W. R. R., 51 I. C. C. 713; New Orleans Joint Traffic Bureau v. K. C. S. Ry., 52 I. C. C. 488, 490; Hyman-Michaels Co. v. Director General, 53 I. C. C. 177; Cairo, Truman & Southern R. R. Co. v. Director General, 53 I. C. C. 189; Southern Rice Growers' Asso. v. T. & N. O. R. R. Co., 53 I. C. C. 197, 207; Codington County Oil Co. v. A. T. & S. F. Ry. Co., 53 I. C. C. 234, 243; South San Francisco Chambr of Commrce v. S. P. Co., 53 I. C. C. 285, 294; Nashville Bridge Co. v. N., C. & St. L. Ry., 53 I. C. C. 371; Aetna Explosives Co. v. Director General, 53 I. C. C. 375; Marinette-Green Bay Mfg. Co. v. C. & N. W. Ry. Co., 53 I. C. C. 499, 505; Western Stoneware Co. v. A., T. & S. F. Ry. Co., 53 I. C. C. 564, 565; Texas Cottonseed Crushers' Asso. v. G., C. & S. F. Ry. Co., 53 I. C. C. 627; Guil-

ford Lumber Co. v. S. Ry. Co., 53 I. C. C. 669, 680; Zelnicker Supply Co. v. O. S. L. R. R. Co., 53 I. C. C. 710; Rock Hill Buggy Co., Inc. v. S. Ry., 52 I. C. C. 583; Peoria Board of Trade v. A. T. & S. F. Ry., 55 I. C. C. 42, 47, 50; Aberdeen Commercial Club v. Director General, 56 I. C. C. 147, 156; Kansas Oil Refining Co. v. Director General, 56 I. C. C. 269; Orange Rice Milling Co. v. Director General, 55 I. C. C. 19; Partridge Lumber Co. v. Director General, 55 I. C. C. 29; Inman-Poulsen Lumber Co. v. S. P. Co., 55 I. C. C. 357, 360, 361; Keet & Roundtree Dry Goods Co. v. Director General, 55 I. C. C. 400; Rio Grande Valley Creamery Co. v. Wells, Fargo & Co., 55 I. C. C. 425; Anderson Lumber Co. v. Director General, 55 I. C. C. 467; Curtis, Booth & Bentley Co. v. Director General, 55 I. C. C. 511, 512, 513; Waccamaw Lumber Co. v. A. C. L. R. R., 55 I. C. C. 595; Chevrolet Motor Co. of Texas v. Director General, 55 I. C. C. 601; Hechtman v. Director General, 55 I. C. C. 672; Du Pont de Nemours & Co. v. Director General, 56 I. C. C. 233, 347; Key-James Brick Co. v. S. Ry. Co., 57 I. C. C. 296; Cohen-Schwartz Rail & Steel Co. v. Director General, 57 I. C. C. 298; Chapin & Co. v. Director General, 57 I. C. C. 363; Kilmer & Co. (Inc.) v. Director General, as Agent, 57 I. C. C. 453, 454; White Bros. & Crum Co. v. Director General, 57 I. C. C. 511, 512; Rudy Patrick Seed Co. v. Director General, 57 I. C. C. 637; National Refining Co. v. Director General, 57 I. C. C. 663; Hines Lumber Co. v. Director, 57 I. C. C. 701, 702; Page Hersey Iron Tube & Lead Co., Ltd. v. Director General, 58 I. C. C. 1, 2; Miller Link Lumber Co. v. Director General, 58 I. C. C. 65; Atlantic Refining Co. v. Director General, as Agent, 58 I. C. C. 46; Nebraska Bridge Supply & Lumber Co. v. Director General, as Agent, 58 I. C. C. 129; Northern Potato Traffic Asso. v. A., T. & S. F. Ry. Co., 58 I. C. C. 592, 595, 596; Ohio Cities Gas Co. v. Director General, 59 I. C. C. 320; Cohen-Schwartz Rail & Steel Co. v. Director General, 59 I. C. C. 533; Heider Mfg. Co. v. B. & O., 58 I. C. C. 184; United Paperboard Co. Inc. v. L. W. R. R. Co., 59 I. C. C. 151; Gulf Refining Co. v. T., St. L. & W. R. R. Co., 59 I. C. C. 154, 155; Phelps Dodge Corp. v. Director General, as Agent, 59 I. C. C. 561; Decker & Sons v. Director General, 59 I. C. C. 585; Birmingham Rail & Locomotive Co. v. S. Ry. Co., 59 I. C. C. 602; Choctaw Cotton Oil Co. v. Director General, as Agent, 59 I. C. C. 725; Intermediate rate Association v. Director General, 61 I. C. C. 226, 246; Indian Refining Co. v. Director General, as Agent, 60 I. C. C. 438; Universal Portland Cement Co. v. B. & L. E. R. R. Co., 60 I. C. C. 489; Wichita Board of Commerce v. Director General, as Agent, 60 I. C. C. 536, 542; Meron v. Director General, as Agent, 60 I. C. C. 725; Ryan Fruit Co. v. Director General, 60 I. C. C. 733, 735; Quinton Spelter Co. v. Ft. S. & W. R. R. Co., 61 I. C. C. 43; Parlor City Lumber Co. v. Director General, as Agent, 61 I. C. C. 203; Minnesota & Ontario Paper Co. v. Director Genral, as Agent, 61 I. C. C. 403; Russell Bros. v. Director General, as Agent, 61 I. C. C. 671; Northern Potato Traffic Asso. v. B. & O. R. R. Co., 61 I. C. C. 680, 687; Chattanooga Coke & Gas Co. v. Director General, as Agent, 61 I. C. C. 729, 732; Odell-Daly Material Co. v. Director General, as Agent, 62 I. C. C. 12; United Paperboard Co. (Inc.) v. S. Ry. Co., 62 I. C. C. 60; Galena Signal Oil Co. v. Director General, as Agent, 62 I. C. C. 139; Du Pont de Nemours & Co. v. Director General, as Agent, 62 I. C. C. 151; Southern Veneer Asso. v. A. C. L. R. R. Co., 62 I. C. C. 669, 674; Capital Ice & Storage Co. v. St. L. S. F. Ry. Co., 62 I. C. C. 677, 678; Cement to Washington Baltimore & Annapolis Electric Ry. stations 63 I. C. C. 264; Empire Cotton Oil Co. v. Director General, 64 I. C. C. 64, 65, 66; Hudson Mule Co. v. L. & N. R. R. Co., 63 I. C. C. 6, 15; Standard Oil Co. (Ky.) v. Director General, as Agent, 63 I. C. C. 200; Weiss Milling Co. v. A., T. & S. F. Ry. Co., 64 I. C. C. 189; Tacoma Junk Co. v. N. P. Ry. Co., 64 I. C. C. 305; General Iron Works v. Director General, as Agent, 64 I. C. C. 532, 535; Charleston Milling Co. v. M. P. R. R., 64 I. C. C. 671; Atlantic Refining Co. v. Director General, as Agent, 64 I. C. C. 702; Pioneer Pole & Shaft Co. v. Director General, as Agent, 64 I. C. C. 744, 747; American Wood Pipe Co. v. Director General, 66 I. C. C. 155, 156; Clarke-Burkle & Co. v. Director General, as Agent, 66 I. C. C., 265; Tallulah Cotton Oil Co. v. A. & V. Ry. Co., 66 I. C. C., 755; H. D. Lee Mercantile Co. v. B. & M. R. R., 73 I. C. C. 623; Barnes Foundry Co. v. C.

R. R. of N. J., 73 I. C. C. 645; North Packing & Provision Co., 73 I. C. C. 749; Wilson & Co. v. Director General, as Agent, 73 I. C. C. 1; Russell Bros v. Director General, as Agent, 73 I. C. C. 125; Empire Cotton Oil Co. v. A. C. L. R. R., 74 I. C. C., 479; Lexington Granite Co. v. Director, 74 I. C. C., 487; Kissel Motor Car Co. v. G. T. Ry. Co., 74 I. C. C. 45; Bradbury Marble Co. v. Director General, as Agent, 74 I. C. C. 140; United Iron Works Inc. v. Director General, as Agent, 74 I. C. C. 277, 282, 283; Pioneer Lumber Co. v. Director General, as Agent, 74 I. C. C. 288; Pratt Engineering & Machine Co. v. M. & O. R. R. Co., 74 I. C. C. 383; Live Stock to, from and between Points in the Southeast, 74 I. C. C. 419, 423, 424; King-Ryder Lumber Co. v. Director General, as Agent, 74 I. C. C. 529; Scott & Williams v. Director General, 78 I. C. C. 303; National Bibre & Insulation Co. v. N. & W. Ry., 78 I. C. C. 361; Milwaukee Chamber of Commerce v. C. B. & Q. R. R. Co., 78 I. C. C. 110; Libbey Co. v. Director General, as Agent, 78 I. C. C. 650; Parkersburg Rig & Steel Co. v. P. R. R. Co., 78 I. C. C. 724; American Shipbuilding Co. v. Director General, as Agent, 77 I. C. C. 439; Paggi Bros. Oil Co. v. G., C. & S. F. Ry. Co., 80 I. C. C. 63; Tidewater Paper Mills Co. v. B. T. R. R. Co., 80 I. C. C. 493; Lycoming Motors Corp. v. E. J. & S. R. R. Co., 80 I. C. C. 757; Northwestern Marble & Tile Co. v. Director General, as Agent, 81 I. C. C. 167; Monroe Hardware Co. v. A. & V. Co., 81 I. C. C. 187; Davison & Namack Foundry Co. v. P. R. R. Co., 81 I. C. C. 345, 346; Standard Portland Cement Co. v. Director General, as Agent, 81 I. C. C. 357; International Coal Products Corp. v. Director General, 81 I. C. C. 435; Jackson & Co. v. A. C. L. R. Co., 83 I. C. C. 14; Boren-Stewart Co. v. B. & O. R. R. Co., 83 I. C. C. 215; Crown Willamette Paper Co. v. Director General, as Agent, 83 I. C. C. 320; Anguish v. A. & V. Ry. Co., 83 I. C. C. 353, 354; Abbott v. Director General, as Agent. 83 I. C. C. 508, 510; Standard Oil Co. (Ky.) v. Director General. as Agent, 83 I. C. C. 705; Western Electric Co. v. Director General, 87 I. C. C. 545, 546; Jackson Traffic Bureau v. St. L. S. F. Ry., 88 I. C. C. 188; Jackson Paper Co. v. B. S. L. & W. Ry., 88 I. C. C. 219; Ridenour Baker Mercantile Co. v. A. T. & S. F. Ry., 88 I. C. C. 273, 275; Indiana Board & Filler Co. v. W. Ry., 88 I. C. C. 754; West End Scrap Iron & Metal Co. v. Director General, 89 I. C. C. 149.

§15½. Rate via other routes.
See Evidence §47.

CASES 1887-1908

(a) There are two routes over which coal may be shipped from the Thacker District, in West Virginia, to Alexandria, Ind.; one by the N. & W. and C. C. C. & St. L., the shorter line, and one by the N. & W., H. V., and L. E. & W. Complainants in 1903 had shipped to them at Alexandria, Ind., eight carloads of coal from the Thacker District, W. Va., over the latter route, and by that line the published rate was $1.90 per ton, while over the other route the rate was $1.65 per ton. November 26, 1903, the rate by the route used was reduced to $1.65, and later the other line lowered its rate to $1.55. Complainants, acting on behalf of the consignor, demanded reparation. The evidence relates solely to the rate itself, and the fact that a lower rate was in force over a competing short line. HELD, that the rate charged is not shown to have been unreasonable. and that, in view of their published tariff, the carriers in the through line over which the coal was carried could not lawfully apply the lower rate in effect over the competing line. J. J. Marley & Son v. Norfolk & W. R. Co., 11 I. C. C. 616.

IMPORTANT CASES SINCE 1908

(b) The joint through rate over another road is not a proper basis for reparation. Iola Portland Cement Co. v. M. K. & T. Ry. Co., 20 I. C. C. 91, 92.

(c) Evidence that lower combinations were in effect via routes other than the one over which the shipments moved is not of itself sufficient basis for a finding that the joint through rates are unreasonable or unjustly discriminatory. Corporation Comm'n of North Carolina v. S. Ry., 33 I. C. C., 487, 492.

(d) The fact that a transit arrangement at a point is available in connection with joint rates effective over other lines affords no basis for a finding that higher combination rates attacked are unreasonable. Chapin & Co. v. C. I. & L. Ry., 38 I. C. C. 611, 612.

(e) Combination rates on stock cattle

from Suggs and San Angelo, Tex., to Chickasha, Okla., via Lone Wolf, Okla., found unreasonable to extent they exceeded lower joint rates via another route through Altus, Okla., which lower rate was subsequently made applicable via route of movement. Reparation awarded. Snugg & Johnson v. C. R. I & P. Ry. Co., 73 I. C. C., 721.

(f) No presumption of unreasonableness attaches to a joint rate applicable over a particular route because a lower combination rate applies over another route. Paine Lumber Co. Case, 24 I. C. C. 626, followed. Stanley Works v. P. R. R. Co., Unrep. Op. 2147.

ALL OTHER CITATIONS

Miller & Co. v. W. R. R. Co., Unrep. Op. A-942; Corp. Comm. of North Carolina v. S. Ry. Co., 33 I. C. C. 487, 492; Mapes v. G. N. Ry. Co., Unrep. Op. 1977; Duluth Log Co. v. M. St. P. & S. Ste. M. Ry., 38 I. C. C. 338; Berry Coal & Coke Co. v. C. & N. W. Ry. 38 I. C. C. 347; Stone Producers Sales Co. v. C. I. & L. Ry., 38 I. C. C. 485; Keystone Lumber Co. v. B. & C. R. R., 38 I. C. C. 702; Metropolitan Paving Brick Co. v. W. & L. E. R. R. R. Co. 38 I. C. C. 345, 346; Hammer v. A. C. L. R. R. Co., 38 I. C. C. 621, 622; Atlantic Lumber Co. v. A. C. L. R. R. 39 I. C. C. 639; Anderson-Tully Co. v. A. & V. Ry., 39 I. C. C. 734; Chattanooga Imp. & Mfg. Co. v. L. & N. R. R. Co., 40 I. C. C. 146; Broderick & Bascom Rope Co. v. L. & N. R. R. Co., 39 I. C. C. 213, 214; Lukens Lumber Co. v. A. C. L. R. R. Co., 40 I. C. C. 295; Choctaw Lumber Co. v. T. O. & E. R. R. Co., 42 I. C. C. 180; Swanson v. C. B. & Q. R. R., 42 I. C. C. 285; Scott Paper Co. v. Penn. R. R., 44 I. C. C. 525, 526; Kinnear Mfg. Co. v. P. C. C. & St. L. Ry., 45 I. C. C. 74, 75; Whiteville Lumber Co. v. A. C. L. R. R., 46 I. C. C. 622, 626; Farmers Elev. & Merc. Co. v. M. P. Ry., 47 I. C. C. 25; Martin Brokerage Co. v. S. P. Ry., 51 I. C. C. 91; Zelnicker Supply Co. v. C., B. & Q. R. R. Co., 53 I. C. C. 15; Watters-Tonge Lumber Co. v. L. & N. R. R. Co., 53 I. C. C. 317; Clark & Boice Lumber Co. v. J. & N. W. Ry., 53 I. C. C. 131; Dewey Portland Cement Co. v. A. T. & S. F., 55 I. C. C. 1; Illinois Glass Company v. St. L. & S. F. Ry., 55 I. C. C. 8; Inman-Poulsen Lbr. Co. v. So. Pac. Co., 55 I. C. C. 357, 360; Chevrolet Motor Company of Texas v. Director General, 55 I. C. C. 601, 604; Helena Traffic Bureau v. Director General, 55 I. C. C. 708; Page Hershey Iron Tube & Lead Co. (Ltd.) v. Director General, as Agent, 58 I. C. C. 1; Gulf Refining Co. of Louisiana v. T. & Ft. S. Ry. Co., 58 I. C. C. 5; Miller Link Lumber Co. v. Director General, as Agent, 58 I. C. C. 65; Burnham-Munger-Root Dry Goods Co. v. Director General, 58 I. C. C. 73, 75; Heider Mfg. Co. v. B. & O. R. R. Co., 58 I. C. C. 184, 186; Alabama-Georgia Syrup Co. v. L. & N. R. R. Co., 58 I. C. C. 521, 525; Zelnicker Supply Co. v. Director General, 58 I. C. C. 745; Midwest Refining Co. v. Director General, as Agent, 62 I. C. C. 135; The Otto Weiss Milling Co. v. A. T. & S. F. Ry. Co., 64 I. C. C. 189; Nebraska Bridge Supply & Lumber Co. v. Director General, 66 I. C. C. 42; Gulf Refining Co. v. St. L. S. F. Ry. Co., 64 I. C. C. 201; The Pure Oil Co. v. Director General, 64 I. C. C. 444; St. Tammany Ice & Mfg. Co. v. Director General, 64 I. C. C. 491; Proctor & Gamble Co. v. Director General, as Agent, 64 I. C. C. 637; American Glass Co. v. Director General, 68 I. C. C. 141; Margargee Brothers Inc., v. D. & H. Co., 68 I. C. C. 203; Alabama Georgia Syrup Co. v. Director General, 68 I. C. C. 618; Northwestern Leather Co. v. Director General, 69 I. C. C. 425; C., L. S. & S. B. Ry. Co. v. I. C. R. R. Co., 74 I. C. C. 609; Meridan Fertilizer Factory v. M. & O. R. R., 77 I. C. C. 315; Matthews & Sons v. G. M. & N. R. R., 80 I. C. C. 99; Western Coal Rates, 80 I. C. C. 415.

§16. Reparation.

See Procedure Before Commission V; Reparation.

CASES 1887-1908

(a) Railroad companies which, acting independently, arrange their charges of freight so as to make a single through rate to be divided between them, for transportation between competitive terminal points, are not responsible for the charging, by another road joining in such through charge, of a local rate to an intermediate point on its line, although the through rate to the terminal point for the greater distance is less than that to the intermediate point for a less distance. Behlmer v. Louisville & Nashville Ry. Co. et al. 7 I. C. C. App. XII.

(b) One who does not show that he would have taken advantage of a joint tariff if he had known of it cannot recover of a carrier for failure to publish the tariff or file it with the Interstate Commerce Commission as required by the Interstate Commerce Act. Before any party can recover under the Interstate Commerce Act for the nonpublication of a joint tariff he must show, not merely the wrong of the carrier, but that the wrong has in fact operated to his injury. Parson v. Chicago & Northwestern Ry. Co. 7 I. C. C. App. XCI.

(c) The complainant is entitled to reparation for damages resulting from its inability to ship 640 tons of cotton seed to Hope, which it had contracted for and desired to have transported over defendant's line to Texarkana, and then by way of another line to Hope, and which shipment defendant had refused to accept under its local rate to Texarkana, but attempted to compel the complainant to pay the through rate to Hope, which was higher than the local rates based upon Texarkana, Ark. Hope Cotton Oil Co. v. Texas & P. R. Co., 10 I. C. C. 696.

(ca) Complainant attacked rates charged on cotton seed, carloads from Louisiana stations to Hope, Ark., as unreasonable. Complainant desired to ship cotton seed in carloads from Louisiana stations to Hope, Ark., at the sum of local rates based upon Texarkana, Ark., which sum was less than the published through charge, but defendant refused to apply its local rate to Texarkana, which was 12½c, on such through shipments and also refused to allow complainant to ship locally to Texarkana, under that rate. HELD, that while defendant was entitled to insist upon the application of the through rate to the through shipment to Hope, it could not lawfully refuse to receive and carry complainants freight to Texarkana under its local rate to that point, and that complainant is entitled to reparation for damages resulting from its inability to ship 640 tons of cotton seed to Hope which it had contracted for and desired to have transported over defendants line. Hope Cotton Oil Company v. T. P. R. Co., 10 I. C. C. 696.

IMPORTANT CASES SINCE 1908

(d) Carriers under a joint rate are severally liable for damages for the violation of the law in which they participate. Sondheimer Co. v. I. C. R. R. Co., 20 I. C. C. 606, 610.

(e) Where an unreasonable joint rate has been collected, the liability of the parties to such action is joint and several, and the Commission may award reparation against one of the roads which participated in the traffic, even though other roads which performed a part of the service are not made parties defendant to the formal complaint asking reparation. Webster Grocer Co. v. C. & N. W. Ry. Co., 21 I. C. C. 20, 21.

(f) The Commission will not, where a feasible and available joint rate and route are in effect, establish a joint rate over another route merely for the purpose of awarding reparation to a shipper who selected such other route and was compelled in consequence to pay a higher rate. Birge-Forbes Co. v. M. K. & T. Ry. Co., 28 I. C. C. 409, 411.

(g) American line parties to a joint rate from or to a point in Canada, the charges under which are unreasonable "cause to be done" or "do" a thing (i. e. the collection of unreasonable charges for the transportation of property) "prohibited and declared to be unlawful" by the act, and are "liable to the person or persons injured thereby for the full amount of the damage sustained." International Nickel Co. v. Director General, as Agent, 66 I. C. C., 627, 628.

(h) If railroads constituting a through route for traffic from a point in Canada to a point in the United States concurred in a through rate or a carload minimum that was unreasonably high, they are jointly and severally responsible for any damage that might result to any shipper on account of such unlawful rate or minimum. American Cynamid Co. v. Director General, 69 I. C. C. 337, 343.

(i) Where the commission's findings condemned joint rates, of which complainants bore only a portion, such complainants are entitled only to their proportionate share of any reparation awarded. Peoria Board of Trade v. A., T. & S. F. Ry. Co., 73 I. C. C., 532, 534.

(j) Shipment from point in United States, destined to another point in United States, moved in part through

Canada. Contention by director general that commission is without jurisdiction to award reparation in respect of such rates, not sustained. Rate assailed was a joint rate, and all carriers parties thereto are jointly and severally liable for any damage resulting from its application. American lines over which shipment moved are subject to jurisdiction of the commission. Director general was operating them and is thus liable for full amount of any damage sustained. International Nickel Co., 66 I. C. C., 627, 628. Staley Mfg. Co. v. C. P. Ry. Co., 80 I. C. C. 512.

(k) Where a connecting carrier receives carloads of oil consisting of tank cars and carloads made up of barrel packages from the initial carrier and merely joins with the initial carrier in a joint rate in itself reasonable, it is not liable for the alleged discriminatory acts of the initial carrier in charging for the weight of the barrel package used in shipments made by one class of shippers, while at the same time making no charge for the weight of the tank cars against a competing class of shippers using such method of shipment. Penn. Refining Co. v. W. N. Y. & Penn. R. R. Co., 208 U. S. 208, 222, 28 Sup. Ct. 268, 52 L. ed. 456.

ALL OTHER CITATIONS

Iola Portland Cement Co. v. M. K. & T. Ry. Co., 20 I. C. C. 91, 92; Corpor:ation Commission of Oklahoma v. C. R. I. & G. Ry. Co., 17 I. C. C. 379; Black Horse Tobacco Co. v. I. C. R. R. Co., 17 I. C. C. 588, 590, 592; Morti v. C. M. & St. P. Ry. Co., 13 I. C. C. 513, 515; Lemon Hardware Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 171, 174; Payne v. C. M. & St. P. Ry. Co., Unrep. Op. 175; Wolfe v. C. M. & St. P. Ry. Co., Unrep. Op. 198; Hettinger Hardware Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 199; Wiprud v. C. M. & St. P. Ry. Co., Unrep. Op. 201; K. C. S. Ry. Co. v. Albers Com. Co., 79 Kan. 59, 99 Pac. 819; B. & O. R. R. Co. v. La Due, 128 App. Div. 594, 599; reversed 57 Misc. 614, 108 N. Y. Supp. 649; B. & O. R. R. Co. v. La Due, 57 Misc. 614, 616; 108 N. Y. Supp. 659; reversed 128 App. Div. 594, 112 N. Y. Supp. 964; Carson Lumber Co. v. St. L. & S. F. R. R. Co., 198 Fed. 311, 315; Clinton Sugar Refining Co. v. C. & N. W. Ry. Co., 28 I. C. C. 364; Morton Salt Company v. M. L. & T. R. R. & S. S. Co., 28 I. C. C. 422, 424; Galveston Commercial Assn. v. A. T. & S. F. Ry. Co., 25 I. C. C. 216, 227; Best Co. v. G. N. Ry. Co. 33 I. C. C. 1, 3; Du Pont de Nemours Powder Co. v. W. R. R. Co., 33 I. C. C. 507; McCaull-Dinsmore Co. v. M. P. Ry., 35 I. C. C. 69, 71; Forbes Mfg. Co. v. L. V. R. R. Co., 39 I. C. C. 566; Morton Salt Co. v. M. L. & T. R. R. & S. S. Co., 28 I. C. C. 422, 424; Pfister & Vogel Leather Co. v. B. & M. R. R., Unrep. Op. A238; Alderman & Sons Co. v. S. Ry. Co., Unrep. Op. A251; Wagner & Sons v. Sugarland Ry. Co., Unrep. Op. A287; Miller & Co. v. G. C. & S. F. Ry. Co., Unrep. Op. A380; Smith Lumber Co. v. S. P. Co., Unrep. Op. A389; Godwin v. Y. & M. V. R. R. Co., 31 I. C. C. 25, 27; New England Fish Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-924; Heckle v. C. B. & Q. R. R., 46 I. C. C. 513, 514; Brown Stave Co. v. St. L. & S. F. R. R. Co., 48 I. C. C. 75, 76; Northern Potato Traffic Asso. v. A. T. & S. F. R. R. Co., 58 I. C. C. 592, 596; Louisiana Central Lumber Co. v. C. B. & Q. 62 I. C. C. 417, 419; Joseph Sussman v. N. P. Ry., 64 I. C. C. 305; Edwards & Bradford Lumber Co. v. Director General, 64 I. C. C. 503, 505; Gulf City Mfg. Co. v. Directory General, as Agent, 66 I. C. C., 763, 764; Boston Wool Trade Asso. v. B. & A. R. R. Co., 78 I. C. C. 178, 186.

§16½. State rates.

See Evidence §13 (6); States Rates and Regulations.

IMPORTANT CASES SINCE 1908

(a) Combination through rate is not unlawful for the reason that a factor of the lower combination was an intrastate rate not on file. McCaull-Dinsmore Co. v. N. P. Ry. Co., 38 I. C. C. 305, 306.

ALL OTHER CITATIONS

Merchants Exchange of St. Louis v. B. & O. R. R. Co., 34 I. C. C. 341, 353; Cement to Texas Points, 40 I. C. C. 94, 100; Blackwell Lumber Co. v. M. P. Ry. Co., 42 I. C. C. 756, 761; Lambert Co. v. St. L. I. M. & S. Ry., 49 I. C. C. 157; Virginia-Carolina Chemical Co. v. Director General, 55 I. C. C. 583; Alaska Junk Co. v. Director General, 68 I. C. C. 615; Mid-Continent Equip. & Mach. Co. v. M. S. R. R. Co., 83 I. C. C. 393, 394, 395, 396.

V. TARIFFS AND CONSTRUCTION.
See Reshipping Rates; Tariffs.

§17. In general.

CASES 1887-1908

(a) Any one member of a joint combination may file copies of joint tariff for all the members. Re Filing Copies of Joint Tariff, 1 I. C. R. 76.

(b) Joint tariffs to be printed in ordinary type, and copies kept at every depot or station upon the line of the carriers uniting therein. Order as to Publication of Joint Tariffs, 1 I. C. R. 598.

(c) Joint tariffs of rates, fares or charges established by two or more common carriers for the transportation of passengers or freight passing over continuous lines or routes, copies of which are required by the sixth section of the Act to be filed with the Commission, shall be made public so far as the same relate to business between points which are connected by the line of any single common carrier required by the first paragraph of such section to make public schedules of its rates, fares and charges. Such joint tariffs shall be so published by plainly printing the same in large type of at least the size of ordinary pica, copies of which shall be kept for the use of the public in such places and in such form that they can be conveniently inspected, at every depot or station upon the line of the carriers uniting in such joint tariff, where any business is transacted in competition with the business of a carrier whose schedules are required by law to be made public as aforesaid. Orders as to publication of joint tariffs. 1 I. C. C. 599.

(ca) Roads located wholly in one state or Territory, which interchange freight or passenger traffic with connections to or from points outside of such State or Territory on through tickets or bills of lading, should file tariffs covering such traffic with the Commission. If such through rates are made by the addition of local rates to the rates of connecting roads, such local tariffs should be filed with the Commission, together with a statement that through interstate rates are made by adding such local rates to the rates of the carrier with which connection is made. If joint rates are made on any basis other than by the addition of the local rates to the through rates of connecting carriers, tariffs showing such rates should be filed with the Commission covering all interstate business transacted thereunder. Re filing of joint tariffs, 2 I. C. C. 9.

(d) Such common carriers are also subject to the provisions of the Act in respect to joint tariffs of rates, fares and charges for continuous lines or routes. Matter of Grand Trunk Railway Co. v. 2 I. C. R. 496.

(e) The publication of inland joint tariffs for the transportation of foreign merchandise, and of advances and reductions, should be made by posting in a public place at the depot of the carrier where the freight is received in the port of entry, and also where it is delivered at the place of destination in the United States. New York Bd. of Trade & Transp. v. Pennsylvania R. Co. (Com.) 3 I. C. R. 417.

(f) A schedule of rates designated a "joint freight tariff" announcing a rate from New Orleans to Kansas City of 30 cents per hundred pounds of sugar was duly published and filed with the Commission by the New Orleans Traffic Association on behalf of the roads composing said Association "and connections." The Texas & Pacific Railway Company, a member of said Association, in its own behalf, issued and filed a supplemental sheet announcing said rate of 30 cents effective. The several companies composing said Traffic Association operate roads extending to and leading out of New Orleans, but none of them extending to Kansas City: HELD, That a joint tariff of rates or charges must show on its face what carriers unite in establishing such joint tariff, and that the publication and filing of said schedule and supplemental rate sheet did not establish as provided by section 6 of the Act to Regulate Commerce a joint tariff of rates and charges on a continuous line from New Orleans to Kansas City over the roads of said Association, or of any of them, in connection with any other road or roads. HELD further, That where freight passes over a continuous line or route operated by more than one company on which no joint tariff of rates or charges has been established, the tariffs of rates or charges is the sum of the established local rates or charges of the several companies operating such con-

tinuous line. Lehmann, Higginson & Co. v. Texas & Pacific R. Co. 3 I. C. R. 706.

(g) A joint tariff of rates or charges must show on its face what carriers unite in establishing such joint tariff, and for this purpose the words "and connections" are insufficient. Lehmann Higginson & Co. v. T. & P. R. Co., 3 I. C. C. 706, 710.

(h) Carriers should not treat shipments of traffic intended to be continuous between interstate points as consisting of two kinds of service independent of each other, the one to or from a so-called basing or competitive point on a through rate, and the other between the basing or competitive point and a so-called local or intermediate point on a local rate. Re Atlanta & W. P. R. Co. 2 Inters. Com. Rep. 461, 3 I. C. C. Rep. 46, and Hamilton v. Chattanooga R. & C. R. Co. 3 Inters. Com. Rep. 482, 4 I. C. C. Rep. 686, cited and affirmed. Perry v. Fla. Central & Peninsular R. Co. 3 I. C. R. 740.

(i) A tariff sheet whose caption shows that the rate made applies only when the grain is destined through to points on the seaboard, and which has a memorandum at its foot showing that the total through rate is to be ascertained by consulting another tariff sheet for the rate from the point mentioned in such sheet to the seaboard, sufficiently shows that the rate named is a part of the joint through rate, and not a local rate. Parsons v. Chicago N. W. R. Co. (C. C. App. 8th C.) 5 I. C. R. 95.

(j) An indispensable element in every through shipment would seem to be a contract for such through service; an agreement between the parties at the inception of the carriage that the freight shall be transported to the point of destination at the through rate. Matter of alleged unlawful rates and practices, 7 I. C. C. 240, 247.

(k) In the matter of rates for thru routes whether via a single line, or a combination of carriers, the provisions of the law differ in no respect except one, and that is merely that the Commission may prescribe the measure of publicity which the carriers shall be required to give of their rates and fares on such continuous lines or routes, while as to the other class such requirement is specified in the law itself. Such exception does not go to the form, substance, maintenance or application of the rates in any degree whatsoever; and the Commission has, by order duly made March 23, 1889 prescribed that carriers by such continuous lines or routes shall publish their joint rates in the same manner as separate or individual roads are required by law to do. Consolidated Forwarding Co. v. Southern P. Co. et al. 9 I. C. C. 182.

(l) Joint through routes and rates are ordinarily the subject of agreement between the participating carriers, but when they have been established, and until finally abrogated or changed, they are required by the statute to be kept open to public use. Consolidated Forwarding Co. v. Southern P. Co. et al. 9 I. C. C. 182.

(m) The Commission has prescribed, by order duly made July 23, 1899, that the several carriers operating a continuous line or route shall publish their joint rates in the same manner as separate or individual roads are required by the statute to do. Consolidated Forwarding Co. v. Southern P. Co. 9 I. C. C. 182.

(n) Under section 6 of the act two kinds or classes of routes are recognized and provided for, namely, the line of a single carrier, and a continuous line or route operated by more than one carrier where the participating carriers established joint tariffs of rates or fares or charges for such continuous line or route; and in respect of both classes of lines or routes the provision is uniform that established rates shall not be increased except after ten days notice nor reduced except after three days notice. Consolidated Forwarding Co. v. Southern Pacific Co., 9 I. C. C. 182, 205.

(o) The failure of the C., St. P., M. & O. Railway Company to publish through freight rates from Chicago, Ill. and other points to Norfolk, Neb., while such through rates are established and published by that company in connection with other carriers to other points on its line in Nebraska amounts to unlawful discrimination against Norfolk. Johnson v. Chicago, St. P., M & D. R. Co., 9 I. C. C. 221.

(p) At common law, and under the Act to Regulate Commerce as interpre-

ted by the courts, joint through routes and through rates are matters of contract between the connecting carriers, and the defendant, as party to a joint tariff which does not give shippers the privilege of milling in transit, acted within its legal right in notifying its immediate connections and the complainant that it would not permit that practice. Diamond Mills v. Boston & Main R. Co., 9 I. C. C. 311.

(q) Carrier over whose line through route established, given opportunity to apply for an order requiring complainant to indemnify it against loss by reason of complainant's financial irresponsibility. Enterprise Transportation Co. v. Pennsylvania R. R. Co., 10 I. C. C. 326.

(r) Rates charged by connecting lines to be governed by joint tariff. Pacific Purchasing Co. v. C. & N. W. Ry. Co., 12 I. C. C. 549.

(s) Equipment provided, cannot affect rate as established by joint tariff for carload lots of certain minimum magnitude, except as the tariff in specific terms provides certain minimum rates on carloads in cars of certain lengths or capacity. Pacific Purchasing Co. v. C. & N. W. R. Co., 12 I. C. C. 549.

(t) Joint rates established by a joint tariff not to be affected by equipment provided. Pacific Purchasing Co. v. C. & N. W. R. Co., 12 I. C. C. 549.

IMPORTANT CASES SINCE 1908

(u) Where a through rate is constructed on a combination, each factor must be published and filed with the Commission. Without the filing of each factor, there is no official measure of the rate. Awbrey & Semple v. G. H. & S. A. Ry. Co., 17 I. C. C. 267, 271.

(v) Combinations of joint rates not filed with the Commission are not lawful factors to be considered by it in the determination of the reasonableness of the joint rate. Milburn Wagon Co. v. L. S. & M. S. Ry. Co., 18 I. C. C. 144, 146.

(w) A through rate may not be constructed of factors not on file with the Commission. Hagar Iron Co. v. Penn. R. R. Co., 18 I. C. C. 529.

(x) Where port to port rates, reconsignments and intrastate rates are not on file with the Commission they cannot be used as a basis for determining in a claim for reparation the legality and reasonableness of the lawfully published through rate exacted. Hager Iron Co. v. Penn. R. R. Co., 18 I. C. C. 529.

(y) Where an initial line publishes and maintains one joint tariff, which is not properly concurred in by its connections, and at the same time another joint tariff naming the higher rates and properly concurred in, the latter tariff is the legal one and must be applied. Kennedy & Co. v. St. L. S. W. Ry. Co., 22 I. C. C. 277.

(z) Concurrence with others in joint rates that effect unjust discrimination or undue preference is the voluntary action of the carriers at the point where the unjust discrimination or the undue preference exists. Chamber of Commerce, Ashburn, Ga. v. G. S. & F. Ry. Co., 23 I. C. C. 140, 149.

(aa) In the absence of a reconsignment privilege applicable to the shipment in question, held that the sum of the local rates to and from the reshipping point was properly assessed. Deeves Lumber Co. v. A. & V. Ry. Co., 25 I. C. C. 42, 43; Platten Produce Co. v. C. & N. W. Ry. Co., 25 I. C. C. 30, 31; Talge Mahogany Co. v. S. Ry. Co., 25 I. C. C. 44, 45.

(bb) A distance rate has been held inapplicable to a rebilled shipment, where a joint rate was in effect. Memphis Freight Bureau v. I. C. R. R. Co., 27 I. C. C. 1, 2.

(cc) Carriers cannot engage in through transportation, without publication of definite and specific rates, including all services incident to through movement. Hampton Mfg. Co. v. O. D. S. S. Co., 27 I. C. C. 666, 668.

(dd) Where rates are constructed by the use of combinations upon gateways between any two groups, the through rates should be increased by applying to each factor its respective percentage. Increased Rates, 1920, 58 I. C. C. 220, 246.

(ee) Shippers are entitled to use any through route available under the tariffs. If tariffs are so worded that routes other than a direct route are possible such routes should be available alike to all shippers and the through rate applicable via such route should be assessed against all shipments of the same

kind of freight regardless of whether the shipment traveled the particular route because of a reconsignment order or under original billing. Reconsignment and Diversion Rules, 58 I. C. C., 568, 573.

(ff) If carriers intend to restrict application of joint rates to any particular route, and to likewise restrict reconsignment service in connection therewith, they should do so in clear and unequivocal language. Watters-Tonge Lumber Co. v. B. & O. S. W. R. R. Co., 59 I. C. C. 229, 231; McGowin Lumber & Export Co. v. Director General, 59 I. C. C. 238, 240; Meeds Lumber Co. v. Director General, 59 I. C. C. 243, 244, 245.

(gg) Under the Commission's tariff regulation joint rates on interstate traffic might be published as single amounts or by addition of arbitraries. Latter form of publication does not render rates any the less joint rates, and mere fact that arbitrary might have been increased under general order No. 28 at time of its promulgation does not necessarily now justify increases proposed by carriers, upon whom the burden of proof still lies. Switching Charges to and from South Tacoma, 61 I. C. C. 128, 129.

(hh) Rates between specified points, when unrestricted in the carrier's traffic to any particular route of movement, apply over all routes of carrier. Pioneer Lumber Co. v. Director General, as Agent 74 I. C. C. 289.

(ii) Where schedules purport to publish joint rates, and intermediate carrier, which forms a necessary link in the through route, actually participates in through movement, and for whose account a switching charge is published, is not shown as concurring carrier, such method of publication is contrary to the act and commission's tariff regulations. Cord and Pulp Wood to Canton, 78 I. C. C. 593, 596.

(jj) Local rates and joint through rates are placed by the Act on the same level, both being required to be openly published and uniformly applied, and although the carriers are obliged to establish local rates and are left to agree upon joint through rates, or not, as they choose, still if they do agree therein, the rates can become legally operative only by being established as prescribed in the Act. K. C. S. Ry. v. Albers Comm. Co., 223 U. S. 573, 597, 32 Sup. Ct. 316, 56 L. ed. 556.

ALL OTHER CITATIONS

B. & O. R. R. Co. v. La Due, 57 Misc. 614, 616, 108 N. Y. Supp. 659; reversed 128 App. Div. 594, 112 N. Y. Supp. 964; Eagle Pass Lumber Co. v. National Rys. of Mexico, 25 I. C. C. 5, 7; Herman Loeb v. T. & P. A. Ry. Co., 24 I. C. C. 304; Wabash R. R. Co. v. Priddy (Ind., May 7, 1913), 101 N. E. 724, 727; Bartlett Co. v. C. P. & St. L. Ry. Co., Unrep. Op. A203; Charles Warner Co. v. D. L. & W. R. R. Co., 32 I. C. C. 244, 246; Marshall Car Wheel & Foundry Co. v. T. & P. Ry. Co., Unrep. Op. A-929; Murray & Layne Co. v. A. T. & S. F. Ry., 68 I. C. C. 277; St. Louis & O'Fallon Ry. v. East St. Louis & Suburban Ry., 81 I. C. C. 538.

§18. Application of proportional rate.

See Supra §13½; Facilities and Privileges § 11½, §15, §18; Proportional Rates; Reconsignment §6¼; Reshipping Rates; Through Routes and Joint Rates §19.

CASES 1887-1908

(a) Complainant, C. R. I. & P. Ry, alleged respondent, C. & A. R., transported cattle from Kansas City, Mo., to Chicago, Ill., at less than the published rates, for the reason that the livestock originating at points west of Kansas City is stopped at Kansas City to try the market and is again reshipped to Chicago, Ill., at the through rate from point of origin to destination, where as the proper charge should have been on the Kansas City combination. HELD, complaint dismissed as the shipments were not through consignments, the combination rates as per tariff were protected in some cases with some carriers, and in others the through rates were used with stopping in transit privilege at Kansas City in accordance with published tariffs. C. R. I. & P. R., v. C. & A. R., 2 I. C. C. 721.

(b) While defendant carrier was entitled to insist upon the application of the through rate to the through shipment on its line to Hope, Ark., instead of applying the sum of local rates based upon Texarkana, Ark., which sum was less than the published through charge, it could not lawfully refuse to receive and carry complainant's freight to Texarkana under the local rate to that point,

even though the complainant's attempt to ship its freight to Texarkana was for the purpose of having it subsequently reshipped from that point by another line to Hope, Ark. Hope Cotton Oil Co. v. Texas & P. R. Co., 10 I. C. C. 696.

(c) The Evansville & Terre Haute Railroad Company having, instead of making a through rate from points in Indiana to destinations south of the Ohio River, established a local rate on hay of 8 cents per hundred pounds to Evansville, and a proportional of 6½ cents to Evansville when the shipment is billed through to a specified destination, acts unreasonably and unjustly in insisting upon the billing of these shipments to a specified destination in order to secure application of the lower proportional rate, while it declines to assume responsibility for such billing, and does not post in its stations the tariffs from which the shipper can himself ascertain the rate at which the shipment should be billed. While the proportional rate is kept in force it is reasonable and just that these shipments shall be billed to Evansville in care of the road leading southerly therefrom. T. M. Kehoe & Co. v. Evansville & T. H. R. Co., 11 I. C. C. 172.

(d) The fact that through rates are less than the sum of in and out rates is not of itself a valid ground of objection, nor is it unlawful for defendants to maintain reconsignment rates which are higher in some cases than their proportion of through rates. St. Louis Hay & Grain Co. v. Illinois Cent. R. Co., 11 I. C. C. 486.

IMPORTANT CASES SINCE 1908

(e) Although a proportional rate is published this does not make it a legal rate, if there exists a published through rate. Lindsay Bros. v. B. & O. S. W. R. R. Co., 16 I. C. C. 6, 8.

(f) A joint through rate takes precedence over a combination of a proportional and local. Delray Salt Co. v. D. T. & I. Ry. Co., 18 I. C. C. 245.

(g) Principle of rate making which determines the measure of inbound rates on raw material by the compensation received for subsequent independent movements of outbound manufactured products not a correct one. Curry & Whyte Co. v. D. & I. R. R. R. Co., 30 I. C. C. 1, 12.

(h) Whenever absorption of elevation charges is made the grain can not lawfully move forward except at the balance of the through rate. Merchants Exchange of St. Louis v. B. & O. R. R. Co., 34 I. C. C., 341, 351.

(i) A combination where the rates on grain to and on the product from the transit point is greater than the thru rate has frequently been held to be unjustly discriminatory against the intermediate milling point to the extent that the combination of the rate on grain to and on the product from the transit point exceeds by more than the established transit charge the rate contemporaneously in effect on the product. Eldred Milling Co. v. C. N. R. R. Co., 42 I. C. C. 215, 219.

(j) It is not practicable to have rates into and out of all jobbing points so constructed that the resulting through charges from the factory to utimate destination are the same via all jobbing centers. Wichita Wholesale Furniture Co. v. A. T. & S. F. Ry. Co., 44 I. C. C. 339, 344.

(k) A reshipping or rebilling rate is a proportional rate under which after a commodity has been shipped to a distributing market and unloaded for the purpose of storage or treatment in transit the same commodity or an equivalent amount may be reshipped to final destination. There is a close analogy between reshipping rates and transit. The reshipping rate is usually less than the local rate from the distributing or transit point to the final destination and must be regarded as part of the through rate or charge from the point of origin through the transit point to the ultimate destination. Cairo Bd. of Trade v. C. C. C. & St. L. Ry., 46 I. C. C., 343, 348.

(l) Reshipping rates are not merely divisions of through rates but are separately established rates generally published by the carriers other than those engaged in the inbound, movement and without the concurrence of the latter; and the point of reshipment is a rate-breaking point. A change in the reshipping rates, even though it may affect the through charges, will have no effect upon the inbound rates. Cairo Bd. of Trade v. C. C. C. & St. L. Ry., 46 I. C. C. 343, 350.

(m) In determining whether or not

a complainant has been damaged by the exaction of unreasonable or unduly preferential reshipping rates the total thru charges paid from point of origin must be considered. But this does not hold true of a determination of the reasonableness or justness of the reshipping rate itself. Reshipping rates are not merely divisions of through rates, but are separately established rates generally published by carriers other than those engaged in the inbound movement and without the concurrence of the latter; and the point of reshipment is a rate-breaking point. A change in the reshipping rates, even though it may affect the through charges, will have no effect upon the inbound rates. The inbound carriers have a right to secure reasonable compensation for their part of the haul by reasonable inbound rates. Hence they are subject to review independently of the outbound rates. An excessive reshipping rate might produce a reasonable through charge in connection with an unduly low inbound rate and vice versa. It can not properly be argued that a proposal to increase unremunerative reshipping rates could be denied upon the ground that the through charge composed of an excessive inbound rate and the unremunerative reshipping rate is just and reasonable. The converse must also be true, namely that shippers may not upon like grounds be denied relief from unreasonable or unduly prejudical reshipping rates. This is also true as to proportional rates that are applicable to shipments going or from beyond and which are not limited as applying only on shipments from or to designated points or territory. Each of such rates must be judged upon its individual merits. Cairo Bd. of Trade v. C. C. C. & St. L. Ry., 46 I. C. C., 343, 350.

(n) It is the universal practice to accord transit under the through rates wherever necessary at points along the direct line of movement. At points so located defendants must either equalize in and out rates by means of reshipping rates or provide transit under through rates. Cairo Bd. of Trade v. C. C. C. & St. L. Ry., 46 I. C. C., 343, 351.

(o) A system of reshipping rates is more simple, easier of application, and less subject to abuse than any system involving transit arrangements with their attending complexities and difficulties of enforcement. Buffalo Grain Cases, 46 I. C. C. 570, 582.

(p) Carriers which participate in joint through transportation are jointly and severally liable in a proceeding for reparation. Swift & Co. v. U. P. Ry., 49 I. C. C. 336, 337.

(q) So long as lines forming through routes and publishing joint rates applicable thereto allow transit on basis of the through rates at some points, they may be required to accord transit on the same basis at competing points on such through routes. Southern Hardwood Traffic Asso. v. Director General, 61 I. C. C. 132, 141.

(r) The collection on outbound shipments of grain stopped in transit at Cincinnati, Ohio, and Louisville, Ky., of amounts equal to the division of the through charges accruing to the outbound carriers with subsequent refund when the total charges so collected is greater than the through charge from point of origin to destination, found not unreasonable or unduly prejudicial. Cincinnati Grain & Hay Exchange Co. v. B. & O. R. R. Co., 73 I. C. C., 104, 108.

(s) The fact that combination through rates were composed of proportional factors, the use of each of which was dependent upon the use of the other factor or factors, did not invest them with the character of joint through rates. Van Dusen Harrington Co. v. Director General, 78 I. C. C. 729, 731.

(t) Whenever by any transit arrangement through rates are applied, they must be as of the date of the first movement of the shipment from the point of origin under such through rates. Washburn-Crosby Milling Co. v. B. & O. S. W. R. R. Co., Unrep. Op. A480.

(u) Whenever under a transit arrangement a through rate is applied, such through rate must be as of the first movement of the shipment from the point of origin under such through rate. La Junta Milling & Elevator Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A507.

(v) The Interstate Commerce Act, §6, prohibits any carrier from charging, demanding, collecting, or receiving any greater, less, or different compensation for the transportation of passengers or tariffs filed thereunder than the rate

specified in such tariff. Section 8 provides that any common carrier, doing anything prohibited thereby, shall be liable to the persons injured for the full amount of damages sustained. Section 9 authorizes any person, damaged by any carrier subject thereto, to sue for the recovery of the damages in any United States District or Circuit Court. Plaintiff and defendant had a joint tariff providing a through rate for shipments of lumber originating on defendant's line, but providing no through rate permitting such shipments to be stopped at the junction point and there dressed and then forwarded. On lumber so shipped defendant collected from the original shipper the local rate to the junction point, but demanded and received from plaintiff a portion of the freight from such junction point to destination; the rate in force on such shipments being the same from the junction point as from the point of origin on defendant's line. HELD, that plaintiff was entitled to sue for the payments so made, though they were voluntary, and though in making such payments both plaintiff and defendant were guilty of an unlawful act, as plaintiff was damaged by such payment, and the statute is not limited to the regulation of contracts between shipper and carrier. Mobile & O. R. R. v. Washington & C. Ry., 242 Fed. 531.

(w) Before a lower transit tariff can be applied to a shipment through a transit point, it must appear that there is some relation between the inbound and outbound shipments; since an inbound shipment consumed or reconsigned at the transit point cannot be made the basis of transit shipment. G. R. & I. Ry. Co. v. United States, 212 Fed. 577, 585.

(x) An application of transit rates to shipments consumed or reconsigned at the transit point constitutes rebating. Nichols & Cox Lumber Co. v. United States, 212 Fed. 588, 591.

ALL OTHER CITATIONS

Fisher v. Gt. N. Ry. Co., 49 Wash. 205, 211, 212, 95 Pac. 77; U. S. v. N. C. & St. L. Ry. Co., Unrep. Op. A-691; Sunderland Bros. Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-705; Cavers Sturtevant Co. v. C. & N. W. Ry. Co., 41 I. C. C. 378; Mesker & Co. v. L. & N. R. R. Co., 41 I. C. C. 675, 677; Squire & Co. v. A. S. R. R., 44 I. C. C. 509, 511; Eagle Pass Lum. Co. v. G. H. & S. Ry., 48 I. C. C. 693; Memphis Freight Bu. v. St. L. & S. F. R. R., 50 I. C. C. 345; Carolina Portland Cement Co. v. Director General, 57 I. C. C. 496, 498; Grain from St. Louis to Cincinnati and Louisville, 59 I. C. C. 435; Tarver, Steele & Co. v. Director General, as Agent, 60 I. C. C. 666; National Supply Co. v. C. B. & Q. R. R., 66 I. C. C. 604; Weir Smelting Co. v. Director General, as Agent, 74 I. C. C. 260; Phillips & Sons v. B. & A. R. R. Co., 74 I. C. C. 381; C. A. Libbey Company v. Director General, 78 I. C. C. 650; Northwestern Traffic & Service Bureau v. C. W. Ry. Co., 80 I. C. C. 659.

§19. **Breaking Transit.**

See Creating in Transit; Fabrication in Transit; Facilities and Privileges §18; §15; Interstate Commerce Commission §1; Proportional Rates; Reshipping Rates; Stoppage in Transit; Storage in Transit; Transportation §11;

IMPORTANT CASES SINCE 1908

(a) A shipper may transport merchandise to a given point, take possession of it at that point and reship it, even though the effect of the transaction is to secure transportation from a point in one state to a point in another at a less cost than the published through interstate rate. Montgomery Freight Bureau v. W. Ry. of Ala., 14 I. C. C. 150, 152.

(b) The combination of locals, and not the joint through rate, was properly collected on a shipment which was ordered reshipped before it reached its original billed destination, in the absence of a reconsignment privilege. Floridin Co. v. S. A. L. Ry., 21 I. C. C. 610.

(c) A forwarding movement, ordered by consignee who does not take possession of goods, is not a new shipment. Memphis Freight Bureau v. I. C. R. R. Co., 27 I. C. C. 1, 2.

(d) Carrier is fairly entitled to a higher charge on the outbound product than on the inbound movement of raw material to the transit point. Mixed Car Dealers Asso. v. D. L. & W. R. R. Co. 33 I. C. C., 133, 139.

(e) No unlawful discrimination or preference can be predicated upon the fact that sash and door rates must be

paid upon outbound movement which results in making aggregate costs greater than on the through movement of lumber or sash and doors. Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C., 332, 337.

(f) Only substantial commercial and transportation reasons can justify a carrier in permitting a practice like reshipping, which admittedly is similar to that of reconsignment and from which shippers obtain similar benefits and results, while denying to other shippers who can not avail themselves of the reshipping arrangement the right of reconsignment. Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C., 523, 531.

(g) Reshipping admittedly similar to reconsignment. Doran & Co. v. N. C. & St. L. Ry. 33 I. C. C., 523, 531.

(h) The right to make two separate and dissociated shipments of the same commodity, the one at a local rate in and the other at a lower rate out of a reshipping point, cannot be denied. Merchants Exch. of St. Louis v. B. & O. R. R., 34 I. C. C. 341, 350.

(i) While reshipping or proportional rates should in all cases be regarded as applicable only for part of a through but suspended movement from point of origin to ultimate destination, local rates although they may likewise apply to part of a through movement, cannot be limited according to the point of origin of the shipment or the rates which were paid inbound. Merchants' Exch. of St. Louis v. B. & O. R. R., 34 I. C. 341, 351.

(j) It might be that competition has influenced the establishment of an adjustment on one commodity moving outbound which it would not be just to carriers to require on another moving inbound. Alpha Portland Cement Co. v. B. & O. R. R. Co., 34 I. C. C. 414, 421.

(k) If through charges are lawful in the sense that they are reasonable charges for the through service, a shipper can not predicate unlawfulness of one of the component parts of the through charges by alleging that it is excessive compensation to that carrier for that part of the through service. Des Moines Saw Mill Co. v. C. M. & St. P. R. R. Co., 35 I. C. C. 182, 184.

ALL OTHER CITATIONS

Townley Metal & Hardware Co. v. C. R. I. & P. Ry. Co., 18 I. C. C. 378, 379; Stock Yards Cotton & Linseed Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 366, 367; Harlow Lumber Co. v. A. C. L. R. R. Co., 15 I. C. C. 501, 503; Memphis Freight Bureau v. Ft. S. & W. R. R. Co., 13 I. C. 1, 9; Seaboard Refining Co. v. A. G. S. R. R. Co., 25 I. C. C. 702; Meeds Lumber Co. v. A. C. Ry. Co., Unrep. Op. A-829; Isbell-Brown Co. v. G. T. W. Ry. Co., Unrep. Op. A-908; Sunderland Bros. Co. v. C. & A. R. R. Co., Unrep. Op. A-875; Mixed Car Dealers Asso. v. D. L. & W. R. R. Co., 33 I. C. C. 133, 140; Merchants Exchange of St. Louis v. B. & O. R. R. R. Co., 34 I. C. C. 341, 353, 359; Van Dusen Harrington Co. v. C. M. & St. P. Ry., 35 I. C. C. 172; Merriam & Millard Co. v. C. & A. R. R. Co., 39 I. C. C. 485; Memphis Merchants' Exchange v. I. C. R. R. Co., 43 I. C. C. 378, 390; Bush v. Southern Grocery Co., (Ark. 1918), 208 S. W. 299; Chicago, M. & St. P. Ry. Co. v. Frye & Co., (Wash. 1919), 186 Pac. 668; Gwinn & Co. v. C. & O. Ry., 56 I. C. C. 298, 301; Transit Privileges on Lumber, 66 I. C. C., 94.

§20. Change in rate while shipment at transit point.

See Supra §18; §19; Facilities and Privileges §15; §18.

IMPORTANT CASES SINCE 1908

(a) The through rate on the finished product is applicable from origin to destination. Monarch Milling Co. v. C. R. I. & P. Ry. Co., 17 I. C. C. 1.

(b) Tariffs provided that on reshipment from concentration point the through rate from origin to final destination would be protected. Consignment was destroyed by fire while at transit point. Claim for refund of local rate from origin to transit point denied. Anderson, Clayton & Co. v. St. L. & S. F. R. R. Co., 17 I. C. C. 12.

(c) Whenever by any transit arrangement through rates are applied, such through rates must be as of date of first movement from point of origin under such through rates. In Re Milling-in-Transit Rates, 17 I. C. C. 113.

(d) Where grain is shipped under a milling-in-transit privilege and the through rate is changed after shipment from the point of origin and before shipment at the point of milling, the rate in effect at the time of the shipment at

point of origin governs under the rule that rates cannot be changed while shipments are in course of transportation. In Re Milling-in-Transit Rates, 17 I. C. C. 113, 114.

(e) Although the rate is advanced while oil was at a refining-in-transit point, the legal rate is the rate in effect at the time of original movement. Southern Cotton Oil Co. v. A. C. L. R. R. Co., 19 I. C. C. 434, 435.

(f) With respect to shipments moving in connection with transit arrangements, the through rates and regulations lawfully applicable to the transportation and transit service are those in effect when the shipments originated. Fargo Iron & M. Co. v. G. N. Ry., 46 I. C. C., 399, 400.

(g) On barley from South Dakota, Minnesota, Wisconsin, and Iowa to points in Pennsylvania, malted in transit at Chicago, Ill., charges assessed found unlawful to extent they exceeded those based on rates in effect at time of initial shipment east of Chicago. Reparation awarded. Columbia Malting Co. v. N. Y. C. R. R. Co., 53 I. C. C. 137.

ALL OTHER CITATIONS

Southern Cotton Oil Co. v. S. A. L. Ry., Unrep. Op. 358; Rosenheimer Malt & Grain Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. A-808; Mixed Car Dealers Asso. v. D. L. & W. R. R. Co., 33 I. C. C. 133, 139; Western Star Mill Co. v. U. P. R. R., 46 I. C. C. 467; Gulf & Valley Citton Oil Co. (Ltd.) v. T. & P. Ry. Co., 53 I. C. C. 561, 563.

§20a. Combination rule.

IMPORTANT CASES SINCE 1908

(a) Fact that publication of combination basis of rates from all points would complicate tariffs does not constitute sufficient reason to warrant continuance of practice of charging through rates in excess of aggregate of intermediates. Archenhold Automatic Supply Co. v. A. S. R. R. Co. 78 I. C. C. 434, 438.

(b) Proposed restricted application of so-called combination rule, providing for single increases to combination rates where no through rates in effect, to rates only where there is no through rate via any route, and to effect same result through restriction of certain rates to certain routes of A. C. L. R. R., found not justified. Generally accepted interpretation of the rule is that combination rates constructed as provided therein are invariably applicable unless there is joint through rate in effect over route of movement, and much traffic has accordingly moved over so-called unauthorized routes since inception of rule. Cancellation Rule for Combination Rates, 81 I. C. C. 745.

(c) Respondents proposed to restrict the application of the so-called combination rule for constructing lumber rates from the Mississippi Valley and southeastern points of origin to Ohio and Mississippi River crossings when the shipments are destined for points beyond these crossings. The combination rule provided for the application of single increases to the combination rates where no through rates were in effect from point of origin to destination. The application of this rule has in many instances resulted in lower rates than were applicable under the published through rates. At this time there is a substantial movement of lumber over the so-called authorized routes now enjoying the protection of this rule. HELD, proposed schedules would increase rates, proposed basis not justified. Cancellation rule for combination rates, 81 I. C. C. 745.

(d) Although the Commission has frequently indicated that the combination rule, designed as a temporary expedient, is undesirable as a permanent tariff rule, it does not think that carriers publishing one factor of a through rate under which there is a substantial movement, should be permitted to cancel the application of the combination rule to that factor, unless carriers publishing the other factors join in the cancellation or in the publication of joint through rates. Combination Rule on Box Shooks, 89 I. C. C. 219, 220.

ALL OTHER CITATIONS

Combination Rule for Trans-continental Rates, 78 I. C. C. 24; Cancellation Rule for Constructing Combination Rates on Agricultural Limestone Between Certain Points in Illinois and Iowa, 78 I. C. C. 579, 581; Wilson & Co. v. Director General, 81 I. C. C. 39; McLoed v. T. & P. Ry., 89 I. C. C. 356.

§20½. Concurrences.

CASES 1887-1908

(a) Any one member of a joint com-

bination may file copies of joint tariff for all the members. Proceedings at Atlanta, 1 I. C. R. 76.

(b) No authority to issue through tickets or through bills of lading for property, at through rates, over connecting lines, is conferred by the Act to Regulate Commerce upon common carriers of interstate commerce, in the absence of arrangements between the companies. Kentucky & I. Bridge Co. v. Louisville & N. R. Co. (C. C. D. Ky.) 2 I. C. R. 351; Little Rock & M. R. Co. v. East Tennessee, V. & G. R. Co., 2 I. C. R. 454.

(c) The publication by a carrier subject to the Act to Regulate Commerce, of the aggregate local rates between points on its own line and those on the line of a connecting carrier with which it has no joint tariff, is not illegal; but it cannot lawfully add to the duly established rates of another carrier any amount it pleases less than its own rate, and publish and use that sum as a through rate, without the consent of the other company. New York, N. H. & H. R. Co. v. Platt, 7 I. C. C. 323.

(d) Rates established by a single carrier "upon its route" and shown on individual tariffs, and joint rates "over continuous lines or routes operated by more than one carrier" shown on joint tariffs, are the rates authorized by section 6 of the Act to Regulate Commerce, and required to be posted at stations and filed with the Commission. The word "joint," and the express reference in the statute to the several carriers over a continuous line and the joint tariffs which they establish, import concurrence and assent in fixing aggregate rates for a combined service, as distinguished from the separate rates of a single carrier for transportation "upon its route." New York, N. H. & H. R. Co. v. Platt, 7 I. C. C. 323.

(e) It is indispensably necessary in interstate traffic that the consent of each of several lines over which freight is to be carried should be had in the establishment and operation of what is called "through rates." Such rates are the subject of agreement, and for their existence depend upon agreement. N. Y. N. H. & H. R. v. Platt, 7 I. C. C. 323, 335.

(f) At common law, and under the Act to Regulate Commerce as interpreted by the courts, joint through routes and through rates are matters of contract between the connecting carriers, and the defendant, as party to a joint tariff which does not give shippers the privilege of milling in transit, acted within its legal right in notifying its immediate connections and the complainant that it would not permit that practice. Diamond Mills v. Boston & Maine, R. Co., 9 I. C. C. 311.

(g) Every common carrier by rail or water which forms a link in a through route must either file or concur in some tariff under which it handles the through business. Enterprise Transportation Co. v. Pennsylvania R. R. 12 I. C. C. 327, 337.

IMPORTANT CASES SINCE 1908

(h) It would be improper for one road to establish a joint rate from a point on another road without the concurrence of the latter. Coal Rates on the Stony Fork Branch, 26 I. C. C. 168, 173.

(i) The shipper is not bound by the terms of concurrence sheets where they conflict with tariffs, since concurrence sheets are not posted in the same manner as are tariffs, and no opportunity is afforded the general public to ascertain whether or not the terms of the concurrence limit the application of the tariff in so far as the participating road is concerned. Healy & Towle v. C. & N. W. Ry., 43 I. C. C. 83, 84.

(j) Rate on quarry-run limestone from Lewisburg, Ohio, to Cement City, Mich., increased under the Fifteen Per Cent case, 45 I. C. C., 303, found not unreasonable or unduly prejudicial as compared with rates of competitors between other points which were not increased following that case. Such competitive rates were controlling factors in arriving at rates here in issue but defendant herein does not concur therein and carriers maintaining them are not parties to rates here involved. Peninsular Portland Cement Co. v. Director General, as Agent, 73 I. C. C., 542.

(k) Paragraph (4), section 6, of the act requires that the "names of the several carriers which are parties to any joint tariff shall be specified therein," and that each of the parties thereto other than the one filling the tariff shall file such evidence of concurrence therein as may be required by the Commission.

New York Dock Ry. v. B. & O. R. R. Co., 73 I. C. C., 656, 662.

(l) Where schedules purport to publish joint rates. and intermediate carrier, which forms a necessary link in the through route, actually participates in the through movement, and for whose account a switching charge is published, is not shown as concurring carrier, such method of publication is contrary to the act and the commission's tariff regulations. Cord and Pulp Wood to Canton, 78 I. C. C. 593, 596.

(m) Shipments moved as routed by shipper and charges collected at combination rate, to each factor of which was applied increase under General Order No. 28 of director general. Tariff of delivering carrier contained provision that such increase be added but once to combination rate, tariffs of other participating carriers being silent on this point. HELD: Following Sligo Iron Store Co., 62 I. C. C., 643, 73 I. C. C., 551, publication of such provision is holding out to shipper of rate so constructed which carrier should protect. Reparation awarded. Tuffli Bros. Pig Iron & Coke Co. v. Director General, as Agent, 80 I. C. C. 123.

(n) The mere insertion in the tariff of an erroneous concurrence number did not invalidate the rates shown therein. Bartlett Co. v. C. P. & St. L. Ry. Co., Unrep. Op. A203.

ALL OTHER CITATIONS

Fullerton-Powell Hardware Lum. Co. v. C. & E. I. R. R. 41 I. C. C. 444; Ridge Coal Mining Co. v. M. P. R. R. Co., 62 I. C. C. 259, 263, 264; Stone from Bridgeport and Mascot to L. & N. Stations, 64 I. C. C. 515; Standard Oil Company (California) v. Director General, as Agent, 74 I. C. C. 188; St. Louis & O'Fallon Ry. Co. v. E. St. L. & S. Ry. Co., 81 I. C. C. 538, 541, 542.

§20¾. Different Classification applicable.

See Classification §20.

IMPORTANT CASES SINCE 1908

(a) Where through charges exceed the aggregate of the intermediates, as a result of the differing rules and minimum weight applicable in two rate territories, the rules that produce such results are clearly improper. Minneapolis Threshing Machine Co. v. M. & St. L. R. R. 37 I. C. C. 92, 95.

(b) When through rates are published from points in one classification territory to points in a territory in which a different classification applied they must be made subject to one or the other of such classifications. Where such through rates are approximately equal to the sums of the intermediate rates of corresponding classes the charges computed at the through rate subject to the higher classification will exceed in some instances the aggregates of the charges to and from points at the boundaries of the classification territories computed at rates subject to one classification up to the boundary line and to a different one beyond. This can be avoided only by reducing the through rates or increasing the intermediate rates, or by both processes, so that the former will in no instance produce a greater total charge on a through shipment than the aggregate of the charges obtained by the use of rates to and from an intermediate point; or by publishing commodity rates to apply on various articles on which the charges on the basis of the through rate would not exceed the aggregate of the charges based on the intermediate rates. Through Rates to Points in Louisiana and Texas, 38 I. C. C. 153, 159.

§21. Intermediate clause.

See Intermediate Clause; Tariffs §13a.

IMPORTANT CASES SINCE 1908

(a) Rate on bituminous slack coal from Landon to Rostraver and Monessen, Pa., during Federal control, based upon the rate to Webster, Pa., the first station beyond Monessen and applicable to intermediate points, including Rostraver and Monessen. found applicable and not unreasonable. Carriers maintained a lower rate between certain stations, including Landon, but rate referred to another tariff naming distances between stations to and from which the rate applied, and such tariff did not include distances from Landon. Warner & Co. v. Director General, as Agent, 73 I. C. C., 523.

(b) Tariff Circular 18A of the Interstate Commerce Commission, provided that a tariff should contain an alphabetical index of the points from and to which it applies, and, further, that "this is not to be understood as prohibiting the incorporation in a tariff of a rule for the affirmative and definite application

of the rates or fares named in that tariff to or from points not indexed, and which are distinctly intermediate on the same line with points that are indexed." A tariff published by a railroad company provided that "between stations * * * rates to or from intermediate stations will be the same as shown to or from the next more distant station to or from which rates are named." HELD, that such provision must be construed in connection with the circular under which it was issued, and to or from which specific rates were named. National Elevator Co. v. Chicago, M. & St. P. Ry. 246 Fed. 588.

(c) In a railroad tariff, fixing rates to and from stations named, and also providing for the rates to apply to "intermediate stations," the word "intermediate" refers to stations between those named. National Elevator Co. v. Chicago, M. & St. P. Ry., 246 Fed. 588.

(d) Where the tariff sheet of a railroad named the rates on coal from two points on its line to a common destination within the same state, the higher rate being charged for the shorter haul, the further clause appearing on the sheet "On interstate traffic a higher rate must not be charged for a shorter than a longer distance over the same line, * * the shorter being entirely included within the longer distance," did not effect the named rates, and was not an offer to transport coal from the farther point at the same rate charged from the point nearer the common destination, though the ultimate destination of the shipments was beyond the state. Sunderland Bros. Co. v. B. & O. S. W. R. R., (Mo. 1916), 19 S. W. 650.

ALL OTHER CITATIONS

Williamson v. O. S. L. R. R. Co., 15 I. C. C. 228, 229; National Elevator Co. v. Chicago, M. & St. P. Ry., 246 Fed. 588, 589, 590, 591, 592; Reliance Elevator Co. v. Chic. M. & St. P. Ry., (Minn. 1917), 165 N. W. 867; Lumber and other forest products from southeastern points to N. & W. Ry., 64 I. C. C. 591; Empire Refineries v. Director General, as Agent, 73 I. C. C. 221; Sunderland Brothers Co. v. C. B. & Q. R. R., 78 I. C. C. 295; Pacific Rice Co. v. Director General as Agent, 78 I. C. C. 459; Fort Worth Freight Bureau v. Director General, 80 I. C. C. 237; U. S. Nickel Co. v. Director General as Agent, 81 I. C. C. 162, 165; Warfield Pratt Howell Co. v. T. & P. Ry.. 87 I. C. C. 729.

§22. What is legal rate.

See Supra § 15; §15½; §18, §20; §20 3-4; §21; Commodity Rates II; Facilities and Privileges §18; Legal Rate; Tap Lines §18; Tariffs §3 (1); §3 (2); §18; Through Routes and Joint Rates §18; §20.

CASES 1887-1908

(a) A rate is none the less a through rate when freight is shipped upon a through bill of lading from the point of origin to destination, accompanied by a way bill showing the route over which it is to pass, with the percentages of all the other lines set forth on the way-bill, because the initial carrier charges its local rate as part of the total rate, and the remaining lines charge an agreed rate made by percentages. Milwaukee Chamber of Commerce v. Flint & P. M. R. Co. (Com.) 2 I. C. R. 393.

(b) When a combined rate, evidenced by a through bill of lading from the point of origin to destination, has every constituent of a through rate, it is not necessary that it should be formally quoted by one of the carriers to another who is engaged in the making of it, in order to constitute it a through rate. Names are nothing in such a transaction; the law looks at the elements and substance of the transaction itself. Milwaukee Chamber of Commerce v. F. & P. M. R. R. 2 I. C. C. 393, 398.

(c) When there is no joint rate in effect from a station on the line of one carrier to a station on another carriers line to which a ticket is applied for, it is competent to name a through rate made up of the sums of rates prevailing on the several roads or parts of roads made use of in the journey, using for such a through rate local rates where there are no joint rates in effect, and joint rates in combination with locals where they are in effect for any part of the distance. When no joint rates are announced it is understood that the local rates are employed in arriving at the through rates. Re passenger tariffs 2 I. C. C. 445, 447.

(d) A railway company had in force from Nebraska points to Turner, Illinois, a tariff sheet directing corn des-

tined to the seaboard to be billed from such Nebraska points to Turner at different rates when destined to different seaboard points. The corn was carried from Nebraska to Chicago where the rebilling and transferring was done. No shipments could be made under this tariff from Iowa points. HELD, that as billed, the shipment was to Turner; that by billing at different rates to Turner, an illegal preference was given; and that Iowa grain growers were subjected to unreasonable disadvantage in marketing corn. Northwestern Iowa Grain & Stock Shippers Asso. v. Chicago & N. W. R. Co., 2 I. C. R. 431.

(e) The carriage of freights can not be prevented from being treated as one continuous carriage from the place of shipment to the place of destination by any means or devices intended to evade any of the provisions of the act. Matter of Grand Trunk Ry. Co., 2 I. C. C. 497, 503.

(f) The Act to Regulate Commerce, §§2, 3, are not violated by charging a local rate on cotton from a more distant point to Vicksburg, Mississippi, when, after pressing there, it is forwarded to its point of destination at less than Vicksburg rate to such point, the total of such two rates being made to equal the regular rate from such initial point to such destination. Cowan v. Bond (C. C. S. D. Miss.) 2 I. C. R. 542.

(g) Where property is billed from one station to another with the understanding that it is to be unloaded at an intermediate station, and that whether it shall be reloaded for further carriage will depend upon the volition of the shipper or of anyone who may have become purchaser, the case does not fall within the reasons governing rates on through transportation, and the carrier is not at such intermediate points entitled to have the carriage protected as a through shipment as against competitors. C. R. I. & P. R. v. C. & A. R., 2 I. C. C. 721, 725.

(h) Where freight passes over a continuous line or route operated by more than one company, on which no joint tariff of rates or charges has been established, the tariff of rates or charges is the sum of the established local rates or charges of the several companies operating such continuous line. Lehmann v. Texas & . R. Co. (Com.), 3 I. C. R. 706.

(i) The continuity of the carriage of freight over a line formed by two or more roads, is not broken in fact and cannot be broken in law by the charge of a local rate by one (or more) of such roads as its proportion of the through rate. Board of Trade of Troy, Ala., v. A. M. R. Co., 4 I. C. C. 348. 351.

(j) That a local rate is made part of a through rate does not render the latter rate illegal, provided that neither the local nor the through rate is unjust or unreasonable, and that neither of them unjustly discriminates nor gives an undue preference or advantage to persons or traffic similarly situated. Interstate Commerce Commission v. Alabama Midland R. Co. (C. C. App. 5th C.), 5 I. C. R. 685.

(k) The fact that a local rate is made part of a through rate, does not render the through rate illegal, provided neither the local nor the through rate be unjust or unreasonable; and provided neither of them unjustly discriminate, or give an undue preference or disadvantage to persons or traffic similarly situated. Interstate Commerce Commission v. Alabama M. R. Co., 5 I. C. R. 685.

(l) The continuity of the carriage of freight over a line formed by two or more roads is not broken in fact, and cannot be broken in law, by the charge of a local rate by one (or more) of such roads as its proportion of the through rate. Board of Trade of Troy, Ala. v. Ala. Mid. Ry. Co. et al, 6 I. C. C. 2.

(m) Where a contract is made with a shipper by a carrier, member of a through line, for shipment of goods over the line at a less than the published lawful rate charged shippers in general, it is not a violation of the Act to Regulate Commerce within the jurisdiction of the Interstate Commerce Commission for the delivering carrier to exact payment of the full lawful rate before delivery, although if the shipper was an innocent party he might be entitled to his goods on payment of the contract rate. Duncan v. Atchison, T. & S. F. R. Co., 6 I. C. C. 85.

(n) The mere fact that one of several connecting carriers receives a share of the total through charges equal to its in-

dividually established rates between the points covered by its road is insufficient to make such shipments purely local, and relieves it from liability to make reparation for illegality in such charges, but they must be treated as through shipments unless they are local in all essential respects. Independent Ref. Asso. v. Western N. P. & P. R. Co., 6 I. C. C. 378.

(o) The mere circumstances that the Boston & Maine received a share of the total through charge which was equal to its individually established rate from Boston to the points of destination, is altogether insufficient to make these shipments take on a purely local character over the Boston & Maine; and if the shipments were not, in all essential respects, local from Boston to the destination points, then they were through shipments over the through line of the connecting carriers, and must be so treated. Independent Refiners Asso. v. Western N. Y. & P. R. Co., 6 I. C. C. 378.

(p) Shipments of grain were carried to Kansas City, Mo., from points west thereof at local rates, and quantities of grain were afterwards reshipped and rebilled from Kansas City to Chicago or other destinations at the balance of the established through rate from the original point of shipment to Chicago or other ultimate destination, instead of the higher local rate in force from Kansas City to such destination. There was no agreement for through carriage between shipper and carrier at the original point of shipment, no other destination than Kansas City was named, and upon carriage of the grain to that point and delivery to consignee the transportation was completed and the local rate in effect to Kansas City was paid; but the practice was to allow the consignee or other owner of grain at Kansas City to ship from Kansas City to Chicago and other points at the "balance of the through rate," upon presentation of the paid expense bill to Kansas City and certification by a joint agent of carriers at Kansas City. Under this "expense bill" practice it was practicable through transfer of expense bills, to secure a lower "balance of through rate" than would result from deducting the local rate between the actual point of origin and Kansas City from the through rate between said point of origin and the final destination, and other rate manipulations were possible. HELD, That such shipment and reshipment did not constitute a through shipment from the point of origin to the point of final destination, and grain so shipped and reshipped was not entitled to the benefit of the through rate in force. HELD, further, That the shipment from the point of origin to Kansas City was local, resulting in the grain becoming Kansas City grain, and the fact that it had come from a point farther west was no reason for applying on shipments of such grain from Kansas City any less or different rate than was in force from Kansas City. Matters of Alleged Unlawful Rates and Practices, 7 I. C. C. 240.

(q) A shipment of grain to Kansas City from points west at local rates is local in its reshipment to Chicago or other destination, and does not entitle the grain to the benefit of the through rate from the original point of shipment, in the absence of any agreement at such point for through transportation; and the fact that such grain comes from a point further west is no reason for applying upon it any less or different rate than that in force in Kansas City. Re Alleged Unlawful Rates and Practices, 7 I. C. C. 240.

(r) A carrier which has published and filed its rates as the law requires may combine such rates with the lawfully established rates of a connecting carrier or carriers, and thus announce the aggregate amount for which traffic will be transported from points on its railroad to points on the line of such connecting carrier or carriers; but one carrier cannot lawfully add to the duly established rates of another carrier any amount it pleases less than its own local rates, and publish and use that sum as a through rate to points on the line of such other carrier without its consent. Such a through rate is not a "joint rate," for joint rates can be made only by concurrence or assent; nor is it a combination rate, for one of its component parts has no legal existence or sanction as a separate or local charge; there must be lawful rates upon each of the roads before there can be a lawful combination of rates. New York, N. H. & H. R. Co., v. Platt, 7 I. C. C. 323.

(s) In the absence of some agree-

ment or understanding with a connecting line by which a joint tariff of rates is authorized, a given carrier cannot lawfully publish or apply any other rates than those which it fixes for transportation between points reached by its railroad; and the rates so fixed are the only lawful rates which such carrier can charge for any transportation service which it may perform, whether the traffic carried is destined to points on its own road or to points on the line of some other carrier. New York N. & H. R. Co. v. Platt, 7 I. C. C. 323.

(t) Notwithstanding the contention that higher rates are lawfully in force on shipments from Summerdale than from Milwaukee and other more distant points to eastern localities, it appears that, under the tariffs in force over defendants' through line, the rates from Summerdale were actually the same as those from more distant stations, including Milwaukee, at the time a less than carload lot of asbestos pipe coverings was shipped by complainant from Summerdale to Lima, O. HELD, That in failing to apply the through Milwaukee-division rates from Summerdale on such shipment the defendants acted contrary to the requirements of section 6 of the Act, and that complainant is entitled to recover the overcharge. Chicago F. P. Covering Co. v. C. & N. W. R. Co., 8 I. C. C. 316.

(u) A carrier which is a party to a joint rate from Buffalo to Boston on grain shipped from the west under a through rate cannot repudiate the contract of shipment, and cannot impose an arbitrary in addition to the through rate, on the ground that the grain had been milled in transit at Buffalo under an arrangement with a connecting carrier, as the carrier must apply the established rate under which the traffic moved, although it may refuse to become a party to a joint tariff which permits milling in transit. Diamond Mills v. Boston & Maine R. Co., 9 I. C. C. 311.

(v) Where a joint through route has been formed, the rate charged is a through rate, and a shipment will move upon the rate existing at the time it is billed by the initial carrier. The adoption of a joint through rate will not affect a shipment moving upon a combination through rate. Re Through Routes & Through Rates, 12 I. C. C. 163.

(va) A rate is a unit and liability for same as a whole is incurred by the shipper at the time of making shipment. Re Through Routes and Through Rates, 12 I. C. C. 163.

(w) A through rate ascertainable from the tariffs of the participating carriers at the date of shipment applies where through billing is given by the originating carrier, and is recognized by all connecting carriers; and when such rate is made up of the sum of the locals, the locals apply as of the date of shipment. Any increase in the through rate so made after the date of the shipments, or any decrease therein, is not applicable to such through shipments. Re Through Routes & Through Rates, 12 I. C. C. 163.

(x) Where through billing is given by the originating carrier and is recognized by all connecting carriers to destination, there is in existence a through route over which a through rate applies, which through rate is ascertainable from the tariffs of the participating carriers at the date of shipment; and when such rate is made up of the sum of the locals, the locals apply as of the date of shipment. Any increase in the through rate so made after the date of shipment, or any decrease therein, is not applicable to such through shipments. Through Routes & Through Rates, 12 I. C. C. 164.

(xa) Where a through route has been formed the rate charged is a through rate, and the shipment will move upon the rate existing at the time it is billed by the initial carrier. Through Routes & Through Rates, 12 I. C. C. 164.

(y) Existence of a through route is to be determined by the incidents and circumstances of the shipment, such as the billing, the transfer from one carrier to another, the collection and division of transportation charges, or the use of a proportional rate to or from junction points or basing points. These incidents named are not to be regarded as exclusive of others which may tend to establish a carrier's course of business with respect to through shipments. Through Routes & Through Rates, 12 I. C. C. 164.

(z) Tariffs can not be given a retroactive effect; they can not be made to

apply to conditions other than those existing upon the date when such tariffs become effective. A combination through rate is as binding, definite and absolute as a joint through rate; and all the conditions, regulations and privileges obtaining as to any factor in such combination rate for through shipment at the time of initial shipment upon such combination through rate must be adhered to and cannot be varied as to that shipment during the period of such shipment to its final destination. A local or proportional rate "in" can not be absorbed, diminished or affected by any "out" rate not in effect at the time when the traffic moved upon such local or proportional rate. In the matter of through routes and through rates 12 I. C. C. 164, 172.

(aa) Through traffic not necessarily entitled to benefit of local rates. Morgan v. M. K. & T. R. Co., 12 I. C. C. 525.

(bb) Through shipment not necessarily entitled to benefit of low rate established from intermediate points, because of competition. Morgan v. K. M. & T. R. Co. 12 I. C. C. 525.

(cc) A carrier may not charge a higher through rate upon one shipment and a lower combination rate upon another shipment of the same kind between the same points at the same time. Morgan v. M. K. & T. Ry. Co., 12 I. C. C. 525.

(dd) A specific through rate is the lawful rate for a through shipment, even though some combination of rates may make lower. Morgan v. M. K. & T. Ry. Co., 12 I. C. C. 525.

(ee) While shipper may consign his shipment to a given point, pay charges on same, assume custody and take possession of the property, and, later, reship to another point under rates lawfully applicable to such reshipment, neither a carrier nor an agent of a carrier may act as forwarding or reconsignment agent for shipper in such a manner as to evade or defeat the terms or intent or purpose of the law. D. Morgan v. M. K. & T. Ry., 12 I. C. C. 525, 528.

(eea) The principal defendant established, temporarily and because of competition in that locality, an especially low rate upon shipments of live stock from Crowder City, Ind. T., to Kansas City, Mo. Defendants had specific tariff rates applicable to shipments of live stock from other points in Indian Territory to Kansas City, which shipments moved through Crowder City. Complainants allege that the local rates from points of origin of such shipments to Crowder City added to the special low rate from Crowder City to Kansas City made lower rates than the specific rates from points of origin to Kansas City, and that, therefore, defendants should refund charges collected in excess of combination rates on Crowder City. HELD, the specific through rate is the lawful rate, to be applied. No attack being made on its reasonableness, complaint dismissed. Morgan et al v. Mo., Kan. & Tex. Ry. Co. et al, 12 I. C. C. 525.

(ff) A specific through rate is the lawful rate for a through shipment, even though some combination of rates may make lower, and carrier may not charge the higher through rate upon one shipment and the lower combination rate upon another shipment of the same kind between the same points at the same time. D. Morgan v. M. K. & T. Ry. 12 I. C. C. 525, 528.

IMPORTANT CASES SINCE 1908

(gg) Notwithstanding the presumption of unreasonableness attaching to through rate in excess of combination of locals, so long as such rate remains in effect it must be applied. Momsen & Co. v. Gila Valley, Globe & Northern Ry. Co., 14 I. C. C. 614.

(hh) If no specific rate from point of origin to destination on a through shipment is provided, and no specific manner of constructing a combination rate for it is prescribed, the lowest combination of rates applicable via the route over which the shipment moves is the lawful rate for that shipment. Porter v. St. L. & S. F. R. R. Co., 15 I. C. C. 1, 4.

(ii) Where initial carrier's advanced rate tariff did not cancel lower commutation fare named in tariff of another carrier to which initial carrier was a party, such lower rate was the legal rate. The lawfully established rate remains in force until specifically canceled. Stilwell v. L. & H. R. Ry. Co., 19 I. C. C. 404, 405.

(jj) Concurrence with others in joint rates that effect unjust discrimination or undue preference is the voluntary action of the carriers at the point where the unjust discrimination or the undue

preference exists. Chamber of Commerce, Ashburn, Ga., v. G. S. & F. Ry. Co., 23 I. C. C. 140, 149.

(kk) Where two carriers, one within the jurisdiction of the United States and one without, operate in interstate commerce and there is no joint tariff, the through rate must be made up of the separately established rates and charges. Eagle Pass Lumber Co. v. National Rys. of Mexico, 25 I. C. C. 5, 7.

(ll) In the absence of a reconsignment privilege applicable to a given shipment held that the sum of the locals to and from the point of reshipping is the legal rate. Talge Mahogany Co. v. S. Ry. Co., 25 I. C. C. 44, 45; Deeves Lumber Co. v. A. & V. Ry. Co., 25 I. C. C. 42, 43; Platen Produce Co. v. C. & N. W. Ry. Co., 25 I. C. C. 30, 31.

(mm) A through route does not necessitate joint rates, but may be open to traffic upon the payment of the combination of locals. Eastern Shore Development S. S. Co. v. B. & O. R. R. Co., 32 I. C. C. 238.

(nn) Where a specific through rate exists that rate is the only lawful rate for a through movement, and the duty is incumbent upon the carrier to make such through rates as do not violate the law. It is the duty of the carrier, in case any through rate in contemplation violates the provisions of the fourth section, to protect such deviations by application to the Commission and not to file or publish any such rate until favorable action on the application has been taken by the Commission. Chamber of Commerce, Houston, Tex., v. I. & G. N. Ry. Co., 32 I. C. C. 247, 254.

(oo) The lawful rate for a through movement is the specific through rate wherever such through rate exists, and the application thereof can not be defeated by practices of diversion, reconsignment, or reshipment. Doran & Co. v. N. C. & St. L. Ry. 33 I. C. C. 523, 527.

(ppqq) Mere pro forma and paper transactions without substance, except as a means of getting through service at less than the lawful rate, held unlawful. Kanotex Refining Co. v. A. T. & S. F. Ry. Co., 34 I. C. C. 271, 276.

(rr) Any plan of first billing to intermediate points an interstate shipment in order to defeat the interstate rate is unlawful. Kanotex Refining Co. v. A. T. & S. F. Ry. Co., 34 I. C. C. 271, 276.

(ss) A device for defeating the lawful through rate is unlawful. Kanotex Refining Co. v. A. T. & S. F. Ry. Co., 34 I. C. C. 271, 276.

(tt) The lawfully established interstate rate applies on shipments first billed to an intermediate point within the state of origin and then rebilled to the intended destination in an adjoining state, this plan having been devised for the sole purpose of getting the traffic through to the interstate destination at the rates applicable to and from the intermediate point, the sum of which was materially less than the through rate for the through service. Kanotex Refining Co. v. A. T. & S. F. Ry., 34 I. C. C. 271, 276.

(uu) No question concerning different rates from a port to inland destinations or the relationship thereof on domestic and import traffic can arise, where the shipments involved are merely from the foreign port to the given port, there being no definite ultimate destination in the mind of the shipper when the shipment leaves the foreign port. Magnolia Petroleum Co. v. Channel & Dock Co., 34 I. C. C. 330, 332.

(vv) A rate made in meeting competition at a point becomes the lawful factor in making up aggregate of intermediate rates. Montrose & Delta Counties, Frt. Rate Asso. v. D. & R. G. R. R., 34 I. C. C. 409, 410.

(ww) It is well settled that the character and nature of the movement of the traffic, that is, whether the movement is a through or local movement, and not the mere accidents of billing, determine the nature of the commerce and the rate applicable. Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 8.

(xx) Where a shipment from one point to another in the same state is not a separate intrastate shipment, but only part of a through interstate movement, a state distance rate in terms made applicable to interstate shipments will apply. Rutter & Co. v. C. & N. W. Ry., 36 I. C. 272, 277.

(yy) In cases where shipers attempt

unlawfully to defeat through rates the duty is upon carriers to apply the thru rates. Lumber Rates from Newcastle, Cal., 37 I. C. C. 596, 597.

(zz) After shipments moved effort was made to have new bills of lading issued but complainant could not by rebilling the shipments have rendered the intrastate rate applicable. Waverly Oil Works Co. v. P. R. R., 45 I. C. C. 216.

(3a) The character and nature of the movement of the traffic, that is, whether the movement is a through or local movement, and not the mere accidents of billing, determine the nature of the commerce and the rate applicable. Madero v. E. P. & S. W. R. R., 46 I. C. C. 322, 324.

(3b) The carrier can not always ascertain the intention that is in the shipper's mind, but where it is apparent from the surrounding circumstances and the manner in which the shipments are handled that the transportation transaction is not in good faith, but done with a view to obtaining an undue advantage, the Commission will look to what is actually done and the necessary effect thereof, irrespective of incident of billing or of transparent devices intended to defeat the law. Tuckerton R. R. Co. v. Penn. R. R. Co. 52 I. C. C. 319, 322.

(3c) The through rate can not be protected where reconsignment is effected at a point not on a through route to which the rate applies, or where a back haul becomes necessary, except under special tariff provisions. Northern Brokerage Co. v. Director General, as Agent, 60 I. C. C. 182.

(3d) Shipments originated on rails of carriers publishing rates higher than when originating on the line of delivering carrier specified in bill of lading, whose rails also reached point of origin. Complainant asks that lower rates named in tariff of terminal carrier be applied on traffic originating on such other lines, but since carriers on whose lines shipments originated concurred in tariff naming lower rates on traffic to, via, but not from points on the concurring line, rates charged found legally applicable. Lieberman Iron Co. v. Director General, 61 I. C. C. 21.

(3e) Where, in the absence of through rates or a specific manner of constructing through rates, combination rates charged exceeded lower combinations of legally published interstate rates over route of movement, shipments found overcharged to extent that rates charged exceeded the lower combinations. Reparation awarded. Southern Veneer Asso. v. A. C. L. R. R. Co., 62 I. C. C. 669, 674.

(3f) Where a rate is unrestricted in its application it applies to shipments which move through a point via which it was not intended to apply even though such route is unusual and unduly circuitous. St. Tammany Ice & Mfg. Co. (Ltd.) v. Directory General, as Agent, 64 I. C. C. 491, 492.

(3g) A through rate, however made up, whether joint or in some form combination, still remains a through rate and necessarily must be that which was in effect at the time of shipment from the point of origin. Kansas City Board of Trade v. A. T. & S. F. R. R., 69 I. C. 185, 188.

(3h) A joint agency tariff, to which the Southern Railway is a party, names rates on berries, without restriction, as to kind. A later tariff of the Southern's own issue names rates between the same points on strawberries, in crates of sizes the same as and additional to those provided for in the agency tariff, which has never been specifically canceled. HELD, that as to crates of sizes common to both tariffs the rates in the later tariff were not legally established; and as to crates of sizes provided for only by the later tariff were legally established. Strawberries from Virginia Points to Eastern Destinations, 73 I. C. C. 365.

(3i) Rate on bituminous slack coal from Landon to Rostraver and Monessen, Pa., during Federal control, based upon the rate to Webster, Pa., the first station beyond Monessen and applicable to intermediate points, including Rostraver and Monessen, found applicable and not unreasonable. Carriers maintained a lower rate between certain stations, including Landon, but rate referred to another tariff naming distances between stations to and from which the rate applied, and such tariff did not include distances from Landon. Warner &

Co. v. Director General, as Agent, 73 I. C. C. 523.

(3j) Horses and mules moved by express to Goshen, N. Y., where no attempt was made to preserve their identity. Subsequently a portion thereof was forwarded to Jersey City, N. J., for export, for which carrier assessed rate from Goshen, plus terminal charges. Contention that under the terms of the tariff such terminal charges should have been absorbed. HELD, inbound and outbound movements were wholly independent transactions. Rate assessed for movement from Goshen found applicable and absorption of terminal charges was not authorized in connection therewith. Le Prestre, Miller & Co. v. E. R. R. Co., 73 I. C. C. 621.

(3k) Action of a carrier in forwarding a shipment as company material to a purely interchange point for delivery to a shipper and permitting the reshipment therefrom in contravention of its tariffs which provided that no freight will be received at that point, condemned. Cohen & Son v. N. Y. C. R. R. Co., 73 I. C. C. 747, 748.

(3l) Tariff provided through rates between certain specified points, but exchange bill of lading bore notation. "Through rate not to apply; car moving on combination of locals" HELD: Immaterial at whose instance this notation was made since parties to a transportation transaction can not lawfully stipulate that any other than the applicable tariff rates shall apply. Baker-Reid Lumber Co. v. B. & O. R. R. Co., 74 I. C. C. 489, 491.

(3m) Where a carrier holds itself out to carry traffic to and from a certain point, it must reach that point either over its own facilities or through those of others. Where two carriers join in the publication of joint rates and establish through routes via junctions where their rails do not meet, there is a holding out to the public of intermediate carriage between their respective lines which must be protected. Switching Charges at Peoria, 77 I. C. C. 43, 47.

(3n) Shipment consigned to intrastate destination, order of shipper, notify complainant. Before actual movement complainant sold shipment to another party, who did not take delivery at originally billed destination in another State. Contention that initial movement was intrastate and therefore not within jurisdiction of commission, not sustained. Change of ownership en route did not affect through interstate movement of shipment. Mid-Continent Equip. & Mach. Co. v. M. S. R. R. Co., 83 I. C. C., 393, 394, 395, 396.

(3o) Though the rates involved are published as two factors, from both a technical and a practical standpoint they are joint through rates. The arbitraries as such can not be used on local business or on any traffic except in connection with the factors shown in the same schedules on traffic from points of origin therein designated. Under the decision of July 29, 1920, these rates were properly increased by 33 1-3%. Ahern Brokerage Company v. A. C. L. R. R., 89 I. C. C. 278.

(3p) The published interstate rate from a shipping point to M. was the only lawful rate for transportation to M., and could not be defeated by shipping to an intermediate point, taking possession there, and rebilling to M. as an ostensible intrastate shipment, for the purpose of acquiring a lower rate. Baltimore & O. S. W. R. Co. v. Settle, 43 Sup. Ct. 28.

(3q) Through billing, uninterrupted movement, continuous possession by carrier, or unbroken bulk are common incidents of a through shipment, and, when the intention is in issue, the presence, or absence of one or all may be important; but, when it is admitted that the shipment made to the ultimate destination had at all times been intended, they are without legal significance, and none of them is essential to a through interstate shipment. Baltimore & O. S. W. R. Co. v. Settle, 43 Sup. Ct. 28.

(3r) Where an interstate shipper's intention at all times was that cars should be sent to M., and they were billed to O., possession taken there, and the cars rebilled to M., without any intention other than a mere possibility that the interstate journey should end there, the intention as carried out determined as matter of law the essential nature of the movement, and made the entire movement from the original point to M. an interstate shipment. Baltimore & O. S. W. R. Co. v. Settle 43 Sup. Ct. 28.

(3s) A properly concurred in joint

rate is the only lawful through rate applicable to through shipments through the point to which it applies. Waters-Pierce Oil Co. v. United States, 222 Fed. 69, 70.

(3t) A thru freight rate duly filed by the initial carrier with the Interstate Commerce Commission became on its effective date the lawful through joint rate, and the only one which the connecting carrier might lawfully receive or connecting carrier received the new tariff and stamped and filed it, and, without giving any formal notice to the initial carrier of its acceptance, which was not at that time required by the Interstate Commerce Commission, acted upon such tariff, insisting that the new rate was the legal one, although it permitted a shipper to make payments at the old rate. Dayton C. & I. Co. v. Cincinnati, N. O. & T. P. R. Co., 36 Sup. Ct. 137, 139.

(3u) The rate for through transportation of a party, where the carrier had no through party rate on file, is the individual through rate for each person, not the combination of a party rate, which had been filled, applying to part of the distance, and of the individual rates for the rest of it. Atchison, T. & S. F. Ry. Co. v. United States, 41 Sup. Ct. 456.

(3v) In making up the through rate where it appears that one of the connecting carriers has published a rate from point A to point B on its line, for shipments originating in A, and a higher rate on commodities moving into point A destined for point B, the higher rate must be taken in making up the combination. Missouri Pac. R. Co. v. Patterson Milling Co., 273 Fed. 518.

(3w) If an initial carrier accepts traffic for transportation and issues its bill of lading over a route made up of connecting roads for which no joint through rate has been published and filed with the Commission, the lawful rate to be charged is the sum of the established local rates published and filed by the individual roads, or if there is a local rate over one road and a joint rate over the others for the remainder of the route all published and filed with the Commission, the lawful through rate to be charged is the sum of the local and joint rates. K. C. S. v. Albers Comm. Co., 223 U. S. 573, 597, 32 Sup. Ct. 316, 56 L. ed. 556.

(3x) Where cotton consigned to the shipper's order was shipped over the lines of connecting carriers to B, in the state of origin, where it was compressed by the carrier and re-billed to points outside the state, the through rate from point of shipment was the legal rate, and a rate consisting of the initial carrier's intrastate rate to the junction point and the connecting carrier's interstate rate from that point was not a lawful rate for such shipment, under the Interstate Comerce Act, requiring the filing of through rates when established, such intrastate rate not being filed with the Interstate Commerce Commission. McFadden v. Ala. Great So. R. R., 241 Fed. 562.

(3y) A new shipment by a consignee of an interstate shipment is the cars in which received to other points of destination does not necessarily establish continuity of movement or present reshipment to a point within the same state from having an independent and intrastate character. Gulf, Colorado & S. F. Ry. Co. v. Texas. 204 U. S. 403, 27 Sup. Ct. 360, 51 L. Ed. 540—the Texarkana Case; C. M. & St. P. Ry. Co. v. Iowa, 233 U. S. 334, 343, 34 Sup. Ct. 592, 58 L. Ed. 988. Settle v. Baltimore & O. S. W. R. R., 249 Fed. 913, 917.

ALL OTHER CITATIONS

Bott Bros. Mfg. Co. v. C. B. & Q. R. R. Co., 19 I. C. C. 136; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151; DeCamp Bros. & Yule Iron, Coal & Coke Co. v. V. & S. W. Ry. Co., 22 I. C. C. 274, 276; Kennedy & Co. v. St. L. S. W. Ry. Co., 22 I. C. C. 277; Edison Portland Cement Co. v. D. L. & W. R. R. Co., 22 I. C. C. 382, 383; Robertson Paper Co. v. B. & M. R. R. Co., 21 I. C. C. 254, 255; Texico Transfer Co. v. L. & N. R. R. Co., 20 I. C. C. 17, 18; Idaho Lime Co. v. A. T. & S. F. Ry. Co., 19 I. C. C. 139; Fish & Co. v. N. Y. C. & St. L. R. R. Co., 19 I. C. C. 452; Copper Queen Consolidated Mining Co. v. B. & O. R. R. Co., 18 I. C. C. 154, 156; Contact Process Co. v. N. Y. C. & St. L. R. R Co., 17 I. C. C. 184; Laning Harris Coal & Grain Co. v. M. P. Ry. Co. 13 I. C. C. 154, 157, 158; Marshall Michel Grain Co. v. M. P. Ry. Co., 13 I. C. C. 566, 568; American Brake Shoe & Foundry Co. v. A. G. S. R. R. Co., 26

I. C. C. 446, 447; Pole Stock Lumber Co. v. G. & S. I. R. R. Co., 26 I. C. C. 451, 455; Coffeyville Vitrified Brick & Tile Co. v. St. L. & S. F. R. R. Co., 25 I. C. C. 101, 102; Appalachia Lumber Co. v. L. & N. R. R. Co., 25 I. C. C. 193, 195; Arabol Mfg. Co. v. S. B. Ry. Co., 25 I. C. 429, 430, 431; In re Advances on Drain Tile & Sewer Pipe, 25 I. C. C. 688, 691; St. Louis Blast Furnace Co. v. Va. Ry. Co., 24 I. C. C. 361; Pecos & N. T. Ry. Co. v. Porter (Tex. 1913), 156 S. W. 267, 272; C. C. C. & St. L. Ry. Co., v. Haynes (Ind., 1913), 102 N. E. 34, 41; Security Warehouse & Elevator Co. v. C. & A. R. R. Co., Unrep. Op. A221; Miller & Co. v. P. M. R. R. Co., Unrep. Op. A309; Hamlen & Sons Co. v. I. C. R. R. Co., 212 Fed. 324, 326; Sioux City Brewing Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A401; Kroll Lumber Co. v. G. N. Ry. Co., Unrep. Op. A426; Illinois Leather Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A497; Downie Pole Co. v. N. P. Ry. Co., 31 I. C. C. 142, 143; Wells-Higman Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-752; Bailey v. M. P. Ry. Co. (Mo. 1914), 171 S. W. 44, 46; DuPont De Nemours Powder Co. v. Wabash R. R., 33 I. C. C. 507; S. P. Co. v. U. S. 35 Sup. Ct. 573, 574; 237 U. S. 202; 59 L. ed; Rates on Grain and Grain Products, 33 I. C. C. 452, 454; Corporation Comm'n. of North Carolina v. S. Ry., 33 I. C. C. 487, 494; Less Carload Freight Reconsignment Privileges, 32 I. C. C. 85, 86; Meeds Lumber Co. v. A. C. Ry. Co., Unrep. Op. A-829; Altha Tool Co. v. N. C. & St. L. Ry., Unrep. Op. A-919; Kanotex Refining Co. v. A. T. & S. F. Ry., 34 I. C. C. 271, 276; Doran & Co. v. N. C. & St. L. Ry. 33 I. C. C. 523, 527; Merchants Exchange of St. Louis v. B. & O. R. R. Co. 34 I. C. C. 341, 353, 359; Comley Lumber Co. v. C. & S. Ry. Co., Unrep. Op. 1829; Oakland Motor Car Co. v. G. T. W. Ry. Co. of Canada., Unrep. Op. 1866; Dewey Bros. Co. v. B. & O. S. W. R. R. Co., Unrep. Op. 1892; Mutual Oil Co. v. A. T. & S. F. Ry. Co.. Unrep. Op. 2086; Through Rates from Buffalo-Pittsburgh Territory, 36 I. C. C. 325, 327; Memphis Fertilizer Co. v. M. & O. R. R. Co., Unrep. Op. 2220; Van Dusen Harrington Co. v. G. N. Ry. Co. Unrep. Op. 2236; Stone Producers Sales Co. v. C. I. & L. Ry. Co. 38 I. C. C. 485, 486; Bradley Timber & Railway Supply Co. v. M. St. P. & S. S. M. Ry. Co., 38 I. C. C. 598; Lumber from Easton, Wash., 39 I. C. C. 188, 189; Board of Trade of City of Chicago v. A. A. R. R., 39 I. C. C. 643, 650; Marquette Coal Co. v. Penn. R. R. 40 I. C. C. 4; Board of Trade of Chicago v. A. A. R. R. Co., 39 I. C. C. 643, 652; Illinois Grain to Chicago, 40 I. C. C. 124; Fullerton-Powell Hardwood Lumber Co. v. C. & E. I. R. R. Co., 41 I. C. C. 444, 445; Goodin Reid & Co. v. C. N. O. & T. P. Ry., 41 I C. C. 679; Bagdad Land and Lumber Co. v. N. Y. C. R. R. Co., 41 I. C. C. 729, 731; Ruby Mfg. Co. v. G. H. & S. A. Ry., 41 I. C. C. 735; Minneapolis Traffic Asso. v. A. A. R. R. 42 I. C. C. 76; Alabama G. S. R. Co. v. George H. M'Fadden, 232 Fed. 1000; Louis Werner Sawmill Co. v. Kansas City Southern Ry. Co., (Mo. 1916) 186 S. W. 1118; Batesville Southwestern R. Co. v. Mims. 71 So. (Miss. 1916) 827; Markley v. A. C. L. R. R. Co., 42 I. C. C. 187; S. P. Co. Ownership of Atlantic S. S. Lines, 43 I. C. C. 168, 179, 180; Dallas Cooperage & Woodenware Co. v. G. C. & S. F. Ry., 43 I. C. C. 241, 242; Memphis Merchants' Exch. v. I. C. R. R., 43 I. C. C. 378, 389, 391; Moore-Seavers Grain Co. v. U. P. R. R., 45 I. C. C. 562; Woolworth v. U. P. R. R., 46 I. C. C. 437, 439; Bushnell v. St. L. & S. F. R. R., 46 I. C. 445, 446; Jewel Tea Co. v. Penn. Co., 46 I. C. C. 314; Kanotex Refining Co. v. A. T. & S. F. Ry., 46 I. C. C. 495, 496; Collier v. Wabash R. R., (Mo. 1916), 190 S. W. 969; McFadden v. Ala. Great So. R. R., 241 Fed. 562, 564, 565, 566, 567, 568, 569; Larrowe Milling Co. v. Clyde S. S. C., 49 I. C. C. 143, 144; Van Benthuysen L. & T. Co. v. G. & S. I. R. R., 49 I. C. C. 611; Randolph Fruit Co. v. S. P. Co., 49 I. C. C. 707; Potlatch Lumber Co. v. W. I. & M. Ry., 50 I. C. C. 277, 279; Meeds Lumber Co. v. A. G. S. R. R., 49 I C. C. 87, 88; Wilke v. C. & A. R. R., 50 I. C. C. 73, 74; Sunderland Bros. Co. v. C. B. & Q. R. R., 51 I. C. C. 21; St. Louis Southwestern Ry. Co. of Tex. v. Stinson, (Tex. 1918), 204 S. W. 475; American Refining Co. v. St. L. & S. F. R. R., 50 I. C. C. 270; Bracht v. San Antonio & A. P. Ry. Co., (Mo. 1919), 209 S W. 279; Carr v. C. M. & St. P. Ry., 51 I. C. C. 205; National Supply Co. v. C. B. & Q. R. R., 51 I. C. C. 429, 430; Martin Brokerage Co.

v. S. P. Ry., 51 I. C. C. 91, 92; Loretz, Pegram & Co. v. S. P. Ry., 51 I. C. C. 158; Carroll & Co. v. A. T. & S. F. Ry., 51 I. C. C. 395; Standard Oil Co., (Cal.) v. A. T. & S. F. Ry., 51 I. C. C. 598; Chrome Steel Works v. N. Y. & N. J. S. Ry., 51 I. C. C. 727; Acme Cement Plaster Co. v. I. C. Ry., 53 I. C. C. 623; Sugar Land Mfg. Co. v. T. St. L. S. W. 56 I. C. C. 212, 213; Heider Mfg. Co. v. B. & O. R. R. Co., 58 I. C. C. 184, 185; Georgia Show Case Co., v. Director General, 59 I. C. C. 543; Mine timbers from Missouri to Illinois points, 58 I. C. C. 545; Prairie Pipe Co. v. Director General, as Agent, 60 I. C. C. 263; Illiff-Bruff Chemical Co. v. Director General, as Agent, 60 I. C. C. 720; Charleston, S. C. Milling and Mfg. Co. v. Director General, 64 I. C. C. 553; Indian Refining Co. (Inc.) v. Director General, as Agent, 64 I. C. C. 643; Madison Lumber & Mill Co. v. Director General, as Agent, 64 I. C. C. 699, 701; Hercules Mining Co. v. Director General, 66 I. C. C. 140; Missouri Pac. R. Co. v. Patterson Milling Co., 273 Fed. 518; Standard Asphalt & Refining Co. v. Director General, as Agent, 66 I. C. C. 313; Ferd. Brenner Lumber Co. Inc., v. Director General, 66 I. C. C. 595; Baltimore & O. S. W. R. Co. v. Settle, 43 Sup. Ct. 28, 29; Burns & Knapp v. B. S. & K. Ry. Co., 74 I. C. C. 111; Pioneer Lumber Co. v. Director General, as Agent. 74 I. C. C. 288; Falles City Mill & Feed Co. v. Director General, as Agent, 74 I. C. C. 648; U. S. Nickel Co. v. Director General, as Agent, 81 I. C. C. 162, 163; Becker-Bartlett-Lockerby Co. v. Northern Pacific Railway, (Minn., 1924) 197 N. W. 103.

§23. Procedure.

See Procedure Before Commission.

CASES 1887-1908

(a) Where a complaint is made against the reasonableness of through rates agreed upon by several connecting lines, it is necessary to make all of such connecting lines parties defendant. Citing and affirming the rule laid down on this subject in 1 Inters. Com. Rep. 621, 631, 773, 1 Inters. Com. Com. Rep. 199, 237, 490. Michigan Congress Water Co. v. Chicago & Grand Trunk R. Co., 2 I. C. R. 428.

(b) The total rate for through carriage over two or more lines, whether made by the addition of established locals, or of through and local rates, or upon a less proportionate basis, is the through rate that is subject to scrutiny by the regulating authority; how the rate is made is only material as bearing upon the legality of the aggregate charge, and how any reduction may be accomplished is matter for the carriers to determine among themselves. Trammell v. Clyde Steamship Co., 4 I. C. C. 120, 139.

(c) When a local rate from a given point is alleged unreasonable but it appears from the record that such local rate is also a proportion of through rates from that point, and as such is the real subject of controversy, the complaint should be directed against the aggregate through rate not the share received by any initial carrier, and all the carriers composing the through line are necessary parties. Chamber of Commerce of Minneapolis v. G. N. R. Co., 4 I. C. C. 230, 234.

(d) As through traffic from the Atlantic seaboard to Sioux City and Sioux Falls is subjected to the same charges for the haul from Chicago or Duluth as traffic shipped locally from those places to either destination, and as rates from eastern points to Chicago or Duluth do not, in any controlling degree, affect the present controversy, and are not assailed by the complainant, it was unnecessary to make the eastern carriers parties to this proceeding. Daniels v. Chicago, R. I. & P. R. Co. et al. 6 I. C. C. 458.

(e) When carriers forming a through line and dividing the through rate also designate a certain rate for performance of a particular service, and it appears in proof that but one of the carriers is responsible for or interested in the latter charge, it is proper on complaint to deal with that particular carrier and that particular rate, irrespective of the othe rates which make up the aggregate charge. Cattle Raisers Asso. of Texas v. Ft. W. & D. C. R. Co., 7 I. C. C. 513, 539.

(f) While a railroad company operating its road as part of a through line in connection with other carriers defendants in a case brought to test the legality of a through charge over such line is a proper party, it is not a necessary

party to the proceeding. Warren-Ehret Co. v. Central R. R. of New Jersey, 8 I. C. C. 598.

(g) In proceedings to determine the reasonableness of a through rate as augmented by an alleged unlawful terminal charge, all the carriers participating in the through rate are proper parties, but not necessary parties, as the only necessary parties defendant are the carriers who retain the terminal charge for their own use. Cattle Raisers' Asso. v. Chicago, B. & Q. R. Co., 10 I. C. C. 83.

(h) While all carriers participating in the through rate will be proper parties, they are not necessary parties, since the present defendants, the carriers entering Chicago, retain the terminal charge entirely to their own use. Cattle Raisers' Asso. v. C. B. & Q. R. Co., 10 I. C. C. 83.

IMPORTANT CASES SINCE 1908

(i) Where only a portion of a combination through rate is attacked, all the carriers that are parties to the combination rate need not be made parties defendant. Globe Milling Co. v. C. M. & St. P. Ry. Co., 24 I. C. C. 594.

(j) Under the amended Act the burden of proving whether the intermediate rates restored by the cancellation of joint through rates are reasonable, rests upon the carriers and the contention that resulting higher charges are reasonable must necessarily be supported by affirmative evidence that is persuasive. Rates on Plaster and Gypsum Rock, 27 I. C. C. 67, 68.

(k) Through routes cannot be ordered in when complaint does not contain prayer therefor. Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C. 583, 592.

(l) In a proceeding to secure the establishment of through routes and joint rates, a defendant carrier which unites with the complainant in asking the through route cannot be awarded reparation. E. J. R. R. & Terminal Co. v. C. R. R. Co. of N. J., 36 I. C. C. 146, 150.

(m) Where a small railroad and shippers dependent thereupon petition for through routes and joint rates in connection with a trunk line carrier and no particular destinations or commodities are specified with respect to which the petition is limited, it is fairly and generally understood that the petition seeks an arrangement applicable to all points reached by the trunk line on all commodities that ordinarily move to or from the territory served by the petitioning line. I. & S. W. Ry. v. C. B. & Q. R. R., 42 I. C. C. 389, 391.

(n) When a complaint involves charges applicable to a through shipment the through rate or charge must be brought in issue and the participating carriers must be made defendants. When the through rate or charge is made up of separately established rates or charges, applicable to the through business, the through rate or charge must be attacked as violative of the Act, although the violation may be believed to be occasioned by a particular factor or factors thereof; in such case the complainant should be prepared at the hearing to prove the unlawfulness of the through rate itself and that this is due to a particular factor or factors. Stevens Grocer Co. v. St. L., I. M. & S. Ry. Co., 42 I. C. C. 396, 398.

(o) Though a complaint is brought in behalf of a single station, the Commission must take into consideration the fact that through routing arrangements are open to all. Lourie Mfg. Co. v. C. N. R. R., 42 I. C. C. 448, 452.

(p) The Commission could not on the pleadings establish through routes and joint rates that would involve carriers not made parties to the case. Gulf Atlantic S. S. Co. v. A. C. L. R. R., 46 I. C. C. 309, 313.

(q) Where a rate adjustment is found to result in undue prejudice by reason of separately established factors, the carriers parties to the components of the through rates which are not attacked, and which do not in any way contribute to the undue prejudice found to exist, are proper but not necessary parties. Indianapolis Chamber of Commerce v. C. C. C. & St. L. Ry., 46 I. C. C. 547, 556.

(r) The Commission has frequently held a through rate unreasonable because of the unreasonableness of one of the factors, but only where the through rate itself was challenged. Stevens Grocer Co. v. St. L. I. M. & S. Ry., Co., Unrep. Op. 1840.

ALL OTHER CITATIONS

Pulp & Paper Mfrs. Traffic Assn. v.

C. M. & St. P. Ry. Co., 27 I. C. C. 83, 99; Western Fruit Jobbers Assn. v. C. R. I. & P. Ry. Co., 27 I. C. C. 417, 418; Coal Rates on the Stony Fork Branch 26 I. C. C. 168, 173; Humboldt S. S. Co. v. White Pass & Yukon Route, 25 I. C. C. 136, 141; Bascom-Porter Co. v. A. T. & S. F. Ry. Co., 24 I. C. C. 297; R. R. Com. of Oregon v S. P. Co., 24 I. C. C. 273, 277; Scott-Mayer Commission Co. v. C. R. I. & P. Ry. Co., 28 I. C. C. 529; Manufacturers' Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100, 105; Woolworth v. U. P. R. R. Co., 46 I. C. C. 437, 439; The New York Harbor Case, 47, I. C. C. 643, 724; West Virginia Rail Co. v. C. & O. Ry., 48 I. C. C. 600, 607; Parsons v. C. B. & Q. R. R., 49 I. C. C. 96, 98; Lindsay & Co. v. N. P. Ry. Co., 33 I. C. C. 150, 151; E. J. R. R. & Terminal Co. v. C. R. R. Co. of N. J. 36 I. C. C. 146, 150; Lucey Co. v. A. T. & S. F. Ry., 38 I. C. C. 264, 267; I. & S. W. Ry. v. C. B. & Q. R. R., 42 I. C. C. 389, 391; Stevens Grocer Co. v. St. L. I. M. & S. Ry. Co., 42 I. C. C. 396, 398; Lourie Mfg. Co. v. C. N. R. R. 42 I. C. C. 448, 452.

§23a. Court Action.

See Courts.

CASES 1887-1908

(a) Whether the difference in rates for transportation for local traffic and through traffic is reasonable or unreasonable, is a question of fact for the jury. United States v. Tozer, 2 I. C. R. 597.

(b) A court of equity has no power under the Interstate Commerce Act to compel a receiving company which has made a contract or agreement with another connecting company to establish the same rate upon through freight in favor of another company with which there is no contract, as no power is conferred by the Act upon any tribunal to provide for the necessary divisions growing out of a through routing and a through rating. Anthony Salt Co. v. Missouri P. R. Co. (Com.), 4 I. C. R. 537.

(c) A court of equity has no power under the Interstate Commerce Act to compel a receiving company which has made a contract or agreement with a connecting company to establish the same rate upon through freight in favor of another company with which there is no contract and compel the receiving company to accept that rate, as no power is conferred by the Act upon any tribunal to provide for the necessary divisions growing out of a through routing and a through rating. Little Rock & M. R. Co. v. St. Louis, I. M. & S. R. Co., 4 I. C. R. 537.

VI. RIGHT TO WITHDRAW.

§24. In general.

See Supra §9; Advanced Rates §7 (6); Through Routes and Joint Rates §14; Water Carriers IV.

CASES 1887-1908

(a) The respondent, which is a carrier by railroad running through Connecticut to a point in New York, had had for some time a through billing arrangement and an agreement upon through rates for traffic over its own line destined to New York City, with petitioners road, which connected therewith at its New York terminus. This arrangement respondent broke up, and declined to enter into any new one in its place. HELD, such action held to be in violation of second paragraph of section 3 of the act which requires that every common carrier shall afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines. New York & Northern Ry. v. N. Y. & N. E. R. Co., 3 I. C. C. 542.

(b) Breaking up a through billing arrangement at through rates with a responsible company, without any reason therefor, and attempting to give all the business that would come under it to a different company, is unlawful. New York & N. R. Co. v. New York & N. E. R. Co. (Com.), 3 I. C. R. 542.

(c) Defendant published a schedule purporting to be a joint tariff of rates on coal from a point on its road to a number of destinations reached by the complainant railroad company, whereby the complainant company received its full local charges to said destinations from junction points with defendants road, and the defendant accepted the remainder, which was in each instance less than its established local rate from the point of shipment to the point of connection. Complainant, which also carried coal to the same destinations by a

longer route over its own rails, thereby securing greater compensation than was afforded from coal coming to it by defendants road, refused to unite in the rates named by defendant in said so-called joint tariff, and protested against the use of such rates by a connecting carrier as unauthorized, and unlawful for want of mutual consent. HELD, complaint should be sustained and defendant company be required to cease and desist from publishing or applying through rates to points on complainants lines which are less than the sums of their respective local charges. N. Y. N. H. & H. R. Co. v. Platt, 7 I. C. C. 323.

IMPORTANT CASES SINCE 1908

(d) Where the cancellation of a joint rate leaves a higher combination in effect, this in an advance which the carrier must justify. In re Advances on Coal, 24 I. C. C. 43.

(e) Carrier permitted to discontinue through route voluntarily maintained for four years which embraced substantially less than the entire length of its railroad. Rates on Cottonseed and Its Products, 28 I. C. C. 219, 221.

(f) Propriety of cancellation of joint through rates to be determined in view of facts and circumstances of each case. Rates on Green Fruits from Idaho, etc., 29 I. C. C. 650, 651.

(g) There is force in the argument that a carrier should not be required to remain party to a through route and joint rate under conditions which would preclude the right to require the establishment of such through route and joint rate if it did not already exist. Grain Rates from Milwaukee, 33 I. C. C. 417, 424.

(h) The commercial needs of shippers would probably not be recognized as estopping carriers from withdrawing from through routes and joint rates which they might not lawfully be required to establish. Grain Rates from Milwaukee, 33 I. C. C. 417, 425.

(i) The long continuance of through routes and joint rates has never been held to be a controlling factor in any case. The Ogden Gateway Case, 35 I. C. C. 131.

(j) The withdrawal of joint fares does not close a through route in the sense that passengers may no longer have a through service. The Ogden Gateway Case, 35 I. C. C. 131, 142.

(k) If a carrier elects to meet competition at a point, the rate so made becomes a lawful factor in making up the aggregate of the intermediate rates. Through Rates from Buffalo-Pittsburg Territory, 36 I. C. C. 325, 327.

(l) Operating conditions are entitled to consideration in determining the relative reasonableness or practicability of two routes. Paducah Board of Trade v. I. C. R. R. Co., 37 I. C. C. 719, 722.

(m) If it is proposed to cancel an existing route, it is proper to consider whether or not Commission could have required the establishment of the route as an original proposition. Ocean-and-Rail Rates to Charlotte, N. C., 38 I. C. C. 405, 410.

(n) No reason appears for requiring the maintenance of an additional thru route where carriers parties thereto desire its discontinuance and shippers directly interested do not protest, and where it appears that the community will be adequately served if the cancellation is allowed to be made effective. Ocean and Rail to Charlotte, N. C., 38 I. C. C. 405, 410.

(o) The Commission has repeatedly held that the cancellation of a through rate may not be justified by a mere showing that one is too low; it must appear affirmatively that the increased through charge is reasonable. Class arbitraries to Sewall's Point, Va. 59 I. C. C. 591, 592.

(p) Each case of attempted cancellation of joint rates must be considered on its own merits. Cement to W. B. & A. Stations, 63 I. C. C. 264, 266.

(q) The Commission has no power to prevent the cancellation of a through route if it could not have required the establishment of the route as an original proposition. Routing on Coal from Western Maryland Ry., 66 I. C. C. 103, 107.

(qa) It is doubtful if a carrier could be compelled to keep open an indirect and illogical route over which it would be required to short haul itself, in view of the provision of section 15 of the act which provides that in establishing joint rates a railroad may not be required to embrace in the through route substan-

tially less than the entire length of its line. Routing on Sheep from K. C. M. & O. Points, 69 I. C. C. 6.

(qb) Use of the words "proper" or "beyond", following the name of a station, is frequent in tariffs to indicate that the rates are intended to apply only to the particular named station or to destination points beyond, as the case may be, but has never been recognized as the only way in which to limit the application of rates to a named station or beyond. Waggoner & Gate Milling Co. v. Director General, as Agent, 69 I. C. C. 85.

(r) Respondents proposed to cancel joint commodity rates on farm wagons, with or without bodies, loose or in packages, and parts thereof, carloads, from Lynchburg, Va., to Monroe, West Monroe, and Shreveport, La., and from Hickory, N. C., and Rock Hill, S. C., to Shreveport, leaving applicable the higher joint class A rates, governed by the western classification, and to increase corresponding commodity rates from Hickory and Rock Hill to Monroe and West Monroe to the basis of the lowest combinations of intermediate rates. Farm wagons are rated sixth class in the southern and class A in the western classification. When originally established Nov. 25, 1917, the joint commodity rates represented the lowest combination of class rates to and beyond the Mississippi River gateways. The proposed rates are intended to restore, as nearly as possible, the lowest combination basis, observing joint class A rates as maxima. HELD, proposed rates not justified. Farm Wagons from the Carolinas and Virginia to Louisiana, 73 I. C. C. 547.

(s) The commission is not disposed to approve retention of the conbination rule, which provides that where no through rates are published and there are in effect separately established rates to and from junctions, the through rate will be computed by deducting specific amounts from each factor and adding a specific amount to the resulting sum of the factors, because there is an indefinite possibility that future shipments may be affected by its cancellation. Cancellation of Combination Rule to the Southwest, 74 I. C. C. 508, 509.

(t) The commission has no power to prevent the cancellation of through routes and joint rates when the circumstances and conditions are such as would not warrant an order to compel such an arrangement if not already in effect. Routing of Fruits and Vegetables from Texas Points to Defined Territories, 74 I. C. C. 575, 578.

(u) If it was defendants purpose to restrict the application of the through rate to any particular route, it should have done so by clear and unequivocal language. The carriers are obligated to receive shipments and to perform the transportation services requested in accordance with its published tariffs. Elk Tanning Co. v. Erie R. R. Co., 78 I. C. C. 452, 453, 554.

ALL OTHER CITATIONS

In re Coal Rates to Milwaukee and other Wisconsin Points, 27 I. C. C. 223; Rates on Grain and Grain Products, 30 I. C. C. 16; Marble Rates from Vermont Points, 29 I. C. C. 607; Rates on Coal to Milwaukee and Other Wisconsin Points, 28 I. C. C. 527; Lumber Rates, Oregon and Washington to Eastern Points, 29 I. C. C. 609; Kansas City & Memphis Ry. Co. Rate Cancellation, 28 I. C. C. 640; Lumber Rates from North Pacific Coast Points, 30 I. C. C. 111; Lumber Rates, 33 I. C. C. 322; Rates on Grain and Grain Products, 33 I. C. C. 452; Routing of Bauxite Ore to Chicago Heights, Ill., Unrep. Op. A-842; Rates on Grain and Grain Products from St. Paul, Minn., and Other Points, to stations in Kansas, Nebraska, and Other States. Unrep. Op. A-938; Class Rates from Porter and Other Stations in Indiana, Unrep. Op. A-940; Rates on Wagons from Fort Smith, Ark., to Stations in Oklahoma, Unrep. Op. A-943; Rates on Lumber from Points in Louisiana to Points in Texas, Unrep. Op. A-947; Illinois-Minnesota Coal Rates, Unrep. Op. A-962; Cancellation of Routes in Connection with Wool and Mohair to Eastern Points, Unrep. Op. A-844; Grain Rates from Milwaukee 33 I. C. C. 417, 425; Lumber Rates from Wilson Ark., to Cincinnati, Ohio, 35 I. C. C. 179; E. J. R. R. & Terminal Co. v. C. R. R. Co. of N. J., 36 I. C. C. 146; Grain to the Southwest, 36 1. C. C. 660; Coal to Kentucky Points 37 1. C. C. 194; Coal from Toluca Ill., 37 1. C. C. 230; Rogers White Lime Co. v. St. L. & S. F. R. R. Co., Unrep. Op. 2107; Lumber from Louis-

iana Points 39 1. C. C. 688, 689; Grain to Arkansas Points, 40 1. C. C. 49; Cement to Texas Points, 40 1 C. C. 94; Coal and Coke from Bon Air, Tenn., and Other Points, 40 1. C. C. 180; Grain to Arkansas Points 40 1. C. C. 49, 52; Export Grain to Gulf Ports, 40 1. C. C. 280; Forest Products from Arkansas Points 40 I. C. C. 397; Poteau Coal & Merc. Co. v. A. & S. Ry., 40 I. C. C. 459; Fruits and Vegetables from Texas Points 40 I. C. C. 673; Yarn from Showhegan, Me., 42 I. C. C. 241; Lake and Rail Rate Cancellations, 42 I. C. C. 513, 516; Grain from Indianapolis, Ind., 43 I. C. C. 113; Helena-Thebes Lumber, 44 I. C. C. 277; Grain to Little Rock, Ark., 44 I. C. C. 355; Grain and Grain Products from Argo, Ill., 43 I. C. C. 359; Calumet, Mich., Lumber, 43 I. C. C. 441; Grain From Missouri Points, 43 I. C. C. 737; Oak Hills, Colo., Coal, 45 I. C. C. 455; Coal to Muscatine, Iowa, 46 I. C. 450; Grain Transit at Kansas Stations, 48 I. C. C. 59; Montgomery, Ala., Jackson, Miss., Grain Products, 48 I. C. C. 615; Eastbound Transcontinental Syrup, 49 I. C. C. 54; Potatoes from Kansas Points 49 I. C. C. 525; Coal from Arkansas and Other States, 49 I. C. C. 727; Commodities from East St. Louis, Ill., 50 I. C. C. 148; Lumber from the Southeast, 50 I. C. C. 191; Nebraska-Colorado Grain, 50 I. C. C. 79; Commodities from East St. Louis, Ill., 50 I. C. C. 148, 150; Lumber from the Southeast, 50 I. C. C. 191, 195, 196, 197; Heated-Car Service Regulations, 50 I. C. C. 620, 623; Bituminous Coal from B., R. & P. Ry. Points, 58 I. C. C. 215; Coal from Sewell Valley R. R. Stations, 58 I. C. C. 261; Transit Privileges on Lumber at Nashville, 58 I. C. C. 444; Mine Timbers from Missouri to Illinois Points, 58 I. C. C. 545; Cancellation of joint through rates via the G. M. & N., 59 I. C. C. 45; Abandonment of service by C. & E. I., between Thebes, Ill., and Chaffee, Mo. 59 I. C. C. 49, 50; Cancellation of joint class rates from Toledo & Western R. R. 59 I. C. C. 122; Cancellation of joint through rates in connection with the M. & K. 59 I. C. C. 404; Transit privileges on lumber at Mississippi and Alabama points, 59 I. C. C. 448; Coal from West Virginia mines to Southern points, 59 I. C. C. 486; I. & S. Docket 1178, Bituminous coal from B. R. & P. points, 58 I. C. C. 215; Cancellation of Joint Rates with Gulf, Mobile & Northern R. R., 59 I. C. C. 45; Petroleum Oil from Kansas and Oklahoma, 59 I. C. C. 483; Grain via Indianapolis from T., St. L. & W. R. R., 59 I. C. C. 733; Cancellation of rates from Natchez, 60 I. C. C. 276; Cancellation of joint through rates between Augusta, Ga., and A. N. Ry., 60 I. C. C. 324; Water competitive rates on lumber, 60 I. C. C. 643; Coal from Illinois to Michigan, 61 I. C. C. 195; Grain and flour from Missouri to Duluth, Minn., 61 I. C. C. 307; Clam and mussel shells from Oklahoma to New York 62 I. C. C. 685; Rates between Ohio River and Cumberland River Points, 61 I. C. C. 10, 15; P. & W. V. Ry. Co. v. P. & L. E. R. R. Co., 61 I. C. C. 272, 183; Three Lakes Lumber Co. v. W. W., 61 I. C. C. 408; Northern Potato Traffic Asso v. B. & O. R. R. Co., 61 I. C. C. 680, 686; Cancellation of Lumber rates Pacific coast to Minnesota 63 I. C. C. 125; Sugar from California Points to Arizona, 58 I. C. C. 737; Lumber Rates from Pacific Coast, 63 I. C. C. 125; Stone from Bridgeport and Mascot to L. & N. Stations, 64 I. C. C. 515; Lumber to Selma, Ala., from Alabama & Northwestern R. R., 64 I. C. C. 563; Cast-Iron Pipe from Birmingham, District to Montana Points, 64 I. C. C. 638; Routing restrictions on lumber, 66 I. C. C. 56, 57; Rate cancellation from Indiana to Ohio, 66 I. C. C., 449, 451; Elimation of routing on lumber, 68 I. C. C. 71; Routing on Sheep from K. C. M. & O. Texas points to Kansas City, 69 I. C. C. 4; Petroleum from Oklahoma to Southern Illinois, 69 I. C. C. 34; Routing restrictions on lumber from California and Nevada to Colorado destinations, 69 I. C. C. 49; Cancellation of through rates on apples from Pacific coast, 69 I. C. C. 679; Coal from B. & L. E. R. R. Stations to B. R. & P. Ry. stations, 73 I. C. C. 5; Routing on transcontinental grain and grain products, 73 I. C. C. 116; Restriction in routing on traffic from Pacific northwest to points in Texas, 73 I. C. C. 205; Sugar from Baton Rouge, La., 73 I. C. C. 382; Coal from Kentucky, Tennessee, and Virginia to northern and southwestern points, 73 I. C. C. 447; Coal from B. & L. E. R. R. Stations, 73 I. C. C. 5; Reduced Rates 1922, 73 I. C. C. 189; Rails and Crossties from Eastern Points to Canada, 73 I. C. C. 3;

Routing on Coal from Western Maryland Mines to Eastern Destinations, 74 I. C. C. 127; Cancellation of Joint Rates from and to Green Hill, S. C. on the Alcolu Railroad, 74 I. C. C. 571; Rails and Crossties from Eeastern Points to Canada, 74 I. C. C. 3; Routing of Coal from Western Maryland Mines to Eastern Destinations, 74 I. C. C. 127; Linseed Oil from New York Lighterage Points, 74 I. C. C. 155; Mount Hope Mineral R. R. Co. v. C. R. R. Co. of N. J., 74 I. C. C. 195; Liverstone from Illinois Point, 74 I. C. C. 345; Proportional Rates on Petroleum and its Products, 74 I. C. C. 349; Cancellation of Combination Rule to the Southwest, 74 I. C. C. 505; Fruit and Vegeables from Texas Points, 74 I. C. C. 575; Sand and Gravel from Lafayette, Ind., to Chatsworth and Gilman, Ill., 77 I. C. C. 719; Transit Privileges and Routing on Cotton and Cotton Linters via the L. & N. R. R. Co., 77 I. C. C. 724; Continental R. R. on Transcontinental Traffic, 74 I. C. C. 328; Cancellation of Vehicle Rates, 78 I. C. C. 37; Book Shooks to Eastern Trunk Line Territory, 78 I. C. C. 653; Grain Products from M. P. Ry. Stations to Arkansas, 78 I. C. C. 676; Coke, carloads, from Pennsylvania and West Virginia to Moline and Rock Island, Ill., 81 I. C. C. 309; Intermediate Routing, 81 I. C. C. 272, 275, 277; Grain and Products from Minnesota Points, 81 I. C. C. 338; Foster Lumber Co. v. V. & S. R. R. Co., 81 I. C. C. 505; Routing on Grain and Products, 81 I. C. C. 725; Coal to Minnesota Points, 88 I. C. C. 631.

VII. DUTY TO FURNISH FACILITIES.

§25. In general.

See cars and car Supply.

CASES 1887-1908

(a) Connecting carriers which make a through route and establish through rates which apply as single charges for the whole service must be prepared to furnish suitable "instrumentalities of shipment and carriage" as required by the Act to Regulate Commerce, so that the transportation may be conducted without wrong or injustice to those desiring to use the through line. Independent Ref. Asso. v. Western N. Y. & P. R. Co., 6 I. C. C. 378.

(b) Where connecting carriers make a through route and establish through rates which apply as single charges for the whole service, they hold themselves out as carriers over such route at such rates, and must be prepared to furnish suitable instrumentalities of shipment and carriage so that the transportation may be conducted without wrong or injustice to those who desire to use the through line. Independent Refiners' Asso. v. W. N. Y. & P. R. Co., 6 I. C. C. 379, 385.

(c) Exactly what the duties and liabilities of the respective carriers which make up the through route may be not altogether clear; but it seems reasonably certain that it is their duty to receive the commodity at the point of origin and to transport it to and deliver it at the point of destination. They must assume the burden of providing the necessary equipment for the through transportation, and if the commodity is in fact transferred at a junction point the shipper is relieved of the burden of arranging for the details of their transfer. American National Live Stock Asso v. T. & P. R. 12 I. C. C. 32, 36.

(d) Carrier over which through route established may apply to Commission for order requiring complainant to indemnify it against any loss it may suffer by reason of complainant's financial irresponsibility. Enterprise Transp. Co. v. Pennsylvania R. Co. 12 I. C. C. 326.

(e) Carrier over whose line through route established may apply for order requiring idemnity. Enterprise Transp. Co. v. Pennsylvania R. Co., 12 I. C. C. 326.

(f) Complaint in this case involved the question whether defendant carrier could establish a through route and fix a joint rate, and then decline to furnish equipment in which to move such freight; but as it appeared that there was a specific agreement between defendant carrier and another carrier that the latter should furnish the cars, the complainant agreed that under the circumstances it would be in the interest of all parties that the present proceeding be dismissed. Okla. & Ark. Coal Traffic Bu. v. Mid. Val. R. R. Co., 12 I. C. C. 516.

IMPORTANT CASES SINCE 1908

(g) Each carrier subject to the Act is charged with the duty of furnishing

cars to industries located upon its line. In case of through routes, the obligation to furnish cars for shipments to points upon lines of its connections is joint with such connections. Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502, 506.

(h) It cannot be presumed that carriers composing a through route would fail in their duty to furnish equipment. Waverly Oil Works Co. v. P. R. R. Co., 28 I. C. C. 621.

(i) The obligation to furnish cars for transportation over through routes composed of two or more carriers is a joint obligation, and rests upon all carriers participating in the route. Lumber Rates Through Ohio River Crossings, 29 I. C. C. 38.

(j) Where through routes exist, obligations to furnish cars is joint upon all carriers therein. Campbell's Creek Coal Co. v. A. A. R. R. Co., 29 I. C. C. 682, 690.

(k) To furnish cars is an obligation that rests on all the carriers parties to joint rates. Pittsburgh & Southwestern Coal Co. v. W. P. T. Ry. Co., 31 I. C. C. 660, 663.

(l) Railroads are under obligation to serve through routes which they have established with other carriers without respect to the fact that in rendering such service their equiment may be carried beyond their own lines, and it is their duty to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used upon and for the operation of such through routes. Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C. 523, 530.

(m) At common law it was the duty of carriers to transport freight with reasonable dispatch from point of origin to destination. It is doubtful if at common law a carrier was obligated in this regard beyond its own rails. There can be no doubt, however, under the Act to Regulate Commerce that the obligation upon all carriers parties to through routes and joint rates is to move traffic through with promptness. Section 1 of the Act makes it the duty of common carriers to establish through routes, to provide reasonable facilities for operating them, and to make reasonable rules and regulation with respect to the exchange, interchange and return of cars used therein for the operation of the through routes. The language is clear, and the intent of Congress is plain, that the commeree of the country shall flow freely inestablished channels, without hindrance, embarrassment, or delay. Omaha Grain Exch. v. G. N. Ry., 47 I. C. C. 532, 537.

(n) Carriers are obligated to make such arrangements with each other, under joint rates, as will insure prompt exchange of equipment at junction points. The movement of traffic through from point of origin to destination may not be lawfully impeded or interrupted because such arrangements have not been made or because connecting carriers fail to observe what the initial carrier may consider to be its due in the way of car exchange. Under the recent amendment to section 1 of the Act, giving this Commission jurisdiction of car service, that is, the movement, distribution exchange interchange and return of cars used in the transportation of property, the Commission is clothed with ample authority, should the occasion require, to protect the initial carrier against any unfair practices of its connections in the matter of interchange of cars at Sioux City. Omaha Grain Exch, v. G. N. Ry., 47 I. C. C. 532, 538.

(o) No rule or practice may lawfully operate to make nugatory the obligation that rests upon carriers to move traffic promptly over the through route they have established and under the joint rates they publish. Omaha Grain Exch. v. G. N. Ry. 47 I. C. C. 532, 538.

(p) Under through routes established and joint rates published, carriers are obliged to move shipments through promptly from points of origin to destination. Omaha Grain Exchange v. G. N. Ry., 47 I. C. C. 532, 538.

(q) Proposed restricted application of commodity rates on grain and products from points in Kansas, Nebraska, and eastern Colorado to north Pacific coast and California terminals and to intermediate points, the effect of which would be to cancel the joint rates now applicable from points in the origin territory when reshipped from Missouri River or interior markets over lines other than the carrier originating the traffic, leaving in effect over such routes higher combinations to and from the

markets, found not justified. Routing on Transcontinental Grain and Grain Products 73 I. C. C., 116.

(r) Without passing on question whether duty of participants in a through movement to supply appropriate shares of equipment necessary for transportation of coal rests upon carriers jointly (compare Huerfano Coal Co., 28 I. C. C., 502) or severally, in the aggregate the duty of providing adequate supply of equipment rests upon railroad carriers. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 546.

ALL OTHER CITATIONS

Oakland Motor Car Co. v. G. T. W. Ry. Co. of Canada, Unrep. Op. 1866; Lumber Rates from Oregon and Washington, 29 I. C. C. 609; Downie Pole Co. v. N. P. Ry. Co., 31 I. C. C. 142; Omaha Grain Exchange v. C. & A. R. R., 32 I. C. C. 597, 601; Pittsburgh & Southwestern Coal Co. v. W. P. T. Ry. Co., 31 I. C. C. 660, 662; Increased Rates, 1920, 58 I. C. C. 220, 246; Omaha Grain Exch. v. G. N. Ry., 47 I. C. C. 532, 539; Coal from B. & L. E. R. R. Stations, 73 I. C. C. 5; Restriction in Routing on Traffic, 73 I. C. C., 305; Limestone from Illinois Point to St. Louis, Mo., on M. P. R. R., 74 I. C. C., 345.

§26. Restriction of Routes.

CASES 1887-1908

(a) Shippers are subjected to undue, unjust, and unreasonable prejudice and disadvantage by the practice of initial carriers in a joint continuous route, of reserving to themselves exclusive control of the route, and denying to shippers any choice or control in the selection as between different established routes; as under such a practice a route or tariff may be available to one shipper, but not to another, and open one minute to a shipper, but closed the next. Consolidated Forwarding Co. v. Southern P. Co., 9 I. C. C. 182.

(b) Under the practice of defendants as initial carriers in joint continuous routes of reserving to themselves exclusive control of the routing and denying to shippers any choice or control in a selection as between different established routes, a route or tariff may be available to one shipper but not to another and open one minute to a shipper but closed the next; this to be determined by the carriers' agents according as they may desire to distribute the shipper's business among one another from time to time or for any reason whatsoever. This practice of defendants whereby shippers are denied the use of their transportation facilities by established routes is in violation of the statute, and, in its application by the defendants to the traffic in question, subjects the owners and shippers thereof to undue, unjust and unreasonable prejudice and disadvantage and gives to the carriers undue and unreasonable preference and advantage. Consolidated Forwarding Co. v. Southern P. Co. et al. 9 I. C. C. 182.

(c) Complainant alleged unlawful discrimination in the publication of through rate of 90c per gross ton on soft coal from Norwood, N. Y., to Montpelier, Vt. when intended for railroad supply, that is, for the uses of a connecting carrier known as the Montpelier & Wells River Ry. while the rate on coal for commercial use was the combination of locals of $1.85. In transporting bituminous coal from Norwood to Montpelier at 90c per ton for railroad supply the same service is performed and the circumstances and conditions of carriage are the same in every material respect as in transporting coal at $1.85 per ton for complainant and other consignees. HELD, complainant unlawfully discriminated against. Capital City Gas Company v. C. V. Ry., 11 I. C. C. 104.

(d) The phrase "under substantially similar circumstances and conditions" in section 2 of the Act to Regulate Commerce refers to the matter of carriage, and it is not permissible under that section for two or more carriers to establish a joint through rate, less than the sum of their locals, which is applicable only to a particular shipper or class of shippers, while denying such lower rate to other shippers of like traffic between the same points of origin and destination. Wight v. United States, 167 U. S. 512, 42 L. ed. 258, 17 Sup. Ct. Rep. 822, as explained and confirmed in Interstate Commerce Commission v. Alabama Midland R. Co. 168 U. S. 144, 166, 42 L. ed. 414, 423, 18 Sup. Ct. Rep. 45, applied. Capital City Gas Co. v. Central V. R. Co. et al. 11 I. C. C. 104, 106.

(e) The Evansville & Terre Haute R.

Co. does not make through rates with the other defendants from points in Indiana to destinations south of the Ohio River, but has established on hay a local rate of 8 cents per hundred pounds to Evansville and a proportional of 6½ cents to Evansville when the shipment is billed through to a specified destination. The E. & T. R. refused to apply a proportional on shipments billed to Evansville in care of a southern line for points beyond, having discontinued a tariff providing therefor, which was effective from November 10, 1903, to July 19, 1904. The rate from Evansville by the other defendant lines is the same whether shipped locally from or through Evansville. HELD, that it is unreasonable and unjust for the E. & T. R. to insist upon the billing of these shipments to a specific destination in order to secure application of the lower proportional rate, while it declines to assume responsibility for such billing and does not post in its stations the tariffs from which the shipper can himself ascertain the rate at which the shipment should be billed; and that while the proportional rate is kept in force it is reasonable and just that these shipments shall be billed to Evansville in care of the road leading southerly therefrom, as was actually done in 1903 and 1904. HELD, further, that complainants are entitled to reparation on a shipment of one carload of hay carried from Johnstown, Ind., to Charleston, S. C., amounting to $4.36 from the E.& T. R. and $5.97 as admitted overcharge colected by the Georgia R. on the same shipment. T. M. Kehoe & Co. v. Evansville & T. H. R. Co. et al 11 I. C. C. 172.

IMPORTANT CASES SINCE 1908

(f) Proposed increased rates which would result from the elimination of clause providing for application of termini rates at intermediate points, on traffic moving under class rates from Lexington, Ky., to destinations intermediate to western termini of trunk lines and points taking termini rates found not justified. Only justification for proposed restriction of the intermediate clause is that it was published through error, but error in the publication of rates and rules does not in itself justify cancellation of rates or rules so established and maintained. Intermediate Application of Class Rates, 77 I. C. C. 427.

(g) Respondent N. P., proposed to eliminate routing via North Dakota junctions of transcontinental traffic originating in eastern groups and to restrict its receipt from connecting lines to Minnesota Transfer or Minneapolis, Minn. Respondent proposed to restrict to its own lines beyond Aberdeen, S. D., the application of an existing rate of 59c on corn, carloads, from defined territory in South Dakota to destinations in Montana, Idaho, Washington and Oregon. The operation of the suspended schedules would eliminate the Midland Continental as an intermediate carrier and either eliminate the M. & St. L., or deprive it of the long haul on group E traffic originated by it or received from connecting lines. Under the suspended schedules, the M. & St. L., would deliver traffic from Group E points to the N. P., at Twin Cities. It would lose the haul west of the Twin Cities to Aberdeen and the N. P., would gain the haul from the Twin Cities to Jamestown. The Midland Continentals interest is in keeping open the route via Aberdeen and Edgeley and thence over its line to Jamestown. The tariffs applicable on traffic from Group E, to which the Midland Continental is a party, in no way prohibit the routing of such traffic over this road when moving via Aberdeen. It appears that the public interest will be best served by keeping opne the route via Aberdeen. The 59c rate is a concession granted by the G. N., alone to enable it to share in this traffic, it should be permitted to restrict the routing to its own lines. HELD, N. P., has not justified its suspended schedules, but G. N., has justified its amendment. Intermediate routing via North Dakota junctions on transcontinental traffic, 81 I. C. C. 272.

(h) Respondent proposed to restrict the application of joint rates on wheat flour, wheat, corn and articles taking the same rates, in carloads, from St. Paul, Minneapolis and Minnesota Transfer, Minn., and points on respondents lines intermediate between those cities and Kansas City, Mo., to destinations on the Santa Fe in Kansas, Oklahoma and Colorado, to shipments originating beyond the Twin Cities. The proposed schedules would have the effect of increasing the rates from intermediate points and on shipments originating at the Twin Cities to the basis of the combination rates on Kansas City. The present rates are con-

structed on a basis of the local rates beyond Kansas City plus arbitraries of 17.5c on wheat and 16c on corn from the Twin Cities to Kansas City. The present rates apply in both directions and as maxima at intermediate points and have been in effect without substantial changes except for the general increases and reduction since 1912, or prior thereto. HELD, respondents have not justified the proposed schedules. Grain and grain products from St. Paul, Minneapolis, and Minnesota Transfer, Minn., to Kansas, Oklahoma and Colorado points. 81 I. C. C. 338.

(i) Respondents proposed to restrict the joint rates on grain and grain products in carloads from Chicago, Joliet, Lockport, and Peoria, Ill. proper, to Texas points, so as not to apply over routes through Iowa, except over the Santa Fe and Rock Island, and to place the rates from intermediate points on such routes on the combination basis. The tariff contains no definition of direct routes, and rates apply via all routes of carriers parties to the tariff. Rates from points in Iowa to Texas via Omaha are the combinations thereon and the application of lower rates from Chicago, etc., through Iowa to Texas has the effect of causing a violation of the fourth section. As a general rule rates on grain through primary markets break into definite inbound and outbound components, and the general basis from points east of the Missouri river to Texas is the lowest combination. HELD, increased rates resulting from restricted routing justified. Routing on grain from Chicago, Peoria, Ill., to Texas, 81 I. C. C. 725.

ALL OTHER CITATIONS

Transit and Routing on Cotton and Cotton Linters, 77 I. C. C. 724; Routing via Midland Continental R. R., 78 I. C. C. 328; Fertilizer and Fertilizer Material, 80 I. C. C. 604; Jackson & Co. v. A. C. L. R. R. Co., 83 I. C. C. 14; Elk Refining Co. v. B. & O. R. R. Co. Co., 83 I. C. C. 414; Transit on Lumber and Forest Products, 83 I. C. C. 451, 458.

TICKETS

See Passenger Fares and Facilities §15; §16.

TON MILE REVENUE

See Evidence §58; Reasonableness of Rates §36.

TONNAGE

See Allowances §8 (2½)

TOURIST CARS

See Passenger Fares and Facilities §4½.

TIME ZONES

IMPORTANT CASES SINCE 1908

(a) There is need for a closer connection between the sun and the clock than has obtained in many parts of the country; that there is a relationship between habits and employments and the hours of the day as expressed by time pieces which can not be impaired without great inconvenience; and that public health and prosperity will best be subserved when normal standards of time are observed in every locality where they can be made applicable. Standard Time Zone Investigation, 51 I. C. C. 273, 281.

(b) Governmental requirements for the maintenance of a given standard of time, as expressed in state statutes and municipal ordinances, are to be respected as far as possible. While the power of Congress is paramount as to the regulation of interstate commerce and as to the objects enumerated in the daylight saving act, state and municipal regulations may be controlling as to other matters involving the standards of time to be observed and within the exclusive jurisdiction of local authority. Standard Time Zone Investigation, 51 I. C. C. 273, 283.

(c) Some inconvenience must result at every time-breaking point. In order to minimize that inconvenience, the time-breaking points should not be located in large centers when it is possible to place them in smaller places. Standard Time Zone Investigation, 51 I. C. C. 273, 283.

(d) Congress has prescribed that the order of the Commission defining the limits of the various zones may be modified from time to time. This is equivalent to vesting in the Commission some discretion as to the time when the necessary changes in the zones shall be made. Standard Time Zone Investigation, 51 I. C. C. 273, 284.

(e) The Commission is not empowered to fix standards of time for Hawaiian Islands. Standard Time Zone Investigation, 51 I. C. C. 273, 285.

(f) Congress has not vested any dis-

cretion in the Commission as to the standards of time to be observed in Alaska. Standard Time Zone Investigation, 51 I. C. C. 273, 285.

(g) The Commission does not conceive it to be within its discretion to adjust the zone boundaries with the avowed purpose of providing a community with a fast or slow time, particularly as the intent of Congress has been unmistakably evidenced by the repeal of the daylight savings or advanced time section of the act. To change the limits of a time zone to effectuate such purpose would result in seriously distorting the several zone boundaries, which should coincide as nearly as is reasonably practical with the respective median meridians, having regard for the convenience of commerce and the existing junction and division points of interstate common carriers. The desire of banking and mercantile business to have their standard of time the same as that of their principal correspondents is natural; but if carried out without regard to the time meridian, would result in the whole country being placed in one time zone. Standard Time Zone Investigation, 57 I. C. 455, 458.

(h) Upon petition of Detroit, Mich., the Commission reopened the proceedings of Standard Time Zone Investigation. Since May 11, 1915, Detroit has quite generally observed the mean astronomical time of 75 degrees of longitude west from Greenwich, or eastern zone. When throughout the nation on the last Sunday in March, 1918, the standard time of each zone was advanced one hour, Detroit made no such advance locally but remained in central time. The state courts have conformed to the local ordinance and custom; the federal courts observe the central standard as lawfully applicable under the act of Congress; the railroads conform to the central standard. No other business seems to do so. In a social way, the eastern standard is universally applied. The adherence for a period of years of its people, to the time of 75 degrees meridian, indicates that such time results in greater convenience for the commerce of that locality than does central time. HELD, original report modified so as to include Detroit in eastern time zone. Standard Time Zone Investigation, 73 I. C. C. 78.

(i) Upon supplemental report, orders defining limits of United States standard eastern and central time zones, 51 I. C. C., 273, 53, I. C. C., 208, and 66 I. C. C., 566, modified so as to include Detroit, Mich., within the standard eastern time zone. Standard Time Zone Investigation, 73 I. C. C., 78.

(j) Upon petition of Columbus, O., the Commission reopened this proceeding for further hearing on the question whether Columbus and any portions of central Ohio and eastern Kentucky should be included within the United States standard Eastern time zone. Columbus is in the Central time zone about 30 miles west of the zone boundary at Newark, O. Columbus has been using eastern time in the summer months and central time in the winter. On Nov. 25 the city council passed an ordinance adopting eastern time for local use in that city, the change to become effective March 30, 1924. Columbus has its principal business dealings with Cleveland, Toledo, and the territory to the east of it rather than with the communities west. It is situated but two minutes of time west of the meridian midway between those which respectively govern the time of the eastern and central zones. HELD, Columbus and that part of Ohio east of the line of the eastern division of the Ohio Central from Toledo to Fostoria and the line of the Hocking Valley from Fostoria to Gallipolis should be included within the eastern time zone, and that Wayne Country, W. Va., and that portion of the N. & W., north and west of Williamson, W. Va., should be excluded from the eastern and included in the central time zone. Standard Time Zone Investigation, 88 I. C. C. 135.

(k) In 88 I. C. C. 135, the Commission modified previous orders defining the limits of the United States standard Eastern and Central time zones so as to include the city of Columbus and certain other portions of the state of Ohio within, and so as to exclude certain portions of the State of West Virginia from the first or Eastern time zone. Under the adjustment therein prescribed the western division of the N. Y. C., Ohio Central lines, between Toledo and Columbus, including the branch extending west from Peoria to St. Marys, was left in the Central time zone, but all other por-

tions of the Ohio Central lines were included within the Eastern time zone. Subsequently, the N. Y. C., petitioned to include, by exception to the adjustment fixed, all of the Ohio Central lines within the Eastern zone. It is clear that safety of operation and convenience to the carrier and its employees would be considerably aided by allowing operation of the entire system under a single standard of time. HELD, Ohio Central line between Toledo and Columbus, including the St. Marys branch, may be operated under standard Eastern time. Standard Time Zone Investigation, 88 I. C. C. 343.

ALL OTHER CITATIONS

Standard Time Zone Investigation, 51 I. C. C. 208, 499, 555; Standard Time Zone Investigation, 57 I. C. C. 455, 459; Standard Time Zone Investigation, 59 I. C. C. 249, 252; Standard Time Zone Investigation, 64 I. C. C. 281; Standard Time Zone Investigation, 66 I. C. C., 566; Standard Time Zone Investigation, 73 I. C. C. 78; Standard Zone Investigation, 78 I. C. C. 606.

TOLLS

CASES 1887-1908

(a) Complainant attacked as unreasonable the action of defendant in charging and collecting a state toll of 5c per ton as a specific and separately stated part of its transcontinental rate to San Francisco, Calif., when no such toll is paid by said company. The title to the land which constitutes the water front of San Francisco is in the State of California, and the Harbor Commissioners have fixed a schedule of tolls upon merchandise passing over these State premises, ranging proportionately downward from 5c per ton to 1c on 400 pounds or less. This amount is collected regardless of the route used to San Francisco, via the Coast Line or across the harbor from Oakland. The Coast Line does not use any part of the harbor and shipments may arrive at San Francisco via that route and still be subject to the toll under the tariff. HELD, the law does not permit a rate to be made by including charges which the carrier does not in fact meet. Pacific Coast Jobbers and Mfrs. Asso. v. C. P. Ry., 12 I. C. C. 320.

IMPORTANT CASES SINCE 1908

(a) Where bills were rendered for towage services at an increased rate, which it had been stated would be charged for such services, remittances made by the debtor at the old rate, after striking out the new rate from the bills and inserting the old rate, were not a payment in full, but a payment on account. Pennsylvania R. Co. v. M. McGirr's Sons Co., 287 Fed. 334.

(b) Where a shipper loaded his goods into cars in New York and placed the cars on his own car floats, which were then towed to a railroad terminal in Jersey City, where the destination was declared and bills of lading issued, and the shipper could have employed any tugboats he chose to tow his floats, but did in fact employ the boats belonging to the railroad company over whose road the cars were subsequently transported, the towage was not a part of the interstate carriage but was accessorial service. Pennsylvania R. Co. v. M. McGirr's Sons Co., 287 Fed. 334.

(c) Where a railroad company operating towboats notified a shipper of an increased charge for towage, and was not induced to change its charge by the shipper's protest, the shipper was liable for the increased rate, if after such announcement he ordered the towage and the services were rendered. Pennsylvania R. Co. v. M. McGirr's Sons Co., 287 Fed. 334.

TRACK SALES

See Weights and Weighing §7½; II.

TRACK STORAGE

I. CENTRAL AND REGULATION.
II. REASONABLENESS AND DISCRIMINATION.
III. TARIFFS AND CONSTRUCTION.

CROSS REFERENCES

See Demurrage; Storage.

I. CONTROL AND REGULATION.

IMPORTANT CASES SINCE 1908

(a) Since cartage charges may be regarded as a proper subject for national regulation, Federal authority over demurrage and track storage charges in connection with interstate commerce cannot be challenged and is exclusive. Wilson Produce Co. v. Penn. R. R. Co., 14 I. C. C. 170, 173.

(b) Track storage charges when asso-

ciated with an interstate movement appertain directly to interstate commerce; they represent the carrier's compensation for services rendered in connection with the transportation; a shipment is not completed until arrival at destination and delivery to the consignee; and the authority vested in Congress by the commerce clause of the Constitution covers everything relating to the delivery of freight transported between the states. Wilson Produce Co. v. Penn. R. R. Co., 14 I. C. C. 170, 173.

(c) Where, after the Commission has ordered track storage charges to be imposed, shippers are guilty of unnecessary delay in unloading their cars or improperly insist upon using cars for storage purposes, the Commission will, upon application and showing to this effect, modify its order and increase such charges. N. Y. Hay Exchange Assn. v. Penn. R. R. Co., 14 I. C. C. 178, 186.

ALL OTHER CITATIONS

Wilson Produce Co. v. Pa. R. R. Co., 16 I. C. C. 116, 121; Difenderfer Lumber Co. v. M. A. & E. Ry. Co., 53 I. C. C. 571, 573.

II. REASONABLENESS AND DISCRIMINATION.

See Discrimination; Reasonableness of Rates.

IMPORTANT CASES SINCE 1908

(a) The value of the service rendered by a railroad in supplying track storage is not conclusive of the reasonableness of the schedule; it must be judged in the light of its general purpose; and the fact that warehousemen in the city in question are content with a lower charge for storage service is not conclusive since the railroad does not hold itself out as a warehouseman with respect to its cars and tracks. Wilson Produce Co. v. Penn. R. R. Co., 14 I. C. C. 170, 175.

(b) Demurrage charges are imposed as a penalty to influence shippers promptly to unload and release the equipment of the railroad, and track storage charges, in addition to regular demurrage charges, are allowable as are reasonably required to prevent unnecessary delay in the discharge of carload freight. N. Y. Hay Exchange v. Penn. R. R. Co., 14 I. C. C. 178, 185.

(c) Cars are primarily for transportation and not for storage or warehouse purposes, and the public as well as carriers are vitally interested in the prompt release of cars. Turnbull Co. v. Erie R. R. Co., 17 I. C. C. 123, 125.

(d) The Commission has approved track-storage charges assessed by carriers as a penalty in addition to the demurrage. In re Advances in Demurrage Charges, 25 I. C. C. 314, 315.

(e) Carriers are entitled to have their equipment released and their tracks relieved within a reasonable time, and in a proper case they are justified in imposing charges which will accomplish or further those purposes. Milwaukee Produce & Fruit Exch. v. C. & N. W. Ry., 35 I. C. C. 33, 35.

(f) Complainant attacked assessment by the C. O. & P., of a trackage charge of $1 per car in excess of the published rates applicable on traffic from and to its plant at Marseilles, Ill., as unlawful, unreasonable, unjustly discriminatory and unduly prejudicial. Besides its main line at Marseilles the C. O. & P., owns a branch line track which extends from a connection with the Rock Island to complainants plant and to the plants of two other industries adjacent thereto. It was originally built by the Rock Island for the Marseilles Land & Water Power Co., who sold it to its successor, who in turn transferred it to the C. O. & P. An agreement was entered into by the original owners and complainants predecessor that a charge of $1 was to be paid for every loaded car moved to or from its plant. C. O. & P., is an electric line common carrier, and no traffic is interchanged under joint rates with the Rock Island at Marseilles. On that portion of its track which lies between complainants property and the right of way of the Rock Island the C. O. & P., performs no work, the switching being done by the Rock Island with its own power. In its tariffs the Rock Island shows complainant as a destination on its own line, and there is no provision that any extra switching charge will be assessed for movement from and to the same. There is no provision in any tariff for the assessing of this $1. The evidence does not indicate that the C. O. & P., acquisition of the track resulted in any change in the relationship that previously existed between track owner and shipper. The amount of consideration that complainant

pays for the use of this track is a matter of private contract. HELD, collection of charge attacked is not in violation of the act, and the Commission is without jurisdiction to determine the reasonableness of the charge. Complainant dismissed. Certain-Teed Products Corporation v. C. R. I. & P. Ry., 68 I. C. C. 260.

ALL OTHER CITATIONS

Murphy Bros. v. N. Y. C. & H. R. R. Co., 21 I. C. C. 176; Joynes v. P. R. R. Co., 21 I. C. C. 458, 459; Wilson Produce Co. v. Penn. R. R. Co., 16 I. C. C. 116, 121, 122; Wilson Produce Co. v. Penn. R. R. Co., 14 I. C. C. 170, 176; N. Y. Hay Exchange Ass'n v. Penn. R. R. Co., 14 I. C. C. 178, 186, 187; Dumee, Son & Co. v. P. & R. Ry. Co., 26 I. C. C. 33; Wholesale Produce Dealers Asso. v. Long Island R. R. Co., 26 I. C. C. 413; Benisch Bros. v. L. I. R. R. Co., 25 I. C. C. 439; Murphy Bros. v. N. Y. C. & H. R. R. R., 33 I. C. C. 355, 357; McCallum v. M. & R. R. Ry. Co., (Minn. 1915), 151 N. W. 974. Murphy Bros. v. N. Y. C. & H. R. R. Co., 33 I. C. C. 355, 356; Indian Refining Co. v. S. Ry. Co., Unrep. Op. 1983. Export Grain Storage Charges, 42 I. C. C. 530, 540, 542; Famechon Co. v. C. R. & Q. R. R., 45 I. C. C. 598, 600; New York & New Jersey Produce Co., Inc. v. N. Y. N. H. & H. R. R., 49 I. C. C. 93, 94; California Citrus League v. Director General, 58 I. C. C. 373, 380; Western Petroleum Refiners Association v. A. & R. R. R., 66 I. C. C. 58.

III. TARIFFS AND CONSTRUCTION.

IMPORTANT CASES SINCE 1908

(a) Where its track storage tariff applies only to produce yards, a carrier must refund charges for track storage collected for detention of cars in its "metal" yards. Wilson Produce Co. v. Penn. R. R. Co., 14 I. C. C. 170, 176.

(b) A tariff providing for track-storage charges on freight for delivery from the cars "direct to drays" does not apply to freight delivered upon a platform. Wilson Bros. v. D. L. & W. R. R. Co., 25 I. C. C. 11.

(c) Complainant sought reparation for track-storage charges alleged to have been assessed against it without lawful tariff authority. Complainant leased a warehouse from the D. L. & W. R. R., which adjoined its track. Between the warehouse and the track was a platform of the carrier, on which the shipments were unloaded. This platform and track served other shippers as well as complainant. The charges attacked were assessed under a tariff which provided for track-storage for carload freight detained beyond a certain period, "for delivery from cars direct to drays." HELD, the storage charges were illegally assessed, since delivery was not made direct to drays but to the platform. Reparation awarded. Wilson Bros. v. D. L. & W. R. R. Co., 25 I. C. C. 11.

(d) Consignees are entitled to a reasonable time after delivery of shipment and notice of arrival thereof within which to unload without being subjected to demurrage or track-storage charges, and no reason appears why track-storage charges should begin earlier than demurrage charges on the same car. Murphy Bros. v. N. Y. C. & H. R. R. R., 33 I. C. C. 355, 356.

(e) To begin track storage charges earlier than demurrage charges on the same car found to be unjust and unreasonable. Murphy Bros. v. N. Y. C. & H. R. R. Co., 33 I. C. C. 355, 356.

(f) Where a tariff provides that demurrage and track storage charges will not be assessed on shipments when the condition of the weather during free time is such as to make it impossible to unload, manifestly the words, "impossible to unload" can not be given a literal interpretation. They must be construed in a reasonable manner. Weather conditions that would ordinarily prevent unloading might not prevent one shipper under stress of unusual circumstances from unloading, regardless of weather conditions. The test should not be whether or not some consignee unloaded cars at the same place during the same period, but whether or not considering the character of the freight, other consignees reasonably could and did unload. When a dispute arises, the United States Weather Bureau reports should be given proper consideration, and these, the claims and records of consignees, and the records kept by the carriers' agents should be considered together in reaching a conclusion as to whether or not the weather conditions were such as to entitle consignees to waiver of track storage charges. Refusal to apply a reasonable interpretation of this rule,

thereby depriving complainants of refunds lawfully due, subjects them to unlawful charges just as much as if they were charged more than the lawful rate for transportation. Murphy Bros. v. N. Y. C. & H. R. R. R., 33 I. C. C. 355, 358.

(g) Carriers are entitled to have their equipment released and their tracks relieved within a reasonable time, and in a proper case they are justified in imposing charges which will accomplish or further those purposes. Milwaukee Produce & Fruit Exch. v. C. & N. W. Ry., 35 I. C. C. 33, 35.

(h) Carriers control transportation and elevators, and undertake to make delivery by unloading grain from cars to elevators, and grain is no more available for export, except it is nearer vessels, when in cars at terminal yards than when lying on sidings 300 miles from terminals. The assessment of track-storage charges at terminals would merely change the locus of discrimination alleged to exist. Export Grain Storage Charges, 42 I. C. C. 530, 540.

(i) It is contended that the assessment of track storage charges on export grain at tidewater points in addition to the legal tariff rate is illegal under provision of section 6, as tidewater points are merely the point of transfer from rail to water carrier. Track-storage charges not found justified. Export Grain Storage Charges, 42 I. C. C. 530, 540, 542.

(j) A tariff rule, defining railroad premises to embrace private tracks constructed, maintained, or operated under a written agreement by which carrier reserves the right to use such tracks for itself or others, makes the written agreement the controlling factor rather than the right to use such tracks. Western Petroleum Refiners Asso. v. A. & R. R. R. Co., 66 I. C. C., 58, 60.

(k) Tariff provided track-storage would be applied on shipments of "bulk freight" instead of demurrage. HELD, that crated celery is not "bulk freight" within meaning of tariff. Fish & Solomon v. P. R. R. Co., Unrep. Op. A-99.

ALL OTHER CITATIONS

Kollyrite Trucking Co. v. P. R. R. Co., Unrep. Op. A146; American Hay Co. v. B. & M. R. R., Unrep. Op. A286; Murphy Bros. v. N. Y. C. & H. R. R. R. Co., 33 I. C. C. 355, 359.

TRACKAGE AGREEMENTS

CASES 1887-1908

(a) The Union Pacific Railway Compaiy entered into a contract with the Rock Island Railway Company by which for a valuable consideration the latter Company acquired the right to run its through trains from and to points on its own road over the road of the Union Pacific Company between Kansas City and Topeka upon the condition that no intermediate business should be done by the Rock Island Company on any part of the line used under the agreement, the Union Pacific Company retaining control of the road and of its operation, and supplying transportation accommodations for the intermediate points between Kansas City and Topeka. Upon complaint made against the Rock Island Company by a resident of Lawrence, one of the intermediate towns, for refusing to perform the ordinary duties of a common carrier in receiving and discharging traffic at his town, HELD, That the duties of the Rock Island Company were limited by its rights and powers under its contract, and that it was not bound to do the local business prohibited by the agreement on the line used by its through trains. Alford v. Chicago, Rock Island & Pacific R. Co., 2 I. C. R. 771.

(b) The duty of a railroad company operating its own road or a road that it controls to serve the local stations on its line does not apply to a company that has only a running privilege for through trains to reach points on its own line over a part of the road of another company which it does not control. In such a case the company is not required to disregard the conditions of its agreement, and does not violate the provisions of the Act to Regulate Commerce by not receiving and discharging traffic on the tracks of the proprietary company, the sufficiency of the local service rendered by the latter not being questioned. Alford v. Chicago, Rock Island & Pacific R. Co., 2 I. C. R. 7771.

(c) In the absence of statutory provision the rights of a railroad company under a lawful agreement for a specified use of the tracks of another railroad company are measured in respect to the track use by the terms of the contract, and the provisions of the act apply to the

situation created by the contract and add no authority for a different use of the tracks. Alford v. C. R. I. & P. R. 2 I. C. C. 771, 775.

(d) The trackage charge to be paid by defendants to the stock yards company in Chicago is fairly established at $1 per car. Cattle Raisers' Asso. of Texas v. Chicago, B. & Q. R. Co., 11 I. C. C. 277.

IMPORTANT CASES SINCE 1908

(e) It is a well recognized practice among carriers to agree as to trackage rights and privileges for the common use of the part of the line of one so as to make the tracks subject to the agreement a part of both roads. Dixie Cotton Oil Co. v. St. Louis, Iron Mountain & Southern Railway Co., 27 I. C. C. 295, 297.

(f) A provision in a trackage lease that the lessee may not serve private side tracks is not unlawful. Hocking Domestic Coal Co. v. K. & M. Ry., 44 I. C. C. 392, 398.

(g) The interpretation and enforcement of trackage contracts, involving property rights or the use by one railway of the property of another, are questions primarily for the courts and not for the commission. Hocking Domestic Coal Co. v. K. & M. Ry., 44 I. C. C. 392, 398.

(h) The rights of the lessee with respect to a leased line are not the general rights of a common carrier upon its own road, but are limited and qualified by the agreement. They are simple contract rights which the law does not and can not enlarge. Hocking Domestic Coal Co. v. K. & M. Ry., 44 I. C. C. 392, 400.

(i) An owning and operating railroad may give trackage rights to another carrier over a part of its line, where such a grant does not impair the performance of its own duties to the public as a common carrier, and may prohibit the grantee from exercising its functions as a common carrier with respect to traffic upon the line of track so granted. Hocking Domestic Coal Co. v. K. & M. Ry., 44 I. C. C. 392, 400.

(j) A railroad may not render itself incapable of performing its duties to the public or absolve itself from those obligations without the consent of the state, but an owning and operating railroad may give trackage rights to another carrier over a part of its line, where such a grant does not impair the performance of its own duties to the public as a common carrier, and, in the absence of a controlling statute, the owning carrier may, by the terms of the agreement, prohibit the grantee from exercising its functions as a common carrier with respect to traffic upon the line of track so granted. Such provisions do not impair the common carrier obligations of the grantee on its own line, and the grant may indeed enlarge the ability of the grantee carrier to serve patrons on its own line. Hocking Domestic Coal Co. v. K. & M. Ry., 44 I. C. C. 392, 400.

(k) Respondents, Chicago & West Ridge Railroad, proposed to establish a trackage charge of $3 for each car under load set upon and each car under load taken from its tracks. In a tariff previously filed by respondent a trackage charge of $1 was named which it proposed to cancel. Respondent's tracks extend about 2.5 miles from Weber, Ill., a station beyond the city limits of Chicago, Ill., on the C. & N. W., to Peterson Avenue within those limits. Respondent does not own or operate any rolling stock or perform any service of transportation. It allows the Northwestern, its only connection, to use its tracks without charge. The trackage charge is imposed on the shipper. Respondent does not participate in any rates with other railroads, does not issue bills of lading or publish demurrage charges and the only charge collected by it is the trackage charge, which thus constitutes its sole source of revenue. These are the only tariffs filed with the Commission by respondent. HELD, respondent is not a common carrier subject to the interstate commerce act and that the suspended schedules must be stricken from the files of the Commission. The same course will be taken as to its other tariff. Trackage charge on loaded cars, 60 I. C. C. 134.

(l) Where a mine is not actually upon the rails of a carrier and can not be considered as constructively upon the rails of that carrier under the terms of a trackage agreement, the publication of rates from that mine without the concurrence of the carrier upon whose rails it is situated is contrary to the Commission's tariff rules and should be discon-

tinued. Ridge Coal Mining Co. v. M. P. R. R. Co., 62 I. C. C. 259, 263, 264.

(m) The service of mines by a carrier under trackage agreements is, in practical and legal effect, the substantial equivalent of the extension of its rails to them. Ridge Coal Mining Co. v. M. P. R. R. Co., 62 I. C. C. 259, 261; Dering Mines Co. v. Director General, 62 I. C. C. 265, 267.

(n) So long as a charge is published for placing shipments at points of unloading on private industry tracks, carriers must, upon demand, perform the service, but it does not necessarily follow that they would be under any common-carrier obligation to do the switching if no charge were published. Carriers perform services voluntarily or under stress of competition which are not within their duty as common carriers, and which they can not be required to perform in the absence of undue prejudice or unjust discrimination. Whitaker-Glessner Co. v. B. & O. R. R. Co., 63 I. C. C. 47, 54, 55.

(o) It can not be held that because a carrier has extended its lines to certain mines it thereby holds itself out to serve all mines in that general territory similarly situated in regard to its own tracks. Benton Coal Mining Co. v. C., B. & Q. R. R. Co., 63 I. C. 396, 399.

(p) A joint mine which is accorded a joint status by means of a trackage agreement is in the same category as a junction-point mine, and it extends its service to certain mines, either by extension of its rails or under trackage agreements, thereby giving them the advantages of a joint or junction-point status, while declining to make other extensions or trackage agreements to extend its service to other mines. Benton Coal Mining Co. v. C., B. & Q. R. R. Co., 63 I. C. C. 396, 399.

(q) The service of a mine by a carrier under a trackage agreement is, in practical and legal effect, the substantial equivalent of an extension of its rails to the mines. Benton Coal Mining Co. v. C., B. & Q. R. R. Co., 63 I. C. C. 396, 399.

ALL OTHER CITATIONS

Ridge Coal Mining Co. v. M. P. R. R. Co., 62 I. C. C. 259, 261, 262, 263, 264; Dering Mines Co. v. Director General, 62 I. C. C. 265, 267. Whitaker-Glessner Co. v. B. & O. R. R. Co., 63 I. C. C. 47, 54, 55; Benton Coal Mining Co. v. C., B. & Q. R. R. Co, 63 I C. C. 396, 397, 399; Hilsboro Coal Co. v. C. C., C. & St. L. Ry. Co., 63 I. C. C. 401; Hocking Domestic Coal Co. v. K. & M. Ry., 44 I. C. C. 302, 398, 400; Trackage charge on loaded cars, 60 I. C. C. 134.

TRAFFIC CONTRACTS

See Special Contracts; Tap Lines.

TRAIN MILE REVENUE

See Evidence §8.

TRAINLOAD RATES

IMPORTANT CASES SINCE 1908

(a) Complainant attacked the rate of 3.1c per 100 lbs. charged on numerous carloads of logs shipped from Spur 294, and Peck's Spur, Mich., to Green Bay, Wis., 183 and 182 miles, as unreasonable discriminatory and in violation of the fourth section. The rate from Port, Britton's Spur and Hubbell's Mill. Mich., to which the points of origin in question were intermediate was $3 per 1,000 ft., minimum trainload 20 cars, where the products were to be reshipped from Green Bay via defendant's line. Complainant had requested the establishment of the latter rate before its shipments moved, but complainant did not ship more than 6 cars in any one train, and there was no showing that the products of the logs were reshipped via defendants line. HELD, that the rate attacked was not unreasonable, but was discriminatory against complainant in favor of shippers at the more distant points. Reparation denied. Complaint dismissed. Diamond Lumber Co. v. C. M. & St. P. Ry., 43 I. C. C. 65.

(b) The Commission has never approved tariff provision for trainload rates. Diamond Lumber Co. v. C. M. & St. P. Ry., 43 I. C. C. 65, 66.

(c) Tariff should be amended at once by cancellation of the item relating to trainload lots, as manipulation of the grossest kind is obviously under such a provision. Portsmouth Asso. of Commerce v. S. A. L. Ry., 55 I. C. C. 377, 390.

ALL OTHER CITATIONS

Portsmouth Asso. of Commerce v. S. A. L. Ry., 55 I. C. C. 377, 390.

TRANSFER

See Allowances §8 (7); Electric Lines IV; Facilities and Privileges §15½; Transfer Companies; Transshipment.

IMPORTANT CASES SINCE 1908

(a) Complainant attacked the charge of $4 per car for transferring citrus fruit from ventilated box cars into refrigerator cars at Potomac Yard, Va., as unjust and unreasonable. The shipments were made from Florida points to destionations north and east of Potomac Yard. The transfer was made at complainant's request, but complainant had requested refrigerator cars prior to shipment. It appeared that the Florida citrus crop moved partly in ventilator cars and partly in refrigerator cars, but that only a small proportion of the latter were iced. Ventilator cars were safe for citrus fruit until the mercury sank to 10 degrees above zero. Shipments had the advantage of reconsignment service without extra cost; and complainant might avoid the necessity of transferring to refrigerator cars at Potomac Yard by selecting shipments to points involving danger of freezing, shipments already loaded into refrigerator cars and standing at Potomac Yard. HELD that the transfer involved was in the nature of an added special service, for which carriers might justly impose a reasonable charge against the shipper. Imposition of the charge assailed justified. Florida Citrus Exch. v. A. C. L. R. R., 39 I. C. C., 325.

(b) Transfer of coal from coal cars to box cars not found to be a service of transportation which defendant was required to perform and for performance of which by owner defendant could lawfully pay an allowance. Lehigh Valley Coal Sales Co. v. L. V. R. R. Co., 39 I. C. C. 339, 340.

(c) Carriers entering St. Louis, Mo., provided as set forth in St. Louis Terminal Case, 34 I. C. C. 453, for the absorption of certain transfer charges to off-track stations of complainant and their St. Louis stations from designated other transfer companies, but not including the station in question. For traffic from this station the defendant refused to compensate complainant, which was accordingly compelled to move it from its off-track station to defendant's station by wagon. HELD, that it did not appear that the defendant had violated any provision of the Act. Complaint dismissed. Columbia Transfer Co. v. C. B. & Q. R. R., 46 I. C. C. 371.

(d) The practice of terminal carriers of requiring complainants, at their own expense, to transfer to other equipment, shipments of hay delivered to team tracks in St. Louis or East St. Louis in bad-order cars, as a precedent to permitting rebilling to points beyond, found an unjust, unreasonable, and unduly prejudical practice. Reparation awarded. Merchants Exchange of St. Louis v. T. R. R. Asso. of St. L., 50 I. C. C. 474.

(e) Transfer charge collected without lawful tariff authority should be refunded. Reliance Mfg. Co. v. I. C. R. R., 51 I. C. C. 607, 608.

(f) Rule 90, providing for charge of $5 per car for transfer of perishable freight into refrigerator or other fully insulated cars to protect against heat or cold, approved with modifications. Perishable Freight Investigation, 56 I. C. C. 449, 563, 564.

(g) Shipper is entitled to notice of a transfer charge other than one coming to him through the collection of the charge from his consignee, and as he is not obligated to follow his shipment and make the transfer himself he is entitled to the protection afforded by a published definite rate. The defendant can not excuse the collection of this unpublished and unknown drayage and transfer charge by proof that it had a rule which forbade the sending of its cars off its own line during a period of car shortage and congestion of business. William Schuette & Co. v. Director General, 57 I. C. C. 709, 711.

(h) Operating rule prohibited movement of grain car equipment to points off defendant's rails, and reconsignment refused. Tariff provided free reconsignment at through rate and did not restrict reconsignment to foreign cars or authorize a charge for transfer to foreign equipment. HELD, complainants were denied a service authorized by the tariff, it being defendant's duty to forward shipment loaded in its cars or after transfer without charge into foreign cars. Conover v. M. & St. L. R. R. Co., 58 I. C. C. 729.

(i) A consignor of goods loaded them into railroad cars on a spur track constructed for the sole benefit of another firm. In order for the carrier to convey the goods to destination, it was necessary for it to transfer the cars to another railroad about a mile away. It appeared that they did such service for the firm for whose benefit the side track had been constructed. HELD, that its refusal so to carry the consignor's goods did not constitute a discrimination against him in favor of the other firm; the situation of the two being different. St. Louis Southwestern Ry. Co. v. Arkadelphia Milling Co. (Ark. 1915) 180 S. W. 200, 201.

ALL OTHER CITATIONS

Flour City S. S. Co. v. L. V. R. R. Co., 38 I. C. C. 729, 731; Port Huron & Duluth S. S. Co. v. P. R. R. Co., 40 I. C. C. 335, 344, 346; Stinson Hardwood Co. v. C. R. I & P. Ry., Co. 41 I. C. C. 403, 404; Jackson Chamber of Commerce v. N. Y. C. R. R. Co., 42 I. C. C. 155; Lake and Rail Rates Cancellations (No 2), 42 I. C. C. 513, 518, 521; Neosho Grocery Co. v. Director General, 53 I. C. C. 481.

TRANSFER COMPANIES

See Common Carrier.

IMPORTANT CASES SINCE 1908

(a) A transfer company, while a common carrier, is not a carrier by railroad and is not subject to the Act. Anacostia Citizens Assn. v. B. & O. R. R. R. Co., 25 I. C. C. 411, 414.

(b) The Commission has no jurisdiction over a common-carrier transfer company. Anacostia Citizens Assn. v. B. & O. R. R. Co., 25 I. C. C. 411, 414.

(c) Transfer company held to be agent of railroad where the railroad undertakes to check baggage to and from residence of passengers. Anacostia Citizens Assn. v. B. & O. R. R. Co., 25 I. C. C. 411, 415.

TRANSIT

See Compress Companies and Charges; Concentrating Rates and Privileges; Creosoting in Transit; Dressing in Transit; Elevation; Fabrication in Transit; Facilities and Privileges §15; Refining in Transit; Reshipping Rates; Routing and Misrouting §8½; Stoppage in Transit; Storage in Transit; Through Routes and Joint Rates §19.

TRANSPORTATION

I. WHAT IS TRANSPORTATION SERVICE.
§1. In general.
§1½. Jurisdiction of Commission.
II. DUTY OF CARRIER TO TRANSPORT.
§2. In general.
§3. Company material.
§3½. Confiscation of Fuel.
§4. Collection of charges.
§5. Delivery or receipt.
§5½. Free Transportation.
§6. Notifying consignor or consignee.
§6½. Notice to carrier.
§7. Prompt and safe carriage
§7½. Receipt by consignee.
§8. Special services.
§9. State interference.
§10. Unloading or loading at terminal.
§11. When transit ends.
III. OPERATION OF RAILROAD.
§11½. In general.
§12. Right of carrier to make regulations.
§13. Economy of management.
§14. What are operating expenses.
§15. Right to traffic.
§16. Eminent Domain.

CROSS REFERENCES.

See Allowances §8 (4⅞); §8(5); §10; §11; §12; §12(2); Additional Charges and Services; Assorting Packages; Common Carrier III; Crimes §12; Exclusive Contract; Express Companies §5; X; Facilities and Privileges II; Refrigeration §13; Special Rates and Services; Storage; Tap Lines; Track Storage; Water Carriers.

I. WHAT IS TRANSPORTATION SERVICE.

§1. In general.

See Allowances §10; §11; §12.

IMPORTANT CASES SINCE 1908

(a) Transportation from a seaport of the United States or an adjacent foreign country to an interior American destination in completion of a through move-

ment of freight from a port of a foreign but not adjacent country, whether upon a joint through rate or upon a separately established or proportional inland rate applicable only to imports moving through, is not a "like service" to that of the transportation independent and complete within itself of traffic starting at such domestic port, though bound for the same destination. Pittsburg Plate Glass Co. v. P. C. C. & St. L. Ry. Co., 13 I. C. C. 87, 100.

(b) It is the duty of the carrier to furnish transportation under section 1. Lumber Rates through Ohio River Crossings, 29 I. C. C. 38, 39.

(c) When the shipper is willing to accept the risk of weather conditions, carriers should not refuse to accept shipments. Protection of Potato Shipments in Winter, 29 I. C. C. 504, 505.

(d) Failure of carrier's agent at destination to notify consignor that shipment was being held for delivery. HELD, not to constitute a breach of duty under the Act. Central Pennsylvania Lumber Co. v. T. V. Ry., 51 I. C. C. 465.

(e) Whether a particular movement should be treated as a line haul or switching service is not dependent upon manner of publishing charges but rather upon nature of service itself. Absorption of Charges, 81 I. C. C. 181, 183.

(f) Under U. S. Comp. St. §8563, sub. 2, declaring, "The term 'transportation' shall include ..... all services in connection with the receipt, delivery," etc., "of property transported," "delivery" connotes either tender to the consignee or a reasonable opportunity afforded him for the removal of the property transported. Cork v. Lehigh Valley R. Co., (N. J. 1922), 119 Atl. 88.

ALL OTHER CITATIONS

Cosby v. Richmond Transfer Co., 23 I. C. C. 72, 74; The Tap-line Case, 23 I. C. C. 277, 292, 298; New England Coal & Coke Co. v. N. & W. Ry. Co., 22 I. C. C. 398, 400, 401; Arlington Heights Fruit Exchange v. S. P. Co., 20 I. C. C. 106, 117; Southwestern Produce Distributors v. W. R. R. Co., 20 I. C. C. 458, 460; American Sugar Refining Co. v. D. L. & W. Ry. Co., 200 Fed. 652, 656; Dixie Cotton Oil Co. v. St. Louis, Iron Mountain & Southern Railway Co. 27 I. C. C. 295, 297; In re Cancellation of Joint Rates on the C. Z. & G. R. R., 27 I. C. C. 353, 363; New England Investigation, 27 I. C. C. 560, 568; Lake-and-rail Butter and Egg Rates, 29 I. C. C. 45, 51; Industrial Railways Case, 29 I. C. C. 212, 236, 237; C. & N. W. Ry. Reconsignment Rules, 29 I. C. C. 620, 624; Phila. Team Owners' Pro. Assn. v. Ry. Co., 32 I. C. C. 387, 391; Coal and Oil Investigation, 31 I. C. C. 193, 224; United States Button Co. v. C. R. I. & P. Ry. Co., 32 I. C. C. 149, 150; Rosenheimer Malt & Grain Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. A-808; McShane Lumber Co. v. G. C. & S. F. Ry. Co., Unrep. Op. A-821; Wien v. N. Y. C. & H. R. R. Co., 152 N. Y. Supp., 154, 157, 158; Rates in Chicago Switching District, 34 I. C. C. 234, 239; Switching Charges at South Omaha, Nebr., 31 I. C. 198, 200; Mitchell Coal & Coke Co. v. Penn. R. R., 38 I. C. C. 40, 44; Swift & Co. v. Hocking Valley Ry. Co. (Ohio 1915) 112 N. E. 212, 213; The Car Peddling Case, 45 I. C. C. 494, 501; New York Produce Exchange v. B. & O. R. R., 46 I. C. C. 666, 672; St. L. I. M. & S. Ry. v. Clark Pressed Brick Co., (Ark. 1917), 192 S. W. 382; Bills of Lading, 52 I. C. C. 671, 700.

§1½. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

IMPORTANT CASES SINCE 1908

(a) The Commission has "no control whatever" over the operation or physical maintenance of carriers subject to the Act. Private Wire Contracts, 50 I. C. C. 731, 763.

ALL OTHER CITATIONS

New England Investigation, 27 1. C. C. 560, 616; In re Express Rates, 24 I. C. C. 380, 430; Swift Co. v. Director General, 56 I. C. C. 309, 315.

II. DUTY OF CARRIER TO TRANSPORT.

§2. In general.

See Cars and Car Supply IV; V; Common Carrier §6; Facilities and Privileges II.

CASES 1887-1908

(a) It is not necessary for a shipper to make a special contract with a common carrier, in order to entitle himself to transportation for his goods. Rid-

dle, Dean & Co. v. N. Y. & L. E. & W. R. R. Co., 1 I. C. R. 787.

(b) Less desirable freight must be accepted upon reasonable terms, as well as that which is more desirable. Riddle v. New York, L. E. & W. R. Co. 1 I. C. R. 787.

(c) A common carrier is under obligation to serve the public equally and justly; it is unlawful for him to make or give any undue or unreasonable preference or advantage to any particular person or locality, or any particular description of traffic in any respect whatsoever. He must know no friends and concede no unequal favors. The opportunity for profit of a stranger in a single and unusual transaction should be held as important by the carrier as the traffic of a constant shipper; no preference should be given to either. It is in contravention of the statute for a common carrier to refuse a shipment upon the ground that regular patrons desire to use all the facilities at hand, and to appropriate to the uses of the latter the entire available equipment. Riddle Dean & Co. v. N. Y. L. E. & W. R. Co. 1 I. C. C. 787, 790.

(d) A common carrier, by virtue of his assuming that position and thereby becoming entitled to the privileges, liens and protections given by statute and at the common law, becomes at the same time bound to carry the merchandise of all, for a reasonable reward, whenever tendered in the usual way. The difference between a common carrier and a private carrier consists largely in that obligation which arises without special agreement. The compensation of a common carrier is assured to him by a lien upon the goods, a right which is not enjoyed by a private carrier; in case the articles are not surely worth the freight money his right to demand payment in advance has long been recognized, his interests are well protected in every direction, and he has no right to refuse to accept for transportation, at a reasonable rate any article of such a nature as he is accustomed to transport for any persons seeking the service. Riddle Dean & Co. v. N. Y. L. E. & W. R. Co., 1 I. C. C. 787, 791.

(e) It is obvious that an unremunerative and undesirable traffic can be put an end to by announcing a prohibitory rate as effectually as by refusing to accept the business. Riddle Dean & Company v. N. Y. L. E. & W. R. R. Co. 1 I. C. C. 787, 792.

(f) Every carrier is held liable for correctness of weight and classification of freight received so far as same can be practically ascertained. Re Unbilling 1 I. C. R. 813.

(g) Common carriers must take all descriptions of all ordinary traffic from all points, and the rates should be known and announced publicly in advance of the offering of traffic. Re Tariffs of Transcontinental Lines (Com.) 2 I. C. R. 203.

(h) A carrier cannot be considered as ratifying the original contract of shipment for goods which it receives from another company and transports, when it is bound by statute to perform such service. Dwyer v. Gulf, C. & S. F. R. Co. (Tex.) 5 I. C. R. 361.

(i) Under the Act to Regulate Commerce as amended carriers subject to its provisions may not lawfully refuse transportation as therein defined, but they must upon reasonable request afford the same upon established rates filed and kept posted as required by law. J. J. Waxelbaum & Company v. A. C. L. R. R., 12 I. C. C. 178, 183.

IMPORTANT CASES SINCE 1908

(j) The chief function of a common carrier is to carry, at reasonable rates traffic tendered to it. As a general rule, an interstate carrier has no right at least under ordinary circumstances, to choose, or in any way to control, the markets in which its shippers may buy or sell their wares. Its duty is to transport the merchandise of shippers in accordance with their reasonable instructions, and it may demand nothing beyond a reasonable compensation for the services rendered. It cannot force its services upon a shipper or insist upon carrying his shipment to one market when he desires to reach another. It has no right to insist that a shipment shall go to the end of its rails if the shipper desires it to be diverted at an intermediate point to another market off its rails. Nor may a carrier accomplish these results indirectly by any unreasonable adjustment of its rate schedules with that end in view. It cannot lawfully compel the shipping public to contribute

to its revenues on any such grounds. Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co., 15 I. C. C. 460, 464.

(k) The operation of a rule that inflammable oils will be delivered but one day in a week unduly prefers large shippers with tank stations from which they make deliveries by wagon. National Petroleum Ass'n v. L. & N. R. R. Co., 15 I. C. C. 473, 476.

(l) The question of the use of additional equipment and the expense involved to the carriers are not controlling in determining whether the operation of a railroad limiting shipments to certain days of the week is unjustly discriminatory against any class of shippers. National Petroleum Ass'n. v. L. & N. R. R. Co., 15 I. C. C. 473, 477.

(m) It is the duty of a common carrier to receive and carry, upon reasonable terms, all goods tendered in suitable condition, and it can not lawfully discriminate in favor of any person, product or locality. Standard Lime & Stone Co. v. Cumberland Valley R. R. Co., 15 I. C. C. 620, 622, 623.

(n) A shipper may not use a carrier subject to the Act or its agent as his agent for the purpose of receiving consignments of property and rebilling the same in order to break an interstate journey or make an intrastate one. The Commission's authority is confined to carriers subject to the Act, and until a carrier becomes a subject to the Act voluntarily or as a matter of law, the Commission's rule as to a shipper availing himself of such carrier as his agent does not apply. (Lane, comm'r, concurring opinion.) In Re Transportation by the C. & O. Ry. Co., 21 I. C. C. 207, 209.

(o) It is beyond the lawful right of a carrier to determine what traffic it will take into a city and what traffic it will take out of it. It must perform either service at the request of the shipper and for a reasonable charge. Memphis Hay & Grain Assn. v. St. L. & S. F. R. R. Co., 24 I. C. C. 609, 615.

(p) And when the rules put upon the shipper the risk of damage from freezing, there is no occasion for a further rule permitting the carrier to refuse a shipment altogether. Protection of Potato shipments in Winter 26 I. C. C. 681, 685.

(q) Neither character, quantity, quality or price of articles can qualify obligation of carrier to accept them for transportation. In re Rates on Plaster and Gypsum Rock, 27 I. C. C. 67, 69.

(r) Railroad service is often of even greater importance than the rate itself. New England Investigation, 27 I. C. C. 560, 616.

(s) Rates may not be predicated upon character of vehicle from which commodities are delivered on freight platforms or in cars, so long as no additional burden is put upon carriers. Trap or Ferry Car Service Charges, 34 I. C. C., 541, 542.

(t) Uncertainty in service is as much to be condemned as uncertainty in rates. Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 58.

(u) Operation of the anti-trust laws, except in respect of consolidations or mergers of parallel and competing lines, as applied to rail-and-water carriers subject to the Act, and of the antipooling provisions of section 5 of the Act, should be suspended during period of war, if unification is to be effected by the carriers. Unification of Railroad Operation, 47 I. C. C. 757, 760.

(v) It is the shipper's duty to provide a barge for the movement of coal beyond the pier, and the practice at tidewater is similar to the constructive placement of cars consigned to line shippers who are unable to accept delivery when tendered. Wholesale Coal Trade Asso. v. Director General, as Agent, 58 I. C. C. 15, 26.

(w) Operating rule prohibited movement of grain car equipment to points off defendant's rails, and reconsignment refused. Tariff provided free reconsignment at through rate and did not restrict reconsignment to foreign cars or authorize a charge for transfer to foreign equipment. HELD, complainants were denied a service authorized by the tariff, it being defendant's duty to forward shipment loaded in its cars or after transfer without charge into foreign cars. Conover v. M. & St. L. R. R. Co., 58 I. C. C. 729.

(x) In absence of undue prejudice whatever service a carrier can be required to perform it may insist upon per-

forming. Riter Conley Mfg. Co. v. Director General, 58 I. C. C. 327, 330.

(y) Railroads must serve the public and handle the freight from its connections accommodating its methods of operation to the business needed to be moved. Routing on Coal from Western Maryland Mines, 66 I. C. C. 103, 106.

(z) The obligation to accept articles tendered for transportation is governed by general principles of law; to reconsign, by rules lawfully on file with the Commission. The right to refuse shipments temporarily for good cause by establishment of embargoes, which are not required to be filed, is recognized. The right to reconsign depends entirely upon the construction of the rules, which are required to be filed in the same manner as rates. If carriers do not restrict such rules to the extent of their capacity to perform the service, the shipper can not be held liable for detention when it is not directly responsible therefor and can not abate the cause thereof, as in the case of an embargo, which is a disability of the carrier. Krauss Bros. Lumber Co. v. Director General, as Agent, 66 I. C. C. 637, 639.

(aa) It is necessary that all essential transportation facilities of the country be kept in operation. Division of joint rates and fares of M. & N. A. R. R., 68 I. C. C. 47, 61.

(bb) The issuance of bills of lading and movement of shipments under regular waybills are mere incidents of service which in no wise determine its character as line haul or switching. Western Meat Co. v. Director General, 78 I. C. C. 77, 80.

(cc) Carrier is obliged to receive shipments and to perform transportation services requested in accordance with its published tariffs. Elk Tanning Co. v. E. R. R. Co., 78 I. C. C. 452, 453, 454.

(dd) Under Section 1 of the Act as amended June 29, 1906, providing that "it shall be the duty of every carrier subject to the provisions of the Act to provide and furnish such transportation upon a reasonable request therefor," the term transportation includes all kinds of instrumentalities of shipment and carriage. United States v. B. & O. R. R. Co., 165 Fed. 113, 121.

(ee) A rule of the Interstate Commerce Commission providing that burnt cotton, which is cotton that has been on fire, and which has not been subsequently repicked and rebaled, must not be offered for shipment until it has been reconditioned, or until not less than five days have elapsed since the last evidence of fire therein, does not forbid shipment of cotton which had been part of a larger mass that had been on fire after five days elapsed, merely because there was fire in other cotton about 200 yards distant at the time of the shipment. Southern Ry. Co. v. Pettit, 257 Fed. 666.

ALL OTHER CITATIONS

I. C. C. v. C. G. W. Ry. Co., 209 U. S. 108, 119, 28 Sup. Ct. 493, 52, L. ed. 705; United States v. Wells Fargo Express Co., 161 Fed. 606, 613; Public Service Co. of Wash. v. N. P. Ry. Co., 23 I. C. C. 256 Brook-Rauch Mill & Elevator Co. v. St. L. I. M. & S. Ry. Co., 21 I. C. C. 651, 653, 656; Chappelle v. L. & N. R. R. Co., 19 I. C. C. 56, 59; Traffic Bureau of Merchants' Exchange of San Francisco v. S. P. Co., 19 I. C. C. 259, 261; Corporation Commission of Oklahoma v. C. R. I. & P. Ry. Co., 17 I. C. C. 379; Kansas City Transportation Bureau v A. T. & S. F. Ry. Co., 15 I. C. C. 491, 496; Pueblo Trans. Ass'n. v. S. P. Co., 14 I. C. C. 82, 85; Reid v. Southern Ry. Co., 153 N. C. 490, 493; 69 S. E. 618; Toledo Produce Exchange v. A. A. R. R. Co., 27 I. C. C. 536, 543; New England Investigation, 27 I. C. C. 560, 565, 606, 611; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 26 I. C. C. 53, 58; Coal Rates on the Stony Fork Branch, 26 I. C. C. 168, 174; Lumber from Louisiana to North Atlantic Points, 26 I. C. C. 186, 192; Wichita Falls System Joint Coal Rate Cases, 26 I. C. C. 215, 222, 223; St. Louis, Springfield & Peoria R. R. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 234, 237; Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., 26 I. C. C. 245, 250; Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 26 I. C. C. 638, 648; In Re Irregularities in Mine Ratings, 25 I. C. C. 286, 295; In re Advances in Demurrage Charges, 25 I. C. C. 314, 315; In re Suspension of Western Classification No. 51, 25 I. C. C. 442, 486; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 74; Regulations Restricting the Dimensions of Baggage, 26 I. C. C. 292, 297; Commercial Club of Superior v. G. N. Ry., 24 I. C. C. 96, 111, 112, 117;

Acme Portland Cement Co. v. Am. Exp. Co., 28 I. C. C. 316; In re Separation of Operating Expenses, 30 I. C. C. 676, 678; Allowances at Kansas City, 34 I. C. C. 442, 446; Natl. Petroleum Asso. v. A. T. & S. F. Ry., 38 I. C. C. 65, 71; Knapp Supply Co. v. O. E. Ry. Co. 38 I. C. C. 627, 628; Knapp v Minneapolis, St. P. & S. S. M. Ry. Co. (N. D. 1916), 159 N. W. 81; Hilgard Lumber Co. v. C. & E. I. R. R., 45 I. C. C. 513, 515; Reconsignment Case, 47 I. C. C. 590, 624; Anthony & Jones Co. v. New York Cent. & H. R. R., (N. Y. 1918), 119 N. E. 90; Chicago Live Stock Exchange v. A. T. & S. F. R. R., 52 I. C. C. 209, 217; Tanner & Co. v. C., B. & Q. R. R. Co., 53 I. C. C. 401, 406; Miller Engineering Co. v. Louisiana Ry. & Nav. Co., (La. 1919), 81 So. 314 U. S. Cast Iron Pipe & Foundry Co. v. Director General, 57 I. C. C. 677, 681; Reconsignment and diversion rules, 58 I. C. C. 568, 576; Pittsburgh Forge & Iron Co. v. Director General, as Agent, 59 I. C. C. 29, 32; Sharon Steel Hoop Co. v. P. Co., 59 I. C. C. 378, 380; Products Co. v. Director General, as Agent, 60 I. C. C. 523, 524; Atchison Ry. Co. v. United States, 232 U. S., 199, 214. Wyandotte Terminal R. R. Co., 62 I. C. C. 1, 6; Oliver Iron & Steel Co. v. P. & L. E. R. R. Co., 64 I. C. C 447; E. I. Du Pont de Nemours & Co. v. Director General, 64 I. C. C. 667, 670; Routing on Coal from Western Maryland Mines, 66 I. C. C. 103, 108.

§3. Company material.

See Evidence §46.

(a) Carriers buying what would ultimately become company material, contracted with shippers located off their lines and agreed that if the vendor would bill the shipment beyond a designated junction point, at which their own lines and the lines of the initial carriers meet, the purchasing carrier would absorb its own division of the joint through rate, and the shippers assume only that portion of the joint through rate which accrued to the initial carrier as their division of the rate up to the junction point designated in the billing. HELD, this practice results in the application of a portion of joint rate from the point of origin to the junction point for the benefit of a particular shipper, which is not published for the public at large nor filed with the Interstate Commerce Commission under section 6 of the Act. Nor is it material whether the contractor for a carrier, or the purchasing carrier itself, is the consignor. In either case the shipment should be billed and continuously transported from point of origin through the junction point of the purchasing carrier and to the point of final destination on the purchasing carrier's line. The purchasing carrier is then clearly entitled to its division of the joint rate and the charge which it may pay on its shipment of material to the junction point is the division of the rate accruing to the initial carrier and connections, if any, up to the junction point in question. If the shipment is billed or is actually carried only to the junction point of the purchasing carrier, whether the carrier or its contractor or other private party acts as consignor, the division of a joint rate cannot apply unless this division has been lawfully published as applicable to movements to such junction point for shipment beyond. The Act to Regulate Commerce gives no indication that either carriers or contractors who furnish company materials and supplies are to be preferred over other individuals so far as rates are concerned. The public rate is the only lawful rate and is applicable to all alike without distinction. If one shipper is to have the advantage of such a division of a through rate then all other shippers should have the same advantage, and the only way to secure this advantage to one is to publish it available for all. A carrier acting in the capacity of shipper or consignor stands upon a footing of absolute equality with every other shipper with respect to the application of published rates to such shipments except in regard to that part of a joint rate which accrues upon the purchasing carrier's own line. Practice condemned and complainant dismissed. Beekman Lumber Co. v. St. L. & S. F. R. R. Co., 21 I. C. C. 270, 272, 273, 275.

(b) The local haul to a junction point is a different service from that performed to the same point as part of a through haul to a destination beyond, and the fact that fictitious billing may be resorted to, to secure the unlawful application of the division of a joint rate for that service is no reason for condemning the lawful practice of billing bona fide through shipments to ultimate destination at the through rate. False or fictitious billing of company material with intent to defeat the application of the lawful rate for the service actually performed like

other fraudulent practices with like intent would subject the guilty party to the penalties of the law for offenses of this sort in general. Beekman Lumber Co. v. L. Ry. & N. Co., 21 I. C. C. 280, 282.

§3½. Confiscation of Fuel.

ALL CITATIONS

Springfield Light, Heat & Power Co. v. Norfolk & W. Ry. Co., 260 Fed. 254, 259.

§4. Collection of Charges.

See Freight Charges; Overcharges; Undercharges.

IMPORTANT CASES SINCE 1908

(a) Under the law and the long established custom a carrier has the right to require prepayment of its charges, or to transport the freight and collect all of such charges on delivery thereof, or to accept part of the charges in prepayment and collect the remainder upon delivery. In re Transportation of Company Material, 22 I. C. C. 439, 440.

(b) The Commission reopened 57 I. C. C. 591 prescribing rules and regulations for the prompt payment of transportation rates and charges with particular reference to its application on freight moving wholly or partly by water. A considerable volume of traffic in this country moves partly by rail and partly by water in competition with all rail routes. Apparently there is no good reason for a difference in practice with respect to the extension of credit where the transportation is by railroad and where partly by railroad and partly by water when both are under a common control, management or arrangement for a continuous carriage or shipment. Petition was filed to modify the order with regard to export traffic. The delay incident to presentation of expense bills on export traffic is usually not more than two days. HELD, on export traffic the 96 hours for payment of charges should be computed from the first 4 p. m. following the time when the vessel is completely loaded freight bills to be presented on that day. Ex Parte 73, 63 I. C. C. 375.

ALL OTHER CITATIONS

Emerson v. Central of Ga. Co., 72 So. R. (Ala., 1916) 122, 120; Waters v. Becker, (Wisc., 1921), 186 N. W. 167.

§5. Delivery or Receipt.

See Drayage; Express Companies §2; Side Tracks; Spotting; Stock Yard Companies; Switch Tracks and Switching §5.

CASES 1887-1908

(a) While carefully guarding their rights in all matters to which it relates, the Act does not proceed upon the theory that shippers are absolved from all duty in looking after the delivery of their freight to railroads for carriage. Riddle Dean & Co. v. B. & O. R. R., 1 I. C. C. 779, 784.

(b) Collection and delivery are not required by the Interstate Commerce Act to be alike at places grouped under the same rate. Detroit, Grand Haven & Milwaukee Ry. Co. v. Interstate Commerce Commission, 7 I. C. C. App. LXXIV.

(c) Transportation by rail undoubtedly involves a suitable delivery. Discrimination may rise in the delivery as well as in the receipt or the transportation. Authority over the transportation must carry with it authority over the delivery. St. Louis Hay & Grain Co. v. C. B. & Q. R. Co., 11 I. C. C. 82, 87.

IMPORTANT CASES SINCE 1908

(d) A confectionery merchant, at 3142 14th St., N. W., Washington, D. C., alleged unjust discrimination in that defendants extended to other parts of the city including that one known as Georgetown, free collection and delivery service from and to the shipper's door, while denying same to complainant. Defendants made free deliveries to 14th Street N. only as far as Florida Ave., while they made deliveries as far west as 37th and U. Sts., in Georgetown. From the stations of two of the defendants to 37th and U Sts., the distance is 576 blocks greater than to complainant's place of business. From the station of another of the defendant's the distance is very much greater to 37th and U than to complainant's store. It appeared that on account of the increased growth on Washington, north of Florida Ave. on 14th St., there were in complainant's vicinity some 70 stores in operation; also a general market and ice factory, and other industries. The cost of delivery beyond the free delivery zone was 2c per 100 lbs. with a minimum charge of 10c per package. HELD, that complainant was unduly prejudiced by this discrimination and defendants should desist from such preferences. Cassassa v. P. R. R. Co., 24 I. C. C. 629.

(e) And delivering lines owe to shippers under joint rates the obligation to do what they reasonably can to avoid delays in the delivery of their traffic. Detroit Reconsigning Case, 25 I. C. C. 392, 395.

(f) It is the duty of a carrier to give a receipt to conform to the markings on the shipment. Parlin & Oredorff Plow Co. of St. Louis v. U. S. Express Co., 26 I. C. C. 561, 562.

(g) It is the general custom for carriers to haul freight from points on their respective lines to industries located on their own sidings without switching charges. Dixie Cotton Oil Company v. St. Louis, Iron Mountain & Southern Railway Co. 27 I. C. C. 295, 297.

(h) Railroads attempted to withdraw a free store door delivery service accorded by them to merchants at Washington, D. C., on articles falling within the first four classes moving to Washington from New England territory, greater New York and Philadelphia. This free service did not apply to shipments in the other classes or to any shipments coming to Washington from other points of origin than those above specified. Defendants sought to justify the withdrawal on the ground that free service was instituted to prevent the congestion of terminals at Washington, and that this congestion has been relieved recently by the building of new terminal facilities. It appeared that a similar free service was extended to the merchants at Baltimore on the first three classes, but not on the fourth class, and that these merchants, as jobbers and retailers, were in competition with Washington merchants. HELD, that the free service should not be withdrawn with respect to the first three classes so long as it was extended to Baltimore since to permit such withdrawal would result in unjust discrimination against Washing to merchants. Washington, D. C. Store-Door Delivery, 27 I. C. C. 347.

(i) In the absence of tariff provision to the contrary, rates to a given point include delivery only on a carrier's own rails. Ohio Iron & Metal Co. v. C. M. & St. P. R. R. Co., 28 I. C. C. 703, 705.

(j) If a service offered and for a long time performed in consideration of a rate includes taking property from a given point and delivering at a given point, the delivery at the point is in no sense a "free service." Rates in Chicago Switching District, 34 I. C. C., 234, 242.

(k) Unjust discrimination resulting from limitations upon certain shippers in connection with receipt and delivery of freight at undefined points on west bank of Mississippi River must be corrected. St. Louis Terminal Case, 34 I. C. C., 453, 466.

(l) The fact that inanimate or dead freight may be required to be delivered to customers on the spur tracks at their plants is no sufficient reason for a like rule being applied to live stock. Nashville Abattoir, Hide & Melting Asso. v. L. & N. R. R. Co., 40 I. C. C. 134, 139.

(m) A reasonable tender of freight at an accessible point must be made by carriers to consignees under the law. Ordinarily such a delivery is affected by setting the car on a team track or private siding. But the usual method is not the exclusive method. It is followed because it is the most convenient and practicable under ordinary conditions. The underlying requirement in all cases is that the carrier shall make a practical loading. St. Louis, Mo. (Cupples Station) Terminal Regulation, 40 I. C. C., 425, 432.

(n) The duties of the carrier and the shipper in respect to the delivery of goods are reciprocal. The circumstances and conditions attending the delivery of freight at terminals in the large cities, and even from the depots of carriers in the smaller communities, are such that it is not only impossible for the shipper to anticipate the arrival of his goods and be there to receive them, but also it would be equally disadvantageous to the carriers, whose facilities for the receiving and handling of freight are so congested and inadequate in many communities that much time and thought on the part of transportation companies, public commissions, and regulatory bodies are being devoted to the solution or amelioration of such conditions. Bills of Lading, 52 I. C. C. 671, 700.

(o) Whether customary and reasonable delivery is made on an ordinary team track, switch track or plant track of an industry, it is a public transportation service. Wharton Steel Co. v. Director General, 59 I. C. C. 11, 21.

(p) It is the duty of carriers under line-haul rates to deliver or receive c. l. freight at usual points of unloading or

loading unless such points are so located that the request for the receipt and delivery at such spots could not, in view of general usage, be regarded as reasonable. Wharton Steel Co. v. Director General, as Agent, 59 I. C. C. 11, 21.

(q) A service that is of such a nature that an engine crew, admittedly performing its work with marked efficiency and dispatch, can interchange but two cars an hour, can not fairly be regarded as merely a service of delivery substituted for team track, industrial spur or private siding delivery. Carey Mfg. Co. v. Director General, as Agent, 59 I. C. C. 640, 644.

(r) There are certain fundamental differences in the carriers legal rights and liabilities which they can not be required to disregard to the extent of making deliveries on private tracks without requiring surrender of the order bill of lading or other adequate protection against losses for which such deliveries render them liable. These differences necessitate a different manner of handling such shipments when destined for delivery on private sidings from that employed on shipments for team track delivery, Diversion and reconsignment rule, 61 I. C. C. 385, 391.

(s) And carriers are required to deliver or receive c. l. freight at the usual points of loading or unloading unless such points are so located that the request for receipt and delivery at such spots could not, in view of general usage be regarded as reasonable. Edge Moor Iron Co. v. Director General, as Agent, 61 I. C. C. 537, 540.

IMPORTANT CASES SINCE 1908

(t) The refusal of a carrier to accept certain shipments when tendered for transportation after close of business on day preceding effective date of increased rates found not to have resulted in unreasonable or unlawful charges, and the acceptance of an occasional shipment from complainant after the closing hour found not to establish the existence of such a practice. Transcontinental Freight Co. v. Director General, as Agent, 62 I. C. C. 127.

(u) In testing the extent of the carrier's legal obligation as to the delivery of carload freight, two circumstances are entitled to primary consideration. One is the extent of the service involved in a typical team track delivery; the other, the extent of the service rendered in the typical shunting of a car upon a siding of a shipper clear of the main track, the substitute for team track delivery. Wherever a particular delivery service-spotting at some place of unloading within a plant, properly may be construed as the equivalent of either of these two services, and the rendition of such service practical, the Commission may require a carrier to perform such service with its own equipment as part of its legal obligation as to delivery of carload traffic. Lehigh Portland Cement Co. v. Director General, 62 I. C. C. 231, 236.

(v) Under the law a reasonable tender of freight at an accessible point must be made by carriers to consignees. Ordinarily delivery by the carrier to the consignee or by the shipper to the carrier is effected by settling the car on the team track or private siding, or in the car of less carload traffic, at the carrier's freight station. The underlying requirement in all cases is that the carrier shall make a practical delivery or afford facility for practical loading. Carriers must maintain reasonable facilities for the receipt of freight from shippers. National Wholesale Grocers Asso. v. Director General, 62 I. C. C. 375, 402.

(w) Placing cars within complainant's plant upon the interchange tracks of its railway, a plant facility, found to constitute delivery at such industry under the line-haul rates. Whitaker-Glessner Co. v. B. & O. R. R. Co., 63 I. C. C. 47.

(x) The obligation as common carriers involves only a delivery and acceptance of carload shipments at some reasonably convenient point of interchange. Gulf States Steel Co. v. Director General, 66 I. C. C. 255, 258.

(y) The receipt and delivery of property are a part of a carrier's transportation services. Elevation and transfer in transit have frequently been found by the commission and the courts to constitute necessary steps in the transportation of various kinds of property. Guaranty Claim of Central Elevator Co., 72 I. C. C., 175, 176.

(z) Defendant track lines unable to make delivery to plant of complainant without using tracks of Pittsburgh & Ohio Valley Ry. Co., but since that road is found to be a common carrier subject to the act delivery by connecting lines

to the Valley upon its interchange tracks does not constitute delivery to complainant and is not a completed service at line-haul rates. Carnegie Steel Co. v. Director General, as Agent, 80 I. C. C. 269, 275, 276.

(aa) Cars were switched from dock to carrier's scale, for weighing, and returned to dock. Switching tariff provided rates for "intra-plant" and "intra-terminal" switching. HELD, movement was not "intra-plant," switching within definition of tariff, and was not "from one track to another," within definition of "intra-terminal" switching, which contemplates movement from one plant or industry to a different plant or industry. Scale track was not point of actual or constructive delivery, and mere fact that cars were stopped at scale for weighing makes that point no more a destination or "another track" than would be any point along route at which for operating reasons, cars might be momentarily stopped. Movement herein involved was not covered by tariff. Mitsui & Co. v. Director General, as Agent, 81 I. C. C. 489.

(bb) Shipment of coal to Drew, Miss., placed on public delivery track for unloading, was subsequently reconsigned to another point at complainant's request after original consignee's rejection. Combination rates to and from Drew assessed. Rule claimed applicable by complainant provided for assessment of through rate plus reconsignment charge if reconsignment order given after arrival at original destination "but before placement for unloading." HELD, original consignee having no private track, car was properly placed for unloading on public delivery track; rule relied upon being therefore inapplicable. Memphis Freight Bureau v. L. & N. R. R. Co., 83 I. C. C. 589.

(cc) In absence of instructions to contrary, it is right of carrier, and ordinarily would be appropriate course, to place car for unloading promptly upon arrival at destination. Memphis Freight Bureau v. L. & N. R. R. Co., 83 I. C. C., 589, 590.

(dd) Where the facilities of an industry are so constructed that delivery at its plant is rendered impracticable, the duty of the carrier is fulfilled if it holds itself out to receive and deliver on a convenient interchange track. Divisions received by Brimstone R. R. and Canal Co., 88 I. C. C. 62, 69.

(ee) The delivery and receipt of carload freight on industrial spur tracks within a carrier's switching limits in a city, is not an added service for which the carrier is entitled to make, or should make, a charge additional to the line-haul rate to or from the city, where the line-haul rate embraces a receiving and delivery service at team tracks or freight sheds for which the spur track service is a substitute. Interstate Com. Com. v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 814, 818; 234 U. S.—, 58 L. ed.—, reversing 188 Fed. 229, 929, and affirming the decision of the Commission in 18 I. C. C. 317, 318.

(ff) Though shippers, in contracting with a carrier for the construction of industrial spur tracks to their establishments, consent to a special charge for the receipt and delivery thereon of freight by the carrier, such service is performed subject to the law of the land requiring that the carrier's charge shall not be unreasonable or unjustly discriminatory, and if it become apparent that the shippers are subjected to arbitrary and unwarranted exaction, they are not estopped from bringing the matter before the Commission, nor from securing its order directing the carrier to stop the objectionable practice. Interstate Com. Com. v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 814, 819; 58 L. ed.—234 U. S.

(gg) In the absence of special contract or usage to the contrary, under the common law, carriers by land are bound to deliver or tender goods to consignee at his residence or place of business, and until this is done they are not relieved from responsibility as carriers. This rule, however, never has applied to railroads. They are exempt from personal delivery and bound only to carry the goods to the depot or station to which they were consigned and there haul or place them in a warehouse ready for delivery whenever the consignee or owner calls for them, after notifying the consignee or owner of their readiness to deliver. A. T. & S. F. Ry. Co. v. I. C. C., 188 Fed. 229, 237; S. P. Co. v. I. C. C., 188 Fed. 241.

(hh) It is not the duty of a carrier to completely fill the sidetrack of a shipper with cars, even though the cars sufficient to fill such side-track are held by it at a junction just short of such des-

tination. Menasha Paper Co. v. C. & N. W. Ry. Co., 36 Sup. Ct., 501.

(ii) The Act, as it now is, provides that transportation which must be furnished to all upon equal terms includes the delivery of freight as part of its transportation. While §3 remains part of the act in its original form, it must be given a reasonable construction with a view to carrying out all the provisions of the act and to make every part of it effective, in accordance with the intention of Congress. Pennsylvania Co. v. United States, 35 Sup. Ct. 370, 375; 236 U. S. 351, 59 L. ed. 616.

(jj) The provisions of §3 of the Act must be read in connection with the amendments and subsequent provisions, which show that transportation as used in the act covers the entire carriage and services in connection with the receipt and delivery of property transported. So there can be no question that when a carrier uses terminal facilities in connection with the receipt and delivery of carload freight transported in interstate traffic, it is subject to the provisions of the act, and is obliged as a common carrier in that capacity to afford all reasonable, proper, and equal facilities for the interchange of traffic with connecting lines, and for the receiving, forwarding, and delivery of property to and from its own lines and such connecting lines, and is obliged not to discriminate in rates and charges between such connecting lines. By the amendments to the act, the facilities for delivering freight of a terminal character are brought within the terms of the transportation to be regulated. Pennsylvania Co. v. United States 35 Sup. Ct. 370, 374; 236 U. S. 351, 59 L. ed. 616.

(kk) A contract for transportation of a carload obliges the carrier, if required, to place the car on a private siding for unloading. Lee v. Erie R. Co., 158 N. Y. 730.

(ll) A railroad furnishing sufficient facilities for the receipt and delivery of freight cannot be requested to receive freight on a private switch. Fairview Coal Co v. Arkansas Cent. R. Co. (Arkansas, 1923), 252 S. W. 920.

ALL OTHER CITATIONS

Dubuque Shippers' Assn. v. C. & N. W. Ry. Co., 26 I. C. C. 565, 566; Anacostia Citizens' Assn. v. B. & O. R. R. Co., 25 I. C. C. 411; Bahrenburg Bros & Co. v. A. C. L. R. R. Co., 24 I. C. 561, 568; Haverhill Box Board Co. v. B. & A. R. R. Co., 28 I. C. C. 336, 337; Ludowici-Celadon Co. v. A. C. L. R. R. Co., 28 I. C. C. 693, 695; Anderson-Tully Co., v. M. L. & T. R. R. & S. S. Co., 30 I. C. C. 140, 144; Merchants' & Mfrs' Asso. v. C. R. R. Co. of N. J., 30 I. C. C. 396, 399, 400; Industrial Railway Case, 29 I. C. C. 212, 225, 235; Lewis v. N. Y. O. & W. Ry. Co. (N. Y., 1914), 104 N. E. 944, 945; Merchants & Mfrs. Asso. v. B. & O. R. R. Co., 30 I. C. C. 388, 393; Peoples Fuel & Supply Co. v. G. T. W. Ry. Co., 30 I. C. C. 657, 661; Coovart v. S. P. & S. Ry. Co. (Wash., 1914), 141 Pac. 324; Complaint of Dartnell, Ltd. (Can. Ry. Comm.), File 1700. 44; New England Coal & Coke Co. v. N. & W. Ry. Co. 33 I. C. C. 276, 278; Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 52; Chattanooga Log Rates, 35 I. C. C. 163, 167; Foster Lum. Co. v. G. C. & S. F. Ry., 36 I. C. C. 241, 242; Toch Bros. v. C. of G. Ry. Co. 41 I. C. C. 368; Kriel v. B. & O. R. R., 41 I. C. C. 434; Milk and Cream Rates to New York City, 45 I. C. C. 412, 421; New York Harbor Storage, 47 I. C. C. 141, 157; D. M. S. Live Stock Ex. v. C. B. & Q. R. R., 47 I. C. C. 287, 318; Omaha Grain Exch. v. G. N. Ry., 47 I. C. C. 532, 537; Schaeffer & Son v. L. I. R. R. Co., 48 I. C. C. 25, 30; Marting Iron & Steel Co. Case, 48 I. C. C. 620, 622; Hood & Sons v. B. & M. R. R., 49 I. C. C. 694; Natl. Tube Co. v. B. & O. R. R., 50 I. C. C. 489, 492; Ottawa Coal & Supply Co. v. D. T. & I. R. R., 50 I. C. C. 87, 88; Youngblood, Inc. v. C. R. R. Co. of N. J., 50 I. C. C. 217, 220; National Tube Co. v. B. & O. R. R., 50 I. C. C. 489,498; Bills of Lading, 52 I. C. C. 671, 719; Allen v. L. V. R. R. Co., 53 I. C. C. 33, 36; Louisville & N. R. Co. v. Camody, (Ala., 1919), 82 So. 648; Swift & Co. v. Director General, 56 I. C. C. 309, 315, 316; United States Cast Iron Pipe & Foundry Co. v. Director General, 57 I. C. C. 677, 681, 682; Geisel Mfg. Co., 59 I. C. C. 193; Lowry Lumber Co. v. Director General, as Agent, 59 I. C. C. 709, 710; Phoenix Portland Cement Co. v. Baltimore & Ohio R. Co., 269 Fed. 136; Tidewater Paper Mills Co. v. B. T. R. R. Co., 80 I. C. C. 493; Grasselli Chemical Co. v. Director General, as Agent, 81 I. C. C. 562, 564.

§5½. Free Transportation.

See Passenger Fares and Facilities §12.

IMPORTANT CASES SINCE 1908

(a) The spirit of the whole Act forbids the free carriage of property except where public interests are involved under the conditions specified in section 22. Legality of Express Franks, 50 I. C. C. 599, 603.

ALL OTHER CITATIONS

Ridge Coal Mining Co. v. M. P. R. R. Co., 61 I. C. C. 259, 261, 262.

§6. Notifying consignor or consignee. See Notice.

IMPORTANT CASES SINCE 1908

(a) The Commission said in the Bill of Lading case (52 I. C. C. 671, 719, 720) that at Common Law the duty of a carrier to give notice to the shipper when a shipment is refused can only arise when the carrier is required to make personal delivery, and has no application to railroads when goods are to be deposited in a warehouse to await call, and failure as warehouseman to give such notice is not such negligence as to make the carrier liable for any loss caused thereby. The Commission, however pointed out that this was not the uniform law by any means in all the states. In many the carriers are required to give notice to the consignor if the consignee fails or refuses to accept the shipment. The Commission in this case was asked to incorporate in the bill of lading a provision requiring the carriers to give such notice. The Commission declined to do this, not because it disapproved of such practice, but evidently looked upon it more as an operating detail, which it was averse to giving a "bill of lading Status." That the Commission desired the carriers to give such notice is shown by the following language in the decision (p720): "It is undoubtedly to the mutual interest of the carrier and shipper that such notices should be given, but we have no reason to believe that the carriers fail, in the general conduct of their business, to exercise due diligence and observe good business methods in respect to the giving of such notices."

(b) Altho at one time the Commission said that it is to the interest of the public that the consignor should be promptly notified when a shipment is not delivered. Kehoe & Co. v. N. C. & St. L. R. Co., 14 I. C. C. 555, 556.

(c) A carrier's agent at destination is under no duty to notify a consignor by wire that a shipment was not promptly delivered. His duty goes no further than to give intended purchaser notice of arrival. Famechon Co. v. C. B. & Q. R. R., 45 I. C. C. 598, 600.

(d) The failure of a carrier to notify complainant of arrival of a shipment, consigned to itself in care of a warehouse company, in time to comply with tariff requirements necessary to secure the application of joint rates from origin to ultimate destination, resulted in the loss of that privilege. HELD: As complainant made arrangement with warehouse company for receipt and storage of the shipment, he recognized that company as his agent and delivery to complaint. Scattergood & Co. v. Director General, as Agent, 60 I. C. C. 155.

ALL OTHER CITATIONS

Scandinavian-American Trading Co. v. B. & O. R. R. Co., Unrep. Op. A388; Levenson Wrecking Co. v. New York Cent. & H. R. R. Co. (Sup. Ct. 1915) 156 N. Y. S. 656; Emerson v. Central of Ga. Ry. Co., 72 So. R. (Ala., 1916) 120; Danzer & Co. (Inc.) v. C. & O. Ry. Co., 58 I. C. C. 119, 120.

§6½. Notice to Carrier. See Notice.

IMPORTANT CASES SINCE 1908

(a) It is the duty of a shipper to inform carriers of the delivery required under a rate indicated, where the delivery is to be made off the tracks of the line carrier. Ohio Iron & Metal Co. v. C. M. & St. P. Ry. Co., 28 I. C. C. 703, 706.

§7. Prompt and safe carriage.

IMPORTANT CASES SINCE 1908

(a) The prompt and safe carriage of goods is an obligation enforced upon carrier by the common law and not by the Act to Regulate Commerce. Blume & Co. v. Wells, Fargo & Co., 15 I. C. C. 53, 54.

(b) The delivering lines owe to shippers under joint rates to do what they reasonably can to avoid delays in the delivery of their traffic. The Detroit Reconsigning Case, 25 I. C. C. 392, 395.

ALL OTHER CITATIONS

New England Investigation, 27 I. C. C. 560, 565, 571, 572; In re Suspension of Western Classification No. 51, 25 I. C. C. 442. 478.

§7½. Receipt by consignee.

IMPORTANT CASES SINCE 1908

(a) Rule requiring of consignees that

where external evidence is absent they receipt for cases of eggs in same terms as carrier receipted when same were offered for shipment, held not unreasonable. New York Mercantile Exchange v. B. & O. R. R. Co., 36 I. C. C. 156.

(b) When a rail carrier's lighter or barge with a shipment on board reports to a steamship company at points designated in a permit stating when and where shipment will be received, the shipment, so far as the rail carrier is concerned, has reached its destination, and it is then incumbent upon consignee to take delivery. New York Board of Trade v. Director General, 59 I. C. C. 205, 208.

ALL OTHER CITATIONS

Atchison T. & S. F. Ry. Co. v. Ehret, (Okla., 1915) 152 Pac. 1107.

§8. Special services.

See Express Companies §2; Special Rates and Services.

IMPORTANT CASES SINCE 1908

(a) A speed between ten and eleven miles an hour, including stops at divisional points, is nothing more than ordinary merchandise schedule. Arlington Heights Fruit Exchange v. S. P. Co., 19 I. C. C. 148, 152.

(b) Rail carriers may lawfully operate "off-track" stations, either through the instrumentality of transfer companies, or through their own employees, and may operate the same both as a convenience for shippers and as a means of securing traffic that otherwise might be lost to them. St. Louis Terminal Case, 34 I. C. C. 453, 460.

(c) Among the various privileges included in rates are direct delivery from package boats to private docks, storage, reconsignment, and "split' deliveries of carload lots, which should be paid for; but there may be no justification for a horizontal increase on all commodities. Rates via Rail-and-Lake Routes, 37 I. C. C. 302, 312.

(d) Transportation has never been considered to include the use of a carrier's equipment and station property as a salesroom; and the mere toleration by the carriers through a period of years of such a use of their property affords no basis for a ruling that the practice has now grown into a shipper's right and a carrier's duty and is a transportation service. The Car Peddling Case, 45 I. C. C. 494, 500.

(e) The service of mines by a carrier under trackage agreements is, in practical and legal effect, the substantial equivalent of the extension of its rails to them. Ridge Coal Mining Co. v. M. P. R. R. Co., 62 I. C. C. 259, 261.

ALL OTHER CITATIONS

Mountain Ice Co. v. D. L. & W. R. R. Co., 15 I. C. C. 305, 316; Fay v. Chicago, R. I. & P. Ry. Co., (Ia., 1919), 173 N. W. 69.

§9. State interference.

See Express Companies §1½; Interstate Commerce §4; State Rates and Regulations.

CASES 1887-1908

(a) Until legislation by Congress is had, as to the qualifications, duties and liabilities of employes on railway trains engaged in interstate commerce, it is within the power of the State to provide against accidents on trains while within their limits. Nashville, Chattanooga & St. Louis R. Co. v. Alabama, 2 I. C. R. 238.

(b) The Statute of Alabama, declaring all persons afflicted with color blindness disqualified from serving on railroad lines within the State in certain capacities, and providing for an examination and imposing a fine for any railroad company to employ a person in any of such capacities who has not a certificate of fitness from the examiners, is not repugnant to the power vested in Congress to regulate commerce among the States, and does not violate the clause of the Fifth Amendment which declares that no person shall be deprived of his property without due process of law. Nashville, Chattanooga & St. Louis R. Co. v. Alabama, 2 I. C. R. 238.

ALL OTHER CITATIONS

De Rochemont v. Railroad, 75 N. H. 158, 163, 71 A. 868.

§10. Unloading or loading at terminal.

See Facilities and Privileges §10; Loading and Unloading; Minimums; Terminal Facilities.

CASES 1887-1908

(a) Forty-eight hours is an unreasonably small allowance of time for unloading, where any portion of it has to be consumed in attending to the preliminaries antecedent to the actual process of unloading; but forty-eight hours is a reasonable time for actual unloading. Pennsylvania Millers' State Asso.

v. Philadelphia & R. R. Co., 8 I. C. C. 531.

IMPORTANT CASES SINCE 1908

(b) Shippers should be allowed to handle their own freight to and from cars wherever practicable. Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 60.

(c) Carriers are justified in requiring that shippers load and unload their freight to and from cars on car floats when ordered and placed at vessels or outside piers. The reason for such a rule as to carload freight on team tracks apply to make transfer with nearly equal force. The freight is switched between rails and car float in unbroken carloads, and is not ordinarily handled by the railway company's employees. Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 62.

(d) The voluntary assumption by defendant of the obligation to perform the loading service in connection with nonperishable freight raises no presumption that its refusal to perform a similar service with respect to perishable freight is unreasonable. Swift & Co. v. N. Y., N. H. & H. R. R., 44 I. C. C. 481, 486.

(e) Ever since the inception of railroad transportation shippers have, generally speaking loaded and their consignees have unloaded carload freight. This practice or custom arose naturally because it was the easiest, most economical and satisfactory way of doing business. It is practically out of the question for railroads to provide men to load and unload carload freight at all points in the country. The shipper can load more satisfactorily and economically than anyone else. He is able to possess himself of effective appliances, where they can be used, to employ skilled men to properly load all carload traffic whether shipped in closed or on open cars. For the same reasons consignees are the best fitted to unload shipments. For more than fifty years the loading by consignor and unloading by consignee has been a recognized rule of carload transportation, and this rule extends to and includes commodities which yield to carriers the largest part of their income. Quoting from opinion in National Lumber Dealer's Asso. v. A. C. L. R. R. Co., 14 I. C. C. 154 Chicago Live Stock Exchange v. A. T. & S. F. R. R., 51 I. C. C. 209, 216.

(f) The soundness of the view that ordinarily it is the duty of the shipper to load and unload carload freight can not be questioned. Chicago Live Stock Exchange v. A. T. & S. F. Ry. Co., 52 I. C. C. 209, 216.

(q) The duty of unloading freight or of furnishing orders for other disposition thereof after notice of arrival rests primarily upon the consignee. Kidston & Co. v. D., L. & W. R. R. Co., 74 I. C. C. 135, 138.

(h) Tariff provided that carriers would load bulky freight. Shipments were made by complainants; and carriers, being unable to perform loading, permitted complainants to perform this service. Allegation that charges paid to persons hired to perform loading constitute overcharges, not sustained. No tariff provided allowance to complainants for performing loading service. Since nothing in excess of applicable rates was received by carriers, complainants were not overcharged. Ragone & Son v. Director General, as Agent, 80 I. C. C. 491.

ALL OTHER CITATIONS

Commercial Club of Omaha v. B. & O. R. R. Co., 19 I. C. C. 397, 401; Peale, Peacock & Kerr v. C. R. R. Co. of N. J., 18 I. C. C. 25, 35; Reconsignment and Storage of Lumber and Shingles, 27 I. C. C. 451, 456; In re Advances in Demurrage Charges, 25 I. C. C. 314, 315; L. C. L. Minimum Handling Charges, 43 I. C. C. 266; Sand Point Lumber & Pole Co. v. N. P. Ry. Co., 48 I. C. C. 418, 420; Dulaney Bros. v. C. & A. R. R., 51 I. C. C. 579; Tanner & Co. v. C. B. & Q. Ry., 53 I. C. C. 401, 407; Live Stock Loading and Unloading Charges, 58 I. C. C. 164, 166; Wharton Steel Co. v. Director General, 59 I. C. C. 11, 21; Lowry Lumber Co. v. Director General, 59 I. C. C. 709, 710; Scattergood & Co. v. Director General, as Agent, 60 I. C. C. 155; Kidston & Co. v. D. L. & W. R. R. Co. 74 I. C. C., 135, 138; National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co., 80 I. C. C. 179; Carnegie Steel Co. v. Director General, as Agent, 80 I. C. C. 269.

§11. When transit ends.

See Interstate Commerce §1.

IMPORTANT CASES SINCE 1908

(a) Where grain is shipped on a local bill of lading and upon local rates to an elevation point, it is not in transporta-

tion again until the grain has been loaded in the cars for the outbound shipment in accordance with the tariff publications of the carriers governing such carload shipments. Gund & Co. v. C. B. & Q. Ry. Co., 18 I. C. C. 364, 368.

(b) Under a decision of the United States Supreme Court a movement which is interstate in fact may be converted into two local movements so that interstate rate may be defeated. Southwestern Shippers' Tariff Assn. v. A. T. & S. F. Ry. Co., 24 I. C. C. 570, 585.

(c) A movement in fact interstate may by intervening possession be converted into two local movements. Southwestern Shippers' Traffic Assn. v. A. T. & S. F. Ry. Co., 24 I. C. C. 570, 585.

ALL OTHER CITATIONS

Big Canon Ranch Co. v. G. H. & S. A. Ry. Co., 20 I. C. C. 523; Wells-Higman Co. v. G. R. & I. Ry. Co., 19 I. C. C. 487, 489, 490; Central Lumber Co. v C. M. & St. P. Ry. Co., 18 I. C. C. 495, 497; Smith v. G. C. & S. F. Ry. Co. (Mo. App, 1914), 164 S. W. 132.

III. OPERATION OF RAILROAD

§11½. In general.

CASES 1887-1908

(a) Unless the contrary is imposed as conditions in the grant of its charter, the right to construct and operate a railroad is a franchise in its nature exclusive, not held in common with the public, though the grant of the franchise is for the public use; and the tracks of a railroad are not a common highway upon which anyone can enter and use his own cars for transportation purposes against the objection of the company owning the tracks. Worcester Excursion Car Co. v. Pennsylvania R. Co., 2 I. C. R. 792.

(b) Railroad companies engaged in interstate commerce shall, unless prevented by circumstances beyond their control, run their trains in a reasonable manner and as often as the ordinary business of commerce requires, but are entitled to determine how many and what cars and engines shall constitute their trains, and are not required to divide the train and run a less number of cars upon refusal of their employees to move the usual and customary trains. Re Charge to Grand Jury (No. 1) (D. C. S. D. Cal.) 4 I. C. R. 777.

IMPORTANT CASES SINCE 1908

(c) There is no institution in which regularity of operation is more requisite than in transportation. Unification of Railroad Operation, 47 I. C. C. 757, 763.

(d) The line-haul rate covers only one placement of the car for loading or unloading, and additional charges may and should be made for each additional placement for the purpose. Wharton Steel Co. v. Director General, as Agent, 59 I. C. C. 11, 21.

(e) A carrier is entitled to initiate rates, and to adopt such policy of rate making as it deems wise. United States v. Illinois Cent. R. Co., 44 Sup. Ct. 189.

ALL OTHER CITATIONS

Unification of Railroad Operation, 47 I. C. C. 757, 761.

§12. Right of Carrier to make regulations.

See Switch Tracks and Switching §8.

CASES 1887-1908

(a) The exhibition of the bill of lading at the time of the tender of the charges and demand of the goods is not a condition precedent to the recovery of a penalty under the statute for refusal to deliver the goods, although such penalty should be inflicted only for a willful disregard of the law. Dwyer v. Gulf, C. & S. F. R. Co., 5 I. C. R. 361.

IMPORTANT CASES SINCE 1908

(b) Where carload shipments of fruits and vegetables are made to a consignee in Chicago, who is the owner of the entire contents of the car, and where delivery is made upon the team tracks of the defendant carriers, defendants must furnish the necessary help to bring the packages making up said carloads to the car door and there make delivery to the consignee, and the rule of defendants requiring consignees to take these packages inside the car is unjust and unreasonable. Wholesale Fruit & Produce Ass'n v. A. T. & S. F. Ry. Co., 14 I. C. C. 410, 420.

(c) More or less contamination results where shipments of petroleum and its products are transported with miscellaneous freight, especially to food products. Despite precautions, leakage results and gives rise to damage claims to food and other commodities injured by odor or contamination. The Commission HELD, that reasonable regulations may be made by the carriers for the transportation of said commodity, including a

reasonable limitation of the time when such shipments will be received. National Petroleum Ass'n v. L. & N. R. R. Co., 15 I. C. C. 473, 476.

(d) Carriers have the right to transport certain commodities under reasonable rules and regulations respecting their receipt, carriage and delivery. National Petroleum Ass'n v. L. & N. R. R. Co. 15 I. C. C. 473, 476.

(e) The rule enforced by a carrier restricting the receipt and shipment of L. C. L. lots of coal oil and products of petroleum to one day in each week subjects shipper to unreasonable prejudice. Any rule which restricts such shipments to less than two days in any week is unreasonable, and the days selected should be separated by at least two intervening days. National Petroleum Ass'n v. L. & N. R. R. Co., 15 I. C. C. 473, 477.

(f) Carriers have the right to make reasonable and appropriate rules respecting the acceptance and transportation of traffic. Longo Fruit Co. v. I. T. System, 38 I. C. C. 487, 489.

(g) Carriers may adapt their rates and practices to the needs of the localities and industries which they serve as to promote the welfare of shippers and carrier alike, where that can be done within the limits of reasonableness and without the undue prejudice and unjust discrimination which the law prohibits. National Livestock Shippers League v. A. T. & S. F. 63 I. C. C. 107, 117.

(h) If a shipper habitually delays cars for unloading at destination the carriers may place an embargo against freight consigned to him and thus prevent further detention of equipment if the shipper habitually delays loading cars the carrier may refuse further supply and thus prevent detention and accumulation of cars at the loading point. American Wholesale Lumber Asso. v. Director General, as Agent, 66 I. C. C. 393, 405 .

ALL OTHER CITATIONS

Public Service Commission, Wash., v. N. P. Ry. Co., 23 I. C. C. 256; Sunderland Bros. Co. v. St. L. & S. F. R. R. Co., 23 I. C. C. 259, 262; St. Louis Terminal Case, 34 I. C. C. 453, 465; Transcontinental Freight Co. v. Director General, as Agent, 62 I. C. C. 127, 128.

§13. Economy of management.

See Reasonableness of Rates §12.

IMPORTANT CASES SINCE 1908

(a) It is a false theory of transportation which seeks to force a shipper to avail himself of a less-than-carload service, which is more expensive for the purpose of increasing the gross revenues of the carrier. The true object should be to perform the service in the most economical manner and to charge for the service a reasonable compensation. Florida Fruit & Vegetable Ass'n v. A. C. L. R. R. Co., 17 I. C. C. 552, 564.

(b) It is not apparent that the public should stand responsible for mistakes made in the management of railroads. In re Advances in Rates—Eastern Case, 20 I. C. C. 243, 267; Arlington Heights Fruit Exchange v. S. P. Co., 20 I. C. C. 106, 122.

(c) It is for the public interest that every transportation service should be performed by the most economical method since that must ultimately result in the lowest transportation charge. Albree v. B. & M. R. R. Co., 22 I. C. C. 303 316.

§14. What are operating expenses.

IMPORTANT CASES SINCE 1908

(a) Interest upon funded debt is a fixed charge in nature of operating expense. In re Advances in Rates—Eastern Case, 20 I. C. C. 243, 251.

(b) Permanent improvements are not part of the operating expenses. In re Advances in Rates—Eastern Case, 20 I. C. C. 243, 266.

§15. Right to traffic.

See Origin of Traffic.

IMPORTANT CASES SINCE 1908

(a) Carriers have right to hold traffic to their own lines so long, but only so long, as in so doing they do not encrouch upon the rights of the public. Aransas Pass Channel & Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403, 414.

ALL OTHER CITATIONS

Suffern Grain Co. v. I. C. R. R. Co., 27 I. C. C. 192, 194; Salt Rates from Wisconsin to Iowa, 27 I. C. C. 526, 529.

§16. Eminent Domain.

IMPORTANT CASES SINCE 1908

(a) While a local railroad company may lawfully exercise the right of eminent domain to enforce a junction or connection or a crossing of another railroad, such power must be reasonably exercised with due regard to existing conditions, and must select a point of con-

nection or crossing with due and reasonable care. Such power and right are subject to judicial review, and the chancery court in this state has jurisdiction to decide all questions involved in the exercise of the right, except the amount of the damages, which is for the eminent domain court. Alabama & V. Ry. Co. v. Jackson & E. Ry. Co., (Miss., 1923), 95 Sou. 733.

ALL OTHER CITATIONS

Alabama & V. Ry. Co. v. Jackson & E. Ry. Co., (Miss., 1923), 95 Sou. 733.

TRANSPORTATION ACT

See Act to Regulate Commerce VI; Claims §1½; Statute of Limitations.

IMPORTANT CASES SINCE 1908

(a) Though the Transportation Act, in the portion establishing the Labor Board, does not expressly mention receivers, its definition of carriers dealt with as including any carrier by railroad subject to the Interstate Commerce Act, with certain exceptions, is sufficiently broad to cover a receiver operating an interstate railroad. Birmingham Trust & Savings Co. v. Atlanta, B. & A. Ry. Co., 271 Fed. 731.

TRAP CARS

See Demurrage §10; Ferry Car Charges.

(a) It is not to be inferred that a contract between a carrier and a shipper for a trap-car service is controlling in a consideration of what would be just and reasonable charges or rules governing the service. Trap or Ferry Car Service Charges, 34 I. C. C. 516, 526.

(b) The trap-car service has developed until the movement of less-than-car load shipments by this means is of great magnitude, and with respect to which commercial and transportation interests of country are vitally interested. Trap or Ferry Car Service Charges, 34 I. C. C., 516, 527.

(c) Trap-car service has come to be an organized and definite part of the railroad transportation system of the country. Station facilities have been located, built, and operated with a view to the maintenance of the service. With the same view industrial concerns and commercial houses have located factories and warehouses and have expended large sums of money. The service has measurably assisted industrial development generally. By cooperation carriers and shippers have made the trap car an efficient and important instrument for the expansion of both transportation and commercial business of the country. It is not desirable that anything should be done that will seriously impair its efficiency. Trap or Ferry Service Charges, 34 I. C. C. 516, 546.

(d) While conditions may properly warrant a reasonable difference in the charges dependent on the amount of the service rendered, there should be no difference with respect to what trap car service to which charges are applicable shall consist of. If a trap car is defined so as to include every movment from or to an industry sidetrack loaded with less than carload shipments in one schedule, and in another to include only cars that move between the industry and local freight or tansfer stations unjustifiable discriminations can but be the inevitable result. Trap or Ferry Service Charges, 34 I. C. C. 516, 546.

(e) A carrier performs trap-car service within its terminal. It consists largely of switching cars to and from industry sidetracks from and to freight or transfer stations located within the terminal district. Charges for terminal switch movements are generally made upon a per car basis, and they are usually made with some reference to the amount of the service. There does not seem to be any good reason why trap cars should be excepted from the general rule. If charges are made on a per car basis, they may be graded in accordance with the amount of service required and rendered and need not, therefore, be uniform at all points. Trap or Ferry Car Service Charges, 34 I. C. C. 516, 547.

(f) The statute casts the burden upon the carrier to show that proposed trap-car charges are just and reasonable. Trap or Ferry Car Service Charges, 34 I. C. C. 516, 548.

(g) The rule of the carriers apparently does not contemplate that trap-car charges shall wholly meet the cost of service, but charge is dependent upon revenue derived from line-haul service. Principle being the smaller the revenue from line-haul service the greater the trap-car charge. Macey Co. v. P. M. R. R. Co., 42 I. C. C. 593, 598.

(h) The charge for switching trap cars should be commensurate with the service performed. Macey Co. v. Pere Marquette R. R. Co., 42 I. C. C. 593, 598.

ALL OTHER CITATIONS

United Shoe Machinery Co. v. B. & M. R. R., 55 I. C. C. 206.

TRANSHIPMENT

See Facilities and Privileges §15½.

TROLLEY COMPANIES

See Electric Lines.

TRUCK COMPETITION

See Wagon Competition.

TUNNEL CHARGES

IMPORTANT CASES SINCE 1908

(a) Imperative need of the tunnel company for additional operating revenue, a terminal charge of 2 cents per 100 pounds to apply on interstate traffic between points beyond Chicago and industries and universal freight stations located on the C. W. & T. Co., granted. Chicago Warehouse & Terminal Co. Terminal Charges, 55 I. C. C. 363, 371.

(b) Authority to establish at Chicago, Ill., terminal charge of 2 cents per 100 pounds to apply on interstate l. c. l. traffic between points beyond Chicago and industries and universal freight stations located on the C. W. & T. Co., granted, Chicago Warehouse & Terminal Co. Terminal Charges, 55 I. C. C. 363, 371.

TWENTY-EIGHT HOUR LAW

ALL CITATIONS

United States v. Chicago, B. & A. R. Co., 293 Fed. 185.

TWO LINE HAUL

See Reasonableness of Rates §37.

UNDERCHARGES

I. CONTROL AND REGULATION.
- §1. Jurisdiction of Commission.
- §1½. Jurisdiction of courts.

II. DUTY OF CARRIERS TO COLLECT.
- §2. In general.
- §3. Defenses.

III. EVIDENCE.
- §3½. In general.
- §4. Admissability of tariff copies.
- §5. Burden of proof.
- §6. Testimony as to rate.

IV. LIABILITY TO PAY.
- §7. In general.
- §7½. State courts and laws.
- §8. Waiver.
- §9. Pleading.

CROSS REFERENCES

See Freight Charges; Reparation §20½.

I. CONTROL AND REGULATION.

§1 Jurisdiction of Commission.

See Interstate Commerce Commission §12; Jurisdiction of Commission.

IMPORTANT CASES SINCE 1908

(a) A complainant alleged that the carriers' demand upon him for the payment of undercharges due at the legally published rate on a carload of peaches shipped from Ridge Springs, S. C., to Philadelphia, Pa., after he had sold the peaches on commission and remitted the proceeds to the consignor was discriminatory in favor of other commission merchants who received correct freight bills before remitting. HELD that the issue was neither within the jurisdiction of the Commission nor within the scope of the Act to Regulate Commerce. Complaint dismissed. Wilson v. Penn. R. R., 50 I. C. C. 571.

(b) On complaint seeking cancellation of unpaid charges accrued during Federal control and alleged to have been unreasonable, contention by complainant that its causes of action did not arise until after charges were actually paid and that therefore claim is not barred by section 206 (c) of transportation act, 1920, HELD, jurisdiction of commission under this section does not depend upon time when action accrued, but depends instead upon whether complaint covering claim was filed with commission within one year after termination of Federal control. Pacific Grain Co. v. Director General, as Agent, 81 I. C. C. 679, 682.

ALL OTHER CITATIONS

Laning-Harris Coal & Grain Co. v. St. L. & S. F. R. R. Co., 15 I. C. C. 37, 38; Falls & Co. v. C. R. I. & P. Ry. Co., 15 I. C. C. 269, 273; Jackson Oil & Refining Co. v. S. Ry. Co., Unrep. Op. A-763.

§1½. Jurisdiction of Courts.

IMPORTANT CASES SINCE 1908

(a) The question of liability for outstanding undercharges, is a question determinable only by a court having jurisdiction and upon the facts in each case.

Conf. Ruling 314. American Smelting & Refining Co. v. Director General, as Agent, 62 I. C. C. 583, 587, 589.

ALL OTHER CITATIONS

I. C. R. R. v. Segari & Co., 205, Fed. 998, 1000.

II. DUTY OF CARRIERS TO COLLECT

§2. In general.

IMPORTANT CASES SINCE 1908

(a) Undercharges may be taken into account in settlement of charges in excess of the unlawful rates that were collected on certain shipments. McCaull-Dinsmore Co. v. M. P. Ry., 35 I. C. C. 69, 72.

(b) The obligation, under penalties of the law, is upon a carrier to collect its established charges from all by such lawful methods as may be suitable and necessary for the purpose. American Coal & Coke Co. v. M. C. R. R., 36 I. C. C. 195, 197.

(c) Where strawberries were consigned from Troy, Kans., to Boston, Mass., and due to an error of the agent of the express company consignee paid less than the legal rate between these two points, the express company was entitled to recover the balance of the legal rate between these two points. American Express Co. v. Sweeney, 283 Fed. 691.

ALL OTHER CITATIONS

Switzer Lumber Co. v. A. & M. R. R. Co., 22 I. C. C. 471, 476; Boise Commercial Club v. Adams Express Co., 17 I. C. C. 115, 121; Bovaird Supply Co. v. A. T. & S. F. Ry. Co., 13 I. C. C. 56, 67; B. & O. S. W. Ry. Co. v. New Albany Box & Basket Co. (Ind., 1911), 94 N. E. 906, 909; Louisiana Ry. & Nav. Co. v. Holly, 127 La. 615, 619, 53 So. 882; Penn. R. R. Co. v. Mogi, 71 Misc. 412, 415, 128 N. Y. Supp. 643; Oregon R. & Nav. Co. v. Coolidge (Ore., 1911), 116 P. 93, 95; American Brake Shoe & Foundry Co. v. A. G. S. R. R. Co., 26 I. C. C. 446, 448; Mixon-McClintock Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 8, 10; Crutchfield & Woolfolk v. S. P. Co., 24 I. C. C. 651, 655; Pennsylvania R. R. Co. v. Titus (N. Y., 1913), 142 N. Y. S. 43, 45; Pennsylvania R. R. Co. v. Titus (N. Y., 1912), 138 N. Y. S. 325, 327; L. & N. R. R. Co. v. McMullen (Ala., 1912), 59 So. 683, 684; Lee Broom & Duster Co. v. A. T. & S. F. Ry. Co. Unrep. Op. A-650; Menasha Woodenware Co. v. M. St. P. & S. S. M. Ry. Co. Unrep. Op. A-651; American Lumber & Mfg. Co. v. C. & O. Ry. Co. Unrep. Op. A-655; Muskogee Wholesale Grocer Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-577; Kansas City Bridge Co. v. D. Q. & E. R. R. Co., Unrep. Op. A-782; Guilford Foundry Co. v. S. Ry. Co., Unrep. Op. A-873; N. P. Ry. v. Longmire, (Wash. 1917), 167 Pac. 79; Sheldon v. Chicago, B. & Q. R. R., (Ia., 1918) 169 N. W. 189.

§3. Defenses.

See Courts §2.

IMPORTANT CASES SINCE 1908

(a) Where a carrier delivers an interstate shipment to the consignee without collecting the charges and later brings suit to recover the same according to the published schedule, nothing in the amendment of June 29, 1906, to the Act, providing that the carriers shall not collect a greater or less compensation from one shipper than from another, prevents the consignee from recouping in the suit for damages suffered by the goods in transit through the carrier's negligence. Battle v. Atkinson, 9 Ga. App. 488, 492, 71 S. E. 775.

(b) In an action by an interstate carrier of shipments of pieplant and peaches against the consignee to recover an undercharge on the lawful rates established pursuant to the Interstate Commerce Act, whether the consignee impliedly agreed to pay the lawful rate held a question of fact. New York Cent. & H. R. R. Co. v. York & Whitney Co., (Mass., 1918), 119 N. E. 855.

(c) Where carloads of fruit were shipped in interstate commerce to a commission merchant, which, as to some, told the terminal carrier that it was acting as a commission merchant, and was not the owner, and, as to others, made no such statement to the carrier, the carrier was not stopped as a matter of law to claim from the consignee undercharges, on the shipments as to which the consignee did not state it was owner, from the lawful rates established under the Interstate Commerce Act; it having misstated the rates. New York Cent. & Whitney Co., (Mass., 1918), 119 N. E. 855.

(d) Since the aim of the Interstate Commerce Act is to secure for each and every shipper engaged in interstate commerce absolute equality of reasonable rates, uniform in application, without discrimination or preference, the railroad and the shipper are bound inexorably to

follow the rate published; no excuse which operates as an evasion of that rate has any standing as matter of law in defense of a proved violation of such rate, whether arising from mistake, inadvertence or honest agreement, and where the carrier has collected less than the published rate, it may bring an action to recover the balance due. N. Y. N. H. & H. R. R. Co. v. York & Whitney Co. (Mass., 1913), 102 N. E. 366, 368.

(e) In an action by a railroad company to recover a balance of the legal freight upon an interstate shipment from the consignee who had accepted the shipment, paid the amount of the freight erroneously understated in the bill of lading, and settled with the consignor upon that basis, the defense of estoppel is not available, for the consignee is conclusively presumed to have had knowledge of the published legal rate. Chicago, M. & St. P. Ry. Co. v. Greenberg, (Minn. 1918), 166 N. W. 1073.

ALL OTHER CITATIONS

Louisiana Ry. & Nav. Co. v. Holly, 127 La. 615, 619, 53 So. 882; B. & O. R. R. Co. v. La Due, 128 App. Div. 594, 596; 112 N. Y. Supp. 964; Great Northern Ry. Co. v. Loonan Lumber Co. (S. D., 1910), 125 N. W. 644, 646; L. & N. R. R. Co. v. McMullan (Ala., 1912), 59 So. 683, 684; Hunter v. St. L. & S. F. R. R. Co. (Mo., 1912), 150 S. W. 733, 735; C. of G. Ry. Co. v. Curtis (Ga. App. 1914) 92 S. E. 318; So. Pac. Co. v. Frye & Bruhn (Wash., 1914), 143 Pac. 163, 165.

III. EVIDENCE.

§3½. In General.

See Evidence.

IMPORTANT CASES SINCE 1908

(a) In an action to recover the difference between the interstate through rate and the sum of the interstate and intrastate rates on lumber consigned to O., and reshipped on intrastate bills of lading to M., the court properly charged that the jury might consider demurrage charges and trackage charges paid at O., in determining the question whether there was an actual good-faith delivery to the consignees at O. Baltimore & O. S. W. R. R. v. Settle et al., 272 Fed. 675.

§4. Admissibility of tariff copies.

IMPORTANT CASES SINCE 1908

(a) In an action in a state court by a carrier to recover the published rate, plaintiff offered copies of portions of the schedules filed with the Interstate Commerce Commission for the purpose of proving the lawful rate. The secretary of the commission, in addition to reciting his custody of the schedules and tariffs, stated that the copies had been compared by him with the originals in his custody and were correct transcript. HELD, the copies were properly admitted in evidence under a state statute governing the admission of certified copies. Oregon R. & Nav. Co. v. Coolidge (Oreg., 1911), 116 P. 93, 94.

(b) The published classification and rates on file with a Railroad Commission are admissible in evidence as showing the classification and rate for a shipment in an action for an undercharge of freight. Emerson v. Central of Ga. Ry. Co., 72 So. R. (Ala. 1916) 120.

ALL OTHER CITATIONS

International & G. N. Ry. Co. v. Carter (Tex., 1915) 180 S. W. 663, 665; Emerson v. Central of Ga. Ry. Co., 72 So. R. (Ala., 1916) 120.

§5. Burden of proof.

See Evidence I.

IMPORTANT CASES SINCE 1908

(a) Where a carrier sues to collect of a shipper charges based on an alleged agreement to pay the freight at the legal rate established in pursuance of the Interstate Commerce Act, and defendant denies both the agreement and the rate, it is incumbent on plaintiff to prove them. Oregon R. & Nav. Co. v. Coolidge (Oreg. 1911), 116 P. 93, 94.

(b) In a suit by a carrier to collect its published interstate rate, an expert witness is properly refused permission to declare from the tariff sheets the legal rate in effect, such construction being for the court. Oregon R. & Nav. Co. v. Coolidge (Oreg. 1911), 116 P. 93, 94.

(c) In a suit by a carrier to recover from a consignee the unpaid balance due for freight charges, where it is admitted that a schedule of rates has been duly filed with and approved by the Interstate Commerce Commission, the presumption, in the absence of any showing to the contrary, is that the rates were duly published, and not that the carrier has violated the provisions of the Elkins Act, subjecting him to severe fines and penalties for failure to publish the same. Atchison, T. & S. F. Ry. v. Wagner, (Kans. 1918), 172 Pac. 519.

(d) A carrier claiming remaining unpaid charges because of its agent's undercharge for a shipment has the burden of showing by a preponderance of evidence that the shipment was erroneously classified by its agent as was claimed by it. American Ry. Express Co. v. Magnolia Fish & Oyster Co., (Tex., 1923), 225 S. W. 459.

ALL OTHER CITATIONS

Chicago & E. R. Co. v. Lightfoot et al. (Mo., 1921), 232 S. W. 176.

§6. Testimony as to rate.

See Tariffs §19.

IMPORTANT CASES SINCE 1908

(a) The last ruling, before shipment of the Interstate Commerce Commission, must govern a common carrier in its efforts to collect freight undercharges. Central of Georgia Ry. Co. v. Southern Ferro Concrete Co., (Ala. 1915), 68 So. 981, 982.

ALL OTHER CITATIONS

Oregon R. & Nav. Co. v. Coolidge (Oreg. 1911), 116 P. 93, 94; Republic Iron & Steel Co. v. Davis, (Okla., 1923) 98 So. 197.

IV. LIABILITY TO PAY

§7. In general.

IMPORTANT CASES SINCE 1908

(a) A consignee of interstate shipments who received the shipments and paid all charges claimed, which were less than the lawful rates established under the Interstate Commerce Act, as a matter of law assumed liability for the only lawful rate which it had a right to pay or the carrier a right to charge, and could not escape liability therefor through any contract with the carrier, and its liability was not a question of fact to be determined from circumstances tending to show an implied agreement. New York Cent. & H. R. R. Co. v. York & Whitney, 41 Sup. Ct. 509.

(b) Where the consignee of a shipment of coke, purchased f. o. b. at point of shipment and contracted to pay the freight, and the carrier delivered and collected from it the freight then considered due, though by error an undercharge, it elected to look to the consignee and cannot collect the deficiency from the consignor. Louisville & N. R. Co. v. Central Iron & Coal Co., 284 Fed. 250.

ALL OTHER CITATIONS

Pennsylvania R. R. Co. v. Titus (N. Y., 1912), 138 N. Y. S. 325, 327; reversed, Pennsylvania R. R. Co. v. Titus (N. Y., 1913), 142 N. Y. S. 42, 45; L. & N. R. R. Co. v. McMullen (Ala., 1912), 59 So. 683, 684; C. of G. Ry. Co. v. Curtis (Ga. App. 1914), 82 S. E. 318; Barnes Grocer Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-769; Berry Lumber & Stave Co. v. A. G. S. R. R. Co., Unrep. Op. A-771; Central of Georgia Co., v. Southern Feiro Concrete Co., (Ala. 1915), 68 So. 982; Pennsylvania R. Co. v. Reifel (N. Y. 1915) 154 N. Y. S. 203, 204; Pennsylvania R. Co. v. Titus (N. Y. 1915) 109 N. E. 857, 858; Ellington & Guy v. Norfolk Southern R. Co. (N. C. 1915) 693, 694; Atchison T. & S. F. Ry. Co. v. Ehret, (Okla. 1915), 152 Pac. 1107; Coal & Coke Ry. Co. v. Buckhannon River Coal & Coke Co. (W. Va. 1915) 87 S. E. 376; Singer v. Merchants' Despatch Transportation Co. 191 Mass. 449, 77 N. E. 882, 114 Am. St. Rep. 635; Pennsylvania R. R. v. Titus, 216 N. Y. 17, 109 N. E. 857; Union Pacific R. R. v. American Smelting & Refining Co., 202 Fed. 720, 121 C. C. A. 182. New York N. H. & H. R. Co. v. Sampson (Mass. 1916), 110 N. E. 964, 965; Union Pac. R. Co. v. W. L. Stickel Lumber Co. (Neb. 1916) 156 N. W. 1082, 1083; Emerson v. Central of Ga. Co., 72 So. R. (Ala. 1916) 120; In re Arlington Hotel Co., 98 Atl. (Del. 1916) 186, 188, 187; Crane R. Co. v. Philadelphia & R. Ry. Co., 97 Atl., (Pa. 1916), 1055; Kink v. Van Slack, (Mich. 1916), 159 N. W. 157; Norfolk & S. R. Co. v. New Bern Iron Works & Supply Co. (N. C. 1916), 90 S. E. R. 149; Yazoo & M. V. R. R. v. Zemurray, 238 Fed. 789; N. P. Ry. v. Longmire (Wash. 1917), 167 Pac. 79; New York Cent. & H. R. R. Co. v. York & Whitney Co., (Mass. 1918), 119 N. E. 855; Blackford v. St. Louis, I. M. & S. Ry., (Ky. 1918), 203 S. W. 867; Wallingford Bros. v. Bush, 255 Fed. 949, 950; Mobile & C. R. Co. v. Laclede Lumber Co., (Mo. 1919), 216 S. W. 790; Pittsburgh, C., C. & St. L. Ry. Co. v. Fink, 40 Sup. Ct. 27; C. of G. Ry. v. Lovell 190 N. Y. S. 922; Chicago & E. R. Co. v. Lightfoot et al. (Mo. 1921), 232 S. W. 176; Pacific Grain Co. v. Director General, as Agent, 81 I. C. C. 679, 681, 682.

§7½. State Courts and laws.

IMPORTANT CASES SINCE 1908

(a) In absence of rules of Interstate Commerce Commission or federal statute providing when suit must be commenced by railroad to recover unpaid freight on interstate shipment, the statutes of limitations of the state govern. St. L. S. W. Ry. v. Shields Gr. & Coal Co., (Tex. 1920) 220 S. W. 183.

ALL OTHER CITATIONS

Yazoo & M. V. R. Co. v. Willis, 71 So. R. (Miss. 1916) 563; St. L. S. W. Ry. v. Shieds Gr. & Coal Co. (Tex. 1920) 220 S. W. 183; Chicago & E. R. Co. v. Lightfoot et al. (Mo. 1921), 232 S. W. 176.

§8. Wairve.

See Waiver.

IMPORTANT CASES SINCE 1908

(a) Undercharges may be taken into account in settlement of charges in excess of lawful rates. McCaull-Dinsmore Co. v. M. P. Ry. Co., 35 I. C. C. 69, 72.

(b) Collection of undercharges may be waived in all instances where rates charged were less than the rates legally applicable and in excess of the rates found reasonable. McCaull-Dinsmore Co. v. S. D. C. Ry. Co., 41 I. C. C. 663, 667.

ALL OTHER CITATIONS

Texas Unit Construction Co. v. N. O. T. & M. R. R. Co., Unrep. Op. 2003; Lewis Mfg. Co. v. W. R. R. Co. Unrep. Op. 2118; Alcus & Co. v. I. C. R. R. Co., 38 I. C. C. 493, 494; McKee & Bilven Button Co. v. I. C. R. R. Co., 39 I. C. C. 627, 628; North Dakota Metal Culvert Co. v. G. N. Ry. Co., 40 I. C. C. 537; Washburn-Crosby Co. v. C. R. I. & P. Ry. Co., 42 I. C. C. 177, 180; American Lumber & Export Co. v. A. T. & N. R. R. Co., 42 I. C. C. 259, 260; Standard Oil Co., (Ind.) v. C. M. & St. P. Ry. Co., 42 I. C. C. 325, 326; Spahn & Rose Lumber Co. v. L. & N. R. R., 45 I. C. C. 111, 112; International Paper Co. v. M. C. R. R., 45 I. C. C. 453, 454; Standard Oil Co. (Ky.), v. Y. & M. V. R. R., 46 I. C. C. 418, 419; Grain Transit at Michigan Stations, 47 I. C. C. 104, 108; Morava Construction Co. v. A. T. & S. F. Ry., 49 I. C. C. 534, 536; United Shoe Machine Co. v. B. R. R., 51 I. C. C. 30; Harmon & Co. v. N. Y. N. H. & H. R. R., 50 I. C. C. 455; Diamond Alkali Co. v. Director General, 55 I. C. C. 711.

§9. Pleading.

IMPORTANT CASES SINCE 1908

(a) A shipper's charges against the railroad for lumber furnished for sideboards in transporting the shipment did not constitute a proper counterclaim in favor of the shipper, when sued for an unpaid balance of freight, because it was not specified in the schedule of rates which the railroad had filed. Oregon-Washington R. & Nav. Co. v. Cascade Contract Co. (Ore. 1921), 197 Pac. 1085.

UNIFORM CLASSIFICATION

See Classification §23.

UIFORM DEMURRAGE CODE

See Demurage §18½.

UNITED STATES COURTS

See Commerce Court; Courts §3; IV.

UNLOADING

See Facilities and Privileges §10; Transportation §10.

UNPUBLISHED RATE

See Evidence §60; Interstate Commerce Commission §13; Reparation §15; Routing and Misrouting §12.

IMPORTANT CASES SINCE 1908

(a) Classification description of scrap iron did not cover rails of the character shipped by complainant, nor was any class or commodity rate applicable. It becomes necessary, therefore, to determine what would have been a reasonable charge for the service rendered. Cohen-Schwartz Rail & Steel Co. v. M. L. & T., 57 I. C. C. 479-480.

(b) If a transportation service has been rendered without tariff authority and the shipper paid a sum claimed by the carrier for that service, the Commission can, upon a proper record, determine a reasonable charge therefor and order refund of whatever the carrier has collected in excess of a reasonable charge. Wharton Steel Co. v. Director General, as Agent, 59 I. C. C. 11, 22.

(c) In the absence of specific ratings or rates on the article shipped it be-

comes necessary to determine whether or not the charges collected were reasonable. Refinite Co. v. Director General, 68 I. C. C. 545, 546.

(d) Complainant attacked rate charged for transporting over the Bangor & Aroostock Ry., from St. Leonard, New Brunswick, to Griswold, Me., three carloads of soft coal shipped during September, 1918, from St. John, New Brunswick to Griswold as unreasonable and without tariff authority. Shipments were routed by shipper via St. Leonard and the bridge. They moved over the C. P. from St. John to St. Leonard at a rate of $2.30 plus a switching charge of 20c for transfer from the rails of the C. P. to those of defendant. For the haul from St. Leonard to destination defendants sixth class rate of 19c was charged. The movement from St. Leonard to Griswold was entirely over the rails of defendant, but the transportation in this country commenced at the international boundary line between St. Leonard and Van Bureau, Me., in the St. John River, which separates those two localities and is crossed by an international bridge. The rate of the 19c from St. Leonard covers an unpublished charge paid by defendant for use of that bridge. No rates on soft coal to Griswold from either St. Leonard or Van Buren were in effect and the rate applied was that on cannel coal which is rated sixth class carloads. The route via Brownville Junction is said by defendant to constitute the proper and usual route of movement. The record shows that complainants made one shipment to Griswold, subsequent to those at issue, which was so routed and moved. No evidence was offered in support of the reasonableness of the rate charged. HELD, rate charged unreasonable to extent it exceeded 11c, reparation awarded. Stetson Cutler & Co. v. Director General, 73 I. C. C. 24.

(e) The Interstate Comerce Act, §6, as amended by Act June 29, 1906, §2 providing that the carrier shall not collect a greater or less or different compensation than the rates, freights, and charges which are specified in the tariff filed, does not forbid the collection of a rate not published in the filed tariffs for a service not mentioned therein. Pennsylvania R. Co. v. M. McGirr's Sons Co., 287 Fed. 334.

(f) In Pennsylvania R. Co. v. M. McGirr's Sons Co., 287 Fed. 334, the court said p. 338: "Section 6 does not forbid the collection of an unpublished rate. It provides that the common carrier shall not collect a greater or less or different compensation for such transportation of passengers or property or of any service in connection therewith than the rates, freights, and charges which are specified in the tariff filed. This relates to a common carrier and service in connection therewith. But it has no application to services rendered in advance of the carriage. In the absence of a published tariff rate the carrier can recover for services such as towage."

ALL OTHER CITATIONS

Pennsylvania R. Co. v. M. McGirr's Sons Co., 287 Fed. 334; Walter A. Zelnicker Supply Co. v. La. West R. R., 52 I. C. C. 543; Gateway Produce Co. v. American Ry. Express Co. 61 I. C. C. 347, 348.

USE OF COMMODITY

See Classification §10; Discrimination §7½.

VALIDATION

See Passenger Fares and Facilities §8.

VALUE OF SERVICE

See Evidence §62; Reasonableness of Rates §39.

VALUE OF SHIPMENT

See Classification §11; Evidence §45; §61; Reasonableness of Rates §38; Released Rates.

VENTILATION

IMPORTANT CASES SINCE 1908

(a) Rule 120, providing when shipments of vegetables or fruit, in stock or box cars, with side doors open, that transportation will be at owner's risk of loss or damage by heat or cold, not the result of carriers' negligence, should be eliminated. Perishable Freight Investigation, 56 I. C. C. 449, 559, 561.

(b) Rule 75, providing for substitution of artificial heat for refrigeration, or vice versa, on shipments while in transit, should be revised to permit a change from service under ventilation to heater service, under reasonable re-

strictions. Charge in connection with such changes should not exceed $7.50 per car. Perishable Freight Investigation, 56 I. C. C. 449, 562, 563.

(c) If shipper specifies service "under refrigeration," carrier must furnish refrigeration and fact that shipper may place ice in package is no reason why carrier should abate the charge, but if shipper specifies service under "standard" or other form of ventilation, carrier is under no obligation to furnish refrigeration and can not justly charge for what it is not required to do. Perishable Freight Investigation, 56 I. C. C. 449, 575.

(d) Rule 230, governing opening of ventilators of cars under refrigeration, approved as modified. Perishable Freight Investigation, 56 I. C. C. 449, 580.

VERDICT

See Crimes §31.

VOLUME OF TRAFFIC

See Evidence §63; Reasonableness of Rates §40.

VOLUNTARY RATES

See Advanced Rates §8(1); Evidence §64; Reasonableness of Rates §16; §33½; Reparation §16.

VOLUNTARY REDUCTION

See Evidence §64.

WAGES

See Evidence §64½; Labor Board; Newlands Act.

CASES 1887-1908

(a) The diminished opportunity to earn wages, induced by the same conditions which forced the railroad into the hands of a receiver, should be considered when deciding the question of reduction or maintenance of the old wage schedule. Ames Union P. R. Co. (C. C. D. Neb.), 4 I. C. R. 619.

(b) Receivers must give employes an opportunity to be heard before fixing wage schedules. Ames Union P. R. Co. (C. C. D. Neb.), 4 I. C. R. 619.

(c) Receivers in possession of a railroad will not be permitted to reduce the wages of employes without giving them notice and an opportunity to be heard, as required by the contract between the men and the company, although an opportunity is given to protest against the new schedules after they are prepared. Ames Union P. R. Co. (C. C. D. Neb.) 4 I. C. R. 619.

(d) Wages of the employes of a railroad in the hands of a receiver will not be reduced below what is reasonable and just in order to pay dividends on stock for which practically no value was paid, and interest on bonds which represent profit in construction. Ames Union P. R. Co. (C. C. D. Neb.), 4 I. C. R. 619.

(e) Wage schedules are not within the class of executory contracts which receivers can renounce while relying on the power of the court to compel the employes to continue in service. Ames Union P. R. Co. (C. C. D. Neb.), 4 I. C. R. 619.

(f) The recommendation of the majority of the receivers of a railroad will not be accepted by the court as conclusive upon the question of wage schedules, when such majority is not composed of practical railroad men. Ames v. Union P. R. Co. (C. C. D. Neb.), 4 I. C. R. 619.

(g) Wage schedules recommended by receivers will not be adopted when the only practical railroad man among the receivers says they should not be put in force without modifications. Ames v. Union Pacific Co., 4 I. C. R. 619.

(ga) When the schedule of wages in force at the time a court assumes the management of a railroad is the result of mutual agreement between the company and its employes, which has been in force for years, the court will presume the schedule to be reasonable and just, and any one disputing that presumption must overthrow it by satisfactory proof. Ames v. Union P. R. Co. (C. C. D. Neb.) 4 I. C. R. 619.

(gb) A contract to render personal service cannot be specifically enforced. Ames v. Union Pacific Co., 4 I. C. R. 619.

(gc) It is not unlawful for employes to associate, consult or confer together with a view to maintain or increase their wages by lawful and peaceful means. Ames v. Union Pacific Co., 4 I. C. R. 619.

(gd) A court will not approve the action of its receiver in reducing the

wages of employes or discharging them in a body without giving them an opportunity to be heard. Ames v. Union Pacific Co., 4 I. C. R. 619.

(h) An order relative to wages of employes of a receiver should be for the benefit of all parties similarly situated, whether belonging to any of the labor organizations applying for it, or not. Ames v. Union P. R. Co. (C. C. D. Neb.), 4 I. C. R. 625.

(i) If employes of receivers do not receive enough compensation for the work they do they have the right to apply to the receivers or to the court to have their wages increased; and on a proper showing made, justice will be done. Ames v. Union P. R. Co. (C. C. D. Neb.), 4 I. C. R. 625.

(j) The rate of wages to be paid to employes of receivers must be left mainly to the receivers to manage. Ames v. Union P. R. Co. (C. C. D. Neb.) 4 I. C. R. 625.

(k) Employes of a receiver of a railroad may be enjoined from disabling rolling stock or other property in the receiver's possession, from interfering with its possession or obstructing its management, and from using force, intimidation, threats, or other wrongful methods against the receiver, his agents, or employes, or persons seeking employment. Arthur v. Oaks, 4 I. C. R. 744.

(l) Illegal combinations are not sanctioned in any degree by the Act of Congress of June 29, 1886 legalizing the incorporation of national trades unions. Arthur v. Oakes, 4 I. C. R. 744.

(m) Trade unions are not prohibited in injunction against illegal combinations of working men. Arthur v. Oakes 4 I. C. R. 744.

(n) Employes of the receiver of a railroad may be enjoined from combining and conspiring to quit his service with the object and intent of crippling the property in his custody, or embarrassing the operation of the railroad. Arthur v. Oakes, 4 I. C. R. 744.

(o) A strike is not unlawful if it is merely a combination among employes having for its object their orderly withdrawal in large numbers or in a body from their employer's service, to accomplish some lawful purpose. Arthur v. Oakes, 4 I. C. R. 744.

(p) Injunction is a proper remedy to restrain threatened acts of employes of a railroad receiver which would inflict irreparable loss upon the property, and seriously prejudice the interests of the public involved in the regular continuous operation of the road. Arthur v. Oakes, 4 I. C. R. 744.

(q) Employes of the receiver of a railroad may lawfully confer together upon the subject of a proposed reduction of wages, and, if not restrained by their contract, may withdraw in a body from the receiver's service because of such reduction, although they expect that such action will inconvenience the receiver and the public. Arthur v. Oakes I. C. C. App. 7th C.), 4 I. C. R. 744.

(r) Equity will enjoin any combination or conspiracy among the employes of the receiver of a railroad which has for its object and intent the physical injury of the property in the receiver's possession, or actual interference with the regular continuous operation by him of the railroad. Arthur v. Oakes, 4 I. C. R. 744.

(s) Equity will not enjoin employes of a receiver of a railroad from quitting his service, although the effect of such action will be to cripple the property, or prevent or hinder the operation of the road. Arthur v. Oakes, 4 I. C. R. 744.

(t) While every man has ordinarily the legal right to stop work and quit his employment whenever he chooses to do so, in the absence of a contract obliging him to continue for a definite time, no man has a legal or moral right while continuing in the employment of another to refuse to do the work he is employed and engaged to do. Re charge to Grand Jury, 4 I. C. R. 777.

(u) Employees of a railroad company assume upon entering the service an implied obligation to perform their duties in such a manner as will enable it to discharge its obligations to the public faithfully, and protect it against irreparable losses, injuries, and excessive damages by any acts of omission on their part. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co. (C. C. N. D. Ohio), 5 I. C. R. 545.

IMPORTANT CASES SINCE 1908

(v) Question of extent of jurisdiction of the Railroad Labor Board rests with

it subject to review by the courts. Sugarland Industries v. Galveston Wharf Co., 80 I. C. C. 655, 657.

WAGON COMPETITION

See Evidence §14(6); Motor Truck Competition; Reasonableness of Rates §8(5).

WAGON ROADS

See Evidence §64¾.

WAGON WEIGHTS

See Weights and Weighing §7¾.

WAIVER

See Loss and Damage §13⅝; Undercharges §8.

WAR IN EUROPE

See Evidence §64⅞.

WAR LEGISLATION

See Act to Regulate Commerce §1; Evidence §64⅞; Government Control.

IMPORTANT CASES SINCE 1908

(a) Carriers under federal control must be treated as a single line. Portsmouth Asso. of Commerce v. S. A. L. Ry., 55 I. C. C. 377, 387.

(b) The Commission must take into consideration the finding and certificate of the President and is bound to give due consideration to the fact that the transportation systems are being operated under a unified and coordinated national control and not in competition. National Council, Farmers' Asso. v. Director General, 56 I. C. C. 339, 409.

(c) The primary purpose of congress was to return the roads to private ownership surrounded by such safeguards as would assure the people of the whole country adequate service, and to rehabilitate the railroads so that they might perform the duties necessary to the very life of the nation. Rates, Fares and Charges of N. Y. C. R. R. Co., 59 I. C. C. 290, 363.

(d) The power of the Commission under the federal control act to make a finding for the future ceased with the termination of federal control. Chero-Cola Bottlings Co. v. Director General, 59 I. C. C. 547.

(e) Contentions that act of August 29, 1916, under which the President took possession and control of railroads, did not confer upon him power to initiate or change rates; that he in turn could not invest director general with such power; that, therefore, any attempted increases in rates prior to Presidential proclamation of March 29, 1918, on lines under Federal control prior to Federal control act were void; and that, even if director general himself had rate-making power, his employees or agents engaged in preparation of tariffs could not promulgate legal increases without authority was given, not sustained. Van Dusen Harrington Co. v. Director General, as Agent, 78 I. C. C. 729, 730.

(f) Carriers while under Federal control remained subject to Federal laws, including the interstate commerce act, in so far as those laws were not inconsistent with provisions of the Federal control act or with orders of the President made thereunder. Acme Cement Plaster Co. v. Director General, as Agent 81 I. C. C. 298, 301.

(g) Under section 10 of Federal control act the President, who acted through the director general, had right to initiate rates by filing them with commission. Acme Cement Plaster Co. v. Director General, as Agent, 81 I. C. C. 298, 301.

(h) The Director General was authorized by the act of Congress and proclamation of the President to promulgate general and special orders for the control and management of the railroads, which have the force and effect of law and are of paramount authority. Compagnie Auxiliare v. D. L. & W. R. Co., 87 I. C. C. 443, 446.

(i) The war powers of the United States, which are not limited by any rules of law, are similar to the police power raised to the highest degree to preserve the nation, and when requisite to this end the liberty of the citizen and the protection of private property, the peace-time rights of the states, must yield to the necessity. Public Service Comm., Second Dist. v. New York Cent. R. Co. (N. Y. 1920), 129 N. E. 455.

(j) The Federal Control Act was a proper exercise of the war powers of the United States, and as incident to the control of the railroads the question of fares intra- as well as inter-state was lodged exclusively in the President, but

such control merely suspended the rights of the owners and the authority of the states over intrastate rates and traffic. Public Service Comm., Second Dist. v. New York Cent. R. Co. (N. Y. 1920) 129 N. E. 455.

(k) The Act of March 21, 1918, providing for federal control of railroads during the war and authorizing the President to make regulations, therefor, assuming that it authorizes the fixing of such regulations of the venue of actions in federal courts against railroad companies, is within the war powers of Congress, and constitutional. Wainwright v. Pennsylvania R. R., 253 Fed. 459.

ALL OTHER CITATIONS

United States v. Metropolitan Lumber Co., 254 Fed. 335; Louisville & N. R. R. v. Murphy, (Ky. 1918), 206 S. W. 268; Ralston Business Men's Assn. v. Bush, (Nebr. 1918), 167 N. W. 727; Benjamin Moore & Co. v. Atchison, T. & S. F. Ry., 174 N. Y. S. 60; Rhodes v. Tatum, (Tex. 1918), 206 S. W. 114; Muir v. Louisville & N. R. R., 247 Fed. 888; State v. Northern Pac. Ry. Co., (N. D. 1919), 172 N. W. 324, 325; Kneeland-Bigelow Co. v. Michigan Cent. R. Co., (Mich. 1919), 174 N. W. 605; Solvay Process Co. v. D. L. & W. R. R., 55 I. C. C. 280, 288, 289; New York Commission of Highways v. Director General, 55 I. C. C. 619, 624; Rates on Grain and Grain Products, 56 I. C. C. 133; Rates, Fares and Charges of N. Y. C. R. R. Co., 59 I. C. C. 290, 363; Van Dusen Harrington Co. v. Director General, as Agent, 78 I. C. C. 729, 731.

WAR POWER

IMPORTANT CASES SINCE 1908

(a) The country does not cease to be a constitutional government because engaged in war, and the rights of the citizens are to be determined by the courts, and not by military tribunals, so long as the courts can function. Rose Mfg. Co. v. Western Union Tel. Co. (Tex. 1923.) 251 S. W. 337.

(b) Martial law can only exist, and military power can only be exercised over the property of the citizens, when the civil arm of the government is powerless because of invasion, insurrection, or anarchy, and when the necessity ceases the military power must end. Rose Mfg. Co. v. Western Union Tel. Co. (Texas 1923) 251 S. W. 337.

WAR TAXES

IMPORTANT CASES SINCE 1908

(a) War tax, or any part thereof, can not lawfully be considered a part of the damage for which the Commission may award reparation. Zelnicker Supply Co. v. S. Ry. Co. 53 I. C. C. 308, 309.

ALL OTHER CITATIONS

Western Stoneware Co. v. A., T. & S. F. Ry. Co., 53 I. C. C. 564, 565, 566; Zelnicker Supply Co. v. Director General, 53 I. C. C. 567, 568, 643, 644; Woolson Spice Co. v. Director General, 53 I. C. C. 698, 699; Zelnicker Supply Co. v. O. S. L. R. R. Co., 53 I. C. C. 710, 712; Orange Rice Mill Co. v. Director General, 55 I. C. C. 19, 20; R. J. Reynolds Tobacco Co. v. Penn. R. R., 55 I. C. C. 33, 34; Herman Gross v. Director General, 55 I. C. C. 37, 38; Marfield Grain Co. v. Director General, 55 I. C. C. 39, 41; National Shipbuilding Company of Texas v. K. C. S.; 55 I. C. C. 104, 105, 106; Brock Candy Co. v. A. G. S. Ry., 55 I. C. C. 107, 109; Beaumont Chamber of Commerce v. Director General, 55 I. C. C. 110, 112; W. A. Zelnicker Supply Co. v. Hines, 55 I. C. C. 135, 136; Du Pont de Nemours & Co. v. Hines, 55 I. C. C. 151, 153; W. A. Gosline & Co. v. Director General, 55 I. C. C. 220, 224; Southern Lumber and Manufacturing Co. v. C. of G. Ry.; 55 I. C. C. 225, 227; Fort Smith Com. Co. v. Director General, 55 I. C. C. 234, 235; Ruddock Orleans Cypress Co. v. Director General, 55 I. C. C. 236, 238; National Refining Co. v. Director General, 55 I. C. C. 341, 342; Aetna Explosives Co. v. Director General, 55 I. C. C. 350, 352; Roxana Petroleum Co. of Okla. v. Director General, 55 I. C. C. 607, 610; Charles Hechtman v. Director General, 55 I. C. C. 672, 674; Mississippi River & Bonne Terre Ry. v. Director General, 55 I. C. C. 674, 678; Frame & Co. v. Director General, 55 I. C. C. 721, 723; Bennett Grain Co. v. Director General, 55 I. C. C. 744, 746; Lowry Lumber Co. v. Director General, 55 I. C. C. 751, 752; Sunland Oil Co. v. Director General, 55 I. C. C. 753, 754; San Antonio Freight Bureau v. Director General; 57 I. C. C.

45, 47; Boldt Co. v. Director General, 57 I. C. C. 259, 263; Ozark Cooperage & Lumber Co. v. Director General 57 I. C. C. 471, 473; Acme Cement Plaster Co. v. Director General, 55 I. C. C. 179, 182; Piqua Milling Co. v. E. R. R. Co., 239, 242; Chevrolet Motor Co. of Texas v. Director General, 601, 604; San Antonio Freight Bureau v. Director General, 57 I. C. C. 45, 47; Akin Gasoline Co. v. Director General, 57 I. C. C. 133, 135; New Jersey Power & Light Co. v. Director General, 57 I. C. C. 147, 148; General Chemical Co. v. Director General, 57 I. C. C. 222, 226; Koenig Coal Co. v. G. T. Ry. Co., 57 I. C. C. 241, 243; Boldt Co. v. Director General, 57 I. C. C. 259, 263; Woodbury Lumber Co. v. Director General 57 I. C. C. 324, 326; Bare Paper Co. v. Director General, 57 I. C. C. 328, 331; Kilmer & Co. (Inc.) v. Director General, as Agent, 57 I. C. C. 453, 454; Du Pont De Nemours & Co. v. Director General, 57 I. C. C. 461, 464; Proctor & Gamble Co. v. Director General, as Agent, 57 I. C. C. 465, 460; Ozark Cooperage & Lumber Co. v. Director General, 57 I. C. C. 471, 473; United Verde Extension Mining Co. v. Director General, 57 I. C. C. 438, 485; Lesser-Godlman Cotton Co. v. L. & N. W. R. R. Co., 57 I. C. C. 486, 488; St. Bernard Cypress Co. v. Director General, as Agent, 57 I. C. C. 489, 490; Philadelphia Quartz Co. v. Director General, as Agent, 57 I. C. C. 632, 634; Rudy-Patrick Seed Co. v. Director General, as Agent, 57 I. C. C. 637, 638; Congoleum Co. v. Director General, as Agent, 57 I. C. C. 757, 759; Old Ben Coal Corporation v. Director General, 58 I. C. C. 42, 45; Gulf Refining Co. v. D. L. & W. R. R. Co., 58 I. C. C. 7, 8; Waukesha Pure Food Co. v. Director General, as Agent, 58 I. C. C. 49, 52; Nebraska Bridge Supply & Lumber Co. v. Director General, as Agent, 57 I. C. C. 129, 132; Transcontinental Freight Co. v. Director General, as Agent, 58 I. C. C. 187, 190; Ohio Cities Gas Co. v. Director General, as Agent, 58 I. C. C. 437, 438; Rice Potato Co. v. C., B. & Q. R. R. Co., 58 I. C. C. 757, 760; Birmingham Packing Co. v. Director General, 59 I. C. C. 27, 28; Gill v. Director General, 59 I. C. C. 119, 121; United Paperboard Co. v. L. & W., 59 I. C. C. 151, 153; Bare Paper Co. v. Director General, 59 I. C. C. 183, 185; Central Pennsylvania Lumber Co. v. Director General, 59 I. C. C. 197, 198; El Paso Chamber of Commerce v. Director General, 59 I. C. C. 226, 227; Magnolia Provision Co. v. H. & T. C. R., 59 I. C. C. 228, 229; El Paso Sash & Door Co. v. Director General, 59 I. C. C. 234, 237; United Iron Works, Inc. v. Director General, 59 I. C. C. 312, 313; Hanover Creamery Co. v. Director General, 59 I. C. C. 444, 447; Acme Cement Plaster Co. v. Director General, 59 I. C. C. 508, 509; G. S. Tiffany & Co. v. St. L. S. W., 59 I. C. C. 719; Delp Grain Co. v. Director General, 59 I. C. C. 755, 757; Ludlow Mfg. Associates v. Director General, as Agent, 59 I. C. C. 451, 452; Riverton Lime Co. Inc. v. Director General, 60 I. C. C. 123, 124; Chapin-Sacks Mfg. Co. v. Director General, 60 I. C. C. 145, 146; Best Clymer Mfg. Co. v. Director General, 60 I. C. C. 153, 154; Dougherty & Son Refining Co. v. Director General, 61 I. C. C. 197, 199; Crucible Steel Co. of America v. Director General, 61 I. C. C. 655, 656; Best Clymer Co. v. Director General, 62 I. C. C. 62, 63; Jones & Laughlin Steel Co. v. Director General, as Agent, 325, 332; Southport Mill (Ltd.) v. Director General, as Agent, 357, 358; Standard Oil Co. (Ky.) v. Director General, as Agent, 449, 450; Texas Cotton Seed Crushers' Asso. v. Director General, as Agent, 60 I. C. C. 465, 466; Sligo Iron Store Co. v. W. M. 62 I. C. C. 643, 645; Sterling Lumber Co. v. Director General, 64 I. C. C. 432, 434; Weaver Brothers Lumber Co. v. Director General, 66 I. C. C., 297, 299; Boston Wool Trade Asso. v. A. T. & S. F. Ry. Co., 83 I. C. C. 445, 448, 450; Eagle Ottawa Leather Co. v. Director General, 89 I. C. C. 233.

WAREHOUSING

See Facilities and Privileges §16½ Storage.

CASES 1887-1908

(a) The function of a carrier is to receive, transport and deliver. As a rule, it can only be forced into the position of warehousemen through lack of diligence on the part of the consignee in the removal of his property. With no general duty to act as a warehouseman for indefinite periods in connection with its primary obligation as a common car-

rier, it can not assume to provide shippers with valuable warehouse facilities which are not essential to its business as a carrier, without furnishing them for all shippers at all times and upon the same terms and notifying the public thereof in the manner provided by law. American Warehousemens Asso. v. I. C. R. Co., 7 I. C. C. 556, 589.

IMPORTANT CASES SINCE 1908

(aa) When goods have been so placed in the warehouse of the carrier at point of destination as to be reasonably accessible to consignee, open to his inspection and permitting of safe and convenient removal by consignee, common carrier liability ceases, and responsibility thereafter is that of a warehouseman only. However, goods are not considered as being ready for delivery if they are so placed as not to be obtainable by consignee, or if they are so mingled with or covered by other goods that consignee cannot inspect or remove them without himself undertaking their selection and separation from the heap. Phila. Team Owners' Pro. Assn. v. Ry. Co., 32 I. C. C. 387, 391.

(b) A warehouseman, as such, has no special rights under the Act. But when a warehouseman acts as a consignee or consignor he becomes a shipper and has all the rights of a shipper under the Act. He stands, in fact, in the shoes of a shipper and may make any complaint either of rates or practices that his principal, the real shipper, might himself make. St. Louis Terminal Case, 34 I. C. C. 453, 460.

(c) As a consignor or consignee of merchandise committed to his custody for forwarding or for storage, a warehouseman is a shipper, and in that capacity may bring any grievance to the attention of the Commission that grows out of the rates and practices of the carriers. St. Louis Terminal Case, 34 I. C. C. 453, 462.

(d) The advantage enjoyed, in their private capacity, by warehousemen conducting off-track stations for carriers, is incidental and not undue. St. Louis Terminal Case, 34 I. C. C. 453, 462.

(e) The opportunity to use the warehouse above an off-track station being open alike to all carload shippers, while the use thereof is attended by pecuniary advantages which the exigencies of business will not permit all shippers to enjoy, is not undue. St. Louis Terminal Case, 34 I. C. C. 453, 463.

(f) A consignee of freight has no legal right to use a car as a warehouse or storage plant. Milwaukee Produce & Fruit Exchange v. C. & N. W. Ry. Co. 35 I. C. C. 33, 35.

(g) A warehouse owner, a landlord seeking to rent his property as such, has no relation with a common carrier which could result in a discrimination against him in violation of the Act to regulate commerce. Pittwood v. N. P. Ry., 51 I. C. C. 535.

(h) A warehouse owner is not entitled to recover damages for depreciation in the rental value of his property as a result of leases by a railroad company of similar properties at nominal rentals to shippers. Pittwood v. N. P. Ry., 51 I. C. C. 535.

(i) The case of the Southern Ry. v. Prescott, 240 U. S. 632 involved the liability of the carrier of an interstate shipment as warehouseman of the goods after their arrival at destination. One of the stipulations of the bill of lading substantially the same as that which we are here considering, was that "property not removed by the party entitled to receive it within 48 hours (exclusive of legal holidays) after notice of arrival" might be kept in car, depot, or warehouse, "subject to reasonable charge for storage and carrier's liability as warehouseman only." After arrival of the goods the consignee paid the entire freight charges and took away 4 of the 13 packages constituting the shipment. The company's agent consented that 9 packages might remain to meet the consignee's convenience in removal. Before they were called for the carrier's warehouse with its contents, including the 9 undelivered packages, was destroyed by fire. The Supreme Court held that "transportation" as defined in the Act includes the service of the carrier as warehouseman and that the retention of the part of the shipment in question was a terminal service forming part of the transportation service in the sense of and governed by, the Act to regulate commerce and that the carrier was liable for negligence only. Bills of Lading, 52 I. C. C. 671, 700.

(j) After a shipment has reached

destination and a reasonable opportunity has been afforded to remove it, the duty of the carrier is fully performed. Horton v. Tonopah & Goldfield R. Co., 225 Fed. 406, 410.

(k) From provisions of the Hepburn Act it is evident that Congress recognized that the duty of carriers to the public included the performance of a variety of services that, according to the theory of the common law, were separable from the carrier's service as carrier, and, in order to prevent overcharges and discriminations from being made under the pretext of performing such additional services, it enacted that, so far as interstate carriers by rail were concerned, the entire body of such services should be included together under the single term "transportation," and subjected to the provisions of the act respecting reasonable rates and the like. The recommendation of the Interstate Commerce Commission for the adoption of the uniform bill of lading was of course made in view of this legislation, and while not intended to be and not in law binding upon the carriers it is entitled to some weight. It recognizes—whether correctly or not is a question not now presented—the right of the carrier to make a charge, the amount of which has not been definitely fixed in advance, for storage as warehouseman in addition to the charge for transportation; but at the same time it recognizes that a valuation lower than the actual value may be agreed upon between the shipper and the carrier, or determined by the classification or tariffs upon which the rate is based and it is a necessary corollary that what should be a reasonable charge for storage would be determined in the light of all the circumstances, including the valuation placed upon the goods. We conclude that, under the provisions of the Hepburn act and the terms of the bill of lading, the valuation placed upon the property here in question must be held to apply to defendant's responsibility as warehouseman. Cleveland, C. C. & St. L. Ry. Co. v. Dettlebach, 36 Sup. Ct. 177, 180; 239 U. S. 588, 60 L. ed. 453.

ALL OTHER CITATIONS

In re Advances in Demurrage Charges, 25 I. C. C. 314, 315; New Orleans Storage Rules and Regulations, 28 I. C. C. 605, 607; Hogan Milling Co. v. Union Pac. Ry. Co. (Kan. 1914), 139 Pac. 397, 398; Philadelphia Team Owners' Protective Asso. v. P. & R. Ry. Co., 32 I. C. C. 387; Claims for Loss and Damage of Grain, 48 I. C. C. 530, 563.

WASHOUTS

See Routing and Misrouting §7½.

WATER CARRIERS

I. CONTROL AND REGULATION.
§1. In general.
§2. Jurisdiction of Commission
II. DISCRIMINATION AND REASONABLENESS.
§3. In general.
III. TARIFFS AND CONSTRUCTION.
§4. In general
§4½. Facilities Furnished.
§5. Reparation.
§5½. Bills of Lading.
IV. THROUGH ROUTES AND JOINT RATES.
§6. In general.
§6½. Free transportation.
§6½a. Barge lines and rail carriers.
§6¾. Wharfage.
V. EVIDENCE.
§7. In general.
VI. REASONABLENESS OF RATES.
§8. In general.
§9. Advancing Charges.

CROSS REFERENCES

See Bills of Lading §3; Break Bulk Rates; Coastwise Traffic; Discrimination §8(5); Erie Canal; Foreign Commerce; Panama Canal Act; Port to Port Rates; Rail and Water Rates; River Crossings; Water Competition.

I. CONTROL AND REGULATION.

§1. In general.

See Control and Regulation.

CASES 1887-1908

(a) The Act does not apply to railroad wholly within State, joining with connecting steamers in independent although concurrent reduction of rates, unless goods are going to or from a foreign country. Ex parte Koehler (U. S. C. Ct. Or.) 1 I. C. R. 28.

(b) A State may regulate the charges of public warehouses. Cited in Dis. Op. Wabash etc. R. Co. v. People (U. S. Sup. Ct.) 1 I. C. R. 44.

(c) The control of navigable waters constituting channels of communication

between States and foreign countries is within commercial power of Congress. Cited in Gloucester Ferry Co. v. Pennsylvania (U. S. Sup. Ct.) 1 I. C. R. 388; S. P. cited in Bowman v. Chicago & N. W. R. Co. (U. S. Sup. Ct.) 1 I. C. R. 840.

(d) The power to regulate commerce among the several States comprehends the power to regulate the navigable waters of the United States on which such commerce may be or is carried; and to this end Congress may make any regulation concerning such navigation, in cluding the vessels engaged therein, as may be necessary and proper to secure and maintain the safety and convenience of the waterway; which regulations are so far applicable to vessels engaged only in intrastate commerce thereon as to those engaged in interstate commerce. The City of Salem. 2 I. C. R. 418.

(e) The regulation contained in U. S. Rev. Stat. §4465, forbidding a steamboat to carry more passengers than allowed in her certificate of inspection, applies to such boats engaged in carrying passengers on a navigable water of the United States, between ports of the same State only. The City of Salem (D. C. D. Or.) 2 I. C. R. 418.

(f) A statute forbidding common carriers within the state, on land or in boats or vessels on the waters entirely within the body of the state, to limit or restrict their liability as it exists at common law, applies to shipments purely domestic beginning and ending in the state. Missouri Pacific R. Co. v. Sherwood Thompson & Co. 4 I. C. R. 240.

(g) Section 3 of the Act of Congress of February 13, 1893, which provides that if the owner of any vessel transporting merchandise or property to or from any port of the United States shall exercise due diligence to make the vessel in all respects seaworthy, and properly manned, equipped, and supplied neither vessel, owner, agent, nor charterer shall be held responsible for damage or loss resulting from faults in navigation, errors in management, or dangers of the sea,—applies to shipments on the Great Lakes, notwithstanding §§1, 2 and 4 of the Act relate to shipments between the United States and foreign countires. The E. A. Shores, Jr. 7 I. C. C. App. LXVII.

(h) A water carrier would not be subject to the Act and would rest under no obligation to publish or observe its tariff rates, whether its transportation were state or interstate, until it entered into some arrangement with a rail carrier for the interstate transportation of passengers or property. By that act, however, it would become subject to the jurisdiction of the Act and would make itself liable for the posting and observing of the schedules under which that transportation was conducted. Enterprise Transportation Company v. Pennsylvania R. R. 12 I. C. C. 326, 335.

IMPORTANT CASES SINCE 1908

(i) The rule has been well stated as follows: Interstate commerce wholly by water not subject; partly by water and partly by railroad, under a common control, management or arrangement for a continuous carriage or shipment, is subject to the Act. In re Jurisdiction Over Water Carriers, 15 I. C. C. 205, 207.

(j) Water lines on great lakes required to transport dairy products and furnish reasonable equipment therefor, including refrigeration; refusal to do so held to constitute an undue prejudice to such traffic. Lake-and-rail Butter and Egg Rates, 29 I. C. C. 45, 51.

(k) It would be improper for the Commission to approve an arrangement whereby a steamboat company might operate its line during the busy season only, while leaving the service in the period of unremunerative operation for its competitor to perform. Gulf Atl. S. S. Co. v. A. C. L. R. R. 46 I. C. C. 309, 312.

(l) Water carriers of both passenger and freight are included in the Act. Colonial Nav. Co. v. N. Y. N. H. & H. R. R. 50 I. C. C. 625, 628.

(m) Section 1 of the Interstate Act specifies: "that the provisions of this Act shall apply ..... to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment) from one state or territory of the United States or the District of Columbia, to any other state or territory of the United States or the District of Columbia, or from one place in a territory to another place in the

same territory, or from any place in the United States to an adjacent foreign country, etc." By section 5 of the Act, where the Commission has found that the operation by railroad, or other common carrier subject to the Act, of any carrier by water not operating through the Panama Canal, as in the public interest and may be extended or continued beyond July 1, 1914, it is provided that: "In every case of such extension the rates, schedules, and practices of such water carrier shall be filed with the Interstate Commerce Commission and shall be subject to the Act to Regulate Commerce and all amendments thereto in the same manner and to the same extent as is the railroad or other common carrier controlling such water carrier or interested in any manner in its operation." By section 6 of the Act it is further provided that: "When property may be or is transported from point to point in the United States by rail and water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single state, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction given by the Act to Regulate Commerce, as amended June eighteenth, nineteen hundred and ten: ..... (b) To establish through routes and maximum joint rates between and over such rail and water lines...." These provisions of the Act clearly bring water carriers within its operation and control when, and if, they participate in arrangements for continuous shipment and carriage. Bills of Lading, 52 I. C. C. 671, 724.

(n) Carriers by water that are subject to the Act, or that are willing to subject themselves to the Act, by participating in the transportation of interstate traffic under arrangements with a railroad for through and continuous carriage and shipment of goods, must accept and be bound by the provisions of the Act, including the provisions of the Cummins amendment, in respect to liabilities of carriers. Bills of Lading 52 I. C. C. 671, 725.

(o) The rates and practices of a water carrier are subject to the provisions of the act in the same manner and to the same extent as are those of the railroad controlling it. Rail-and-Water Rates from Atlantic Seaboard, 63 I. C. C. 267, 275.

(p) But the act does not confer upon the Commission the power to prescribe minimum rates over a through route where one of the carriers is a water line. Rail-and-Water Rates from Atlantic Seaboard, 63 I. C. C. 267, 275.

(q) The extension of credit on freight moving partly by water and partly by railroad when both are under a common control, management, or arrangement for a continuous carriage or shipment, and when delivery or relinquishment of possession of the freight at destination is effected by or through the water line, found to be a practice subject to the provisions of section 1, paragraph (6); section 2; section 3, paragraph (1); and section 15, paragraph (1) of the act. Regulations for Payment of Rates and Charges, 63 I. C. C. 375, 377.

(r) A natural waterway, improved by the expenditure of public funds, should be thrown open as far as possible to the free and unrestricted use of all those who desire to avail themselves of it. It differs materially from a privately constructed and privately owned roadbed, which, though quasi-public in nature, is built by individuals or corporate interests primarily for their own gain. A navigable river is a public highway, a natural avenue of commerce and the public interests demand that its advantages be utilized to the fullest extent. U. S. War Department v. A. & S. Ry. 77 I. C. C. 317, 353.

(s) The usefulness of water routes to interior points ought not to be dependent upon the extent to which rail lines are consolidated, and Congress has wisely recognized this in the law. U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 317, 355.

(t) Contention that independent steamship lines can not survive in competition with a steamship line "subsidized" by an industry. HELD: Whether or not an industry should be permitted to operate a steamship line is a question of public policy to be determined by the lawmaking body. Application of

United States Steel Products Co., 77 I. C. C. 685, 687, 688.

(u) Section 28 of the merchant marine act, 1920, provides a method by which the Commission, may, as to the rates, fares and charges of common carriers for the transportation of persons or property subject to the act, suspend the prohibition of application of lower charges than for similar transportation wholly within the United States, when the charge is based in whole or in part on the fact that the person or property affected thereby is to be transported to, or has been transported from, any port in a possession or dependency of the United States, or in a foreign country, by a carrier by water in foreign commerce, unless the transporting vessel is, or was at the time of such transportation by water documented under the laws of the United States. The section provides that the commission may suspend the provisions of the section for such length of time and under such terms and conditions as it may prescribe upon certificates from the United States Shipping Board that adequate shipping facilities in vessels documented under the laws of the United States are available. The section also provides that such suspension of operation of its provisions may be terminated by order of the Commission whenever the Shipping Board is of the opinion that adequate shipping facilities by such vessels to the ports designated in the section are afforded and shall so certify to the Commission. Upon appropriate certification of the Shipping Board, by order of the Commission June 14, 1920, supplemented July 27, 1920, and Dec. 11, 1920, the Commission suspended the provisions of said section 28 until further order. By third supplemental order entered Feb. 7, 1921, the Commission prescribed certain conditions as supplemental to the orders of suspension, with respect to the application of rate for the transportation of export and import shipments in transit to or from the ports of export or import at the time the provisions of section 28 might become effective. Upon consideration of the certification of the Shipping Board dated March 1, 1924, the Commission, by supplemental order of March 11, 1924, prescribed, in effect, that its suspension order of June 14, 1920, as modified, was thereby terminated, effective May 20, 1924, as to the transportation of export and import traffic, and ordered that tariffs, published, and filed with the Commission by common carriers subject to the act, as a result of such order, should be so published and filed upon not less than 15 days notice to the Commission and the general public. HELD, section 28 does not confer upon the Commission any power to review the certificates made to it by the board, or to determine the facts as to adequacy of shipping facilities independently, or otherwise than as certified to it by the board. Further HELD, the present effective date of the order of March 11, 1924, should be extended from the present date, May 20, to June 20, 1924, Section 28 of Merchant Marine Act, 88 I. C. C. 646.

(v) There is no congressional enactment applicable to the conditional sales of vessels. Rivara v. James Stewart & Co., 195 N. Y. S. 841.

(w) Transportation by ocean carriers between the United States and nonadjacent foreign countires is not included in or affected by the Act to Regulate Commerce and the jurisdiction of the Interstate Commerce Commission and the classification and schedule of rates and charges pursuant to the act, cannot extend to carriers engaged in that transportation. Burke v. Union. Pac. R. R. Co. (N. Y. 1919) 124 N. E. 119.

ALL OTHER CITATIONS

Mutual Transit Co. v. U. S., 178 Fed. 664, 666; In re Jurisdiction Over Water Carriers, 15 I. C. C. 205, 208, 211; Cosmopolitan Shipping Co. v. Hamburg-American Packet Co., 13 I. C. C. 266, 274, 281; Du Pont De Nemours Powder Co. v. P. R. R. Co., 27 I. C. C. 59, 61; Arkansas Pass Channel & Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403, 414; New England Investigation, 27 I. C. C. 560, 607; Augusta & Savannah Steamboat Co. v. O. S. S., 26 I. C. C. 380; Chamber of Commerce of New York v. N. Y. Co. & H. R. R. R. Co., 24 I. C. C. 55, 61; Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 186; Damon v. Crosby Transp. Co., 33 I. C. C. 448, 451; Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 695, 700; Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co., 34 I. C. C. Co.,

34 I. C. C. 67, 69; Direct Navigation Co., 46 I. C. C. 378, 381; Alaska S. S. Co. v. United States, 259 Fed. 713; Corporation Commission of N. C. v. Director General, 62 I. C. C. 64, 83; Rail and water rates from Atlantic seaboard 63 I. C. C. 267, 274, Ex Parte 73, 63 I. C. C. 375, 377; Territory of Alaska v. Troy, 42 Sup. Ct. 241.

§2. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

CASES 1887-1908

(a) The Interstate Commerce Commission cannot compel a rail carrier to receive freight from or deliver it to a steamboat line with which it has refused to make a through rate and to do through billing, upon the prepayment of charges for an estimated proportion of a through rate equal in amount to that which the rail carrier receives from another steamboat line with which it has an arrangement for through rates and through billing. Capehart v. Louisville & N. R. Co. (Com.) 3 I. C. R. 278.

(b) The defendants, the Clyde Steamship Company, the New York & Texas Steamship Company, and the Florida Central & Peninsular Railroad Company are common carriers engaged in interstate commerce by arrangement as alleged in the complaint, and as such are subject to the jurisdiction of this Commission in respect thereto. Railroad Comm. of Fla. v. Savannah, F. & W. R. Co. 3 I. C. R. 688.

IMPORTANT CASES SINCE 1908

(c) The Commission has no direct authority to require the issuing of through export bills of lading, since it has no jurisdiction over the water carriers. Galveston Commercial Assn. v. A. T. & S. F. Ry. Co., 25 I. C. C. 216, 225.

(d) While the Commission has no direct authority to require the issuing of through export bills of lading, this does not mean that the Commission may not act upon the rail carrier which is subject to its jurisdiction in a proper case where the ocean carrier stands ready to enter into these through arrangements upon reasonable terms. Galveston Commercial Assn. v. A. T. & S. F. Ry. Co., 25 I. C. C. 216, 226.

(e) Under section 15, coupled with section 6 as amended by the Panama Canal Act, the Commission is authorized to prescribe through routes and joint rates with water lines. Chattanooga Packet Co. v. I. C. R. R. Co., 33 I. C. C. 384, 387.

(f) The Commission has power under section 15 to require rail carriers to join water carriers in establishing through routes and joint rates. Chattanooga Packet Co. v. I. C. R. R. Co., 33 I. C. C. 384, 392.

(g) But the Commission has no power to require establishment of a through route between railroad-owned lakes lines and barge lines operating on the Erie Canal. Lake Line Applications Under Panama Canal Act, 33 I. C. C. 699, 716.

(h) Port-to-port rates are not within the jurisdiction of Commission. Fish from Virginia, 42 I. C. C. 415.

(i) The Commission is without jurisdiction to determine whether boat lines or rail lines should bear cost of printing and publishing joint rail-and-lake rates. Lake and Rail Rate Cancellations (No. 2), 42 I. C. C. 513, 522.

(j) The Commission has never exercised jurisdiction over the individuals or companies performing the intermediate services on lake cargo coal between the lower and upper lake ports, for interior points. Lake Cargo Coal Rates, 46 I. C. C. 159, 185

(k) Under section 15 the Commission already possessed the power to establish through routes and joint rates between rail and water carriers. Unless paragraph (b), added somthing to existing jurisdiction it would seem superfluous. That it did add something seems clear from the statement that the powers enumerated are "in addition to the jurisdiction given by the Act to regulate commerce." The congress was here dealing specifically with rail and water carriers and must be presumed to have expressed its intent. It gave no indication of intent to limit the Commission power to instances where the rail carriers would not be short hauled. This interpretation best comports with the manifest intent to encourage transportation by water, and under any other construction a port could be closed to through transportation by water and rail because it was not the terminus of the rail carrier. Bal-

timore & Carolina S. S. Co. v. A. C. L. R. R., 49 I. C. C. 176, 183.

(l) The limitation in section 15 refers specifically to railroads and apparently was intended to insure to the originating rail line as large a share as possible of the movement of freight by rail. That the limitation should be projected into section 6 so as to force a shipper to move his property by rail when he wishes to send it a portion of the way by water is utterly inconsistent with the policy of the Congress manifested in the passage of the Panama Canal Act, the Federal Shipping Act, and the Improvement of Rivers and Harbors. Baltimore & Carolina S. S. Co. v. A. C. L. R. R., 49 I. C. C. 176, 184.

(m) It was argued that because of the passage in paragraph (a) which refers to "the dock of the water carrier" the Commission's jurisdiction was limited to instances where the water carrier has a dock, and that, where a steamship company had no dock the Commission was without power in the premises. The argument was not persuasive. The lettered paragraphs are coordinate and deal with different matters. They relate back to the general grant of additonal powers and do not modify one another. Where the rail carriers have docks and physical connection therewith it would clearly be a wasteful requirement to insist that the water carrier secure a dock and that the rail carriers then extend spurs to that dock. We can not impute such an intent to the Congress. Where either the rail or water carrier has suitable dock facilities the ownership or control by the one or the other is immaterial, at least in so far as the exercise of power under paragraphs (b) or (c) is concerned, and except as bearing upon the reasonable compensation for the use of such facilities. Baltimore & Carolina S. S. Co. v. A. C. L. R. R., 49 I. C. C. 176, 184.

(n) Manifestly the purpose of the new legislation was to cover the entire subject of the regulation and control of interstate transportation over a rail line and a water carrier, at least as to their traffic, and to confer upon the Commission jurisdiction of such transportation without limitation, except as prescribed in the Act itself. With the authority to establish through routes and joint rates is given authority to determine all the terms and conditions under which the rail-and-water lines shall be operated, to establish proportional rates by rail to and from the ports, and to determine what traffic may move thereunder. Colonial Nav. Co. v. N. Y. N. H. & H. R. R., 50 I. C. C. 625, 629.

(o) The Commission has jurisdiction of carriers both by rail and by water; is empowered to establish through routes and joint rates between and over rail-and-water lines, and is authorized to determine all the terms and conditions under which such lines shall be operated Colonial Nav. Co. v. N. Y. N. H. & H. R. R., 50 I. C. C. 625, 631.

(p) The question whether or not a railroad company can be guilty of discrimination when the preferential treatment which produces the discrimination is accorded a steamship company which is owns by stock control, must be answered in the affirmative and the idea that jurisdiction of the Commission is defeated by reason of such common ownership must be untenable. Colonial Nav. Co. v. N. Y. N. H. & H. R. R., 50 I. C. 625, 633.

(q) Boat lines which bring logs to the ports are not subject to the Act to Regulate Commerce and have no tariffs on file with the Commission, and rates shown from the ports are not, properly speaking, proportional rates Pacific Lumber Co. v. N. W. P. R. R., 51 I. C. C. 738, 746.

(r) The movement from the Lake Erie ports to the western docks constitutes a new and independent transaction under an agreement or arrangement between the owner of the coal and the owner of the vessel. It is not subject to the jurisdiction of the Commission and the rates are not filed with the Commission. Coal Rates to the northwest, 53 I. C. C. 590, 592.

(s) In paragraph 3 of section 15 it is definitely provided that the Commission shall not have the right to establish any route, classification, or practice or any rate, fare or charge when the transportation is wholly by water, and any transportation by water affected by this act shall be subject to the laws and regulations applicable to transportation by water. Corona Coal Co. v. Secretary of War, 69 I. C. C. 389, 391.

(t) The jurisdiction of the Commission does not extend to the local port to port rates of water carriers. Corona Coal Co. v. Secretary of War, 69 I. C. C. 389, 391.

(ta) Port-to-port rates of the Warrior River Barge Line on bunker coal from Black Warrior River mines in Alabama to Mobile, Ala., and to New Orleans, La., found not within the commission's jurisdiction. Corona Coal Co. v. Secretary of War, 69 I. C. C. 389, 391.

(u) The Commission has the power to require the establishment of through routes where one of the carriers is a water line even though the rail line would thereby be shorthauled. U. S. War Department v. A. & S. Ry. 77 I. C. C. 317, 328.

(v) Provisions of section 15, paragraph (3), of the act, restricting commission's regulatory power over rates of water lines, is inapplicable to water lines owned, controlled, or operated by rail lines, which by section 5, paragraph (11) of the act, have same status as the controlling railroad. That commission has not the same power to fix minimum rates over such water carrier as though it were an all rail line was decided in Rail-and-Water Rates from Atlantic Seaboard 63 I. C. C. 267. Reduced Rates from New York Piers, 81 I. C. C. 312, 330.

(w) A rate applies only as a local or proportional rate for the transportation wholly by water. Such rates, are not within the jurisdiction of the Commission. Roasted coffee from Atlantic seaboard, 83 I. C. C. 131, 134.

(x) Section 15 (3) of the act authorizes commission to establish through routes and joint rates applicable to transportation of property where one of the carriers is a water line. However, by that same section and paragraph it is provided that commission shall not "have right to establish any route, classification, or practice, or any rate, fare, or charge when transportation is wholly by water." Boston Wool Trade Asso. v. A. T. & S. F. Ry. Co., 83 I. C. C., 445, 449.

(y) Nothing in amendments to the act warrants different conclusion from that expressed in rule 71 of Tariff Circular 18-A, wherein commission said "Ocean carriers between ports of United States and foreign countries not adjacent are not subject to terms of the act; nor to commission's jurisdiction." Boston Wool Trade Asso. v. A. T. & S. F. Ry. Co., 83 I. C. C. 445, 448, 450.

(z) Water carriers on the Great Lakes were engaged in carrying goods from one port to another in the same state, from a port in one state to ports in another state, and also from ports in one state to destinations in another state in connection with rail carriers. They were also interested in operating amusement parks. HELD, the Interstate Commerce Commission had power under section 20 of the Act as amended to order a universal system of bookkeeping and accounting and to require reports on all the business of defendants, whether interstate or intrastate, since the intrastate business was so inextricably bound up with the interstate business that to limit the provisions of the Act to interstate business would defeat the purpose sought to be accomplished by reports and accounting systems. I. C. C. v. Goodrich Co., 224 U. S. 194, 213, 32 Sup. Ct. 436, 56 L. ed. 729.

ALL OTHER CITATIONS

Goodrich Transit Co. v. I. C. C., 190 Fed. 943, 959; L. & N. R. R. Co. v. I. C. C., 184 Fed. 118, 123; City of Ashland v. N. Y. C. & H. R. R. R. Co., et al., 20 I. C. C. 3; George Borgfeldt & Co. v. S. P. Co., 18 I. C. C. 552, 553; Joseph Ullman v. Adams Express Co., 14 I. C. C. 340, 345; Cosmopolitan Shipping Co. v. Hamburg-American Packet Co., 13 I. C. C. 266, 279; Lykes Steamship Line v. Commercial Union, 13 I. C. C. 310, 316; Benton Transit Co. v. Benton Harbor, St. Joe Ry. & Light Co., 13 I. C. C. 542, 545. Arkansas Pass Channel & Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403, 414; Augusta & Savannah Steamboat Co. v. O. S. S. Co., 26 I C. C. 380, 383, 384; Escanaba Business Men's Assn. v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 74; Louisiana Sugar Planters' Asso. v. I. C. R. R. Co., 31 I. C. C. 311, 319. Lake Line Applications Under Panama Canal Act, 33 I. C. C. 699, 715; Central Vermont Boat Lines, 40 I. C. C. 589, 592; Lake and Rail Rate Cancellations (No. 3), 44 I. C. C. 745, 749; Colonial Nav. Co. v. N. Y. N. H. & H. R. R. Co., 50 I. C C. 625, 627, 628; Railroad Com'rs. v. Atlantic Coast Line R. Co. (Fla. 1921), 85 So. 773. National Supply Co. v. C., M. & St. P. Ry. Co., 57 I. C. C. 739, 741;

Rail and Water Rates from Atlantic Seaboard 63 I. C. C. 267 275.

II. DISCRIMINATION AND REASONABLENESS.

See Intra VI Discrimination; Reasonableness of Rates.

§3. In general.

CASES 1887-1908

(a) Carriers of interstate traffic are not obliged to pay charges of steamboat lines when no agreement for a through rate exists. In the Matter of the Application of F. W. Clark, 2 I. C. R. 796.

(b) A carrier by rail has no better transportation rights than a water carrier. Both are lawful and necessary instrumentalities of commerce. Both are indispensable and the rail carrier must compete fairly, and is not at liberty to resort to unlawful methods to divert traffic from a water carrier. Lehmann Higginson & Co. v. S. P. Co., 3 I. C. C. 80, 90.

(c) A common carrier has not the right to make a discrimination where the conditions are equal, between two steamboats in delivering freight to them, on the ground that the greater charge is not unreasonable. Samuels v. Louisville & N. R. Co., 4 I. C. R. 420.

(d) A charter provision of a railroad, granting the power to take "tolls from all persons, property, merchandise, and other commodities transported on their road, provided only the net profits of the road shall never exceed 25 per cent per annum," does not give the company the right to discriminate between connecting steamboats in the matter of freights. Samuels v. Louisville & N. R. Co. (Ala.), 4 I. C. R. 420.

(e) The requirement of the agreement of a railway and steamship association, that its members apply "full local rates upon all traffic subject to the association agreement coming from or going to" connecting lines which do not maintain association rates, while to traffic from other connecting lines conforming to such rates full local rates are not applied, is repugnant to that clause of the Act to Regulate Commerce, §3, which forbids carriers to "discriminate in their rates and charges between connecting lines." Cincinnati Freight Bureau v. Cincinnati, N. O. & T. P. R. Co. (Com.), 4 I. C. R. 592.

(f) A railroad company operating steamers in connection with its railroad as a single line is not guilty of a discrimination against another carrier, within the prohibition of the Interstate Commerce Act, by refusing to allow a rival steamboat company to land its boats at a wharf used by it solely for connecting its railroad and boats, where there is no regular public station at such wharf, but the general station is at a little distance and ample facilities there exist. Ilwaco R. Nav. Co. v. Oregon S. L. & U. N. R. Co. (C. C. App. 9th C.), 5 I. C. R. 627.

IMPORTANT CASES SINCE 1908

(g) A rail carrier may control or connect with a line of steamships engaged in foreign commerce, with which it may interchange business as freely as with another rail carrier, and it may quote a combined rate for the through movement, the agent of the railroad company acting as the agent of the steamship company in so doing. An inland carrier may go into the foreign shipping business without contravening any provision of the Act; nor is there anything in such statute which denies to a rail carrier the right to quote a rate from an inland point to a foreign destination over its own through route or by any other route. But as to such carriers engaged in foreign business, the rail carrier has, so far as this law is concerned, a purely contractural or proprietary relation, not a relation related or controlled in any manner by this Act. On foreign commerce the rate to be published with the Commission should be the rate to the port and from the port—an open rate, which any one who desire to do so may use with equal advantage. The publication of such rate does not in any manner limit the very valuable privilege of through billing. Such through billing should clearly separate the liability of the rail and the ocean carrier and show the published rate of the inland carrier. The routing of the freight, however, should remain with the shipper, and upon him may be imposed no greater charge to the port when his freight goes by one ocean line than by another. Cosmopolitan Shipping Co. v. Hamburg-American Packet Co., 13 I. C. C. 266, 281.

(h) The Commission does not favor the existence of lower rates at ports put into effect by rail carriers to meet water

competition. Darling & Co. v. B. & O. R. R. Co., 15 I. C. C. 79, 87.

(i) A boat line incorporated as a common carrier obtained its facilities from a salt company by which it is owned and in whose interest it is operated; it published no rates except upon salt in cargo lots; its rates were manipulated for the benefit of the salt company, and it used as terminal facilities the docks and warehouses of the salt company by whose agents and employees all shipments had to be handled. HELD, that the boat line is a mere device to defraud the law, and payments made to it by connecting rail carriers in the guise of divisions are rebates. Colonial Salt Co. v. M. I. & I. Line, 23 I. C. C. 358.

(j) A shipper of salt does not have to deliver his shipments to a boat line controlled by a competitor, and such boat line, although it publishes rates on salt in cargo lots, cannot be considered a common carrier, but a private facility of the salt company by which it is owned. Colonial Salt Co. v. M. I. & I. Line, 23 I. C. C. 358, 366.

(k) A railroad may not have a preferred line of steamships to the exclusion of other ships. But a railroad has the right to reserve wharves for its own use and for the use of such water carriers as it prefers, provided it affords to the public access to equal facilities elsewhere at equal rates. Mobile Chamber of Commerce v. M. & O. R. R. Co., 23 I. C. C. 417, 424.

(l) A railroad line has the right to reserve for certain boat lines certain of its water terminals, provided such reservations do not effect discrimination against traffic destined to such waterside terminals and to be carried therefrom by other boat lines. Mobile Chamber of Commerce v. M. & O. R. R. Co., 23 I. C. C. 417, 427.

(m) Free wharfage is a legitimate means of making a port attractive to ocean lines, and the Texas City interests in pursuing that policy will be protected against coercion by carriers. In Re Wharfage Charges at Galveston, 23 I. C. C. 535, 545.

(n) Water competition may be nullified by community of interest between rail carriers and water carriers. Bowling Green Business Men v. L. &. R. R. Co., 24 I. C. C. 228, 237.

(o) The cost of transportation per mile by water is comparatively high for short distances and very small for long distances. Southwestern Shippers Traffic Assn. v. A. T. & S. F. Ry. Co., 24 I. C. C. 570, 583.

(p) Carriers have the right to hold traffic to their own lines so long, but only so long, as in so doing they do not encroach upon the rights of the public. They may hold Texas cotton to their own lines and enjoy the haul to the port of Galveston so long as shippers are not unjustly discriminated against or their lawful right of choice of routes and destinations interfered with. They may not, however, dictate to shippers of cotton that it shall move to Galveston or to any other particular port. The community tributary to another port, such as Port Aransas, is entitled to ship cotton to the port of its own selection, and that, too, upon reasonable rates and without unreasonably or unjustly discriminatory restrictions. Aransas Pass Channel & Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403, 414.

(q) Carriers cannot so adjust rates as to build up one port and close or prevent the opening of others. Aransas Pass Channel & Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403, 415.

(r) If rail carriers exchange bills of lading, it is discriminatory for them to refuse like recognition of water lines. Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co., 34 I. C. C. 67, 73.

(s) If carriers are permitted to apply higher rates for the same service on traffic routed over connecting water lines than on traffic routed all rail, they will be in a position to destroy water competition and to deprive communities and shippers of the advantages of location upon navigable waters. Inland Nav. Co. v. Wabash R. R. Co., 43 I. C. C. 588, 592.

(t) Competing boat lines similarly situated should be put by a rail carrier on an equality in the use of a river warehouse and incline in the transfer of l. c. l. traffic. Cumberland Transportation Co. v. C. N. O. & T. P. Ry., 45 I. C. C. 444, 447.

(u) It does not follow necessarily that water rates should be on as high a level, relatively, as all rail or rail-and-water rates. New Bedford Board of Commerce v. Director General, 55 I. C. C. 274, 276.

(v) Ocean rates are generally not published and are subject to fluctuations. It is by no means certain that an equalization based on such rates constitutes a permanent basis upon which to construct the rail rates to the ports, because the equalization results only from a particular and definite relationship of rates, and if one rate factor included in the calculations is variable, the equalization must be destroyed to the extent to which variations occur from the particular rate which was employed in the equalizing process. Unless this process of equalization rests upon substantial, fairly permanent, and controlling facts and natural relationships it can not be proper and lawful. Inland Steel Co. v. Director General, 57 I. C. C. 339, 340.

(w) The water rates on transcontinental traffic from the Gulf ports have generally been lower than from the Atlantic ports because of the shorter distance, less frequent sailings therefrom, and because the rail rates from the Middle West to the Gulf ports were higher than to the north Atlantic ports. Transcontinental Cases of 1922, 74 I. C. C. 55, 56.

(x) Rates which coastwise railroad-owned steamship lines desire to apply on shipments moving on export bills of lading from south Atlantic and Gulf ports to New York, N. Y., there transferred to trans-Atlantic lines for transportation to nonadjacent foreign countries, are not local rates between two points in United States, nor rates between points in United States on traffic to be exported, but are joint rates applying over all-water lines from ports of United States, and the portion of such charges which would accrue to such steamship lines are merely divisions of joint charges made in conjunction with connecting trans-Atlantic lines. Ocean Steamship Co. of Savannah, 78 I. C. C. 251, 256.

(y) Respondent, Ocean Steamship Company proposed to increase the rates on railroad crossties, wooden, from Savannah, Ga., to New York and Boston. Respondents rates are ordinarily published on a weight basis, but its rates on lumber and ties are published per 1,000 feet. Rate was $4.48 on Feb. 28, 1922, advanced on June 19, 1922 to $5.15 applying on pine and oak ties, and suspended schedules rates of $5.60 on pine ties and $6.72 on oak ties are proposed. There is a considerable movement of ties in connection with the Clyde Line from Jacksonville, and respondents rates on ties have been particularly affected by the rates of that carrier. The basis here sought to be made effective has been maintained for some months by the Clyde Line and provision therefor in connection with respondents line was deferred to accommodate protestants because of various outstanding contracts based on the lower rate. HELD, proposed increased rates justified. Rates on crossties from Savannah, Ga., 78 I. C. C. 679.

ALL OTHER CITATIONS

Mobile Chamber of Commerce v. M. & O. R. R. Co., 23 I. C. C. 417, 423; Carstens Packing Co. v. M. K. & T. Ry. Co. of Texas, Unrep. Op. 323; Railroad Comimissioners of Florida v. A. C. L. R. R. Co., 28 I. C. C. 356, 359; In reWharfage Facilities at Pensacola, 27 I. C. C. 252, 260; Toledo Produce Exchange v. A. A. R. R. Co., 27 I. C. C. 536, 542; Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 643; Augusta & Savannah, 26 I. C. C. 380, 386, 389, 393; Diamond Crystal Salt Co. v. M. C. R. R. Co., 26 I. C. C. 434, 437; Galveston Commercial Assn. v. A. T. & S. F. Ry. Co. 25 I. C. C. 216, 224; Commercial Club of Superior, Wis., v. G. N. Ry. Co., 24 I. C. C. 96, 107; Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 189; Southwestern Shippers Traffic Assn. v. A. T. & S. F. Ry. Co., 24 I. C. C. 570, 579, 582; Lake-and-Rail Butter and Egg Rates, 29 I. C. C. 45, 51; Isbell-Brown Co. v. M. C. R. R. Co., Unrep. Op. A435; Decatur Nav. Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 283, 288; Tampa Board of Trade v. L. & N. R. R. Co., 30 I. C. C. 377, 381; Pacific Navigation Co. v. S. P. Co., 31 I. C. C. 472, 479, 480; Eastern Shore Development S. S. Co. v. B. & O. R. R, Co, 32 I. C. C. 238, 242; Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 695; Samuel v. D. L. & W. R. R., 36 I. C. C. 255, 256; Import and Domestic Rates, 36 I. C. C. 389, 394; Rates via Rail-and-Lake Routes, 37 I. C. C. 302, 307, 312; Long and Ballany Bros. Co. v. C. & W. C. Ry. Co., 43 I. C. C. 186; Cumberland Transportation Co. v. C. N. O. & T. P. Ry., 45 I. C. C. 444, 446; Gulf Atlantic S. S. Co. v. A. C. L. R. R., 46 I. C. C. 309, 312; Export Free Time, 47 I. C. C. 162, 170. Inland Steel Co. v. Director

General, 57 I. C. C. 339, 340; Phelps Dodge Corporation v. Director General, 57 I. C. C. 714, 718, 719; Shipbuilding Corporation v. Director General, 58 I. C. C. 367; Increased Rates, 1920, 58 I. C. C. 220, 253; American Smelting & Refining Co. v. Director General, as Agent, 62 I. C. C. 583, 588; New Bedford Board of Commerce v. Director General, 68 I. C. C. 85; Kalbfleish Corporation v. Central of Georgia Ry., 68 I. C. C. 333; Corona Coal Co. v. Secretary of War, 69 I. C. C. 389.

III. TARIFFS AND CONSTRUCTION.
See Tariffs.

§4. In general.

IMPORTANT CASES SINCE 1908

(a) "Lake-and-rail" means a movement partly by rail and partly by lake boats which involves break of bulk. Escanaba Business Men's Assn. v. A. A. R. R. Co., 24 I. C. C. 11, 12.

(b) "Across-lake" means a movement by rail to the lake and across the lake by car ferry without break of bulk. Escanaba Business Men's Assn. v. A. A. R. R. Co., 24 I. C. C. 11, 13.

(c) "Rail-lake-and-rail" means a movement by rail to the lake, by boat to another lake port, and from thence by rail, which involves breaking bulk twice. Escanaba Business Men's Assn. v. A. A. R. R. Co., 24 I. C. C. 11, 13.

(d) "Across-lake-and-rail" means a movement by rail and car ferry to the western lake port, and from thence by rail which may or may not involve breaking bulk. Escanaba Business Men's Assn. v. A. A. R. R. Co., 24 I. C. C. 11, 13.

(e) Ocean rates fluctuate according to spare room as the time approaches when the vessel must sail. Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 70.

(f) Transshipment rate limited to traffic delivered to respondent by water lines with which it has no through rates. Murray Lighterage & Transportation Co. v. D. & H. Co., 25 I. C. C. 388, 390.

(g) A boat line would have to file a tariff before through routes with rail carriers could be established. Chattanooga Packet Co. v. I. C. R. R., 33 I. C. C. 384, 385.

(h) A water carrier must file its tariff with the Commission before the latter can compel the establishment of through routes with rail carriers. Chattanooga Packet Co. v. I. C. R. R., 33 I. C. C. 384, 385.

(i) The action of a navigation company in transporting through interstate shipments in connection with the rail line, without filing its tariffs with the Commission, is unlawful. Inland Nav. Co. v. W. Ry. Co., 43 I. C. C. 588, 591.

(j) Rail carriers should notify consignees, from time to time, of the names of steamship companies which have adopted the average agreement by posting the names at piers where freight is received. New York Board of Trade v. Director General, 59 I. C. C. 205, 210.

(k) The act does not require that rates of Ocean S. S. Co. of Savannah on shipments moving on export bills of lading from Savannah, Ga., to nonadjacent foreign countries be published and filed with commission. This transportation has been conducted without filing of tariffs for nearly seven years; no complaint has been made; and no objection is made to its continuance. If steamship company is subjected to limitations of the act it will be deprived of a substantial portion of its total traffic, and such requirement would operate to disadvantage of carriers and the public through loss of service over an available route. Ocean Steamship Co. of Savannah, Ga., 78 I. C. C. 251.

(l) No violation of Act shown by reason of carrier's failure to give advance notice of arrival of steamer. Scandinavian American Trading Co. v. B. & O. R. R. Co., Unrep. Op., A-388.

(m) Steamship tariff schedules are binding on the passenger only when filed with the Interstate Commerce Commission and shipping board and posted as required by law. Vanderberg v. Detroit & C. Nav. Co., (Mich., 1921), 186 N. W. 477.

ALL OTHER CITATIONS

Milburn Wagon Co. v. L. S. & M. S. Ry. Co., 18 I. C. C. 144, 146; Galveston Commercial Assn. v. A. T. & S. F. Ry. Co., 25 I. C. C. 216, 218, 219; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 69; Southwestern Shippers Traffic Assn. v. A. T. & S. F. Ry. Co., 24 I. C. C. 570, 579; Chattanooga Packet Co. v. I. C. R. R. Co., 33 I. C. C. 384, 385; S. P. Co. Ownership of Schooner Pasadena, 33 I.

C. C. 476, 479; Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co., 34 I. C. C. 67, 73; P. M. and B. & L. E. R. R. Cos. Operation of Car-Ferry Boats, 34 I. C. C. 86, 89; C. & E. R. R. Co. Ownership of Water Equipment, 34 I. C. C. 218, 220; P. Co. Operation of Pennsylvania-Ontario Transp. Co., 34 I. C. C. 47, 48; G. T. Ry. Co. of Can. Operation of Car-Ferry Co., 34 I. C. C. 49, 51; B. R. & P. Ry. Co. Operation of Car-Ferry Co., 34 I. C. C. 52, 54; O. W. R. & N. Co. Ownership of S. F. & P. S. S. Co., 34 I. C. C. 165, 168; S. P. Co. Steamboats on Sacramento River, 34 I. C. C. 174, 178; Joint Ownership and Operation of Mackinac Transp. Co., 34 I. C. C. 229, 230; The Alaska Investigation, 44 I. C. C. 680, 682; Casey-Hedges Co. v. A. G. S. R. R., 50 I. C. C. 240, 242; Central R. R. of N. J. v. Anchor Line, 219 Fed. 716; New York Board of Trade v. Director General, 59 I. C. C. 205, 209; Stevens v. Atchison, T. & S. F. Ry. Co., 202 N. Y. S. 195.

§4½. Facilities Furnished.

IMPORTANT CASES SINCE 1908

(a) At the present time there is not a boat operating between St. Louis, Mo., and New Orleans, La., except the fleet of the United States Railroad Administration, which consists of five towboats and a number of barges. Memphis-Southwestern Investigation, 55 I. C. C. 515, 564.

ALL OTHER CITATIONS

State v. Atlantic Coast Line R. Co., (Fla., 1919) 81 So. 498.

§5. Reparation.

See Reparation.

IMPORTANT CASES SINCE 1908

(a) Respondents proposed to cancel the tariff provision that freight charges on petroleum crude and fuel oil from points in Kansas, Oklahoma and Texas to certain named destinations in Arizona and New Mexico and to Cananea, Mexico, shall be ascertained on the basis of an estimated weight of 7.4 pounds per gallon and to provide in lieu thereof that the charges shall be based on the actual weight per gallon. From the record it is clear that the suspended schedules are aimed primarily at Mexicon oil which is received at Texas ports and at present is being consumed in volume in the mining operations of the copper regions of Arizona and New Mexico. This Mexican oil, it is said, weights from 7.98 to 8 pounds per gallon, its weight thus exceeding somewhat the estimated weight of 7.4 pounds now in use in this territory. So far as this record shows, petroleum oil in tank car has seldom, if ever, moved under anything but estimated weights. Of the Oklahoma oil, 85 per cent, it was stated, weighs from 7.48 to 7.57 pounds per gallon, the balance ranging from 7.29 to 7.43 pounds. Beyond what has been stated respondents submitted little evidence tending to show that 7.4 pounds does not fairly approximate the average weight of crude and fuel oil in this territory; on the contrary they concede that it is fairly representative of fuel oil from the Texas and Oklahoma fields. The practice of shipping petroleum oils under estimated weights has long been in effect, and this record falls far short of justifying the restricted exception to this practice which is here proposed. HELD, suspended schedules have not been justified. Actual weights on crude and fuel oil, 69 I. C. C. 194.

ALL OTHER CITATIONS

Isbell-Brown Co. v. M. C. R. R. Co., Unrep. Op. A425.

§5½. Bills of Lading.

See Bills of Lading.

IMPORTANT CASES SINCE 1908

(a) The Commission is required by section 25 of the act to preserve for the carrier by water the protection of limited liability provided by law. In the Matter of Bills of Lading, 64 I. C. C. 347, 352.

IV. THROUGH ROUTES AND JOINT RATES.

See Through Routes and Joint Rates.

§6. In general.

CASES 1887-1908

(a) The Act to Regulate Commerce does not empower the Commission to compel railroad companies to enter into joint arrangements with carriers by water for through carriage at through rates. The fact that a railroad company makes such arrangement for one of its branch roads will not charge it with unjust discrimination for refusing to make identical arrangements on other parts of its system, when it appears that from such other parts of its system it actually makes through arrangements by a more direct route and at the same rates, which are presumptively of equal convenience to shippers. Re Joint Water & Rail Lines. (Com.) 2 I. C. R. 486.

(b) Several rail carriers engaged in interstate commerce each cross or touch a navigable river leaving a large space of territory along and near the river and between their lines that can be served only by steamboats, and in connection with steamboats these rail carriers carry freight to and receive it from this territory at points where they touch or cross the river respectively, but as to it they make through rates with only one line of steamboats and refuse to make such through rates with other steamboats on the river. HELD, that under the Law the rail carriers may do this and that it is not unjust discrimination nor unlawful preference. Citing Napier v. The Glasgow & Southwestern Railway Company, 1 Railway & Canal Cases, 292. In such a case all that a steamboat has a right to demand, with which the rail carriers have refused to make through rates and to do through billing, is that the rail carriers shall receive from and deliver to such steamboat freight for transportation at their published local tariff rates. Copeheart & Smith v. Louisville & Nashville R. Co., 3 I. C. R. 278.

(c) Where a carrier not subject to the Act to Regulate Commerce, for example, a steamboat plying the Tennessee River between Decatur, Alabama, and Bridgeport, in the same State, has applied to rail carriers engaged in interstate commerce for through rates and through billing of freight and has been refused these, and during a period of several years has paid these rail carriers their local published tariff rates on freight, and now sues to recover the difference between the amount so paid on the local rates and the proportion of the through rate between the same points covered by the local rates, HELD, that no recovery can be had in such a proceeding before the Interstate Commerce Commission, and the complaint is dismissed without prejudice. Capeheart & Smith v. Louisville & Nashville R. Co. 3 I. C. R. 278.

(d) Where several rail carriers engaged in interstate commerce each cross or touch a navigable river, leaving a large space of territory along and near the river and between their lines that can be served only by steamboat, and in connection with steamboats these rail carriers carry freight to and receive it from this territory at points where they touch or cross the river respectively, they may make through rates with only one line of steamboats and refuse to make such through rates with other steamboats on the river; and this is not unjust discrimination or unlawful preference. Capehart v. Louisville & N. R. Co. (Com.) 3 I. C. R. 278.

(da) An aggregate through rate is itself an entirety, although made up of agreed percentages, proportions or divisions, as the case may be, of the entire rate among the several carriers; and where the rail carrier makes a through rate from a point on a navigable river with a steamboat line, and refuses to make such through rate with another steamboat, the Commission cannot compel the rail carrier to receive freight from or deliver it to the steamboat, with which it has refused to make a through rate and to do through billing, upon the prepayment of charges for an estimated proportion of the through rate equal in amount to that which the rail carrier receives from the steamboat line with which it has an arrangement for through rates and through billing. Capeheart & Smith v. Louisville & Nashville R. Co. 3 I. C. R. 278.

(e) All that a steamboat has a right to demand, with which the rail carriers have refused to make through rates and to do through billing, is that the rail carriers shall receive from and deliver to such steamboat freight for transportation at their published local tariff rates. Capehart v. L. & N. R. Co., 3 I. C. R. 278, 282.

(f) The phrase "common control, management or arrangement for continuous carriage or shipment" in the first section of the Act to Regulate Commerce was intended to cover all interstate traffic carried through over all rail or part water and part rail lines. The receipt successively by two or more carriers for transportation of traffic shipped under through bills for continuous carriage over their lines is assent to a common arrangement for such continuous carriage or shipment and previous formal arrangement between them is not necessary to bring such transportation under the terms of the law. Trammell v. Clyde S. S. Co. et al, 4 I. C. R. 121.

(g) The share of the through rate for the transportation of salt from producing points in Michigan to points on the Missouri River, which is allowed to the boat line on Lake Michigan, the con-

trolling interest in which is owned by the same persons who own a controlling interest in the corporation producing salt at the point named, and which share amounts to from 30 to 33 1-3 per cent of the through rate, and is considerably higher than the former charge for carrying salt on Lake Michigan, but which increase is partly accounted for by the fact that additional services are included,—is not so grossly disproportionate to the value of the additional through services as to amount to a rebate in favor of the salt interests which control the boat line. Re Transportation of Salt, 10 I. C. C. 148.

(ga) Discrimination by railroads against steamboat line, in refusing to make a joint rate with it while making such joint rate with its competitor. Re Alleged Unlawful Discrimination against the Enterprise Transp. Co. 11 I. C. C. 587.

(h) The Commission instituted an investigation as to alleged unlawful discrimination against the Enterprise Transportation Company by railroads leading from New York City. Railroad lines leading west from New York make joint through rates with the New England Navigation Company, controlling the Fall River line of steamers, which plies between New York and Fall River Mass., and some other New England cities, and also controlling other important steamer lines operating on Long Island Sound. Such joint rates apply in both directions between western and New England points. The New England Navigation Company is owned and operated by the New Haven Railroad. The rail lines centering in New York and running westerly thereof refuse, for stated business reasons, to make the like or any joint rating arrangement with the Enterprise Steamship Company, a steamship line plying between Fall River and other New England points and New York and in competition with the New England Navigation Companys Fall River line. This Fall River line may, by reducing rates on local traffic, force out of business the Enterprise Transportation Company, while obtaining a lucrative and supporting business from through traffic, and upon disappearance of such competition, restore the former charges. The existence of the Enterprise Company as a competitive factor is of distinct value to the public and that existence may depend upon its right to engage in through business. HELD, this investigation was made with the understanding that the Commission is without power to grant relief, and no opinion as to whether the through routing arrangement should be extended to the Enterprise Company is expressed; but if the public is to have the legitimate benefit of water competition, it is evident that authority should be provided to establish through routes between rail and water carriers, or at least to prevent unjust discrimination by rail carriers between connecting water lines. In the matter of alleged unlawful discrimination against the Enterprise Transportation Company by railroad lines leading from New York, 11 I. C. C. 587.

(i) The rail lines centering in New York and running westerly therefrom refuse, for stated business reasons, to make any joint rating arrangement with the Enterprise Transportation Company, a steamboat line plying between Fall River and other New England points and New York city, and in competition with the Fall River line of the New England Navigation Company, which is owned and operated by the New York, New Haven and Hartford Railroad Company. The Fall River line may, by reducing rates on local traffic, force out of business the Enterprise Transportation Company, while obtaining a lucrative and supporting business from through traffic, and, upon disappearance of such competition, restore the former charges. The existence of the Enterprise Transportation Company as a competitive factor is of distinct value to the public, and this existence may depend upon its right to engage in through business. By reason of want of power to grant any relief, the Commission expresses no opinion as to whether the through routing arrangements should be extended to the Enterprise Company; but if the public is to have the legitimate benefit of water competition, it is evident that authority should be provided to establish through routes between rail and water carriers. Re Alleged Unlawful Discrimination against the Enterprise Transp. Co. 11 I. C. C. 587.

(j) Railroad lines leading west from New York City make joint through rates with the New England Navigation Company, controlling the Fall River line of steamers, which plies between New York and Fall River, Mass., and some other New England cities, and also controll-

ing other important steamer lines operating on Long Island Sound. Such joint rates apply in both directions between Western and New England points. The New England Navigation Company is owned and operated by the New York, New Haven & Hartford R. R. Co. The rail lines centering in New York and running westerly thereof refuse, for stated business reasons, to make the like or any joint rating arrangement with the Enterprise Transportation Company, a steamship line plying between Fall River and other New England points and New York City, and in competition with the New England Navigation Company's Fall River line. This Fall River line may, by reducing rates on local traffic, force out of business the Enterprise Transportation Company, while obtaining a lucrative and supporting business from through traffic, and upon disappearance of such competition, restore the former charges. The existence of the Enterprise Transportation Company as a competitive factor is of distinct value to the public, and that existence may depend upon its right to engage in through business. This investigation was made with the understanding that the Commission is without power to grant any relief, and no opinion as to whether the through routing arrangement should be extended to the Enterprise Company is expressed; but if the public is to have the legitimate benefit of water competition; it is evident that authority should be provided to establish through routes between rail and water carriers, or at least to prevent unjust discrimination by rail carriers between connecting water lines. Matter of Alleged Unlawful Discrimination, 11 I. C. C. 587.

(k) Complainant, Enterprise Transportation Company, attacked defendant for refusing to make a through route and joint rate from Jamestown, Pa., for the transportation of fish. Complainant has been operating a line of steamboats on Long Island Sound since some time in 1905. Its boats ply between Fall River and New York City and call en-route at Jamestown, R. I. Its principal competitor is the New England Navigation Company, which is owned and controlled by the defendant Pennsylvania Railroad. The latter stops at Newport but does not at Jamestown. The Navigation Company and defendant maintain a through route and joint rate from Newport to Philadelphia. A large tonnage of fish is shipped annually from Jamestown to Philadelphia, Jamestown being 3 miles from Newport. Rates from Newport are 34c and from Jamestown 37c. HELD, that from Jamestown no satisfactory through route exists within the meaning of the Act. That, even if the present arrangement should be regarded as a satisfactory through route, complainants right to maintain this proceeding would not be affected thereby, since, at the time complaint was filed, through route from Jamestown by defendants lines had been abandoned and for a time thereafter was not in operation. Pennsylvania and complainant should be required to establish, for the transportation of fish, from Jamestown to Philadelphia, a through route, and apply thereto a joint rate of not more than 34c. Enterprise Transportation Co. v. Pennsylvania R. R., 12 I. C. C. 327.

(ka) Complainant has been operating a line of steamboats on Long Island Sound since some time in the year 1905. Its boats ply between Fall River and New York City, and call en route at Jamestown. R. I. Its principal competitor is the New England Navigation Company, which is owned and controlled by the Pennsylvania Railroad Company. The boats of the Navigation Company ply between Fall River and New York City and stop at Newport, R. I., but do not now stop and never have stopped at Jamestown. Previous to the time complainant began business as aforesaid the navigation company and Pennsylvania Railroad Company maintained, and have ever since maintained, and applied to the transportation of fish a through route and joint rate from Newport to Philadelphia. At the time complainant began to operate as aforesaid no such route or rate was in existence from Jamestown to Philadelphia. A large tonnage of fish is shipped annually by water from Jamestown, which is about 3 miles from Newport. At some time during the summer of 1906, and after complainant had begun operations, the navigation company and Pennsylvania Railroad Company, by using the Naragansett Ferry Company as their agent to receive shipments of fish at Jamestown and transport same from that point to Newport, extended said through route to Jamestown. This service was discon-

tinued about November 1, 1906, but renewed about February 1, 1907, and has been continuously maintained since, except that when the boats of the Narragansett Ferry Company are not running, the transportation from Jamestown to Newport is performed by the Newport and Jamestown Ferry Company. The through rates to Philadelphia are: From Newport 34 cents per 100 pounds, and from Jamestown, 37 cents. Out of these rates the Pennsylvania Railroad Company receives 7 cents per 100 pounds for the transportation from New York to Philadelphia, and the ferry company receives 3 cents for the transportation from Jamestown to Newport. The ferry company is named as a party to the tariff prescribing the through rates, but refuses to concur in the tariff or file with the Commission its rates for the transportation from Jamestown to Newport. The local rate of the Pennsylvania Railroad Company for transporting fish from New York to Philadelphia is 22 cents per 100 pounds. Complainant receives at Jamestown shipments of fish desined to Philadelphia and delivers same to the Pennsylvania Railroad Company at New York. Deliveries to the latter are made at the same place and at about the same time, whether carried thereto by complainant or by the navigation company, and reach Philadelphia at the same time in the one case as in the other, but such shipments leave Jamestown a little earlier when received over complainant's line than when the carriage is over said through route. When the initial shipment is over complainant's line the Pennsylvania Railroad Company exacts for the haul from New York to Philadelphia said local rate of 22 cents, and refuses to make with complainant a through route and apply thereto a joint rate. Complainant's local rate for transporting fish from Jamestown to the place where delivery is made to the Pennsylvania Railroad Company, as aforesaid, including drayage across the city of New York, is 17½ cents per 100 pounds, while the local rate of the navigation company for transporting fish from Newport to such place of delivery, including drayage, is 23 cents per 100 pounds. Upon all the facts and circumstances disclosed by the record, HELD, That from Jamestown to Philadelphia no satisfactory through route exists within the meaning of the language of the Act to regulate Commerce. That even if the present arrangement should be regarded as a satisfactory through route, complainant's right to maintain this proceeding would not be affected thereby, since, at the time the complaint was filed, through route from Jamestown by defendants' lines had been abandoned and for a time thereafter was not in operation. That the Pennsylvania Railroad and complainant should be required to establish, for the transportation of fish, from Jamestown to Philadelphia, a through route, and apply thereto a joint rate of not more than 34 cents per 100 pounds, except that the Pennsylvania Railroad Company may, if it wishes to do so, apply to the Commission for an order requiring complainant to indemnify it against any loss it may suffer in the premises by reason of the financial irresponsibility of complainant. Enterprise Transportation Co. v. Penn. R. R. Co. et al. 12 I. C. C. 327.

IMPORTANT CASES SINCE 1908

(l) That a steamship company has no vessels and that its stock is not paid in, does not deprive it of the right to a ruling by the Commission as to whether it is entitled to be part of a through route in connection with rail carrier. Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 186.

(m) Where a steamship company stands ready with sufficient financial backing to engage in business as a common carrier in connection and under arrangement with rail carriers, the Commission will not refuse to recognize it as a common carrier in determining whether through routes and joint rates should be established merely by reason of the fact that it has refrained from the actual carrying of traffic until the rights and privileges necessary for its successful operation should be granted. Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 187.

(n) Cancellation of rates with boat lines permitted where boat lines manipulated manifests and received excessive divisions. Seattle Shingle Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 364, 368.

(o) To a contention by one railroad that a water carrier has always been found reliable, and that it does not desire to establish through routes and joint rates with a second line so long as the service rendered by the first is satisfactory, it may be rejoined that the con-

trolling consideration must be the public benefit. This is buttressed by the presumption that, where possible, and where the roadway has not been constructed by private outlay, competition is the normal safeguard commonly relied on in the first instance. Unless there is something, such as lack of financial responsibility, to rebut the presumption that the interests of the community would be better served by two carriers than by one, the right of the petitioning boat line for through routes and joint rates is fairly apparent. Decatur Nav. Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 286.

(p) A natural waterway, improved by the expenditure of public funds, should be thrown open as far as possible to the free and unrestricted use of all those who desire to avail themselves of it. It differs materially from a privately constructed and owned roadbed, which, though quasi-public in nature, is built by individuals or corporate interests primarily for their own gain. A navigable river is a public highway, a natural avenue of commerce, and the public interests demand that its advantages be utilized to the fullest extent. It is true that the Act to Regulate Commerce, in giving the Commission authority to establish through routes and joint rates, was not intended to require the Commission to establish such routes and rates whenever requested without regard to the peculiar circumstances of each case. In view of the fact that the Act was designed to promote the free movement of interstate commerce, and bearing in mind that a large river is a natural artery of commerce, it would seem that any responsible common carrier operating on the river would be prima facie warranted in requesting the Commission to allow it to participate to the fullest possible extent in the interstate commerce originating on the river. Decatur Nav. Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 288.

(q) An objection by rail carriers to the establishment of through routes and joint rates with a water carrier, is not entitled to great weight where no reduction in rail rates to the point of junction is contemplated. Bowling Green Protective Association v. E. & B. G. P. Co., 31 I. C. C. 301, 304.

(r) The Commission is empowered to make through routes and joint rates even when one of the defendants is a water line. Bowling Green Protective Association v. E. & B. G. P. Co., 31 I C. C. 301, 306.

(s) The Commission has power to make through routes and joint rates when one of the carriers in a water line. Bowling Green Protective Asso. v. E. & B. G. Packet Co., 31 I. C. C. 301, 306.

(t) Spirit of act to maintain freedom of our ports and to allow boat lines to engage in traffic upon equal terms. Pacific Nav. Co. v. S. P. Co., 31 I C. C. 472, 479.

(u) Where it is sought to apply the limitation in section 15 in a proceeding by an ocean carrier plying between two ports, to secure the establishment by a rail carrier having rail lines between such ports, of through routes and joint rates accorded competing ocean carriers, the question is whether or not the establishment of through routes with complainant would embrace substantially less of defendant's line than is included in the through rail-and-water routes maintained with the competitors. Pacific Nav. Co. v. S. P. Co., 31 I. C. C. 472, 479.

(v) If rail carriers are permitted to choose the particular boat lines with which they will establish through routes and joint rates, they will be able to dictate who shall operate on the water and who shall not, for a boat line accorded a monopoly of through rail-and-water traffic will soon be able to drive competitors out of business. The spirit of the Act is to maintain the freedom of ports and to allow boat lines to engage in traffic on equal terms. To permit rail carriers serving a port to favor one boat line or another would destroy the freedom of competition between boat lines which the Act is intended to preserve, and would practically close ports to all but the favored vessels. Pacific Nav. Co. v. S. P. Co., 31 I. C. C. 472, 479.

(w) The maintenance by a rail carrier of through routes and joint fares with one ocean carrier while denying them to another, constitutes undue preference and advantage to the former and undue prejudice and disadvantage to the latter, in violation of section 3. Pacific Nav. Co. v. S. P. Co., 31 I. C. C. 472, 479.

(x) It is a generally accepted principle of rate making that through rates should be less than the sum of the inter-

mediate rates. That this rule should be applied where one of two connecting carriers transports the goods by water and the other by rail is evident from the provisions of the Act to Regulate Commerce. Not only is the Commission given power, under section 15, to require rail carriers to join with water carriers in establishing through routes and joint rates, but under section 6 as amended it is authorized to establish maximum proportional rates by rail to and from ports to which the traffic is brought, or from which it is taken by the water carrier, and to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply. Chattanooga Packet Co. v. I. C. R. R., 33 I. C. C. 384, 392.

(y) It does not follow because the initial tariff filed by a boat line included joint rates with rail carriers, party theretofore with other like carriers to lower rates between the same ports, that the concurrence of the rail carriers suffices to bring the new and higher joint rates under the requirements of the clause of section 15. The exemption therefrom attaching to rates filed by the lake carrier alone would attach to the joint rates in question. Otherwise a new instrumentality of water commerce can not file in the first instance joint rates with rail connections without subjecting itself to limitations not of its own making but which it must inherit from predecessors whose domination by rail owners was supposed to account for thir ill success as public servants. Bay State Milling Co. v. Transit Corporation, 43 I. C. C. 338, 347.

(z) It can not be accepted without proof that the duty of providing arrangements the same as was formerly practiced by the railroad-owned boat lines is incumbent on a new water carrier or upon such carrier in connection with rail carriers in the Chicago and Milwaukee switching district. Grain Products Rates via Great Lakes, 43 I. C. C. 550, 555.

(aa) The Commission is not justified in sanctioning an arrangement restricting competition by excluding a boat line that seeks through routes and joint rates on the same basis as that enjoyed by its competitor. Gulf Atlantic S. S. Co. v. A. C. L. R. R., 46 I. C. C. 309, 312.

(bb) A navigable river, being a natural highway, should be thrown open as far as possible to the free and unrestricted use of all those who desire to avail themselves of it, and that a responsible common carrier operating thereon is prima facie warranted in asking for the establishment of through routes and joint rates with rail lines reaching the river. Gulf Atl. S. S. Co. v. A. C. L. R. R., 46 I. C. C. 309, 312.

(cc) If through rates are accorded to complainant boat line and in event of failure to agree upon amount of bond for the protection of defendant in its participation in such through rates, a specific sum will be fixed by the Commission upon request. Gulf Atlantic S. S. Co. v. A. C. L. R. R., 46 I. C. C. 309, 313.

(dd) Whenever and wherever, within the powers granted by the statute under which the Commission operates, there is presented an opportunity to utilize water transportation, this Commission will freely exercise its authority. Charleston & Norfolk S. S. Co., 47 I. C. C. 365, 371.

(ee) In establishing a through route and joint rates between rail and water carriers in a case where physical connection between a rail line and a water line is necessary it must appear (1) that such connection is reasonably practicable, (2) that it can be made with safety to the public, and (3) that the business to be handled will justify the outlay. The Act is broad and comprehensive in terms and contains no other limitation upon the authority of the Commission to establish through routes and joint rates between and over rail-and-water lines. Colonial Nav. Co. v. N. Y. N. H. & H. R. R., 50 I. C. C. 625, 629.

(ff) To apply the limitation of section 15 to cases which involve questions as to the propriety and feasibility of through routes and joint rates between and over rail-and-water lines would be inconsistent with the comprehensive and all-embracing authority plainly intended to be accorded by the Panama Conal Act. Col-Nav. Co. v. N. Y. N. H. & H. R. R., 50 I. C. C. 625, 630.

(gg) The word "property" of that part of section 6, as amended by the Panama Canal Act, construed to apply to passenger and freight traffic, in the establishment of through routes and joint rates between rail and water carriers. Col-Nav. Co. v. N. Y. N. H. R. R., 50 I. C. C. 625, 631, 632.

(hh) The act does not confer upon

the Commission the power to prescribe minimum rates over a through route where one of the carriers is a water line. Rail-and-Water Rate from Atlantic Seaboard, 63 I. C. C. 267, 275.

(ii) Complainant attacked combination rates of $1.38 charged on 73 bales of cotton concentrated at Sinton, Tex., shipped during Sept. 1918, to Galveston, Tex., for further concentration, and reshipped Nov. 2, 1918, by water from Galveston to Fall River, Mass., as unreasonable, unjustly discriminatory and unduly prejudical to extent they exceeded $1.24 and $1.25 plus a charge of 3c for second concentration applicable through Houston, Tex. Prior to June 25, 1918, the through rates were constructed on the New York combinations. The joint factor up to New York was the combination on Galveston. Effective June 25, 1918, the joint rates to New York and the local rates into and out of Galveston were increased 15c. Thereafter on cotton given second concentration at Galveston and reshipped to New York complainants were required to pay an increase of 15c in the rates to and a similar increase in the rates from Galveston, whereas at Houston second concentration was available to their competitors at the transit charge of 3c in addition to a single increase of 15c in the joint rate. On Dec. 12, 1918, second concentration was authorized at Galveston on the same basis as at Houston. No evidence was offered to show that the rates attacked were unreasonable. Any unjust discrimination which may have existed has been removed and complainants were not damaged, complaint dismissed. Spinnler & Co. v. Director General, 73 I. C. C. 611.

(jj) If there be dissimilarity of circumstances and conditions attending the interchange of traffic with a water line compared with interchanges with all rail lines, rail carriers are entitled to be compensated for the greater expense, either by a large division of the through rate or by reasonable additional charge. U. S. War Department v. A. & S. Ry. 77 I. C. C. 317, 346.

(kk) Rail carriers may make a reasonable charge to cover the additional expense, if any, of interchange with boat lines over and above the cost of interchange with rail carriers. U. S. Department v. A. & S. Ry. 77 I. C. C. 317, 346.

(ll) The law authorizes the Commission to require the establishement of through rail and water routes and joint rates which short haul a rail carrier. U. S. War Department v. A. & S. Ry. 77 I. C. C. 317, 355.

(mm) Joint rates over rail and water routes ought to be divided without regard to the extent to which rail carriers may be shorthauled, and not upon a plan designated to discourage or render impracticable the use of such joint rates. U. S. War Department v. A. & S. Ry. 77 I. C. C. 317, 355.

(nn) Whatever may be the case as between rail lines, joint rates over rail-and-water routes ought to be divided without regard to the extent to which rail carriers are short-hauled, and not upon a plan designated to discourage or render impracticable the use of such joint rates. U. S. War Department v. A. & S. Ry., 77 I. C. C. 355.

(oo) The exaction by rail lines of their local rates as divisions of through routes and joint rates with water carriers has for its purpose the protection of the long haul. It is a means of accomplishing indirectly what Congress, in the law respecting the establishment of through routes and joint rates, has sought to prevent. U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 356.

(pp) Whatever powers the Commission may have are limited by the fact that the act does not confer upon it the power to prescribe minimum rates over a through route where one of the carriers is a water line. Roasted coffee from Atlantic seaboard 83, I. C. C. 131, 134.

(qq) Section 15 (3) of the act authorizes commission to establish through routes and joint rates applicable to transportation of property where one of the carriers is a water line. However, by that same section and paragraph it is provided that commission shall not "have right to establish any route, classification, or practice, or any rate, fare, or charge when transportation is wholly by water." Boston Wool Trade Asso. v. A. T. & S. F. Ry. Co., 83 I. C. C. 445, 448, 449.

(rr) Refusal of certain rail carriers

to join with White Star Line, a lake line carrier, in through routes and joint rates from Port Huron and Detroit, Mich., through Toledo, Ohio, to points in c. f. a. territory, while participating in such through routes and rates with Detroit & Cleveland Navigation Co., a competing lake line operating between Detroit and Cleveland, Ohio found unduly prejudical. Joint rates in connection with complainant's line is desirable in public interest, and establishment thereof required. White Star Line v. N. Y. C. R. R. Co., 83 I. C. C. 473.

(ss) Suggestion that through freight might be diverted to complainant lake line if joint rates are established in connection with it, sufficient to reduce all-rail traffic so as to make operation of proposed through package cars impracticable. HELD: When it is so highly desirable that all means of transportation should be utilized and developed to highest possible efficiency such potentialities should not be permitted to prevent establishment of routes and rates that are actually and presently in the public interest. White Star Line v. N. Y. C. R. R. Co., 83 I. C. C. 473, 477.

(tt) Where a railroad tendered cotton, which had been damaged by fire and water while waiting to be unloaded, to a connecting steamship company, which refused to accept it, the shipper's contention that there was no delivery to the steamship company, and that the freight was therefore not earned, was without merit, in view of the fact that there was no claim against the railroad in relation to the damage. Stevens v. Atchison, T. & S. F. Ry. Co., 202 N. Y. S. 195.

ALL OTHER CITATIONS

Trucker's Transfer Co. v. C. & W. C. Ry. Co., 27 I. C. C. 275, 278; Humboldt S. S. Co. v. White Pass & Yukon Route, 25 I. C. C. 136; Murray Lighterage and Transportation Co. v. D. & H. Co., 25 I. C. C. 388; Tampa Board of Trade v. L. & N. R. R. Co., 30 I. C. C. 377; Hamlen & Sons Co. v. I. C. R. R. Co., 212 Fed. 324, 327; Pacific Nav. Co. v. S. P. Co., 31 I. C. C. 472, 476, 478; Milwaukee Produce and Fruit Exchange v. Crosby Co., 30 I. C. C. 653, 655; Decatur Nav. Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 287;Eastern Shore Development S. S. Co. v. B. & O. R. R. Co., 32 I. C. C. 238; Catskill & New York Stamboat Co., Ltd., v. P. R. R. Co. Unrep. Op. A-756; Financial Relations, Etc., L. & N. R. R., 33 I. C. C. 168, 206; Tampa Board of Trade v. A. & V. Ry. Co., 33 I. C. C. 457; Bituminous Coal Rates to Baltimore and Other Points 33 I. C. C. 307, 316; Chattanooga Packet Co. v. I. C. R. R. Co., 33 I. C. C. 384, 393; Damon v. Crosby Transp. Co., 33 I. C. C. 448, 451; The Twin Cities Cases, 33 I. C. C. 699, 709; Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co., 34 I. C. C. 67, 73, 74; P. H. & D. S. S. Co. v. Penn. R. R., 35 I. C. C. 475; Federal Sugar Refining Co. v. C. R. R. of N. J., 35 I. C. C. 488; Pine Bluff Traffic Bureau, v. L. & N. R. R., 37 I. C. C., 218, 223; Black & White River Transp. Co. v. M. P. Ry., 37 I. C. C. 244; Cumberland Transp. Co. v. C. N. O. & T. P. Ry., 37 I. C. C. 463, 468, 469; Passenger Fares from Milwaukee, Wis., 38 I. C. C. 98, 100; Lake and Rail Rate Cancellations 38 I. C. C. 201; Ocean-and-Rail Rates to Charlotte, N. C. 38 I. C. C. 405; Pine Bluff Traffic Bureau v. L. & N. R. R. Co., 37 I. C. C. 218, 219, 223; Peninsular & Occidental S. S. Co., 37 I. C. C. 432, 441; The Boat "H. B. Plant," 37 I. C. C. 453, 455, 456; Indiana Transportation Co., v. G. R. H. & C. Ry., 39 I. C. C. 757; S. P. Co. Ownership of Atlantic S. S. Lines, 43 I. C. C. 168, 173, 174; Inland Nav. Co. v. Wabash R. R., 43 I. C. C. 588, 594; Cumberland Transp. Co. v. C. N. O. & T. P. Ry., 45 I. C. C. 444; Transcontinental Rates, 46 I. C. C. 236, 267; Baltimore & Carolina S. S. Co. v. A. C. L. R. R., 49 I. C. C. 176, 180; Colonial Nav. Co. v. N. Y. N. H. & H. R. R., 50 I. C. C. 625, 626, 627, 631, 633; Eastern Shore of Virginia Produce Exchange v. W. M. Ry., 50 I. C. C. 60; Rail and water rates from Atlantic Seaboard territory to Texas, 61 I. C. C. 740; Waters v. Pfister & Vogel Leather Co., (Wisc. 1921), 186 N. W. 173; Ore Carrying Corporation v. C. R. R. Co. of N. J., 66 I. C. C. 311.

§6½. Free transportation.

See Free Transportation.

IMPORTANT CASES SINCE 1908

(a) In the provision of section 1 as amended by the Hepburn Act, that "no common carrier subject to the provisions of this Act shall issue or give any interstate free ticket, free pass," etc.,

the phrase "common carrier" is not limited to "common carriers subject to the provisions of this Act," and hence a common carrier subject to the Act may exchange passes with ocean steamship lines and foreign railroads. United States v. E. R. R. Co., 213 Fed. 391.

§6½a. Barge lines and rail carriers.

IMPORTANT CASES SINCE 1908

(a) General principles indicated which should govern the division of joint rates the level of switching charges at the ports, the levying of per diem charges for detention of cars or barges at interchange points, and the establishment of additional through routes and joint rates, between the barge line and rail carriers. U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 317.

(b) Everything that can be done ought to be done to give the barge line a fair opportunity to demonstrate its worth. The project should be viewed in the light of the service which can reasonably be anticipated and without permitting vision to be obscured by the difficulties and embarrassments which surround every new enterprise. On the other hand the experiment will not be fairly conducted if the barge line is permitted to tap the resources of the rail lines by depriving them in any way of just compensation for the services which they perform in connection with its operation. U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 353.

(c) In view of the experience that the country has had with recurrent rail congestion car shortages, and with increased rates, the possibilities which the barge line offers as a means of adding to the sum total of transportation facilities and of providing a cheaper form of carriage are plainly of prime public importance. U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 353.

(d) Is owned and operated by the Government, not necessarily as a permanent governmental undertaking, but to test the possibilities of transportation by barge upon inland waterways. U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 353.

(e) The Mississippi-Warrior River barge line is owned and operated by the Government, not necessarily as a permanent governmental undertaking, but to test the possibilities of transportation by barge upon inland waterways. U. S. War Dept. v. A. & S. Ry. 77 I. C. C. 353.

(f) Reciprocal switching charges are assessed upon traffic received from or delivered to rail lines, while higher industrial switching charges are assessed on traffic from or to the barge line. HELD: Reciprocity is a factor extraneous to the service and so "indefinite, uncertain, and speculative," as well as variable, that it is not entitled to weight as a reason for a differentiation in the charges, and the element of reciprocity, as between the rail carriers, found not to justify the difference. U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 360.

(g) The allowance by connecting rail lines of per diem reclaims to a switching line found to be a reason for assessing higher charges on traffic of the Mississippi Warrior River barge line, so long as the latter pays no per diem reclaims. U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 317, 361.

(h) So long as the Mississippi-Warrior River barge line is compelled to pay a penalty for the detention of cars, the rail lines ought to pay a corresponding penalty for the detention of barges. U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 317, 361.

(i) Fact that connecting rail lines furinsh cars to a switching line while the barge line does not furnish cars is not a justification for rail carriers assessing higher switching charges on the barge line's traffic. U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 360, 361.

(j) General principles indicated which should govern the levying of per diem charges for the detention of cars or barges at the interchange points between the Mississippi-Warrior River barge line and rail carriers. U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 361.

(k) If the average switching service performed on traffic received from or delivered to the Mississippi-Warrior River barge line is more expensive than the average switching service performed on traffic received from or delivered to rail lines corresponding higher switching charges in the former case are justified U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 361.

§6¾. Wharfage.
See Wharfage.
IMPORTANT CASES SINCE 1908

(a) The Commission will not order a physical connection with a dock, the location of which is unknown. Baltimore & Carolina S. S. Co. v. A. C. L. R. R., 49 I. C. C. 176, 177.

V. EVIDENCE.

§7. In general.
See Evidence.
IMPORTANT CASES SINCE 1908

(a) The presumption is that a reasonable water-and-rail rate would be some what less than a reasonable rail-water-rail rate. Augusta & Savannah Steamboat Co. v. O. S. S. Co. of Savannah, 26 I. C. C. 380, 387.

(b) Distance of haul is to be considered in determining reasonableness of rates by water. Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 643.

(c) Condition of harbor is to be considered in determining reasonableness of rates by water. Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 643.

(d) Depth of channels is to be considered in determining reasonableness of water rates. Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 643.

(e) Capacity of boats is to be considered in determining reasonableness of water rates. Comercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 643.

(f) Wharves and wharfage may be considered in determining the reasonableness of rates by water. Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 643.

(g) Condition of navigation is to be considered in determining reasonableness of rates by water. Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 644.

(h) The density of traffic is to be considered as determining reasonableness of rates by water. Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. 639, 644.

(i) Cost of operation may be considered in determining reasonableness of rates by water. Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 644.

(j) Boat line originating traffic considered same as branch line to rail carrier. R. R. Com'rs. of Fla. v. A. C. L. R. R. Co., 28 I. C. C. 356, 359.

(k) Large and important quantities of low-grade commodities move into and out of the south Atlantic ports by tramp steamers. Fourth Section Violation in the Southeast, 30 I. C. C. 153, 170.

(l) In constructing joint rates via rail and water, some difference should be made in water rates for lower classes. Bowling Green Protective Asso. v. E. & B. G. Packet Co., 31 I. C. C. 301, 305.

(m) Water lines must be looked upon as rate-making lines between the two seaboards as to traffic involved. Rates on Asphaltum, Barley, Beans, and Canned Goods, 33 I. C. C. 480, 486.

(n) It is impossible for an independent to engage in a rate war with a boat line financed by owning railroads. Lake Line Application Under Panama Canal Act, 33 I. C. C. 699, 716.

(o) What voice lake lines have in naming their rates or divisions, when any at all, is usually that of an official who occupies a dual traffic capacity for the railroad and its controlled lake lines, Rates via Rail-and-Lake Routes, 37 I. C. C. 302, 307.

(p) With railroad competitors of lake lines, investment, traffic density, and gross revenues have increased greatly, even while average revenue per unit of tonnage was decreasing. Rates via Rail-and-Lake Routes, 37 I. C. C. 302, 310.

(q) The water rates on transcontinental traffic from the Gulf ports have generally been lower than from the Atlantic ports because of the shorter distonce and less frequent sailings therefrom, and because the rail rates from the Middle West to the Gulf ports were higher than to the north Atlantic ports. Transcontinental Cases of 1922, 74 I. C. C. 55, 56.

(r) Conference rates were maintained by water carriers operating in transcontinental service from the north Atlantic and Gulf ports and established at a conference under a "gentlemen's agreement." Appendix 1. Transcontinental Cases of 1922, 74 I. C. C. 48, 55, 96.

(s) Shipment by boat from New York, N. Y., to Albany, N. Y., thence rail to interstate destination, rail carrier advancing water charges found not a through shipment, there being no common control, management, or arrangement for continuous carriage from New York to ultimate destination. Amendt Milling Co. v. M. C. R. Co., 83 I. C. C. 585.

ALL OTHER CITATIONS

Fourth Section Violation in the Southeast, 30 I. C. C. 153, 163, 178, 230; Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 517; Ownership of Dalles, Portland & Astoria Navigation Co., 33 I. C. C. 462, 466; Doran & Co. v. N. C. & St. L. Ry. 33 I. C. C. 523, 525; C. & E. R. R. Co., Ownership of Water Equipment, 34 I. C. C. 218, 220; Rates via Rail-and-Lake Routes, 37 I. C. C. 302, 316.

VI. REASONABLENESS OF RATES.

See Supra II; Loss and Damage; Reasonableness of Rates.

§8. In general.

CASES 1887-1908

(a) A line of steamships plying between New York and Boston every other day makes the distance in 24 hours, does the largest part of the carrying trade of the grocers of Boston on shipments from New York, carries flour from New York to Boston for 8½ cents per hundred pounds; other lines, part water and part rail, known as the "Sound Lines," make daily trips between New York and Boston, and carry flour from New York to Boston at 9 cents per hundred pounds; an all-rail line composed of the lines of the defendants upon through billing and through rates to Boston alone on shipments from New York makes daily runs between these points and carries flour from New York to Boston at 9 cents per hundred pounds; each and all of these carriers are in actual competition for this business and it involves the carriage of traffic important in amount. HELD, upon the facts that this is a case in which the circumstances and conditions in the carriage of this commodity are substantially dissimilar at Boston to what they are at Readville, an interior town about eight miles from Boston, on the line of the all-rail carriers, where no competition exists between the all-rail carriers and the water lines, and justifies the all-rail carriers in meeting the rate by the water line at Boston by charging 9 cents per hundred pounds on flour, while the combined local rates of the two rail carriers are higher upon shipments of this kind of freight from New York to Readville than they are upon the joint through rate from New York to Boston. The all-rail line is composed of two separate and distinct lines of railroad, owned by two separate and distinct corporations; but by an arrangement these two corporations make joint through rates on all business from and to New York and Boston passing over their lines, and for this business they furnish fast freight trains which stop at no stations between New York and Boston and have the right of way over all other freight trains; as to all other points along their lines, however, they each charge their local rates, and this business is done by way freight trains of each Company respectively for itself and on its own account; all of which methods and rates in each instance are duly advertised in their published tariffs. On the facts herein above stated, a firm of dealers in the City of Boston ordered a consignment of flour from New York to Readville by the all-rail lines of the defendants in this proceeding, and subsequently claimed in their complaint to the Commission that they should have been charged for this service the through rate to Boston and not the local rates of the defendants from New York to Readville. HELD, that the facts show that complainants are mistaken as to their rights in this matter and that the complaint cannot be sustained, and must be dismissed without prejudice. King & Co. v. N. Y. N. H. & H. R. R. Co. 3 I. C. R. 272.

(b) Where a line of steamships, plying between New York and Wilmington, N. C., makes a through rate from New York via Wilmington and the Carolina Central Railroad to interior points, by adding the steamer rate to the local tariff rate of the railroad to the interior points, there being no agreed through rates for such freight between the steamship and rail lines, the rail carrier, when the freight is tendered to it at Wilmington, is under no obligation to pay the rates earned by the steamer in

transporting the freight from New York to Wilmington, but may decline to do so, leaving the steamship and the shipper to settle the matter of the steamship's charges before the carrier takes the freight and transports it to the interior point. In the Matter of the Application of F. W. Clark 2 I. C. R. 796.

IMPORTANT CASES SINCE 1908

(c) Joint rates with water line should not be greater than all-rail rates. Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co., 34 I. C. C. 67, 74.

(d) The maintenance of lower rates by differential rail-and-water routes should be required only when the cost of transportation is less than the all-rail cost. Lake and Rail Rate Cancellations, 42 I. C. C. 513, 520.

(e) A showing that the lake link in rail-lake-and-rail routes constitutes but from 13 to 26 per cent of the total distance, cannot be accepted as conclusive proof of the impracticability of the rail-lake-and-rail-routes. Lake and Rail Rate Cancellations, 42 I. C. C. 513, 520.

(f) One of the most important factors to be considered in fixing rates on commodities moving by water is that of the space occupied. The rates on uncompressed cotton may properly be considerably higher than on compressed cotton. The former takes approximately twice the space necessary for the latter, and the desirability of utilizing the space of vessels to the fullest extent is well recognized. Cotton from New Orleans, 49 I. C. C. 751, 754, 756.

(g) Authority granted boat lines subject to the Commission's jurisdiction to increase their rates to the same extent granted railroads operating between the same points or in the same territory, but in the construction of rail-and-lake rates the present parity between Chicago and Duluth should be maintained. Increased Rates, 1920, 58 I. C. C. 220, 253.

(h) Water craft are operated under conditions which make it impossible to predict at all times the precise date of docking and clearing, and rail carriers can not be held responsible therefor. American Smelting & Refining Co. v. Director General, as Agent, 62 I. C. C. 583, 588.

ALL OTHER CITATIONS

Burke v. G. C. & S. F. Ry. Co., 147 N. Y. S. 794, 798; Acosta v. Merchants & M. Transp. Co., 41 I. C. C. 376; Canada Atlantic Transit Co., 42 I. C. C. 369; Fish from Virginia, 42 I. C. C. 415; Transcontinental Commodity Rates, 48 I. C. C. 79, 94, 95; International Paper Co. v. M. C. R. R. Co., 83 I. C. C. 235; Amendt Milling Co. v. M. C. R. R. Co., 83 I. C. C. 585, 586.

§9. Advancing Charges.

CASES 1887-1908

(a) Carriers of interstate traffic are not obliged to pay charges of steamboat lines when no agreement for a through rate exists. Re Clark (Com.) 2 I. C. R. 797.

WATER COMPETITION

See Advanced Rates §18(2); Discrimination §8, §8(5); Equalization of Rates §4(4); Erie Canal; Evidence §14(1); §14(3); §14(5); Long and Short Hauls §4; §10; Panama Canal Act; Potential Competition; Reasonableness of Rates §8(4); Water Carriers.

WEATHER INTERFERENCE

See Demurage §19.

WEIGHTS AND WEIGHING

I. CONTROL AND REGULATION.
§1. In general.
§2. Jurisdiction of Commission.
II. METHOD OF COMPUTING CHARGES.
§2½. In general.
§3. Actual weight.
§4. Capacity weight.
§5. Estimated weight.
§5a. Net weight rates.
§5½. Origin weights.
§6. Reweighing.
§7. Scaleage and shrinkage.
§7½. Track scales.
§7¾. Wagon weights.
III. DISCRIMINATION.
§8. In general.
IV. EVIDENCE AND BURDEN OF PROOF.
§9. In general.
V. REPARATION.
§10. In general.
VI. TARIFFS AND CONSTRUCTION
§11. In general.
§12. Inspection bureaus.

VII. REASONABLENESS OF CHARGES.
§13. In general.
VIII. WEIGHING ALLOWANCES.
§14. In general.

CROSS REFERENCES

See Bills of Lading §7; Classification §4; §11½; §21; Evidence §65; Express Companies §11(3); Mails; Minimums; Reasonableness of Rates §41; Refrigeration V.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. In general.

IMPORTANT CASES SINCE 1908

(a) The question of the loss of weight of grain during elevation is one of property rights that must be disposed of in the courts under the general law. Baltimore Chamber of Commerce v. Pa. R. R., 15 I. C. C. 341, 346.

(b) Wherever the transportation charge is by weight and the weight of the cheaper grade commodity is substantially the same, the poor man pays more freight in proportion to the value of the service than he who consumes the costlier article. Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co., 16 I. C. C. 405, 406.

(c) The Commission does not suggest that all weigh masters should be appointed or licensed by the government, but it does think that there are points at which, and perhaps circumstances under which, official weigh masters should act, and that the power should exist to appoint such persons and determine their sphere of action. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 34.

ALL OTHER CITATIONS

Southwestern Portland Cement Co. v. T. & P. Ry., 41 I. C. C. 39.

§2. Jurisdiction of Commission.

See Jurisdiction of Commission.

IMPORTANT CASES SINCE 1908

(a) The Commission has jurisdiction over rates collected in excess of actual weight, such charges being mere overcharges. Wheeler L. B. & S. Co. v. A. & C. R. R. Co., 20 I. C. C. 10.

(b) The Commission may order a refund of charges based on weight in excess of actual weight. Noble v. St. L. S. W. Ry. Co., 20 I. C. C. 62; Peters v. O. S. L. R. R. Co., 20 I. C. C. 598; Wheeler Lumber Bridge & Supply Co. v. A. & C. R. R. Co. 20 I. C. C. 10, 11.

(c) It has been said that some Federal tribunal, perhaps the Commission, should be given authority over track scales. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 23.

(d) When transportation is interstate some of its incidents, such as receipt, delivery, storage, demurrage, car service, and weighing, assume an interstate character. As the Act to Regulate Commerce applies to "all services in connection with the receipt, delivery * * * * * and handling of property transported" the Commission has jurisdiction of the weighing service. Detroit Coal Exch. v. M. C. R. R., 38 I. C. C. 79, 80, 81.

II. METHOD OF COMPUTING CHARGES.

§2½. In general.

CASES 1887-1908

(a) Prima facie the system of charging by weight is more just than any other. It is the only system whereby the charge is made proportionate to the service rendered. It is the only system whereby inequalities as between shippers resulting from differences in the size of cars, can be obviated. Leonard v. C. & A. R. Co., 2 I. C. C. 599, 602.

(b) The charge for transportation under the net-weight practice being reasonable and just and without complaint on the part of the shippers or carriers an increased charge by the device of charging for the gross weight, being one sixth advance for the same service, was unwarranted, making the rate unreasonable Proctor v. Cincinnati, H. & D. R. Co. (Com.) 3 I. C. R. 131.

(c) The question as to correct weights and shipments, as between carrier and shipper, is one of fact to be determined in a manner just to both parties and as to which the ex parte action of either cannot conclude the other. Potter Manufacturing Co. v. C. & G. T. R. Co., 4 I. C. C. 223, 229.

(d) When actual weights of cotton shipments cannot be ascertained without great inconvenience to the shipper or carrier, and when transportation

charges are promptly adjusted by the carrier upon the basis of actual weights furnished by the consignee, a practice of billing the cotton at a proper estimated weight per bale should not be deemed unlawful Phelps & Company v. The Texas & Pacific Railway Company 4 I. C. R. 363.

(e) When actual weights of cotton shipments cannot be ascertained without great inconvenience to the shipper or carrier, and when transportation charges are promptly adjusted by the carrier upon the basis of actual weights furnished by the consignee, a practice of billing the cotton at a proper estimated weight per bale should not be deemed unlawful. Phelps & Co. v. Texas & Pacific Railway Co., 6 I. C. C. 36.

(f) Published tariffs specifying rates per standard crate on vegetables shipped from Florida to northern or northeastern points should state plainly the weight dimensions of the crate to which the rates apply. Re Alleged Unlawful Charges v. 8 I. C. C. 585.

(g) Complaint alleged that defendants' carload rate on apples from certain points in Illinois to New York City was unreasonable in that an arbitrary weight greater than the actual weight was imposed, but subsequently defendants amended their tariffs so as to make them apply to only actual weight on such apples. Complaint dismissed. White & Co. v. B. & O. S. W. R. R. Co. et. al. 12 I. C. C. 307.

IMPORTANT CASES SINCE 1908

(h) The weight basis for assessing charges should be the same for returned shipments as for shipments forwarded. In re Express Rates, 24 I. C. C. 380, 408.

(i) An exhaustive investigation of change in weighing in all parts of the country by the Commission revealed that three-fourths of all the track scales in use in the United States were of defective design or improperly constructed. Less than one-fourth were properly inspected. Not more than 10 per cent were accurately tested and a majority were not in a proper sense tested at all. The methods of weighing were heedless and unsatisfactory in many cases. The stenciled tare weights upon 80 per cent of all cars were erroneous. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 9.

(j) Where weighing methods have been inaccurate it does not meet the situation to say that the railroad has given to one shipper, by assessing charges on too low a rate, what it has taken from another by enforcing an excessive weight. In so far as possible the weight assessed should be the true weight. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 10.

(k) In practical railroad operation it may not be possible to weigh loaded cars by the most perfect method. The time and expense in the different methods of weighing must be considered. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 16.

(l) Cars should never be weighed in motion coupled at both ends, and ordinarily not when coupled at one end. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 17.

(m) Cars should never be weighed in motion coupled at both ends; they may properly be weighed in motion when uncoupled upon track scales especially designed for that purpose and in charge of thoroughly competent men; they should not ordinarily be weighed coupled at one end, and never unless at points where the greatest attention is paid to the condition of the scale and the competency of the weigh master. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 17.

(n) Stencilled weight on cars often inaccurate. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 19.

(o) Grain being weighed at the primary grain market, usually by a weighmaster under the supervision of a Chamber of Commerce or of the state of municipality itself, and the weight of flour and other grain products being usually ascertained by the counting of the number of packages each of a certain weight, there is at the present time but little dissatisfaction as to the weighing of these commodities. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 22.

(p) More complaint exists as to the weighing of coal than any other commodity except lumber. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 24.

(q) In the general investigation undertaken by the Commission evidence indicated that coal was usually weighed

at or near the mine by the railroad or the mine owner; that the coal if not properly trimmed was liable to fall from the car; that it was subject to extensive pilfering en route; that a substantial change in weight between the time the coal left the mine and its arrival at destination might also occur on account of evaporation; that it was frequently wet at the mine in the process of mining or preparing for shipment, and the drying out of the water lightened the weight of the car; and that the coal itself as it came from the mine sometimes contained moisture so as to cause a loss in weight by drying in the course of transit. HELD, it was proper for a railroad company to provide in its tariff that the weight as ascertained at point of origin should govern unless shown to be incorrect within such measure of tolerance as might be fixed. Where the commodity varies in weight during transportation the carrier might provide that the weight so ascertained should govern irrespective of the destination weight. It could not, however, provide that an incorrect weight, no matter when ascertained or where ascertained, should control. Where coal is wet in process of preparation for shipment so that the moisture does not become at any time a part of the coal itself, but soon evaporates, a proper deduction should be made from the weight as ascertained at the mine. When the moisture is a part of the coal itself, even though it subsequently evaporates, the carrier may properly require that the weight at the mine shall govern. When coal falls from the car or is lost by pilfering the carrier ought to be held responsible since the falling from the car is due from improper loading and the pilfering is a loss, for which the railroad must stand responsible. Some method should be adopted by which the weight of the coal at the mine can be accurately ascertained. There should probably also be the right upon the part of the shipper to demand a reweighing under proper restrictions. When possible, the car should be weighed light before being loaded. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 25.

(r) The Commission has no control over the contract between the coal producer and his purchaser. If the mine producer insists that his contract of sale shall provide for a mine rate, the Commission cannot control that action. It can, however, see to it that freight charges are assessed upon actual weights, and that the rules under which those rates are ascertained are correct. In re Weighing of Freight by Carriers 28 I. C. C. 7, 25.

(s) The evidence indicated that the car of lumber was usually weighed at the point of origin, and usually weighed a second and frequently a third time; that in case the subsequent weighing showed more than the original weight, the weight was advanced, while if they showed less no change was made in the original weight. That the same kind of lumber in the same state of dryness did not always possess an absolutely uniform rate; that green lumber shrunk greatly in weight in the process of drying; that dried lumber would often absorb moisture and increase materially in weight; and that accumulation of snow and ice upon the car tended to increase the weight of the car beyond its stenciled capacity. HELD, that in view of the fact that more complaint has been made touching the weighing of lumber than with respect to any other commodity, and in view of the varying practices of the railroads in recognizing claims for errors in weight, some method should be devised by which the true weight of lumber could be more accurately ascertained. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 27.

(t) Tolerance is the limit of error within which the ascertained track scale weight of a carload of freight shall be deemed to be correct. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 29.

(u) Evidently accuracy in the matter of weight becomes important in proportion to the value of the article, when the question is as to whether the entire carload has been delivered, and in proportion to the amount of the rate, when the question concerns merely the assessment of freight charges. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 29.

(v) Accuracy in matter of weight becomes important in proportion to value of article. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 29.

(w) Five hundred pounds may be regarded as reasonable tolerance. In re

Weighing of Freight by Carriers, 28 I. C. C., 7, 30.

(x) It is not to be expected that all railroads of the country will be equipped with theoretically ideal scaling devices. To require this would be unreasonable, but such devices are among the most important of the appliances of a railroad, for they virtually determine the charge which the shipper is to pay and the railroad to receive. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 32.

(y) The car may undoubtedly vary somewhat in weight from week to week, according to climatic condition, and therefore, when possible, it should be weighed both light and loaded at that end of the route at which the weight is governed. This, however, in the great majority of instances is impossible. The stenciled tare weight must be accepted, and it is extremely important that this weight should be as accurate as possible, while the stenciled weight can never be made absolutely accurate, there is no excuse for the wide area of error that now exists. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 34.

(zaa) Under the present system the transaction is usually closed before the dispute as to the weight of a shipment begins. Much trouble would be avoided if the interested party could be notified before the car is received and unloaded of exactly the amount upon which freight charges are to be assessed and given an opportunity to make whatever claim he desires in respect to weight before the unloading of the car, not only as a matter of justice to the shipper, but as a protection to the carrier against unreasonable claims on account of excessive weight. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 35.

(bb) Every carload of freight, where track scales are relied upon to determine weight upon which freight charges are to be assessed, should be weighed within 50 miles of the point of origin ordinarily. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 36.

(cc) Cars must be spotted in order to be properly weighed. American Brake Shoe & Foundry Co. v. B. Ry. of O., 28 I. C. C., 350, 351.

(dd) Rule that charges will be assessed on weights as ascertained at defendant's regular weighing stations and that this rule will not be departed from held unreasonable. Schenck v. N. & W. Ry. Co., 29 I. C. C. 125.

(ee) Carriers are not required to accept weight ascertained on private scales. Schenck v. N. & W. Ry. Co., 29 I. C. C. 125, 127.

(ff) It is unjust and unreasonable not to promptly report scale weights to billing office and give shipper opportunity to surrender additional billing. National Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 684, 685, 698.

(gg) Weights of many commodities transported cannot be taken with unfailing exactitude. The most accurate weights which can be secured with due consideration of all of the necessities of the situation should unquestionably be obtained. But the Commission will not condemn lightly a system which gives satisfaction at many important markets. Kansas City Live Stock Exch. v. A. T. & S. F. Ry., 34 I. C. C. 423, 427.

(hh) If carriers choose to adopt elevator weights, where ascertained, in preference to track-scale weights, their right to cancel elevation allowances is not affected thereby. Grain Elevation Allowances at Kansas City, 34 I. C. C. 442, 445.

(ii) The provision, in rules applying on traffic handled under class rates, for loading of articles other than those requiring refrigeration, provided weight thereof does not exceed 25 per cent of total weight, not justified. Rates and Rules on Shipments of Packing-House Products, 36 I. C. C. 62, 63.

(jj) Actual billing under a given, minimum is not conclusive as to weight which can be safely loaded. Eastern Live Stock Case, 36 I. C. C. 675, 685.

(kk) Weight of inside door protection has always been included in gross weight of shipments and practice is not unlawful. Keystone Wood Co. v. P. R. R. Co., 37 I. C. C. 622, 624.

(ll) Where a classification provides for the application of charges based on the minimum weight as stenciled on a tank car, provision should be made for reducing gallons to pounds. Lewis Mfg. Co. v. C. B. & Q. R. R., 41 I. C. C. 671, 672.

(mm) The shipper has a right to a

reasonable check of weights at the point of origin to be used as the basis for assessing charges. Romann & Bush P. I. & Co. v. L. & N. R. R., 51 I. C. C. 126, 128.

(nn) Complainant attacked rates charged on carloads of slab wood shipped intrastate from Perry to La Grande, Ore., subsequent to April 29, 1919, as unjust and unreasonable. Perry is 4.2 miles from La Grande, applicable rate 90c per 128 cubic feet. In 69 I. C. C. 7, a cord unit of 192 cubic feet was substituted on fuel wood 16 inches and under in length, and this basis is now effective. HELD, rates charged not unreasonable, complaint dismissed. Grande Ronde Lumber Co. v. Director General, 69 I. C. C. 355.

(oo) Complainant's contention that assessment of freight charges should be upon the weight at destination instead of at point or origin not sustained. Miller & Co. v. G. T. W. Ry. Co., Unrep. Op. A417.

(pp) Deduction of 1,000 pounds for lining and stoves on shipments of potatoes not shown unreasonable Miller & Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. A539.

(qq) To weigh all shipments of canned goods would add to cost of handling and would be detrimental to both shippers and canners. Allen Bros. Co. v. P. B. & W. R. R. Co. Unrep. Op. A-709.

ALL OTHER CITATIONS

In re Weighing of Freight by Carriers, 28 I. C. C. 7, 21, 23; In re Weighing of Freight by Carriers, 28 I. C. C., 7, 17, 19, 29, 30, 34; Transit Privileges on Carload Shipments of fish Unrep. Op.; A-765; National Pole Co. v. M. & I. Ry. 33 I. C. C. 372; Thomas & Osborn v. A. T. & S. F. Ry. Co., Unrep. Op. A-956; Johnson v. S. P. Co, 33 I. C. C. 597, 600; Eastern & Western Lumber Co. v. S. P. Co., 38 I. C. C. 697; Strobel Co. v. I. C. R. R. 38 I. C. C. 707; San Diego & Arizona Ry. Co. v. S. P. Co., Unrep. Op. 2106; Alberger Pump & Condenser Co. v. A. V. Ry. Co., 40 I. C. C. 105, 107, 108; Washed Coal Weights, 45 I. C. C. 93, 98; Hipkins v. Ocean S. S. Co. of Savannah, 45 I. C. C. 568; Rankin & Co. v. C. R. I. & P. Ry., 48 I. C. C. 421; Claims for Loss and Damage of Grain, 48 I. C. C. 530, 535, 538, 542, 575; Adams v. A. B. & A. Ry., 49 I. C. C. 415, 418; National Confectioners' Asso. v. A. & R. R. R., 49 I. C. C. 566, 573; Noble v. L. & N. R. R., 50 I. C. C. 245; Johns-Manville Co. v. L. V. R. R. Co. 53 I. C. C. 527.

§3. Actual Weight.

CASES 1887-1908

(a) When actual weights of cotton shipments can not be ascertained without inconvenience to the shipper or carrier, and when transportation charges are promptly adjusted by the carrier upon the basis of actual weights furnished by the consignee, a practice of billing the cotton at a proper estimated weight per bale should not be deemed unlawful. Phelps & Co. v. T. & P. R. R. Co. 4 I. C. C. 363, 369.

(b) Complainant attacked class rate on apples, carloads from Kansas City, Mo., to El Paso, Tex., as unreasonable in that an arbitrary weight greater than the actual weight was imposed. Subsequently, defendant amended its tariff so as to make it apply to only actual weight on the apples. HELD, complaint dismissed. D. M. Payne v. A. T. & S. F. Ry. 12 I. C. C. 190.

(c) Complainant attacked defendants carload commodity rate on apples from certain points in Illinois to New York City as unreasonable in that an arbitrary weight greater than the actual weight is imposed, but subsequently defendants amended tariffs so as to make them apply only actual weight on such apples. HELD, complaint dismissed. W. N. White & Co. v. B. & O. S. W. Ry. 12 I. C. C. 307.

IMPORTANT CASES SINCE 1908

(d) Actual weighing of the articles making up a carload is the only way by which their actual weight can be ascertained to a certainty, but this practice is not always convenient, practicable, or even advisable. Where the commodity is not susceptible of a reasonably accurate estimated weight, there should be sufficient margin between the minimum and the maximum weights to allow for reasonable variation between the estimated and the actual weights. Georgia Rough & Cut Stone Co. v. Georgia R. R. Co., 13 I. C. C. 401, 403.

(e) Theoretically, a shipper should not pay freight on more than the actual weight of the commodity shipped, and

under the same principle, the carriers should receive a revenue on the actual weight carried. By reason of the varying conditions, however, it is almost impossible to accurately follow that theory or principle. The best that can be done is to make a regulation that, in the light of experience, will come nearest doing substantial justice between all shippers and carriers on all kinds of commodities. Rice v. Georgia R. R. Co., 14 I. C. C. 75, 79.

(f) To assess freight charges upon any other than actual weight is to impose rate either too high or too low and to discriminate between different shippers. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 30.

(g) There is force in the contention that as to all commodities freight charges which are based upon weight as the unit should be assessed upon the actual or correct weight. Official Classification Ratings, 37 I. C. C., 166, 187.

(h) While provision for assessment of charges based on actual weight of shipments loaded to full visible capacity is proper where it may be determined by casual inspection, it would be highly improper in connection with potato shipments to leave interpretation of such a provision to local agents as it would result in confusion and open the door to unlimited discriminations and preferences. Northern Potato Traffic Asso. v. C. B. & Q. R. R. Co. 57 I. C. C. 385.

(i) Charges in excess of actual weight are unreasonable Reparation awarded. Kaye & Carter Lumber Co. v. M. St. P. & St. Ste. M. Ry. Co., Unrep. Op. 159.

(j) When more of an article is shipped on one day to one consignee than can be loaded, the balance, if loaded in a box car, will be carried at the carload rate on the actual weight. Hartford Canning Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 288.

ALL OTHER CITATIONS

Peters v. O. S. L. R. Co., 20 I. C. C. 598; Beggs v. Wabash R. R. Co., 16 I. C. C. 208; Bennett v. C. M. & St. P. & S. Ste. Marie Ry. Co., 15 I. C. C. 301; Miller & Co. v. P. M. R. R. Co., Unrep. Op. 377; Kaye & Carter Lumber Co. v. N. P. Ry. Co., Unrep. Op. 392; Central Iron & Coal Co. v. M. K. & T. Ry. Co., Unrep. Op. 441; Torrey Cedar Co. v. C. & N. W. Ry. Co., Unrep. Op. 420; Atlas Lumber & Shingle Co. v.N. P. Ry. Co., 26 I. C. C. 313, 314; Wright & Co. v. V. R. R. Co., 25 I. C. C. 214, 215; Flint, Erving & Stoner Co. v. N. O. G. N. R. R. Co., Unrep. Op. A-40; Chattanooga Iron & Wire Works v. A. G. S. R. R. Co., Unrep. Op. A-70; In re Weighing of Freight by Carriers, 28 I. C. C., 7, 30; Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co., 28 I. C. C., 274, 276; Lee Co. v. I. C. R. R. Co., Unrep. Op. A422; Dant & Russell v. G. & P. Ry. Co., Unrep. Op. A436; Eakle Lumber Co. v. N. & W. Ry. Co., Unrep. Op. A477; Osborn v. N. P. Ry. Co. Unrep. Op. A-723; Deister Concentrator Co. v. L. S. & M S. Ry. Co., Unrep. Op. A-857; Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C. 332, 340; Sloane v. S. P. Co., 33 I. C. C. 509, 510; Lowe Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 1817; Charleston Mining & Mfg. Co., v. S. Ry. Co., Unrep. Op. 1944; Duluth Log Co. v. M. St. P. & St. Ste. M. Ry., 37 I. C. C. 619; Condie-Neale Co. v. M. & O. R. R. Co., Unrep. Op. 2126; Heyman & Co. v. Rutland Transit Co. Unrep. Op. 2232; Albenger Pump & Condenser Co. v. A. V. Ry., 40 I. C. C., 105; Lewis Mfg. Co. v. C. B. & Q. R. R. Co., 41 I. C. C. 671; Torrey Cedar Co. v. C. & N. W. Ry., 42 I. C. C. 17; Shaffer & Co. v. G. T. W. Ry. Co., 42 I. C. C. 433; Western Grain & S. P. Co. v. B. & O. R. R., 45 I. C. C. 127; Flanley Grain Co. v. C. St. P. M. & O. Ry., 48 I. C. C. 505; Swatika Fuel Co. v. A. T. & S. F. Ry., 49 I. C. C. 588; Berthold & Jennings Lumber Co. v. S. Ry., 49 I. C. C. 113; Northern Grain and Warehouse Co. v. S. P. & S., 63 I. C. C. 205; Armour & Co. v. Director General, 63 I. C. C. 369, 373; Acme Cement Plaster Co. v. St. L. S. F. Ry., 64 I. C. C. 662.

§4. Capacity Weight.

CASES 1887-1908

(a) A rule or regulation of a carrier which has not provided track scales at stations, forbidding shippers to load grain in cars beyond a specified weight above the marked capacity, under penalty of increased rates on the excess weight, if properly established, is not unlawful, provided the increase is not unreasonable and the margin between the maximum and minimum carload weight is so wide that shippers may without scales readily comply with both rules.

Suffern v. Indiana, D. & W. R. Co. 7 I. C. C. 255.

IMPORTANT CASES SINCE 1908

(b) Where complainant is charged on a carload of coal on the basis of 80,500 lbs., and it appears that the weight at destination was 66,760 lbs., and the car was physically capable of carrying not over 70,500 lbs., complainant is entitled to reparation on a weight basis of 70,500 lbs. Katzmaier v. A. T. & S. F. Ry. Co., 14 I. C. C. 528, 529.

ALL OTHER CITATIONS

Romona Oolitic Stone Co. v. Vandalia R. R. Co., 13 I. C. C. 115, 117; Romona Oolitic Stone Co. v. C. I. & L. Ry. Co. 13 I C. C. 568, 570; Georgia Rough & Cut Stone Co. v. Georgia R. R. Co., 13 I C. C. 401, 404. Standard Paint Co. v. S. P. Co., 37 I. C. C. 405. McFarland Lumber Co. v. St. L. S. W. Ry., 47 I. C. C. 225.

§5. Estimated Weight.

CASES 1887-1908

(a) When actual weights of goods shipped cannot be ascertained without needless inconvenience, estimated or constructive weights may be taken if the method of estimation works no inequality in its practical application to competing modes of conveyance. Rice v. Cincinnati, W. & B. R. Co. (Com.) 3 I. C. R. 841.

(aa) In assuming for transportation purposes that a barrel of refined petroleum oil weighs 400 pounds and that a gallon of that commodity weighs 6.3 pounds when shipped in tanks, defendants use constructive or hypothetical weights so much out of proportion to actual weights that positive and measurable preference is constantly granted to the shipper by the tank method; and so far as that practice enables the tank shipper to secure the carriage of more pounds of freight for the same money than the shipper in barrels it subjects the latter to unlawful prejudice. When actual weights cannot be ascertained without needless inconvenience, there is no serious objection to the use of estimated or constructive weights, provided the method of estimation works no inequality in its practical application to competing modes of conveyance. Rice v. Cinn. W. & B. R. Co., 3 I. C. R. 841.

(b) A practice of billing cotton at a proper estimated weight per bale should not be deemed unlawful when actual weights of shipments cannot be ascertained without great inconvenience to the shipper or carrier, and when transportation charges are promptly adjusted by the carrier upon the basis of actual weights furnished by the consignee. Phelps v. Texas & P. R. Co. (Com.), 4 I. C. R. 363.

(c) Practice of billing cotton at proper estimated weight per bale should not be deemed unlawful when actual weights of shipments cannot be ascertained without great inconvenience to the shipper or carrier, and when transportation charges are promptly adjusted by the carrier upon the basis of actual weights furnished by the consignee. Phelps v. Texas & P. R. Co., 6 I. C. C. 36.

(d) Complainant attacked rates charged on horses and mules less carloads from Bayou Sara, La., to St. Louis, Mo., on the classification basis as unreasonable. Rate is double first class of $1.80 per 100 pounds upon an estimated weight of 2 000 for the first animal, 1,500 pounds for the second, and 1,000 pounds for each additional animal. Distance covered is 667 miles. This rate when applied to the transportation of a single animal is not unreasonable, but it is unreasonable for a shipment of four animals, amounting in that case to $99, while the charge upon a carload of 25 animals is only $100. Defendants less carload tariff would be rendered more just by reducing the charge to 90c per 100 pounds, the first class rate, increasing the estimated weight of the first animal to 4,000 pounds, and leaving the weights for the additional animals as they now are, at 1,500 pounds for the second and 1,000 pounds each for all others included in the shipment. HELD no order issued, but complainant may apply to the Commission for reparation if compelled to pay rates in excess of those indicated. Barrow v. Y. & M. V. R. R. 10 I. C. C. 333.

(ef) Carload rate on apples from certain points in Illinois to New York City based on estimated weight, sustained. White & Co. v. B. & O. S. W. R. R. Co., 12 I. C. C. 306.

(g) The Commission has recognized the right of carriers, in order to facilitate the movement of business, to fix an estimated weight upon certain standard packages upon which a rate is based.

This estimated weight is taken into consideration in the making of the rate itself, and of such estimated weights shippers have the right to complain before this Commission and secure relief; but the facts in this case do not justify a holding that the estimated weight complained of was a violation of the act. Claim for reparation denied. White & Co. v. B. & O. S. W. R. R. Co. et. al. 12 I. C. C. 306, 307, 308.

IMPORTANT CASES SINCE 1908

(h) There is no objection to specific or estimated package rates. National League of Commission Merchants of U. S. v. A. C. L. R. R. Co., 20 I. C. C. 132, 135.

(i) In instances where it is difficult to secure the actual weight of articles shipped, estimated weights per unit may be used in arriving at proper charges. The standard weights per unit established by carriers as a basis for charges in such instances, must be fair and should be the result of careful investigation. In re Suspension of Western Classification No. 51, 25 I. C. C. 442, 532.

(j) Where published estimated weights are neither related to the actual weights of the commodities, nor uniform; they must be revised. New Orleans Shippers' Asso. v. I. C. R. R. Co., 34 I. C. C. 32, 36, 37.

(k) Lack of uniformity in estimated weights results in discrimination New Orleans Shippers' Asso. v. I. C. R. R. Co., 34 I. C. C. 32, 37.

(l) The fact that estimated weight of 200 pounds per barrel has been so long in effect should not prevent adoption of correct weight if estimate now applied does not fairly represent true weight in transportation. Increased weights on flour in barrels and half barrels, justified. Official Classification Ratings, 37 I. C. C. 166, 187.

(m) A necessity for the use of estimated instead of actual weights in the fruit and vegetable traffic as well as the desirability of uniformity has been established. Fruits and Vegetables, 43 I. C. C. 291, 317.

(n) It is impracticable to provide different estimated weights for lumber dependent upon the locality of production, stage of seasoning, or species, as the weights differ even in the same locality, and it is difficult to determine how much the lumber has been seasoned, or to distinguish between the different kinds of pine lumber. Berthold & Jennings Lumber Co. v. S. Ry., 49 I. C. C. 113, 114.

(o) The suggestion that carriers publish as estimated weights the maximum known weight per gallon of each commodity that moves in tank cars, and to provide for the application of those weights in the absence of a certificate from the shipper as to the actual weight per gallon at the time of loading, approved. Consolidated Classification Case 54 I. C. C. 25.

(p) A proposal to fix a rate on crude gas, fuel oils, not to exceed 89 per cent of the rate on refined oils. HELD, plan gives emphasis to element of weight and in determining the proper relationship of the rates relative values and the nature of the commodities should also be taken into consideration. Pure Oil Co. v. Director General, 56 I. C. C. 218, 222.

(q) Shippers should not expect to have transportation charges collected on a basis less than actual weight. If in the future the size of orange or lemon boxes is changed, carriers will be expected to change their estimated weights to conform to the actual weight of the respective boxes. California Citrus League v. Director General, 58 I. C. C. 373, 382.

(r) Where the practical and only effect of the proposed increases in estimated weights would be a substantial increase in transportation charges, the respondent should show not only that the proposed estimated weights are not excessive, but also that the application of the existing rates to such estimated weights will not result in unreasonable transportation charges to the shipper. Increased weights on kale, lettuce and spinach, 61 I. C. C. 586, 589.

(s) Estimated weights are commonly used for the convenience of both the shipper and the carrier, and they should preferably bear some close relation to the actual weights. Increased weights on kale, lettuce and spinach, 61 I. C. C. 586, 589.

(t) In the absence of proper tariff authority therefore, it is unlawful, of course, to use estimated weights that are

less than the actual weights. Lake Charles Rice Milling Co. v. A. & N., 63 I. C. C. 18, 39.

(u) Charges, based on estimated weight of 8.5 pounds per gallon, on oil of coal tar, light, from destructive distillation of coal, in tank-car loads found unreasonable to extent they exceeded charges based on actual weight of 7.4 pounds. Reparation awarded. Semet-Solvay Co. v. Director General, as Agent, 83 I. C. C. 492.

(v) Rule of consolidated classification providing that weights on petroleum and products in tank cars be based on full shell gallonage capacity of tank at certain estimated weights per gallon, found not reasonable. Complainant contending that estimated weight be ascertained upon basis of 60 degrees Fahrenheit. Estimated weights per gallon are not assailed; but if, as matter of fact, such weight does not result in correct estimated weight per car because of temperature variations, any desirable correction should be through change in assumed weight per gallon rather than in manner proposed by complainant. Western Petroleum Refiners Asso. v. St. L.-S. F. Ry. Co., 83 I. C. C. 702.

(w) Rates on petroleum and products in tank cars are computed not upon actual, but upon estimated, weights, Estimated weights per car are arrived at by multiplying gallonage in tank and dome at time of loading by estimated weight per gallon specified in the classification. Semet-Solvay Co. v. Director General, as Agent 83 I. C. C. 492, 703.

(x) Contention that weight computed on basis of marked capacity of car should have been on basis of estimated weight not sustained because agent of carrier was not furnished with copy of invoice showing number of feet of lumber in loaded car and whether lumber was green or seasoned as required under tariff. Berthold & Jennings Lumber Co. v. A. T. & N. Ry. Co., Unrep. Op. A-888.

ALL OTHER CITATIONS

Standard Oil Co. v. I. T. R. R. Co., 23 I. C. C. 369; Simpson Fruit Co. v. Wells, Fargo & Co., 23 I. C. C. 412; Noble v. St. L. S. W. R. R. Co., 20 I. C. C. 62; Ozark Fruit Growers' Ass'n. v. St. L. & S. F. R. R. Co., 16 I. C. C. 134, 136; Davies v. I. C. R. R. Co., 16 I. C. C. 376, 380; Hydraulic Press Brick Co. v. St. L. & S. F. R. R. Co., 13 I. C. C. 342, 345; French Broad Mfg. Co. v. L. & N. R. R. Co., Unrep. Op. 586; Crutchfield Woolfork & Glore v. F. E. C. Ry. Co. 28 I. C. C. 274, 278; Jaynes v. Pennsylvania R. R. Co. (Pa., 1912) 83 A. 318, 319; Eakle Lumber Co. v. N. & W. Ry. Co., Unrep. Op. A477; Johnson & Son v. C. & O. Ry. Co., A-551; Roseland Truck Farmers' Association v. I. C. R. R. Co., Unrep. Op. A-615; Allen Bros. Co. v. P. B. & W. R. R. Co. Unrep. Op. A-709; R. R. Comm. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 31, 35; Dover Lumber Co. v. S. I. Ry. Co. Unrep. Op. A-854; Pacific States Lumber Co. v. N. P. Ry. Co., Unrep. Op. A-876; Brown Mercantile Co. v. M. & P. R. R. Co., Unrep. Op. 1936; Palmer & Semans Lumber Co. v. C. & O. Ry. Co., Unrep. Op. 2011; Kansas Chemical Mfg. Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 2050; Verhalen & Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-072; Fish & Co. v. A. T. & S. F. Ry., 38 I. C. C. 115; Lewis Mfg. Co. v. W. R. R. Co., Unrep. Op. 2118; Official Fish & Co. v. A. T. & S. F. Ry. Co., 38 I. C. 115, 116; Pioneer Lumber Co v. N. P. Ry. Co., 38 I. C. C. 399, 400; Natl. League of Commission Merchants v. A. C. L. R. R. 39 I. C. C. 563, 565; Fissell v. B. & O. R. R. Co. 40 I. C. C. 539, 540; Lewis Mfg. Co. v. C. B. & Q. R. R., 41 I. C. C. 671; La Junta Melon & Produce Assn. v. A. T. & S. F. Ry. Co., 42 I. C. C. 26; Fish from Virginia, 42 I. C. C. 415, 416, 417; Miss. R. R. Comm. v. N. O. M. & C. R. R. Co., 42 I. C. C. 574, 575, 576; Fuller & Co. v. A. T. & S. F. Ry., 44 I. C. C. 519, 521; Ferguson & Son Groc. Co. v. A. B. & A. Ry., 45 I. C. C. 81, 82; Western Grain & Sugar Products Co. v. B. & O. R. R. 45 I. C. C. 127, 130; Warren Fish Co. v. L. & N. R. R., 46 I. C. C. 375; Stuart & Co. v. A. B. & A. Ry., 49 I. C. C. 668, 672; Claims for Loss and Damage of Grain, 48 I. C. C. 530, 550; Providence Fruit & Produce Exch. v. A. E. Ry., 51 I. C. C. 167, 169; Texler Lumber Co. v. T. & W. R. R., 53 I. C. C. 333; Consolidated Classification Case, 54 I. C. C. 25, 34, 35; Lowry Lumber Co. v. Director General, as Agent 57 I. C. C. 635; John A. Eck Co. v. Director General, 59 I. C. C. 577; Lowry Lumber Co. v. Director General, 59 I. C. C. 758; Express Classi-

fication, 1920, 59 I. C. C. 265, 276, 278, 281; Barnett Oil & Gas Co. v. Director General, as Agent, 59 I. C. C. 689; Henderson Lumber Co. v. B. & O., 60 I. C. C. 159, 161; Interior Lumber Co. v. Director General, 61 I. C. C. 661; Glacifer Co. v. American Ry. Exp. Co., 63 I. C. C. 153; Pendleton & Gilkey v. Director General, as Agent, 64 I. C. C. 145; Packing requirement of deciduous fresh Fruits, 64 I. C. C. 539; Estimated Weight on Petroleum Crude Oil from Texas, 64 I. C. C. 545; Weights on Berries in Pony Refrigerators, 64 I. C. C. 610, 612; Providence Fruit & Produce Exchange v. Director General, 66 I. C. C. 300; Oyles & Son v. L. & N. R. R. Co., 66 I. C. C. 175; Actual Weights on crude and fuel oil, 69 I. C. C. 194; By products Coke Corporation v. Director General, 87 I. C. C. 683.

§5a. Net weight rates.

CASES 1887-1908

(a) Although the fact that most shippers of a given article in part of a described territory were permitted to secure reduced rates by billing at net weight, while many other shippers of the same article in another portion of that territory paid higher rates through billing at the full weight of the package and its contents is ample warrant for an order requiring the carriers to remove the unjust discrimination as between such shippers by discontinuing the practice of shipping at net weights in any part of the territory, yet on the other hand, unless the net-weight practice was prevalent throughout substantially the whole territory affected and either authorized by carriers generally in that territory or so well known from constant and general application as to receive implied sanction, it would not of itself constitute sufficient ground for an order requiring a reduction in rates when all the carriers applied their established charges on the basis of gross weights. Decision in Proctor & Gamble v. Cincinnati, Hamilton & Dayton R. R. Co. et al., 4 I. C. C. Rep. 87, 3 Inters. Com. Rep. 131, which was based mainly upon testimony indicating general prevalence of the net-weight practice. HELD: In the light of further evidence, not controlling in this case. Proctor & Gamble Co. v. C., H. & D. Ry. Co., 9 I. C. C. 440.

(b) The fact that most shippers of a given article in part of a described territory secured reduced rates by billing at net weight while many other shippers in another portion of the territory billed their goods at full weight of the package and contents, is not ground for reducing the rate, where the carriers, on being asked to discontinue such unjust discrimination, applied their established charges on the basis of gross weights, unless such net-weight practice had been so prevalent throughout substantially the whole territory inspected, and either authorized by carriers generally or so well known from constant and general application as to receive implied sanction. Proctor & Gamble Co. v. Cincinnati, H. & D. R. Co., 9 I. C. C. 440.

§5½. Origin weights.

IMPORTANT CASES SINCE 1908

(a) Carriers' practice of exacting charges on cedar posts and poles on point of origin weights instead of weights taken in transit, not found to have been illegal or unreasonable. Northern Mercantile Co. v. A. E. R. R. Co., 42 I. C. C. 290, 294.

(b) The rule that charges on coal will be assessed on weights ascertained at defendant's regular weighing stations and that this rule will not be departed from found unreasonable. Aetna Portland Cement Co. v. D. G. H. & M. Ry., 46 I. C. C. 407, 409.

(c) The Commission approves the assessing of charges on articles subject to shrinkage in transit on basis of origin weights. Ewing & Co. v. O. S. L. R. R. Co., 46 I. C. C., 471, 472.

(d) Where there is obvious error in the point of origin weight, the carriers should see to it that shippers are enabled to secure either through correction or claim a quick adjustment to the basis of the actual weight. Adams v. A. B. & A. Ry., 49 I. C. C. 415, 417.

(e) The fact that the tariff prescribed that the point of origin weight will be used as the basis for assessing charges should not mean that an erroneous record of scale weight shall govern. Romann & Bush Pig Iron & Coke Co. v. L. & N. R. R., 51 I. C. C. 126, 128.

(f) Charges on sweet potatoes based on scale weights, and on peaches based upon estimated weights, obtained at points of origin, found not to have been unreasonable. Shippers did not weigh

shipments at destinations; estimated weights sought would not fairly represent actual weights; and a check of tariffs several years back showed no provision for estimated weights on these commodities. Oyler & Son v. L. & N. R. R. Co., 66 I. C. C. 175.

ALL OTHER CITATIONS

Spokane Lumber Co. v. G. N. Ry. Co., 48 I. C. C. 627, 628, 631; Farmers Feed Co. v. Erie R. R., 52 I. C. C. 317; Lowry Lumber Co. v. Director General, 57 I. C. C. 165, 503, 635.

§6. Reweighing.

IMPORTANT CASES SINCE 1908

(a) Under a complaint by a jobber shipping coal, which questions the reasonableness of reweighing charges, it is immaterial to the determination of the question whether the jobber pays the mine owner on the basis of the original weight or the reweighing rate. Rice v. Georgia R. R. Co., 14 I. C. C. 75, 80.

(b) If the original weight was improper the shipper ought not to be required to pay for reweighing. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 30.

(c) Where a reweighing is requested by a shipper and such reweighing shows error beyond the limit of tolerance fixed, no charge should be made for that service. In re Weighing of Freight by Carrier, 28 I. C. C. 7, 31.

(d) Tariffs should provide that where reweighing is requested by shipper, and shows error beyond limit of tolerance fixed, no charge shall be made for reweighing. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 31.

(e) Following rules should be adopted: Reweigh every car within one year from date when it is put into service; reweigh after it undergoes substantial repairs; reweigh at least once in two years. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 25.

(f) If the shipper for his own purposes requests a second weighing, there is no apparent reason why he should not pay a reasonable sum for this service, unless it appears upon such weighing that the original weight was erroneous and that the shipper was therefore justified in asking that the car be reweighed. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 36.

(g) Where a shipper notified of an advance in the weight of a car during the course of transportation elects, he should be permitted, without any expense to him, to require a third weighing of that car. He should also be allowed, without liability to demurrage charges, a sufficient time in which to examine into the weight of the car before it is unloaded. If no claim of over-weight is made before the unloading, then no such claim should be entertained at all. In re Weighing of Freight, 28 I. C. C. 7, 36.

(h) The right of a shipper to demand a reweighing of its car and if the weight upon which charges had been levied was incorrect, to have the same corrected without any reweighing charge, applies to a switch movement to the private scales of the shipper. American Brake Shoe and Foundry Co. v. Belt Ry. Co., 28 I. C. C. 350, 353.

(i) It is the right of shipper to demand reweighing if he desires it. American Brake Shoe & Foundry Co. v. B. Ry. of C., 28 I. C. C., 350, 353.

(j) The contention that where the actual delivery of the car is made by a switching carrier no duty rests upon that carrier to reweigh the car upon request, is answered by section one of the Act which, in connection with the instrumentalities and services comprehended in the term "transportation," makes it the duty of every carrier subject to the Act "to provide such transportation upon reasonable request therefore. If a switching carrier participates in the through movement of a car, a reweighing of the car is included in the transportation which it is its duty to perform upon reasonable request. Detroit Coal Exchange v. M. C. R. R., 38 I. C. C. 79, 81.

(k) A car to be reweighed is not properly chargeable with any empty movement. It is already at the industry or team track and its empty movement therefrom after the reweighing operation is included in the road-haul freight rate. Detroit Coal Exchange v. M. C. R. R., 38 I. C. C. 79, 82.

(l) As there is no extra empty movement in connection with a car to be reweighed, and the length of the average reweighing movement is comparatively short, the scales being located at convenient places throughout the term-

inals, it does not necessarily follow that the cost of an average industrial switching movement and all the services incident thereto would fairly represent a mathematically determined percentage of the cost of an average reweighing movement. Detroit Coal Exchange v. M. C. R. R., 38 I. C. C. 79, 83.

(m) A consideration of the several links in the average reweighing movement after placement as compared with the average industrial switching movement, will afford a foundation for prescribing approximately a proper relation of these charges. The several short operations which are necessary to take a car to and from the scale constitute one complete service, just as the several operations necessary to move a car from one industry to another constitute one complete service. The weighing operation is merely one link in the weighing movement, and is not unlike a number of individual operations incident to the average switching movement. Detroit Coal Exchange v. M. C. R. R. Co., 38 I. C. C. 79, 84.

(n) There are many incidental services comprehended in the industrial switching charge which are not included in the reweighing charge. The industrial switching charge covers the movement of an empty car to the originating industry, and the movement of an empty car from the industry at destination; the reweighing charge covers no such extra empty movements, as the cars are already at the industry, and the empty movement therefrom after reweighing is included in the line-haul freight rate. The industrial switching charge also includes free time for loading and for unloading; the reweighing charge includes no additional free time. The industrial switching carrier is liable to loss and damage through the terminals; the carrier which performs merely a switching service in connection with the car to be reweighed appears to disavow responsibility for loss and damage in the process. The industrial switching movement is always to a definite point, and this point in extreme instances may be as far as 22 miles away; the reweighing movement may be to any one of several scales distributed throughout the terminals and is therefore comparatively short. Detroit Exchange v. M. C. R. R. Co., 38 I. C. C. 79, 85.

(o) Charges for reweighing carload freight after placement at industry or team track found unreasonable to extent that they exceeded 75 per cent of the industrial switching rates contemporaneously in effect. Detroit Coal Exchange v. M. C. R. R. Co., 38 I. C. C. 79, 85.

(p) Disagreement between line-haul carriers and switching carriers as to proportion of reweighing charges each should bear is tantamount to a dispute regarding divisions. Detroit Coal Exchange v. M. C. R. R. Co., 38 I. C. C. 79, 86.

(q) If the reweighing develops a shortage less than the tolerance, the shipper should pay for the extra service performed; if the reweighing develops a shortage in excess of the tolerance, no charge should be made against the shipper. Whether in the latter instance, all or part of the reweighing charge should be paid by the line-haul carrier is a matter of no concern to the shipper. That is a question to be decided by the carriers participating in the transportation and their inability to agree should not be used as an excuse to increase the charges to be paid by the shipper. Detroit Coal Exchange v. M. C. R. R. Co., 38 I. C. C. 79, 86.

(r) There is no rule by which the weight shown at destination is entitled to more consideration than that shown at point of origin, when both weights were ascertained by the same method. Flint Erving & Stoner Co. v. N. O. G. N. R. R. Co., Unrep. Op. A-40.

(s) Altho a Carriers tariff may provide expressly for reweighing on request failure to reweigh in no way indicated that the original weight was erroneous. Chestnut Lumber Co. v. N. O. & N. E. R. R. Co., Unrep. Op. 1857.

ALL OTHER CITATIONS

Sunderland Bros. Co. v. C. B. & Q. R. R. Co., 21 I. C. C. 632, 636; Wheeler L. B. & S. Co. v. A. & C. R. R. R. Co., 20 I. C. C. 10; Duluth Log. Co. v. C. St. P. M. & O. Ry. Co., 16 I. C. C. 38, 39; Schenck v. N. & W. Ry. Co., 29 I. C. C. 125; In re Weighing of Freight by Carriers, 28 I. C. C., 7, 30, 31, 35; American Brake Shoe & Foundry Co. v. B. Ry. of C., 28 I. C. C., 350, 353; Ruddock Orleans Cypress Co. v. L. R. & N. Co., Unrep. Op. A-634; Cypress Lum-

ber Co. v. A. N. R. R. Co., Unrep. Op. 1918; Blackmer and Post P. Co. v. M. P. Ry., 49 I. C. C. 162; Menominee White Cedar Co. v. C. & N. W. Ry. Co., 53 I. C. C. 229.

§7. Scaleage and shrinkage.

See Facilities and Privileges §12; Scaleage and Shrinkage.

IMPORTANT CASES SINCE 1908

(a) Absolute precision in the adjustment to a schedule of scaleage deductions so as to meet all varying conditions is beyond a reasonable possibility. Baltimore Chamber of Commerce v. Pa. R. R. Co., 15 I. C. C. 341, 344.

(b) The weight obtained by weighing both trucks at a time preferred to scaling obtained by weighing trucks separately. Wheeler Lumber, Bridge & Supply Co. v. A. & C. R. R. R. Co., 20 I. C. C. 10, 11.

(c) An initial carrier's tariff provided for a deduction in weight on account of moisture; a connecting carrier which participated in the movement, neither concurred in such tariff nor had a similar tariff provision of its own. HELD, that complainant was entitled to the deduction only on that part of the haul performed by the first carrier. Hull Co. v. S. Ry. Co., 24 I. C. C. 302.

(d) On shipments of coal the deduction for moisture from actual net weight does not establish the remainder as net weight, but provides simply an arbitrary basis on which to compute charges. C. W. Hull Co. v. S. Ry. Co., 24 I. C. 302, 303.

(e) The Commission has approved the assessing of charges on articles subject to shrinkage in transit on basis of origin weights. Ewing & Co. v. O. S. L. R. R., 46 I. C. C. 471, 472.

(f) The carriers tariffs provided that the weight of shipments of coal as determined at the point of origin would be corrected, and no charge for re-weighing made, when the difference between that weight and the weight as determined at destination upon reweighing at request of shipper or consignee exceeded 1 per cent of point of origin weight, minimum 500 lbs. On Mar. 1 1917, the tariffs were so amended as to provide for an additional difference between the two weights of 1 per cent of point of origin weight on bituminous coal and ½ per cent on anthracite, as a condition precedent to correction of the origin weight and the reweighing of the shipment free. The two tolerances described were published in one tariff rule, which provided that they should be computed separately and added together, the percentage in each case to be taken of the weight as determined at the point of origin. On cars of 50,000 lbs. or more this was tantamount to saying that the total tolerance should be 2 per cent; but on cars of less weight this was not true, on account of the operation of the minimum weight provision of the scale tolerance. Thus on a 40,000 lbs. car a 2 per cent tolerance would amount to 800 lbs., whereas by computing the tolerances separately and adding them together the total tolerance would be 900 lbs., that is the 500 lb. minimum in lieu of the 1 per cent scale tolerance plus 400 lbs., or 1 per cent, for the moisture tolerance. HELD (1) that the original tolerance scale had not been shown to be unreasonable; but (2) that the increased total tolerance had not been justified; and (3) that the additional tolerance for moisture absorption and evaporation had not been justified. Northwestern Traffic & Service Bur. v. C. M. & St. P. Ry., 47 I. C. C. 549.

(g) Tolerance is the allowable margin of error between the origin and destination scale readings arising from differences in scales or errors in weighing or from the absorption or evaporation of moisture by the shipment in transit, which must be exceeded as a condition precedent to the correction of the billed weight and the reweighing of the shipment free. N. W. Traffic and Service Bureau v. C. M. St. P. Ry. 47 I. C. C. 549.

(h) Increase in tolerance on anthracite coal of 1 per cent difference between origin and destination weight and ½ of 1 per cent on bituminous coal, as an allowance for evaporation and moisture in addition to the regular tolerance allowance of 1 per cent, not justified. Northwestern traffic & Service Bureau, Inc. v. C. M. & St. Paul Ry. 47 I. C. C. 549, 556.

(i) A rule that there will be deducted from the weight of the grain lost one-eighth of 1 per cent of the shipping weight on wheat, rye, oats, and other small grain, and one-fourth of 1 per cent on corn to cover shrinkage due to evap-

oration or other natural causes is not unreasonable. Claims for Loss and Damage of Grain, 48 I. C. C. 530, 544.

(j) On a weight of 60,000 pounds shrinkage of 60 or 70 pounds on wheat, and 120 pounds on oats and barley, are normal and not indicative of inaccurate weighing or losses in transit. Claims for loss and Damage of Grain, 48 I. C. C. 530, 573.

(k) A rule for correction of the billed weight when the difference between it and the destination weight exceeded a reasonable tolerance, would disregard shrinkage. Adams v. A. B. & A. Ry., 49 I. C. C. 415, 418.

(l) In Weighing of Freight by Carriers, 28 I. C. C. 7, 25, the Commission said that where coal is washed in preparing it for shipment and the moisture does not become a part of the coal itself but soon evaporates there would seem to be a strong reason why a proper deduction should be made from the weight at the mine; but that where the moisture is a part of the coal itself even though it subsequently evaporates, the carrier may properly require that the weight at the mine shall govern. Farmers Feed Company v. Erie R. R., 52 I. C. C. 317.

ALL OTHER CITATIONS

Topeka Banana Dealers' Ass'n v. St. L. & S. F. R. R. Co. 13 I. C. C. 620, 625, 626; In re Weighing of Freight by Carriers, 28 I. C. C. 7, 29; Northwest Coal Co. v. U. P. Ry. Co. Unrep. Op. A-665; Washed Coal Weights, 45 I. C. C. 93, 98; Trexler Lumber Co. v. N. Y. N. H. & R. R., 47 I. C. C. 229, 230; Lowry Lumber Co. v. Director General, 57 I. C. C. 503.

§7½. Track Scales.

See Supra §5½.

CASES 1887-1908

(a) Where the weight of merchandise is uniformly the same, the carrier or the consignee may ask to have the weight verified up to the moment of delivery; it is the weight disclosed by the scales and not the weight mark on the bill of lading, that controls. Baird v. St. Louis, I. M. & S. R. Co. (C. C. E. D. Ark.) 4 I. C. R. 422.

(b) Complainant attacked as unreasonable weight charged on two carloads of coal from Midland Valley, Ark. to Kansas City Mo., rate assessed $2 per ton, minimum 88,000 pounds. Cars were weighed at Muskogee showing 81,500 pounds on one car and 77,000 pounds on the other. There is no testimony in the case to show how the mine weights were ascertained, but the testimony of complainant did show that such weights were often wrong. The Commission is of the opinion that the track weights should determine the actual weight. HELD, weight on which shipment was charged unreasonable to extent they exceeded the track scale weights, reparation awarded. J. H. Leonard v. M. K. & T. Ry., 12 I. C. C. 538.

IMPORTANT CASES SINCE 1908

(c) The commonest defect in the installation of track scales of today seems to be in the construction of the pit containing the scale itself. Not only should the foundations be sufficient, but the pit itself should be so constructed that it can be kept absolutely dry and can be readily entered for the purpose of inspection. When great accuracy is desired it should be kept at a uniform temperature. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 10.

(d) A general investigation of the conditions of weighing revealed that in a very considerable part of the country track scales were not originally properly installed. The main platform bearings were out of place, and many scales were binding. There were also all kinds of false bearings, levers were out of level, connections were not plumb, and check rods were too tight. The record indicated that a majority of the track scales should be at once rebuilt in order to obtain reasonably accurate results, and that many additional scales should be installed. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 11.

(e) A majority of the track scales now in use should be rebuilt, and many additional should be installed. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 11.

(f) Formerly the platform above the standard track scale was attached to the scale itself, the track upon which the car stood being laid on the platform. With this system of construction the platform is very liable to bind at the edges, producing inaccuracy in weights, and the modern method is to support the tracks upon which the car rests when being

weighed, upon standards which pass down through the platform, so that the platform itself is stationary and not connected with the scale. A second track is laid upon the platform so that the car, when the scale is not in use, may be passed over the scale without engaging its mechanism. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 11.

(g) If the pit which contains the track scale is damp the bearings rust and this interferes with the correctness of the result. If anything gets between the platform and the edge of the pit, in those cases where the weighing track rests upon the platform, the scale may bind. HELD the scale should be kept as clean as possible and a frequent inspection made by going into the pit of the scale. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 12.

(h) In order to make certain of the correctness of the test car used in testing track scales, access must be had to a master scale which has been tested by standard weights obtained from the Bureau of Standards maintained by the United States government. There should be one such scale upon every considerable railroad system. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 12.

(i) Although a person of intelligence may readily be taught to give a track scale the necessary daily inspection, this should be supplemented by an expert inspection at regular intervals. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 12.

(j) The only certain way to determine whether a track scale is accurate is by a weighing test on the scale itself, which consists in putting upon the scale a known weight and then comparing the reading with that weight. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 12.

(k) The track scale which is in use should be inspected and balanced every day. In re Weighing of Freight by Carriers 28 I. C. C. 7, 12.

(l) Track scales should be accurate within at least 100 pounds. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 13.

(m) Scales should be tested by test car at least once in two months; in many cases every month. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 13.

(n) A modern track scale, properly installed and kept in proper condition, should be accurate within at least 100 lbs., and when under test it shows a variation of 100 lbs. or more it should be considered out of order. It is not maintained that the weight of the contents of a car can ordinarily be ascertained within 100 lbs. by track scaling. Into that result many sources of error may enter aside from the inaccuracy of the scale itself, but that particular source of error should not exceed the limit named. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 13.

(o) There are two general classes of instruments for recording carload weights. The automatic device is attached to the scale beam and stamps upon paper without the intervention of any human agency the weight of the car as it would be recorded upon the beam itself. The only duty of the weigh master is to identify the car of which the weight is taken. Assuming the device to be perfect in operation, the only liability to error arises from applying the rate accorded to the wrong car. With the mechanical self recording device the operator observes the scale beam as the car passes across the scale and rests upon the scale. When the beam is balanced he throws a lever engaging mechanism, which records the weight, as shown by the scale. Here the human element is present since the operator must observe the moment at which the scale balances and throw the lever of the recording contrivance. The weight is recorded at the moment when the lever is thrown, so that an error in observing the scale beam or in placing the lever results in an erroneous weight. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 17.

(p) It is just as essential to provide a competent operator as to furnish a suitable scale, and so far no device has been invented which will dispense with intelligence, faithfulness and ability upon the part of that operator. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 18.

(q) Carrier may not provide that weight of a particular scale shall govern, In re Weighing of Freight by Carriers 28 I. C. C., 7, 30.

(r) The governmental duty of exer-

cising authority over the installing and testing of scale tracks is eminently local in its character and the different states should be encouraged to assume and exercise an actual jurisdiction in this particular. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 32.

(s) With respect to the operation of track scales, a federal tribunal should have authority to lay down general rules for the placing of cars when weighed; that is, to determine whether they shall be weighed in motion or at rest and whether they shall be coupled at one or both ends or entirely disconnected from other cars. The authority should extend to the prescribing of the particular cases, or rather the particular classes, of scales upon which cars may be weighed in a given number. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 33.

(t) Government should determine kind of apparatus with which track scales are to be tested, manner of testing and frequency with which test shall be made. In re Weighing of Freight by Carriers. 28 I. C. C. 7, 33.

(u) Some federal tribunal, perhaps the Commission, should be given authority to fix the points at which track scales shall be installed; to prescribe the standard of such scales and their installation; to test or supervise the testing of such scales; and to supervise the operation. It is not suggested by the Commission that the federal authority should actually test all the track scales of the country, much less provide the necessary apparatus for that purpose. The statute should require carriers themselves to install proper scales and properly maintain and test them and should invest the federal tribunal with authority to make necessary rules and regulations to the securing of this end. The government should determine the kind of apparatus with which these scales are to be tested, the manner of the testing, the frequency with which the test should be made, and should require a report of such tests and should have authority to make and supervise tests when it saw fit. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 33.

(v) Every carload of freight, where track scales are relied upon to determine the weight upon which freight charges are to be assessed, should be weighed within 50 miles of the point of origin ordinarily, and the result at once communicated either to the consignor or the consignee as the parties may direct. If during the subsequent course of the shipment the weight is advanced, the same party should be at once notified by telegram. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 36.

(w) The Act does not require freight charges upon shipments of grain to be assessed upon elevator weights. The weight of grain transported must be determined with reasonable accuracy by the carriers as an incident to their service of transportation. They must provide adequate facilities for weighing. At many places throughout the United States such weighing is done on track scales, and condemnation of this method would find no warrant in law. If carriers choose to adopt the elevator weights where ascertained, in preference to track-scale weights, their right to cancel elevation allowances is not affected thereby whether or not the carrier has paid for the weighing. Grain Elevation Allowances at Kansas City, 34 I. C. C. 442, 445.

(x) Scale weights are presumably correct. Fissell v. B. & O. R. R. Co., 40 I. C. C. 539, 540.

(y) Scale and weight experts in general agree that scales dependent upon elevator cribbing for foundation must sooner or later become unlevel and a source of inaccurate weight. Claims for Loss and Damage of Grain 48 I. C. C. 530, 539.

(z) In most instances country elevators are equipped with small capacity automatic or hopper scales, and the carload weight is ascertained by weighing numerous separate draughts. Thus, even though the scales are reasonably accurate and the weighing is carefully performed, there is greater possibility of error than in the case of official weights which are obtained in some instances on track scales but more often in one or two draughts on large capacity hopper scales. This greater tendency to error results from the fact that on all scales a certain weight is required to "break the beam," the amount depending upon the sensibility of the beam and being, it is said, about 10 pounds on hopper scales

and 40 pounds on track scales. Claims for Loss and Damage of Grain, 48 I. C. C. 530, 540.

(aa) In addition to errors made by weighers and the inevitable variations between the origin and destination weights resulting from the well known and generally recognized fact that scales are only relatively accurate, there are many other conditions not incident to transportation that may and do produce differences between the loading and the unloading weights. Among these are loss or diversion of grain between the scale and the car at loading and unloading points; unavoidable waste during the process of loading and unloading and natural shrinkage due to the evaporation of moisture; loss of grain in transit as the result of the careless or faulty application of grain doors or cooperage by shippers; the removal of grain for inspection purposes by state and board of trade inspectors, and waste resulting from the consignee's failure to remove all grain from the car. Claims for Loss and Damage of Grain, 48 I. C. C. 530, 542.

(bb) The presumption of accuracy which attaches to scale weights must be rebutted clearly to be overthrown. Pendleton & Gilkey v. Director General, 64 I. C. C. 145, 146.

(cc) Carriers should not be required to accept weights ascertained by shippers on private scales. Providence Fruit & Produce Exchange v. Director General, as Agent, 66 I. C. C., 300, 301.

(dd) The presumption of accuracy which attaches to scale weights must be rebutted clearly, to be overthrown. Palmer & Semans Lumber Co. v. C. & O. Ry. Co. Unrep. Op. 2011.

(ee) Scale weights are generally considered only authentic evidence of the actual weight and not shown to be incorrect. Independent Cooperage Co. v. N. C. & St. L. Ry., Unrep. Op. 2088.

ALL OTHER CITATIONS

In re Weighing of Freight by Carriers, 28 I. C. C. 7, 11, 12, 13, 30, 33; Kulzer v. G. N. Ry. Co., Unrep. Op. A-849; Dover Lumber Co. v. S. I. Ry. Co., Unrep. Op. A-854; International Fuel Co. v. S. I. Ry., 38 I. C. C. 622; Hinton Bros. Lumber Co. v. A. & M. R. R. Co. Unrep. Op. 2116; Woolman & Co. v. C. R. R. Co., of N. J., 42 I. C. C. 737; Rankin & Co. v. C. M. & St. P. Ry., 45 I. C. C. 132, 134; Skallerup Brothers v. A. T. & S. F. Ry., 44 I. C. C. 266; Woolman & Co. v. P. R. R., 44 I. C. C. 530; Ewing & Co. v. O. S. L. R. R., 46 I. C. C. 471, 472; Aetna P. Cement Co. v. D. G. H. & M. Ry., 46 I. C. C. 407, 409; Trexler Lumber Co. v. N. Y. N. H. & H. R. R. 47 I. C. C. 229; Trexler Lumber Co. v. A. C. L. R. R., 50 I. C. C. 77; Universal Iron & S. Co. v. C. H. & D. Ry., 50 I. C. C. 266; Toberman, Mackey & Co. v. C. & E. T. R. R., 51 I. C. C. 469; Trexler Lumber Co. v. A. C. L. R. R., 50 I. C. C. 77; Trexler Lumber Co. v. T. & W. R. R. Co., 53 I. C. C. 333; Menominee White Cedar Co. v. C. & N. W. Ry., 53 I. C. C. 229; Claims for Loss and Damage of Grain, 56 I. C. C. 347, 348; Lowry Lumber Co. v. Director General, 57 I. C. C. 165 503, 635; Interior Lumber Co. v. Director General, 61 I. C. C. 661, 662; Charles C. Oyler & Co. v. L. & N. R. R., 66 I. C. C. 175.

§7¾. Wagon Weights.

IMPORTANT CASES SINCE 1908

(a) Charges on coal from Corbin, B. C., to Spokane, Wash. not found based on an erroneous weight. Weight claimed was ascertained by weighing over private wagon scales. The car was weighed light after shipment was unloaded; but tariffs provide for reweighing, and the difference between billed weight and weight that would have resulted if actual tare weight of car had been used is within the approved tolerance of 500 pounds. International Fuel Co. v. S. I. Ry. Co., 38 I. C. C. 622, 623.

ALL OTHER CITATIONS

Woolman & Co. v. C. R. R. of N. J., 42 I. C. C. 737; Cardwell v. C. R. T. & P. Ry. 51 I. C. C. 390.

III. DISCRIMINATION.

See Discrimination.

§8. In general.

CASES 1887-1908

(a) When actual weights cannot be ascertained without needless inconvenience, there is no serious objection to the use of estimated or constructive weights, provided the method of estimation works no inequality in its practical application to competing modes of

conveyance. Rice v. C. W. & B. R. Co. 8 I. C. C. 842, 854.

IMPORTANT CASES SINCE 1908

(b) Charging on actual weight to complainant and estimated weight to competitors found discriminatory. American Creosote Works v. I. C. R. R. Co., 18 I. C. C. 212.

(c) It amounts to the same thing whether the rate be high or the weight be excessive. Inaccuracies in weighing results in the imposition of unreasonable charges and in discrimination between shippers just as real as do differences in the freight rate itself. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 10.

ALL OTHER CITATIONS

Pa. Refining Co. v. W. N. Y. & Pa. R. R. Co., 208 U. S. 208, 222, 28 Sup. Ct. 268, 52 L. ed. 456; In re Advance in Rates for Transportation of Liquor 21 I. C. C. 199; R. R. Commissioners of Kansas v. Adams Express Co., 21 I. C. C. 283, 284, 285; Peters v. O. S. L. R. R. Co., 20 I. C. C. 598, 599; American Creosote Works v. I. C. R. R. Co., 18 I. C. C. 212, 218, 219; Bamble Bros. v. C. M. & St. P. Ry. Co., Unrep. Op. 173; Clearfield Lumber Co v. N. Y. C. & St. L. R. R. Co., Unrep. Op. A-76; Finkbine Lumber Co. v. G. & S. I. R. R. Co. 48 I. C.C. 705, 707.

IV. EVIDENCE AND BURDEN OF PROOF.

§9. In General.

See Bills of Lading §7; Burden of Proof, Evidence.

CASES 1887-1908

(a) The question as to correct weights and shipments, as between carrier and shipper, is one of fact to be determined in a manner just to both parties and as to which the ex parte action of either cannot conclude the other. Potter Manufacturing Co. v. Chicago & G. T. R. Co., 4 I. C. R. 223.

(aa) Allegations of unreasonable rates on vegetables from points in Florida to New York and other northeastern destinations were investigated by the Commission in a proceeding instituted upon its own motion, but the evidence presented was too uncertain and inconclusive to enable the Commission to make the necessary comparisons or arrive at any definite conclusion. Published tariffs specifying rates per standard crate on vegetables shipped from Florida to northern and northeastern points should state plainly the weight or dimensions of the crate to which the rates apply. Re alleged unlawful charges, 8 I. C. C. 585.

IMPORTANT CASES SINCE 1908

(b) Positive evidence of the incorrectness of a carrier's scaling is necessary before another weight can be substituted, Browne Grain Co. v. G. C. & S. F. Ry. Co., 20 I. C. C. 163, 164; Noble v. D. & T. S. L. R. R. Co. 20 I. C. C. 60, 61.

(c) Disputes as to weights of past shipments raise questions of fact which are quite difficult of determination, as reweighing is ordinarily impossible, and evidence of a very positive character as to the incorrectness of the scaling by the carrier is necessary before another weight can be substituted therefor. Browne Grain Co. v. G. C. & S. F. Ry. Co., 20 I. C. C. 163, 164.

(d) The weight of an article is considered in determining the classification. Barrett Mfg. Co. v. C. M. & St. P. Ry. Co., 20 I. C. C. 79, 80; W. E. Caldwell Co. v. C. I. & L. Ry. Co., 20 I. C. C. 412, 415.

(e) The burden of justifying increased weighing charges is on the carrier. Blackmer & Post P. Co. v. M. P. Ry., 49 I. C. C. 162, 163.

(f) A dispute as to weight of a past shipment raises a question of fact which is difficult of determination and evidence of a positive character as to the incorrectness of the scaling by the carrier is necessary before another weight can be substituted therefor. Kulzer v. G. N. Ry. Co. Unrep. Op. A-849.

ALL OTHER CITATIONS

Allen v. Pa. R. R. Co., Unrep. Op. 415; Reliance Mfg. Co. v. A. G. S. R. R. Co., Unrep. Op. 562; Barker v. L. & N. R. R. Co., Unrep. Op. A-54; Clearfield Lumber Co. v. N. Y. C. & St. L. R. R. Co., Unrep. Op. A-76; Motorcycle Mfrs' Assn. v. B. & O. R. R. Co., 26 I. C. C. 127, 138; Coal Merchants' Asso. v. B. & O. R. R. Co., 83 I. C. C. 328.

V. REPARATION.

See Reparation.

§10. In General.

IMPORTANT CASES SINCE 1908

(a) Reparation on the basis of excessive weight on yellow pine crossties is denied inasmuch as the shipments originated at many different points, the consignors being mere agents of complainant, and no evidence of any personal knowledge of actual weights having been introduced. Switzer Lumber Co. v. A. & M. R. R. Co., 22 I. C. C. 471 473.

(b) Excess charges based on erroneous weights are analogous to overcharges National Pole Co. v. M. & I. Ry. Co., 33 I. C. C. 372, 373.

ALL OTHER CITATIONS

Sunderland Bros. Co. v. C. & N. W. Ry. Co., Unrep. Op. 148; Richmond Co. v. G. T. Ry. Co. of Can., Unrep. Op. 161; Joseph Co. v. C. of Ga. Ry. Co., Unrep. Op. 166; Bentley v. C. & N. W. Ry. Co., Unrep. Op. 181; Marquette Cement Mfg. Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 188.

VI. TARIFFS AND CONSTRUCTION.

See Tariffs.

§11. In General.

IMPORTANT CASES SINCE 1908

(a) As practice of making scaleage deductions is not a matter of rates, the Commission sees no reason why the amount of the weight deductions should be published in tariffs. Baltimore Chamber of Commerce v. Pa. R. R. Co., 15 I. C. C. 341.

(b) The practice of making scaleage deductions based on estimated weights does not present a question of rates; it is a question of bailment only. Baltimore Chamber of Commerce v. Pa. R. R. Co., 15 I. C. C. 341, 346.

(c) It is not proper to provide in tariffs that weights at either the point of origin or the point of destination shall govern, unless those weights are correctly taken; that is, such a tariff would be unreasonable unless the shipper were permitted to show by reweighing or by other means that the weights at the point of origin were inaccurate. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 30.

(d) A carrier may not by providing that weights at either the point of origin or the point of destination, shall govern irrespective of whether such weights are correctly taken, exempt itself from liability to the shipper for loss of property in transit. It can properly provide only against that variation in weight which may actually be supposed to occur during the transportation and for such measure of possible error as is reasonable in the premises. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 30.

(e) A rule of the carriers provided that where a shipper asked for a reweighing of a carload of freight he should pay 50c, where the reweighing was upon the scales of the shipper, and the Commission HELD that as the carrier was obliged to spot the car, this charge was not unreasonable. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 30.

(f) In the absence of proper tariff authority therefor, it is unlawful to use estimated weights that are less than the actual weights. Lake Charles Rice Milling Co. v. A. & N. Ry. Co., 63 I. C. C. 18, 39.

ALL OTHER CITATIONS

Vegetable Oils Transportation, 46 I. C. C. 674, 676.

§12. Inspection bureaus.

See Inspection.

IMPORTANT CASES SINCE 1908

(a) It appeared that railroad weighing and inspection bureaus were accustomed to enter into an arrangement with certain shippers by which the weight certified by the shipper to be correct was so accepted by the carrier. The shipper agreed to pay any additional charges due to underweight where the weight was subsequently corrected and to allow the carrier access to all its records, invoice books and papers pertaining to the weights of the cars shipped. The agreement covered package freight, put up in standard packages where the weight was determined by counting the number of packages shipped in a particular car and also freight which must ordinarily be weighed in the car by some one. This weighing was done upon the scales of the industry under the inspection of the weighing bureau. It appeared that the weighing bureau frequently weighed such cars. It was also able by inspection of the books and records of the shipper to determine whether the weight charged against the customer

corresponded with the weight rendered to the carrier. HELD, that the system appeared to work satisfactory and without discrimination. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 28.

(b) Representatives of weighing bureaus may examine books and record of shippers. In re Weighing or Freight by Carriers, 28 I. C. C., 7, 28.

(c) The Weighmaster should be the representative of public authority. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 34.

(d) Some degree of supervision over weighing facilities at country points is exercised by state weighing departments or by organizations of grain dealers, or by both, but in general it is wholly inadequate and adds little to the trustworthiness of unsupervised weights. Inaccurate weighing prevails at country shipping points to an extent which impairs the credibility of unsupervised weights as a whole and which justifies careful inquiry into local conditions before accepting the claimed weights as correct. Claims for Loss and Damage of Grains, 48 I. C. C. 530, 542.

(e) The character of the supervision over the weighing of shipments, if any is exercised, is a fact which may readily be determined by investigation and which properly may be considered in connection with other pertinent facts in reaching a conclusion as to the probable accuracy of the claimed weights. Claims for loss and damage of Grain, 56 I. C. C. 347, 349.

ALL OTHER CITATIONS

In re Weighing of Freight by Carriers, 28 I. C. C. 7, 12, 23.

VII. REASONABLENESS OF CHARGES.

§13. In General.

See Reasonableness of Rates.

IMPORTANT CASES SINCE 1908

(a) A charge of 50 cents per car where cars are switched to private scales for weighing unless weights so ascertained were used for the assessment of freight charges not to be unlawful. American Brake Shoe & Foundry Co. v. B. Ry. of C., 28 I. C. C. 350.

(b) The weighing service, although performed after the initial physical delivery of the car, is nevertheless an incident of the transportation service, especially as the weight secured is used in the computation of freight charges and in the settlement of claims for shortage. Detroit Coal Exchange v. M. C. R. R., 38 I. C. C. 79, 80.

(c) Making charge for weight of ice in connection with fish, packed in barrels, while making no similar charge for weight of ice when fish are packed in bulk; found unreasonable. Tariff subsequently modified. Warren Fish Co. v. L. & N. R. R., 46 I. C. C. 375, 377.

(d) The charge for weighing is for general application and is not to be viewed merely in the light of some specific movement. At some points the service is less than at others, and the cost varies accordingly. Blackmer & Post Pipe Co. v. M. P. Ry., 49 I. C. C. 162, 163.

ALL OTHER CITATIONS

American Brake Shoe & Foundry Co. v. B. Ry. of C., 28 I. C. C. 350; Lowry Lumber Co. v. Director General, 56 I. C. C. 229.

VIII. WEIGHING ALLOWANCES.

See Allowances.

§14. In General.

IMPORTANT CASES SINCE 1908

(a) Complainant attacked the carrier's refusal to make an allowance of $3 per car on lumber and other products switched between its plant and thepoint of interchange with the carrier's line at Wiggins, Miss., 6,500 ft., and for the weighing of such shipments, as unreasonable and in violation of sec. 15. The mill was located at a greater distance from the main line than any other mill served by a tap line. Most of the plants on the carrier's line were located very close to its tracks so that practically no switching service was required, and no allowances were paid to any of them. The carrier had its own scale equipment and was ready to perform the same weighing service for complainant that it did for all other shippers, but complainant had installed private scales for its own convenience. HELD that in the absence of discrimination the carrier was under no obligation to perform the switching service sought, and that its refusal to make complainant an allowance for the service was not unlawful or

unreasonable. Complaint dismissed. Finkbine Lum. Co. v. G. & S. I. R. R., 48 I. C. C. 705.

WHARFAGE

See Allowances §8(8); Dockage, Facilities and Privileges §16; Water Carriers §63¾.

CASES 1887-1908

(a) Charges for wharfage, graduated by tonnage of vessels using a wharf, are not open to the objection that they are duties on tonnage within the meaning of the Constitution. Ouachita, etc., Packet Co. v. Aiken, 1 I. C. R. 379.

(b) Wharfage is subject to local state laws, Congress having passed no Act to regulate it; and by those laws its reasonableness must be determined. Ouachita, etc., Packet Co. v. Aiken, 1 I. C. R. 379.

(c) Where wharfage charges are reasonable, it in no way concerns those who pay them, what application is made of the proceeds. Their appropriation to maintain, extend, light and police the wharves is unobjectionable, although a profit may be realized by lessees from the city which owns them. Ouachita, etc., Packet Co. v. Aiken, 1 I. C. R. 379.

(d) The appropriation of wharfage charges to maintain, extend, light and police the wharves is unobjectionable, although profits may be realized by lessees from the city which owns them. Ouachita etc. Packet Co. v. Aiken (U. S. Supt. Ct.) 1 I. C. R. 379.

(e) A transportation company operating a railway and a line of steamboats connecting at the company's wharf is not required, by the 3d section of the interstate commerce act, to permit the boats of a competitor to land at such wharf. Ilwaco R. & N. Co. v. Oregon S. L. & U. N. R. Co., 5 I. C. R. 627.

IMPORTANT CASES SINCE 1908

(f) A corporation operating municipal dock and wharves in connection with interstate commerce, was found not to be a common carrier subject to the act. Wharfage. Handling and Storage Charges, 59 I. C. C. 488.

WITNESSES

See Immunity of Witness; Interstate Commerce Commission §6; Procedure Before Commission §1½; §22.

YARDAGE

See Allowances §8(8).

IMPORTANT CASES SINCE 1908

(a) Complainant attacked certain "yardage charges" in connection with the feeding, watering, and resting of hogs shipped in carloads from points in Idaho, Oregon, Colorado and Utah to Los Angeles, Cal., as illegal and unreasonable. The hogs were stopped en route, as repuired by the federal 28-hour law, unloaded into the carrier's yards, and rested, watered and fed. The feed was furnished by complainant, but the services incident to unloading, watering, feeding and resting the hogs were performed by an "independent contractor" at charges ranging from $1 to $1.50 per car, collected by the carrier with the freight charges and paid over to the contractor. No charge was made for rental of the yards. HELD, following Streever Lumber Co. v. C. M. & St. P. Ry., 34 I. C. C. 1, that it was not within the province of the Commission to determine the issues presented. Complaint dismissed. Pacific Coast Beef & P. Co. v. O. S. L. R. R., 46 I. C. C., 401.

ZONE RATES

See Blanket Rates.

APPENDIX

Index of Cases

Volumes 1 I. C. R. through 12 I. C. C. is the period covered.
(References are to Sections and Paragraphs under Subjects.)

A

Aberdeen Commercial Asso. v. M. & O. R. R. 10 I. C. C. 289. Long and Short Hauls, §5 (3t) §7 (3u).

Alabama v. Stripling 7 I. C. C. CV. State Rates and Regulations (8t).

Alabama Great Southern R. R. Co. v. City of Bessemer, 7 I. C. C. App. XCII. Taxes (7f).

Alanson S. Page v. D., L. & W. R. R. Co. et al., 6 I. C. C. 148. Classification §22 (x); Crimes, §26½ (d).

Albany Produce Co. v. C. B. & Q. Ry., 12 I. C. C. 434. Long and Short Hauls §7 (4q); Procedure Before Commission, §10 (2) (ffa).

Alford v. C. R. I. & P. R. Co., 2 I. C. C. 771. Discrimination, §5 (a); Facilities and Privileges, §16½ (b); Special Contracts, §2 (c); Trackage Agreements (a) (b) (c).

Alleged Unlawful Transportation Charges By I. C. R. Co., 6 I. C. C. 624. Procedure Before Commission §10 (2) (l).

Allen v. Louisville, N. A. & C. R. Co., 1 I. C. C. 621. Interchange of Traffic (a); Long and short hauls, §10½ (i). §12 (1) (c) §13 (e) (f).

Allowance to Elevators by U. P. R. R. Co., 12 I. C. C. 85. Allowances, §8 (3) (h) (1m) (n); Facilities and Privileges, §9½ (m) §10 (h).

Amarillo Gas Co. v. A. T. & S. F. Ry. Co., 12 I. C. C. 209. Procedure Before Commission, §10 (2) (dd) (dda).

American Fertilizing Co. v. North Carolina Bd. of Agriculture (C. C. E. D. N. C.) 3 I. C. R. 532. State Rates and Regulations (4d); Taxes (3y).

Amer. Fruit Union v. Cin. N. Orleans & Tex. Pac. Ry. Co., 12 I. C. C. 411. Expedited service (b) (c) (d) (e) (f); Perishable Freight (g); Refrigeration §4 (h); Special Rates and Services (h) (i).

American Grass Twine Co. v. St. Paul, M. & O. R. Co., 12 I. C. C. 141, Evidence §56 (e); Rail and Water Rates (g); Reasonableness of Rates, §2 (3e) §7½ (dd); Reparation, 7½ (n) §19 (d).

American Harrow Co. v. Shaffer (C. C. W. D. Va.), 5 I. C. R. 336. State Rates and Regulations (7c).

American Nat. Live Stock Asso. v. T. & P. R. Co., 12 I. C. C. 32. Live Stock Shipments, (q); Through Routes and Joint rates, §11 (2) (k) (l); §25 (c).

American Warehousemen's Asso. v. Illinois Cent. R. Co., 7 I. C. C. 556. Association (ga); Facilities and Privileges, §10 (a) §14 (a) (b); Interstate Commerce Commission, §1 (cc); Storage §1 (b) §2 (a) §3 (a) (b) (c); Terminal Facilities §1 (a); Warehousing (a).

Ames v. Union P. R. Co. (C. C. D. Neb.), 4 I. C. R. 619. Actions at Law, (g); Courts, §1 a (b); Crimes, §24½ (b); Evidence, §67 (h); Passenger Fares and Facilities, §6 (v); Receivers (1) (m) (n) (o) (p) (q); Wages (a) (b) (c) (d) (e) (f) (g) (ga) (gb) (gc) (gd) (h) (i) (j).

Ames v. Union Pacific R. Co., 4 I. C. R. 835. Courts, §1 (11) (mm) §6½ (hh) (ii) (jj) §14 (cc); Evidence §55 (a); Interstate Commerce §4 (kk) (11); Local Rates and Combinations, (f); Loss and Damage, §13¾ (e); Reasonableness of Rates, §2 (ee) §7½ (p) §15 (a); State Rates and Regulations (6p) (6q) (6r); Statutes (qq).

Anderson v. Louisville & N. R. Co. (C. C. D. Ky.), 4 I. C. R. 764. Passenger Fares and Facilities, §11 (s) (t) (u) (v) (w); Statutes (mm) (nn) (oo) (pp).

Anderson v. U. S. 8 I. C. C. App. XVIII. Stock Yard Co's. (q).

Andrews Soap Co. v. Pittsburgh, Cinn. & St. L. R. Co., 3 I. C. R. 77. Classification, §10 (d) (e) §22 (m).

Anthony Salt Co. v. M. P. R. R., 4 I. C. C. 33. Blanket Rates, §13 (f); Commodity Rates, §1 (b); Discrimination, §4 (m); Evidence, §2 (f) (g) (h); Reasonableness of Rates, §32½ (a); Reduced Rates, §4½ (c).

Anthony Salt Co. v. Missouri P. R. Co. (Com.), 4 I. C. R. 537. Interchange of Traffic (w) (x); Terminal Facilities, §3 (g); Through Routes and Joint Rates, §23a (b).

Application of Fremont, Elkhorn, & M. V. R Co., et al, 6 I. C. C. 293. Long and Short Hauls, §4 (r) (s).

Application of the R. W. & O. for relief from the Fourth section, 6 I. C. C. 328. Passenger Fares and Facilities, §3 (3) (c).

Arkansas & L. R. Co. v. Smith, 4 I. C. R. 415. Divisions, §2½ (aa); Reparation, §8 (a); Tariffs §3 (2) (b).

Armstrong v. Galveston H. & S. A. R. Co., 5 I. C. R. 247. Loss and Damage, §3 (c) §13½ (a).

Armstrong v. Galveston, Harrisburg & San Antonio Ry. Co. 8 I. C. C. App. 1. Loss and Damage, §13½ (e).

Arthur v. Oakes, (C. C. App. 7th C.), 4 I. C. R. 744. Courts, §14 (u) (v); Crimes §24½ (c) (d); Receivers (r) (s) (t) (u); Wages (k) (l) (m) (n) (o) (p) (q) (r) (s).

Artz v. S. A. L. Ry. 11 I. C. C. 458. Passenger Fares and Facilities, §3 (1) (b) §14 (1).

Ashley v. Ryan (U. S. Sup. Ct.), 4 I. C. R. 664. Courts, §10 (g); State Rates and Regulations; (5w) (5x) (5y) (5z); Taxes (5j) (5k).

Asso. Wholesale Grocers v. Missouri Pacific R. Co., 1 I. C. R. 393. Passenger Fares and Facilities, §2 (a) §6 (j) (k) (lm) (n) (o) (oa).

Asso. Wholesale Grocers of St. Louis v. M. P. R. R., 1 I. C. C. 321. Passenger Fares and Facilities, §6 (a) (b), §7¼ (h) (i) (j) (k), Procedure Before Commission, §1 (a) (b) §5 (a), §10 (l) (c).

Atchison, Topeka & Santa Fe Ry. Co. v. Goetz & Brada Manufacturing Co., 7 I. C. C. XIV. Crimes, §5 (h).

Atlantic & P. R. Co. v. Lesueur (Ariz.), 2 I. C. R. 189. Statutes, (c); Taxes (cc) (dd) (ee) (ff) (gg) (hh) (ii) (jj) (kk) ll).

Atlantic Exp. Co. v. Wilmington & W. R. Co., (N. C.). 4 I. C. R. 294. Express Companies, §1 e), §1¾ (b), §40 (b); State Rates and Regulations, (5b) (5c) (5d) (5e); Statutes (u).

Augusta Southern Ry Co. v. Wrightsville & Tennille Ry. Co., 7 I. C. C. App. XXXVIII. Advanced Rates, §19 (c); Courts §1 (uu); Evidence §1½ (dd); Interstate Commerce, §5 (ss); Local Rates and Combinations, (h) (i).

Bagg v. Wilmington, C. & A. R. Co. (N. C.), 3 I. C. R. 803. Interstate Commerce, §4 (x).

Bailey Liquor Co. v. Austin, 7 I. C. C. App. XXXVII. Intoxicating liquors, (dd)

Bain v. Richmond & D. R. Co. (N. C.), 3 I. C. R. 149. Taxes (3j).

Baird v. St. Louis, I. M. & S. R. Co., 4 I. C. R. 422. Bills of Lading §7 (b); Interstate Commerce, §½ (n), §4 (dd); State Rates and Regulations (5i); Weights and Weighing, §7½ (a).

Barden & Swartout v. Lehigh Valley R. R. Co., 12 I. C. C. 193. Explosive and Dangerous Articles (c).

Barden & Swartout v. Lehigh Valley R. Co., 2 I. C. C. 103. Switch Tracks and Switching, §4 (f).

Barron v. Burnside 1 I. C. R. 295. Courts, §6½ (a) (b) (c); State Rates and Regulations (g) (h) (i) (n).

Barrow v. Y. & M. V. R. Co., 10 I. C. C. 333. Interstate Commerce Commission, §8½ (mm); Live Stock Shipments, (g); Long and short hauls, §13 (b); Reparation, §8 (c), §21 (f); Weights and Weighing, §5 (d).

Barron v. Burnside 1 I. C. R. 295. Courts, §6½ (a) (b) (c); State Rates and Regulations (g) (h) (i).

Bateman Bros. v. Western Star. Milling Co., 4 I. C. R. 260 Statutes (ta).

Bates v. Pennsylvania Co., 2 I. C. C. 715. Classification, §3 (h), §3½ (c), §8a (b) §11 (b), §22 (1); Discrimination, §1 (d); Evidence, §27 (a); Procedure Before Commission, §11 (f).

Bates v. Penn. R. Co., 3 I. C. R. 296. Classification, §3½ (d), §22 (o); Equalization of Rates, §2 (g); Evidence, §31 (a); Procedure Before Commission, §8 (g).

Bayles v. Kansas P. R. Co. (Colo.), 2 I. C. R. 643. Discrimination, §3 (o); Evidence, §1 (j); Procedure Before Commission, §2 (1) (la); Receivers (c) (d) (e) (f); Reparation, §7½ (aa); Special Contracts, §2½ (d).

Beardsley v. N. Y. L. Erie & Western R. R. Co., 7 I. C. C. App. XC. Passenger Fares and Facilities, §6 (y).

Beardsley v. N. Y. Lake Erie & Western R. R. Co. 7 I. C. C. App. LXXVII. Passenger Fares and Facilities, §½ (h).

Beaver v. Pittsburgh, C. & St. L. R. Co. (Com.), 3 I. C. R. 564. Classification, §6 (f), §10 (g).

Behlmer v. Louisville & Nashville Ry. Co., et al., 7 I. C. C. App. XII. Evidence, §14 (5) (t); Receivers (ee) (ff); Through Routes and Joint Rates, §16 (a).

Behlmer v. Louisville & Nashville R. R. Co., 8 I. C. C. App. XXXIV. Discrimination, §8 (5) (b); Long and Short Hauls §9 (na); Procedure Before Commission, §3 (c).

Behlmer v. Louisville & N. R. Co. 71 Fed. Rep. 839. Long and Short Hauls, §4½ (j).

Behlmer v. M. & C. R. Co., 4 I. C. C. 520. Long and short hauls, §4 (q), §6¾ (a), §7 (y), §8 (c), §11 (e), §12 (l) (i).

Behlmer v. Memphis & Charleston R. Co., et al., 6 I. C. C. 257. Evidence, §32 (j); Long and short hauls, §5 (ua) §8 (d), §11 (f).

Behrend v. Washington Southern Ry. Co. et. al. 9 I. C. C. 637. Passenger Fares and Facilities, §2 (n) (o), §14 (i).

Bell Co. v. Baltimore & O. S. R. Co., 9 I. C. C. 632. Classification, §10 (t).

Bell Co. v. Baltimore & O. S. R. Co., 9 I. C. C. 932. Classification, §10 (u).

Bigbee & W. Rivers Packet Co. v. Mobile & I. C. R. Co. (C. C. S. D. Ala.), 4 I. C. R. 829. Discrimination, §3 (hh), §4 (q), §9 (d), §10 (b).

Birmingham Packing Co. v. Texas & P. R. Co., 12 I. C. C. 29. Through Routes and Joint Rates, §11 (2) (g) (h) (i) (j).

Birmingham Packing Co. v. T. & P. Ry. Co., 12 I. C. C. 500. Divisions, §3 (ab) (b); Through Routes and Joint Rates, §14 (r) (s) (t).

Bishop v. Duval, 2 I. C. R. 514. Interstate Commerce Commission, §14 (a); Procedure Before Commission, §10 (2) (g).

Blackman v. Southern R. Co., 10 I. C. C. 352. State Rates and Regulations (10b); Storage, §2 (b) (c) (d) (e) (f), §3 (e) (f).

Blackwell Milling & Elevator Company v. M. K. & T. Ry., 12 I. C. C. 24. Differentials, §8 (w); Discrimination, §10 (g); Divisions, §9 (d); Interchange of Traffic (ff); Interstate Commerce Commission, §10½ (a).

Blanton Duncan v. A. T. & S. F. R. R. Co. et al., 6 I. C. C. 85. Classification, §10 (l) (m) (n); Evidence, §30 (b); Loss and Damage, §5 (c); Pooling of Traffic (ij); Released Rates, §4 (b); Special Contracts, §2 (q).

Bluthenthal v. Long, 8 I. C. C. App. XCIII. Intoxicating liquors, (3m).

Bluthenthal v. Southern R. R. Co., 8 I. C. C. App. XLVII. Intoxicating liquors, (3f).

Board of R. R. Commrs. v. Atchison, T. & S. F. R. R. Co., 8 I. C. C. 304. Classification, §3½ (k) (l); Differential, §8 (la); Evidence, §20 (bb), §44¼ (a) (b) (d) (e), §69 (a); Export Rates and Facilities, §4 (g) (h), §6 (y).

Board of Railroad Commrs. v. Cincinnati, N. O. & T. P. R. Co., 7 I. C. C. 380. Evidence, §12 (l) (d), §20 (w); Long and short hauls, §5 (kk) (ll), §9 (k). Through Routes and Joint Rates, §13½ (u).

Board of Railroad Commrs. of South Carolina v. Florence R. Co., 8 I. C. C. 1. Evidence, §12 (l) (e), §51 (h), §58 (m), §61 (d); Perishable Freight (d).

Board of Railroads and Warehouse Commissioners of Missouri v. E. S. R. Co. 7 I. C. C. 69. Passenger Fares and Facilities, §2 (j); Through Routes and Joint Rates, §13 (ss).

Board of Trade v. Alabama Midland, 4 I. C. R. 348. Discrimination, §3 (ee) (ff); Long and short hauls, §5 (u), §12 (l) (aa); Proportional Rates IV (a); Receivers (i); Reconsignment, §9 (a); Through Routes and Joint Rates, §2 (q), §13½ (o) (p) (q), §22 (i).

Board of Trade v. Nashville, C. & St. L. Ry. Co., 8 I. C. C. 503. Differentials, §8 (m); Discrimination, §8 (1) (i) (j) (k), §10 (e); Evidence, §14 (1) (x); Local Rates and Combinations (ic); Long and short hauls, §4½a (a), §7 (vv) Reasonableness of Rates, §2 (mm); Through Routes and Joint Rates, §13 (3c), §13½ (y).

Board of Trade v. Richmond & D. R. Co. (Com.) 2 I. C. R. 193. Long and Short Hauls, §12 (l) (d).

Board of Trade of Chattanooga v. E. T. V. & G. R. Co., 4 I. C. C. 213. Long and short hauls, §7 (t) (u) (v), §10 (k) (1).

Board of Trade of Dawson, Ga. v. Central of Georgia Ry. Co., 8 I. C. C. 142. Basing Points and Lines, §3 (d); Discrimination, §3 (3d) (3e) (3f) (3g), §4 (x) (y).

Board of Trade of Kansas City, Mo. v. C. B. & Q. Ry., 12 I. C. C. 173. Reconsignment, §2 (d).

Board of Trade of Kansas City v. C. B. & Q. R. Co., 12 I. C. C. 171. Reconsignment, §3 (ca) (cb) (d).

Board of Trade of Lynchburg v. Old Dominion S. S. Co., 6 I. C. C. 632. Discrimination, §3 (mm), §13 (b); Long and short hauls, §4 (y), §5 (cc) (dd).

Board of Trade of Troy, Ala. v. Ala. Mid. Ry. Co., 6 I. C. C. 2. Discrimination, §3 (ii), §10 (c); Local Rates and Combinations (ga); Through Routes and Joint Rates, §2 (t), §13a (b), §22 (1).

Board of Trade Union v. Chic., Milwaukee & St. P. R. R. Co., 1 I. C. C. 608. Branch Lines, §3 (aa); Differentials, §8 (a); Evidence, §47 (a); Reasonableness of Rates, §28 (a) (ab); Routing and Misrouting, §5 (a).

Boer & Co. v. Chesapeake, O. & S. R. Co. 7 I. C. C. 55. Procedure Before Commission, §10 (2) (m).

Bogart v. State (Ohio C. P.), 2 I. C. R. 297. State Rates and Regulations, (rr) II. (e) (f); Association (a); Long and short hauls, §10½ (c) (d) (e) (fg) (h), §11 (a).

Boston & A. R. R. Co. v. Boston & L. R. R. Co., 1 I. C. R. 571. Act to Regulate Commerce II (e) (f); Association (a); Long and short hauls, §2½ (ba), §4 (m), §12 (l) (b) (e), §14 (b); Procedure Before Commission, §10 (l) (ga), §13 (b) (c), §21a (d); Through Routes and Joint Rates, §13a (a).

Boston Chamber of Commerce v. L. S. & M. S. R. R. 1 I. C. C. 754. Differential, §2½ (a), §8 (aa); Discrimination, §4 (a); Equalization of Rates, §2 (ab); Evidence, §1½ (c), §18 (c); Export Rates and Facilities, §4 (a), §6 (a); Reasonableness of Rates, §2 (c), §28 (c); Through Routes and Joint Rates, §14 (a).

Boston Fruit & Produce Exch. v. New York & N. E. R. Co., 3 I. C. R. 493. Act to Regulate Commerce, II. (w); Association (b); Evidence, §1½ (k); Perishable Freight (a); Procedure Before Commission, §11 (h), §13 (sa), §16 (a); Through Routes and Joint Rates, §2 (f).

Boston Fruit & P. Exch. v. New York & N. E. R. Co. (Com.), 3 I. C. R. 604. Divisions, §2½ (a), §7 (b); Evidence, §20 (g); Through Routes and Joint Rates, §14 (f).

Bowman v. Chicago & Northwestern R. Co. 1 I. C. R. 823. Intoxicating liquors, (b) (c) (d) (e) (ea).

Bowman v. Chicago & N. W. R. Co. (U. S. Sup. Ct.) 1 I. C. R. 825. State Rates and Regulations (ee) (ff) (gg) (hh) (ii).

Bowman v. Chicago & N. W. R. Co. (U. S. Sup. Ct.), 1 I. C. R. 840. Water Carriers, §1 (c).

Bowman v. Chicago N. W. R. Co. (U. S. Sup. Ct.), 1 I. C. R. 829. Interstate Commerce, §1½ (h), §5 (e); Taxes (j) (o); State Rates and Regulations (gg) (hh) (ii); Interstate Commerce, §5 (f); Taxes (p); Intoxicating liquors, (f); State Rates and Regulations (jj) (kk).

Boyer & Company v. Chesapeake, O. & S. W. R. Co., 7 I. C. C. 55. Long and short hauls, §5 (ee); Procedure Before Commission, §10 (1) (p).

Brabham v. Atlantic Coast Line R. Co., 11 I. C. C. 464. Evidence, §1½ (pp);

Passenger Fares and Facilities, §2 (x), §3 (l) (c); State Rates and Regulations (10d).
Brady & Co. v. Pennsylvania Co., 2 I. C. C. 78. Divisions, §7 (a); Evidence, §52 (a) (b); Through Routes and Joint Rates, §2 (a) (b) (c), §3½ (aa), §13 (e) (f) (g) (h), §13½ (a), §14 (bc).
Brass v. North Dakota, Stoeser (U. S. Sup. Ct.), 4 I. C. R. 670. Facilities and Privileges, §9½ (c) (d); Interstate Commerce, §4 (jj); Rates and Regulations (6a) (6b) (6c) (6d); Statutes (cc).
Brett v. Ebel, 8 I. C. C. App. L. Anti-Trust Laws and Monopolies (ddl).
Brennan v. City of Titusville, 4 I. C. R. 658. State Rates and Regulations (5s) (5t) (5uv); Taxes (5g) (5h) (5i).
Brewer & Hanlieter v. Central of Georgia Ry. Co., 7 I. C. C. App. III. Discrimination, §3 (zz); Long and short hauls, §8 (g).
Brewer & Hanleiter v. Louisville & N. R. Co., 7 I. C. C. 224. Discrimination, §3 (rr) (ss), §8 (7) (c); Evidence, §50 (b), §51 (f); Long and short hauls, §5 (hh), §7 (ee), §8 (e), §9 (i), §10 (pq).
Brimmer v. Rebman, 3 I. C. R. 485. Interstate Commerce, §4 (r) (s).
Brockway v. Ulster & D. R. Co., 8 I. C. C. 21. Blanket Rates, §12a (c) (d).
Brown v. Walker (C. C. W. D. Pa.), 5 I. C. R. 300. Crimes, §28½ (c) (d) (e) (f). (kl) (m) (n) (o).
Brown v. Walker, 5 I. C. R. 367. Immunity of Witnesses (a).
Brown v. Walker, 5 I. C. R. 369. Act to Regulate Commerce, II. (bb); Crimes, §28½ (g) (h) (i) (j) (kl) (m) (n) (o).
Brown v. Walker (U. S. Sup.), 5 I. C. C. 369 Aff'g. (C. C. W. D. Pa.) 5 I. C. C. 300, and Overruling (D. C. N. D. Ill.), 5 I. C. R., 578. Crimes, §28½ (kl) (m) (n) (o); Statutes (xx).
Brownell v. Columbus & C. M. R. Co. (Com.), 4 I. C. R. 285. Classification, §5 (k) (l) (m), §19 (f); Evidence, §1½ (o).
Buchanan v. N. P. R. Co., 3 I. C. C. 655. Blanket Rates, §12 (b); Reasonableness of Rates, §2 (y) (z).
Buckeye Buggy Company v. C. C. C. & St. L. Ry., 9 I. C. C. 620. Classification, §5 (bb), §10 (r) (s) (t) (u), §12 (b); Forwarders (b).
Budd v. State of New York, 4 I. C. R. 45. Facilities and Privileges, §9½ (a) (b); Interstate Commerce §4 (jj); State Rates and Regulations (4s) (4t); Statutes (o) (p) (cc); Storage, §1 (a).
Budd v. New York, 143 U. S. 517 (36:77). State Rates and Regulations (6a).
Bullard v. Northern Pacific R. Co. 3 I. C. R. 536. Special Contracts, §2 (g) (h) (i).
Burdick v. People of the St. of Ill, 7 I. C. C. App. XX. Passenger Fares and Facilities, §1½ (f).
Bureau of Freight of Charleston, S. C. v. N. & W. R. R. 11 I. C. C. 235. Long and short hauls, §6⅞ (z); Procedure Before Commission, §10 (1) (dd); Reasonableness of Rates, 26½ (a); Through Routes and Joint Rates, §13 (3k).
Burton Stock Car Co. v. Chicago, B. & R. R. Co., 1 I. C. R. 329. Stock Yard Companies (b).
Burlington, C. R. & N. R. Co. v. Dey (Iowa), 3 I. C. R. 584. Actions at Law (b); Attorney Fees (a) (b); Courts, §14 (g) (h) (i); Evidence, §67 (d); Interchange of Traffic (m); Interstate Commerce, §4 (u); Procedure Before Commission, §1 (y); State Rates and Regulations (4k) (4l) (4m) (4n) (4o) (4p); Statues (k) (l) (m) (n) (na); Through Routes and Joint Rates, §1 (i) (j).
Burrows v. Delta Transportation Co. 7 I. C. C. App. XVIII. State Rates and Regulations (7q).
Burton Stock Car Co. v. Chic. B. & Q. R. R. Co., 1 I. C. R. 329. Cars and Car Supply, §9⅞ (3) (a) (b) (c), §11¾ (a) (b) (c) (d) (e), §11⅞ (a); Live Stock Shipments, (b) (ba); Stock Yard Companies (b).
Butner v. Western U. Telegraph Co. (Okla.), 4 I. C. R. 770. Actions at Law, (h); Telephone and Telegraph Companies, §3 (u) (vw) (x), §4 (c) (d) (e) (f).
Business Men's Asso. of Minnesota v. C., St. P., M. & O. Ry., 2 I. C. C. 11. Act to Regulate Commerce II. (k); Blanket Rates, §9 (a); Class Rates, §2 (a); Evidence, §14 (1) (a) (b) (c), §14 (5) (a), §56 (a), §58 (b) (c) (d); Long and short hauls, §2½ (c); Reasonableness of Rates, §2 (de), §7½ (b), §36 (a); Through Routes and Joint Rates, §13 (db).

Business Mens Association v. Ch. & N. W. R. Co., 2 I. C. R. 48. Evidence, 1 (ea), §13 (1) (b), §14 (5) (a), §56 (b), §58 (e) (f); Interstate Commerce Commission, §1 (g); Procedure Before Commission, §1 (na); Reasonableness of Rates, §8 (2) (a), §36 (a).

Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co., 9 I. C. C. 318. Classification, §5 (q) (r) (s) (tu) (v) (w) (x) (y) (z), §6 (l); Commodity Rates, §5 (a) (b); Discrimination, §8 (l) (o); Evidence, §14 (5) (xy); Long and short hauls, §5 (3o), §10 (y); Procedure Before Commission, §1 (ff), §5 (e).

C. & I. Asso. of Union Springs v. L. & N. R. R. Co., 12 I. C. C. 372. Basing Points and Lines, §1 (d); Discrimination, §2 (g), §3 (3q).

C. & I. Asso. of Union Springs v. C. of Ga. Ry. Co., 12 I. C. C. 375. Compress Companies and Charges I (b).

C., N. O. & T. P. R. Co., v. Inters. Com. Commission, 5 I. C. R. 391. Courts, 5 (i); Interstate Commerce, §5 (nn); Interstate Commerce Commission, §1 (s), §8½ (l); Long and short hauls, §10½ (l); Special Contracts, §2 (t).

C. R. I. & P. T. v. C. & A. R. 2 I. C. C. 721. Through Routes and Joint Rates, 18 (a).

California v. Central Pacific R. R. Co., 2 I. C. R. 153. Act to Regulate Commerce, I. (b); Interstate Commerce, §5 (s); Taxes (x) (y) (z) (aa) (bb).

California Fruit Growers Exchange v. Southern P. Co., 12 I. C. C. 553. Cars and Car Supply, §20 (f) (g).

Calloway v. Louisville & Nashville R. Co., 7 I. C. C. 431. Discrimination, §3 (ww); §4 (v); Long and short hauls, §5 (mm) (nn) (oo), §7 (gg) (hh), §9 (l); Reasonableness of Rates, §7½ (u), §28 (ua); Through Routes and Joint Rates, §4 (u), §13 (tt).

Cambria Steel Co. v. Great Northern R. Co. 12 I. C. C. 466. Minimum, §7 (n) (o) (oa), §8 (b).

Campbell v. Chicago, Milwaukee & St. P. R. Co., 4 I. C. R. 203. Courts, §1 (aa) (bb); Interstate Commerce, §2 (d) (e); Overcharges (c); State Rates and Regulations (5a).

Canadian Pacific Passenger Rate Differentials, 8 I. C. C. 71. Passenger Fares and Facilities, §3 (2) (a), §3 (3) (e) (f).

Cannon v. Mobile & O. R. Co., 11 I. C. C. 537. Classification, §16 (bb); Evidence, §13 (l) (l), §32 (q); Long and short hauls, §6⅞ (ccdd) (ee); Reasonableness of Rates, §7½ (y)

Cannon Falls Farmers' Elevator Co. v . Chicago G. W. R. Co., 10 I. C. C. 650. Classification, §3½ (t); Discrimination, §4 (hh), §8 (l) (v) (w); Equalization of Rates, §2 (o), §3 (ja); Evidence, §2 (w); Local Rates and Combinations, (j) (k); Through Routes and Joint Rates, §13 (3ha).

Capehart v. L. & N. R. Co., 3 I. C. C. 278. Rail and Water Rates, (a); Through Routes and Joint Rates, §1 (f) (g) (h), §13 (bb) (cc); Water Carriers, §2 (a).

Capital City Gas Co. v. Central V. R. Co. et al., 11 I. C. C. 104. Classification, §10 (z); Discrimination, §1a (m), §4½ (o); Through Routes and Joint Rates, §26 (c) (d).

Car Shortage, Insufficient Transportation facilities, 12 I. C. C. 561. Car and Car Supply, §6⅞ (b), §20 (h); Common Carrier, §8 (e).

Carolina Ex. Rel. Goodwin v. Caraleigh Phosphate & Fertilizer Works, 7 I. C. C. App. LXXXIII. State Rates and Regulations, (8o).

Carr v. N. P. Ry., 9 I. C. C. 1. Cars and Car Supply, §31 (b), §39 (a); Evidence, §18 (n); Passenger Fares and Facilities, §7¾ (b) (c); Reasonableness of Rates, §28 (v).

Carrey v. Spencer, 5 I. C. R. 636. Passenger Fares and Facilities, §11 (x) (y); Receivers, (aa); State Rates and Regulations, (7m).

Cary v. Eureka Springs R. Co., 7 I. C. C. 286. Class Rates, §2 (e); Discrimination, §3 (tt); Evidence, §1½ (bb), §14 (6) (a), §51 (g); Interstate Commerce Commission, §8½ (aa) (bb) (cc); Reasonableness of Rates, 2 (kk); Reduced Rates, §1 (a), §4½ (i); Through Routes and Joint Rates, §3½ (f) (g).

Castle v. Baltimore & O. R. Co., 8 I. C. C. 338 Discrimination, §4 (z), §13½ (j); Equalization of Rates, §2 (l); Procedure Before Commission, §10 (l) (w).

Cator v. Southern P. R. Co. (Com.), 4 I. C. R. 397. Passenger Fares and Facilities, §6 (s) (t) (u), §7¼ (y), §6 (w).

Cattle Raisers' Asso. v. Chicago, B. & Q. R. Co., 10 I. C. C. 83. Advanced Rates, §22 (b); Association, (gb); Claims, §1 (d); Interstate Commerce Commission, §1 (ee), §8½ (ll), §14 (d); Procedure Before Commission, §2 (r) (s), §13 (aa); Reasonableness of Rates, §2 (oo); Reparation, §½ (d), §6 (c), §7 (a), §8½ (a) (b), §21 (c) (d) (e); Stock Yard Companies, (x) (y) (z) (za); Terminal Facilities, §5 (b), §5a (a); Through Routes and Joint Rates, §23 (g) (h).

Cattle Raisers' Asso. of Texas v. Chicago, B. & Q. R. Co., 11 I. C. C. 277. Live Stock Shipments, (k) (l) (m) (n); Stock Yard Companies, (ff) (gg) (hh) (ii) (jj); Trackage Agreements, (d).

Cattle Raisers' Asso. of Tex. v. C. B. & Q. R. Co., 12 I. C. C. 6. Procedure Before Commission, §8 (i) (j).

Cattle Raisers Asso. v. C. B. & Q. Ry., 12 I. C. C. 507. Evidence, §69 (b); Interstate Commerce Commission, §1 (mm), §8½ (rr); Stock Yard Companies. (ll); Terminal Facilities, §5 (c).

Cattle Raisers' Asso. v. Fort Worth & D. C. R. Co., 7 I. C. C. 513. Absorption of Charges, §3 (a) (b); Act to Regulate Commerce, II (jj); Association, (e) (f) (g); Courts, §6½ (oo); Discriminations, §1a (j), §8 (3) (a); Facilities and Privileges, §10 (c); Interstate Commerce, §½ (v); Interstate Commerce Commission §18 (a); Stock Yard Companies, (g) (h) (i) (j) (k) (l) (m); Terminal Facilities, §5 (a) (aa), §10 (a) (aa); Through Routes and Joint Rates, §1 (v), §23 (e); Reparation, §7½ (c).

Cattle Raisers' Association v. Fort Worth & D. C. R. Co., 7 I. C. C. 555a. Stock Yard Companies (ma).

Cattle Raisers Asso. of Texas v. G. H. & S. A. Ry., 12 I. C. C. 20. Divisions, §1 (a); Through Routes and Joint Rates, §11 (2) (ce) (f) (g).

Cattle Raisers' Asso. of Texas v. M. K. & T. Ry., 11 I. C. C. 296. Advanced Rates, §17 (q); Live Stock Shipments, (o) (p); Stock Yard Companies, (kk).

Cattle Raisers Asso. v. Missouri, I. & T. R. Co., 11 I. C. C. 298. Live Stock Shipments, (pa).

Cattle Raisers' Asso. v. M. P. & T. R. Co., 12 I. C. C. 1. Interstate Commerce Commission, §1 (ff), §8½ (oo); Procedure Before Commission, §5 (i).

Cattle Raisers Asso. of Tex. v. M. K. & T. R. Co., 12 I. C. C. 6. Procedure Before Commission, §5 (jk), §11 (j).

Central Yellow Pine Asso. v. Illinois C. R. Co., 10 I. C. C. 505. Advanced Rates, §2½ (h) (ij), §5 (4) (b), §7 (7) (b), §9 (c) (d) (e), §15 (e) (f), §17 (j) (kl), §18 (4) (a); Evidence §49 (b) (c), §63 (f) (g) (h); Reasonableness of Rates, §2 (qq) (rr), §25 (h); Tap Lines, §1 (a), §7 (g) (h), §9 (ca).

Central Yellow Pine Asso. v. Vicksburg, S. & P. R. Co., 10 I. C. C. 193. Association, (h); Crimes, §7 (c); Divisions, §6 (a), §8 (a); Facilities and Privileges, §17 (c); Tap Lines, §6½ (b) (c), §7 (b) (c) (d) (e), §9 (a) (b) (c), §10 (a) (b) (c) (d), §11 (a), §13 (a).

Chaffee v. United States, 18 Wall, 518, 538, 21 L. ed. 908, 911. Safety Appliance Act, (k).

Chamber of Commerce of Chattanooga v. Southern R. Co., 10 I. C. C. 111. Long and Short Hauls, §4½ (ka), §6⅞ (y), §7 (3r) (3s) (3t).

Chamber of Commerce of Milwaukee v. C. M. & St. P. R. Co., 7 I. C. C. 481. Differentials, §2 (a), §8 (i); Evidence, §1½ (cc), §20 (y); Interstate Commerce Commission, §8½ (ff).

Chamber of Commerce of Minneapolis v. Great Northern R. Co., 4 I. C. R. 230. Discrimination, §4 (o) (p); Equalization of Rates, §3 (c) (d); Evidence, §2 (l), §20 (m), §32 (b); Interstate Commerce, §2 (f); Local Rates and Combinations, (eb); Through Routes and Joint Rates, §23 (c).

Charles H. Brownell, Columbus v. Cincinnati Midland R. Co., 4 I. C. R. 285. Classification, §5 (hi) (j), §18 (d).

Charlotte Shippers' Asso. v. Southern R. Co., 11 I. C. C. 108. Equalization of Rates, §2 (p); Long and Short Hauls, §7 (3x); Through Routes and Joint Rates, §1 (x).

Chattanooga Bd. of Trade v. East Tennessee, V. & G. R. Co., (Com.), 4 I. C. R. 213. Evidence, §14 (1) (i), §14 (3) (d); Long and Short Hauls, §5 (o).

Chicago v. C. & A. R. R. Co., 3 I. C. C. 233. Classification, §11 (g), §18 (b); Evidence, §14 (l) (h), §22 (a); Live Stock Shipments (ea): Local Rates and Combinations, (e); Reasonableness of Rates, §28 (n).

Chicago & A. R. R. Co. v. Pennsylvania Co., 1 I. C. R. 357. Passenger Fares and Facilities, §9 (a) (b) (c) (d) (e) (f), §14 (a) (b) (ba) (bb) (bc).

Chicago & N. W. R. Co. v. Dey (C. C. S. D. Iowa), 2 I. C. R. 325. Courts, §1 (g) (h) (i) (j) (k), §6½ (f), §14 (a) (b) (c) (d) (e); Reduced Rates, §4½ (b); State Rates and Regulations, (ss) (tt) (uu) (vv) (ww) (xx) (zz); Statutes, (da).

Chicago & N. W. R. Co. v. Osborne (C. C. App. 8th. C.), 4 I. C. R. 257. Long and Short Hauls §4½ (e), §5 (q), §12 (2) (na); Tariffs, §3 (3) (b); Through Routes and Joint Rates §1 (n), §3½ (ab), §13½ (m).

Chicago B. & Q. R. Co. v. Jones, (Ill.), 4 I. C. R. 683. Courts, §1 (hh) (ii); Loss and Damage, §17 (a); State Rates and Regulations, (6e) (6f) (6g) (6h) (6i) (6j) (6k) (6l); Statutes, (dd) (ee) (ff) (gg).

Chicago Bd. of Trade v. Chicago & A. R. Co. (Com.), 3 I. C. R. 233. Discrimination, §3 (t); Evidence, §12 (1) (a).

Chicago Fire Proof Covering Co. v. C. & N. W. R. Co., 8 I. C. C. 316. Evidence, §45 (f); Long and Short Hauls, §5 (xx) (yy) (zz), §6⅞ (u); Overcharges, (q); Terminal Facilities, §3 (k); Through Routes and Joint Rates, §13 (ww), §22 (t).

Chicago Live Stock Exchange v. Chicago G. W. R. Co., 10 I. C. C. 428. Association, (i) (j); Classification, §3½ (o) (p), §18 (h); Discrimination, §5 (e), §7 (d), §13½ (k); Live Stock Shipments, (h) (i) (j); Procedure Before Commission, §10 (l) (bb).

Chicago M. & St. P. R. Co. v. State of Minn., 3 I. C. R. 209. Courts §10 (d); Reasonableness of Rates, §2 (r) (s); Special Contracts, §1 (a), §2 (d) (e) (f), §2½ (e); State Rates and Regulations, (3p) (3q) (3r) (3s) (3t) (3u) (3v) (3w); Statutes, (i) (j).

Chicago, Milwaukee & St. Paul Ry. Co., v. Solan, 8 I. C. C. App, VI. Loss and Damage, §3 (h).

Chicago, M. & St. P. R. Co. v. Wabash St. L. & P. R. Co., 4 I. C. R. 578. Pooling of Traffic, (e) (f); Special Contract, §5½ (d), §6 (f).

Chicago Rock Island & Pacific R. Co. v. Chicago Alton R. Co., 2 I. C. R. 721. Through Routes and Joint Rates, §13 (u) (v) (w), §13½ (h).

Chicago, Rock Island & Pacific R. Co. v. Hubbell, 5 I. C. R. 241. Overcharges, (h); Special Contracts, §2 (r) (s); Tariffs, §3 (2) (c).

China & Japan Trading Co. v. Ga. R. R. Co., et al., 12 I. C. C. 236. Advanced Rates, §9 (j) (k); Discrimination, §4½ (r); Export Rates and Facilities, §6 (ya); Reasonableness of Rates, §7½ (ee).

Christie v. Missouri P. R. Co. (Mo.), 2 I. C. R. 22. Crimes, §21½ (b), §28½a (a). Discrimination, §3 (d); Procedure Before Commission, §2 (j); Special Contracts, §2½ (a) (aa).

Cincinnati Chamber of Commerce and Merchants' Exchange v. Baltimore & O. S. W. R. Co., 10 I. C. C. 378. Discriminations, §2 (c); Facilities and Privileges, §1 (b), §16½ (c) (d) (e) (f), §21 (f).

Cincinnati Freight Bureau v. Cincinnati, N. O. & T. P. R. Co. (Com.), 4 I. C. R. 592 Anti-Trust Laws, (h); Evidence, §1½ (q), §32 (g); Pooling of Traffic, (g); Reasonableness of Rates, §7½ (k); Water Carriers, §3 (e).

Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission, (U. S. Sup.), 5 I. C. R. 331. Interstate Commerce, §5 (mm) (nn); Interstate Commerce Commission §8½ (k), §15 (h); Long and short hauls, §2 (c) (s) (sa).

Cincinnati, N. O. & T. P. R. R. Co. v. Interstate Commerce Commission, 162 U. S. 184. Accounting, §1 (b).

Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission, 162 U. S. 184, 40 L. ed. 935, 5 Inters. Com. Rep. 391, 16 Sup. Ct. Rep. 700. Interstate Commerce, §5 (uu); Through Routes and Joint Rates, §3½ (a).

Cist v. Michigan C. R. Co., 10 I. C. C. 217. Branch Lines, §1 (h); Canada, (b);

Foreign Commerce, §½ (j); Passenger Fares and Facilities, §2 (r) (s), §7¼ (ee).
City Council of Atchison v. Mo. Pacific Ry. Co., 12 I. C. C. 111. Allowances, §8 (3) (o) (p) (q), §8 (7) (i).
City Council of Atchison v. Missouri Pac. Ry. Co., 12 I. C. C. 254. Procedure Before Commission, §8 (k).
City Gas Co. v. Baltimore & O. R. Co., 11 I. C. C. 371. Discrimination, §4 (ii), §5½ (g) (h), §8 (l) (y) (z), §17 (d); Evidence, §14 (1) (cc); Proportional Rates, II (c); Through Routes and Joint Rates, §13 (3l).
City of Anniston v. Southern R. R. Co., 7 I. C. C. App. XC. Taxes, (7e).
City of Bloomington v. Bourland, 3 I. C. R. 667. Taxes, (4k).
City of Danville v. Southern Ry. Co., 8 I. C. C. 409. Evidence, §44¼ (c) (f); Long and Short Hauls, §5 (3c) (3d) (3e), §12 (l) (k).
City of Philadelphia v. American Union Telegraph Co., 7 I. C. C. App. VII. Taxes, (6q).
City of Salem, 2 I. C. R. 418. Water Carriers, §1 (d) (e).
City of San Bernardino v. Southern Pacific Co., 7 I. C. C. App. XXXII. Taxes, (6y).
City of Titusville v. Brennau, 3 I. C. R. 735. State Rates and Regulations, (4f).
City of York v. Chicago, Burlington, & Quincy R. R. Co., 8 I. C. C. App. LVI. State Rates and Regulations, (9n).
Clark v. L. S. & M. S. R. Co., 11 I. C. C. 558. Through Routes and Joint Rates, §1 (aa) (bb).
Cleveland, C. C. & I. R. Co. v. Closser, (Ind.), 3 I. C. R. 387. Actions at Law, (c); Agency, (c); Bills of Lading, §2½ (b); Discrimination, §3 (v), §5½ (c); Evidence, §1½ (i); Procedure Before Commission, §1 (x), §18 (da); Special Contracts, §2 (fa), §2½ (h) (i) (j) (k), §6 (c).
Cleveland, C. C. & St. L. R. Co. v. Bachus, 4 I. C. R. 677. Courts, §10 (h); Taxes (5l) (5m) (5n) (5o) (5p) (5q) (5r) (5s) (5t) (5u).
Cleveland, Cincinnati, Chicago & St. Louis Ry. Co. v. People of the St. of Ill. ex. rel. Yett, 8 I. C. C. App. LVI. State Rates and Regulations, (9o).
Club v. A. T. & S. F. Ry. et al., 12 I. C. C. 351. Export Rates and Facilities, §6 (yb).
Clyde Steamship Co. v. City Council of Charleston, et al., 7 I. C. C. App. LXXXV. Interstate Commerce, §½ (t).
Coffeyville Vitrified Brick & Tile Co. v. St. L. & S. F. Ry., 12 I. C. C. 498. Reasonableness of Rates, §32½ (f); Through Routes and Joint Rates, §15 (l).
Coit v. Stutton (Mich.), 4 I. C. R. 768. State Rates and Regulations, (6o).
Collins v. St. of N. Hampshire, 8 I. C. C. App. X. State Rates and Regulations, (8z).
Colorado & Santa Fe R. R. Co. v. Miami Steamship Co., 8 I. C. C. App. XLVII. Courts, §14 (yy).
Colorado Fuel & Iron Co. v. Southern P. Co., 6 I. C. C. 488. Discrimination, §3 (pp) (qq), §4 (r); Differentials, §4 (c); Divisions, §7 (g); Evidence, §1½ (w) (x) (yz), §14 (5) (q) (r); Long and Short Hauls, §6⅞ (o), §14 (c); Reasonableness of Rates, §2 (hh), §27 (da), §38 (a), §39 (b); Tariffs, §6 (e), §6a (c), §8 (b) §8½ (a); Through Routes and Joint Rates, §9 (a), §13 (pp), §13½ (t).
Commercial & Industrial Ass'n of Union Springs v. Central of Ga. Ry. Co., 12 I. C. C. 375. Compress Companies and Charges, II (h), III (e).
Commercial and Industrial Asso. of Union Springs, Ala., v. L. & N. R. R., 12 I. C. C. 372. Basing Points and Lines, §1 (b) (c); Discriminations, §2 (f), §5 (f); Interstate Commerce Commission, §8½ (qq); Long and Short Hauls, §7 (4p), §10 (z).
Commercial Club of Omaha v. Chicago & N. R. Co., 7 I. C. C. 386. Blanket Rates, §5 (a); Discriminations, §1 (s), §2 (b), §3 (uu) (vv), §9 (fb); Equalization of Rates, §2 (j); Evidence, §2 (r), §52½ (b); River Crossings, (b).
Commercial Club of Omaha v. C. R. I. & P. R. Co., 6 I. C. C. 647. Class Rates, §2 (b) (c); Discrimination, §3 (oo), §4 (u); Divisions, §9 (b); Equalization of Rates, §2 (i), §4 (5) (a); Evidence, §2 (q), §20 (s); Procedure Before Commission, §1 (ee), §2 (n) (o); Stoppage in Transit, (b); Through Routes and Joint Rates, §1 (o), §4 (r).
Commercial Club of Santa Barbara v. Southern Pacific Co., 12 I. C. C. 495. Blanket

Rates, §8 (f); Equalization of Rates, §4 (4) (a); Long and Short Hauls, §7 (4r) (4s), §10 (3a).
Commonwealth v. American Dredging Co. (Pa.), 2 I. C. R. 221. Taxes, (mm) (nn) (oopp).
Com. v. Schallenberger, (Pa.), 4 I. C. R. 488. State Rates and Regulations, (5j) (5k) (5l).
Commonwealth of Kentucky v. Chesapeake & Ohio Ry. Co., 7 I. C. C. App. CVI Lease, (e).
Commonwealth of Kentucky v. Chesapeake & Ohio Ry., 8 I. C. C. App. LXXV Lease, (f).
Commonwealth of Kentucky v. Henderson Bridge Co., 7 I. C. C. App. VI. Taxes (6n) (6o).
Commonwealth of Pa. v. Western Union Telegraph Co., 8 I. C. C. App. XCI. Taxes, (7m).
Commonwealth of Va. v. Chesapeake & Ohio R. Co., 3 I. C. R. 398. Interstate Commerce, §4 (o) (p) (q); State Rates and Regulation (4a).
Connecticut v. Harbourine, 8 I. C. C. App. L. State Rates and Regulations, (9m).
Connor v. Vicksburg & M. R. Co. (C. C. E. D. Mo.), 2 I. C. R. 177. Courts, §1 (d) (e) (f), §6½ (d) (e).
Consolidated Forwarding Co. v. Southern P. Co. et al., 9 I. C. C. 182. Cars and Car Supply, §7 (y), §11½ (c); Pooling of Traffic (l); Routing and Misrouting, §6 (b); Tariffs, §3 (3) (c); Through Routes and Joint Rates, §1 (w), §2 (u), §4 (x), §7 (a), §17 (k) (l) (m), §26 (a) (b).
Consolidated Forwarding Co. v. Southern P. Co., 10 I. C. C. 590. Basing Points and Lines, §3 (h); Blanket Rates, §10½ (b), §12 (d) (e); Classification, §22 (rr); Minimum, §7 (h); Pooling of Traffic, (o); Refrigeration, §1 (c), §4¾ (b).
Consolidations and Combinations of Carriers, 12 I. C. C. 277. Anti-Trust Laws, (hh); Finance Dockets, §5 (a) (ab).
Cook v. Chicago, R. I. & P. R. Co. (Iowa), 3 I. C. R. 383. Actions at Law, (a); Claims, §1 (a) (b); Special Contract, §2 (k); Courts, §1 (w) (x) (y); Discrimination, §16 (a) (b); Procedure Before Commission, §18 (d); Reasonableness of Rates, §2 (u).
Cope Brothers & Co. v. Lehigh Valley R. Co., 3 I. C. R. 460. Long and Short Hauls, §12 (2) (m).
Copeheart & Smith v. Louisville & Nashville R. Co., 3 I. C. R. 278. Discrimination, §1 (f); Through Routes and Joint Rates, §1 (f) (g) (h); Water Carriers, §6 (b) (c) (d) (da) (e).
Copp v. Louisville & N. R. Co., (La.), 3 I. C. R. 625. Courts, §6½ (n), §11 (a) (b); Reparation, §½ (b), §23 (b).
Copp v. Louisville & N. R. Co. (C. C. E. D. La.), 4 I. C. R. 805. Overcharges, (e).
Cordele Machine Shop v. L. & N. R. Co., 6 I. C. C. 361. Basing Points and Lines, §2 (b), §3 (c); Local Rates and Combinations, (gb); Long and Short Hauls, §4½ (f), §5 (w), §6⅞ (l) (m) (n), §7 (bb); Through Routes and Joint Rates, §13½ (s).
Cotting v. Kansas City Stockyard Co., 7 I. C. C. App. XCIX. Stock Yard Companies, (fb).
Cotting v. Kansas City Stock Yard Co.'s, 8 I. C. C. App. XXXI. Stock Yard Companies, (v) (w).
Council v. Western & A. R. Co., 1 I. C. R. 292. Courts, §1 (b); Passenger Fares and Facilities, §11 (a) (b).
Council v. Western & A. R. Co., 1 I. C. R. 638. Courts, §1 (a) (b); Passenger Fares and Facilities, §9 (g), §11 (c) (ca) (d); Personal Injuries, (a).
Counselman v. Hitchcock, 3 I. C. R. 816. Crimes, §1 (a) (l) (m) (n) (o) (q) (r) (s) (t) (u) (v).
Counselman v. Hitchcock, 3 I. C. R. 317. Crimes, §28½ a (d) (e).
Covington & C. Bridge Co. v. Kentucky (U. S. Sup. Ct.), 4 I. C. R. 649. Bridges and Tolls, §3 (p) (q).
Covington & Cincinnati Elevated Railroad & Transit & Bridge Company v. Commonwealth of Kentucky, 4 I. C. R. 658. Bridges and Tolls, §3 (rs).

Cowan v. Bond, 2 I. C. R. 542. Discrimination, §3 (m), §4 (j); Local Rates and Combinations, (da); Through Routes and Joint Rates, §22 (f).

Coxe Bro. & Co. v. Lehigh Valley R. Co., 3 I. C. R. 460. Blanket Rates, §13 (e); Classification, §2 (a), §3 (q) (r) (s), §3½ (g); Commodities Clause, II (a) (b), Commodity Rates, §2½ (a); Discrimination, §3 (w) (x); Evidence, §20 (f); Interstate Commerce Commission, §8½ (e).

Cox Bros. & Co. v. Lehigh Valley R. Co., 3 I. C. R. 460. Interstate Commerce Commission, §8½ (f) (g); Long and Short Hauls, §7 (l); Reasonableness of Rates, §2 (w), §16 (b) (c), §25 (b); Through Routes and Joint Rates, §13 (dd) (ee).

Crews v. Richmond & D. R. Co., 1 I. C. R. 608. Reasonableness of Rates, §28 (b).

Crews v. R. & D. R. R. Co., 1 I. C. R. 703 Act to Regulate Commerce, II (i); Basing Points and Lines, §2 (a); Discrimination, §3 (bc) (c), §7 (a); Equalization of Rates, §2 (aa), §7 (a) (aa); Evidence, §1½ (ba), §13 (l) (a); Interchange of Traffic (a); Long and Short Hauls, §7 (e); Reasonableness of Rates, §7½ (a); Stoppage in Transit, (a); Through Routes and Joint Rates, §13 (ab) (ac) (ad) (ae).

Cudahy Packing Co. v. C. & N. W. Ry. Co., 12 I. C. C. 446. Demurrage, §10 (a) (b) (c) (d).

Cumberland Valley R. R. Co. v. Gettysburg & Harrisburg R. R. Co., 7 I. C. C. App. LXXXVII. Interchange of Traffic (ccb).

Curry v. Kans. & Colorado Pacific Ry. Co., 7 I. C. C. XCI. Passenger Fares and Facilities, §12 (p).

Cutter v. A. T. & S. F. Ry., 11 I. C. C. 689. Long and Short Hauls, §6⅞ (ii); Reasonableness of Rates, §2 (vva); Reparation, §15 (a).

Cutting v. Florida R. & Nav. Co. (C. C. N. D. Fla.), 3 I. C. R. 665. Interstate Commerce, §½ (m).

Cutting v. Florida R. & Nav. Co., 4 I. C. R. 424. Act to Regulate Commerce, II (z); Reasonableness of Rates, §2 (cc); Receivers, (j).

Daish & Sons v. Cleveland, A. & C. R. Co., 9 I. C. C. 513. Cars and Car Supply, §20 (d); Discrimination, §3 (3la); Embargoes, (a); Facilities and Privileges §21 (d).

Dallas Freight Bureau et al. v. A. & N. R. R. Co. et al., 9 I. C. C. 68. Long and Short Hauls, §7 (3g) (3h) (3i).

Dallas Freight Bureau v. G., C. & S. F. Ry., 12 I. C. C. 223. Advanced Rates, §5 (3) (a), §17 (st); Evidence, §44¼ (g), §58 (q); Reparation, §7½ (pa), §21 (ga) (gb).

Dallas Freight Bureau v. M., K. & T. Ry., 12 I. C. C. 427. Blanket Rates, §10½ (f), §14 (a), §16 (c); Evidence, §1 (r) (ra), §1 (t), §2 (z), §13 (l) (m); Procedure Before Commission, §20 (c); Reasonableness of Rates, §7½ (ii) (jj); Reduced Rates, §1 (da) (e).

Dallas Freight Bureau v. Texas & P. R. Co., 8 I. C. C. 33. Blanket Rates, §10 (a); Differentials, §8 (p); Evidence, §66 (j); Long and Short Hauls, §7 (mm) (nn).

Daniels v. C., R. I. & P. R. Co., 6 I. C. C. 458. Act to Regulate Commerce, II (gg) (hh); Discrimination, §3 (ll), §4 (t), §13½ (h); Divisions, §7 (f); Equalization of Rates, §8 (a); Evidence, §32 (k), §58 (l); Interstate Commerce Commission, §8½ (u); Percentage Rates, (b); Procedure Before Commission, §2 (m); Reasonableness of Rates, §2 (gg), §16 (d), §28 (s) (t); Reduced Rates §4½ (g); Through Routes and Joint Rates, §13 (nn) (oo), §14 (i), §15 (b), §23 (d).

Daniel Ball v. United States, 19 L. ed. 1002. Interstate Commerce, §5 (uu).

Danville v. Southern R. Co., 8 I. C. C. 409. Basing Points and Lines, §3 (f); Evidence, §2 (s), §7 (b), §44¼ (f); Long and Short Hauls, §4½ (i), §5 (3c), §10½ (m); Through Routes and Joint Rates, §13 (zz) (3ab).

Davenport v. Southern R. Co., et al., 11 I. C. C. 650. Discrimination, §4 (jj); Equalization of Rates, §2 (q); Long and Short Hauls, §6⅞ (hh).

Davis v. Chicago, Milwaukee & St. Paul Ry. Co., 7 I. C. C. App. XLI. Interstate Commerce, §5 (tt).

Davies v. P. M. R. R. Co., 10 I. C. C. 405 Crimes, §5 (i) (j), §5½ (b); Overcharge, (r).

Davis v. Tex. & Pacific Ry. Co., 7 I. C. C. App. XXXVII. Live Stock Shipments, (eb).
Decker v. Balti. & N. Y. R. R. Co., 1 I. C. R. 434. Bridges and Tolls, §3 (e) (f); Navigable Waters, (aa) (b) (c) (ca).
DeCou v. Pennsylvania R. Co., 12 I. C. C. 160. Through Routes and Joint Rates, §13 (4a).
Delaware & Hudson Canal Co. v. Commonwealth, 2 I. C. R. 222. Interstate Commerce, §2 (c), §3 (f); Taxes(qq) (rr) (ss) (tt) (uu) (vv) (xx).
Delaware State Grange v. New York, P. & N. R. Co., 2 I. C. R. 48. Procedure Before Commission, §1 (o).
Delaware State Grange v. N. Y., P. & N. R. Co., 3 I. C. C. 554. Act to Regulate Commerce, II (x); Evidence, §62 (b); Expedited Service, (a); Perishable Freight, (b); Procedure Before Commission, §1 (z); Reasonableness of Rates, §2 (x); Special Rates and Services, (b) (c).
Delaware State Grange v. N. Y. P. & N. R. R., 2 I. C. C. 187. Procedure Before Commission, §1 (o), §4 (g) (h).
Denison Light & Power Co. v. Missouri, K. & T. R. Co., 10 I. C. C. 337. Classification, §22 (qq); Equalization of Rates, §2 (n); Interstate Commerce Commission, §8½ (nn); Reparation, §21 (g).
Derr Mfg. Co. v. Pennsylvania R. Co., 9 I. C. C. 646. Classification, §3 (kk) (ll), §17 (o) (p), §22 (ll) (mm).
Desel-Boettcher Co. v. K. C. S. Ry. Co., 12 I. C. C. 220. Blanket Rates, §13 (j) (k) (l) (m) (n); Reasonableness of Rates, §27¾ (a).
Detroit Board of Trade v. G. T. R. R., 2 I. C. C. 200. Blanket Rates, §20 (a); Evidence, §66 (a); Export Rates and Facilities, §6 (b) (c).
Detroit Board of Trade v. G. T. Ry. of Canada, 2 I. C. C. 199. Percentage Rates (a); Reasonableness of Rates, §28 (e) (f) (g).
Detroit Board of Trade v. The Grand Trunk Ry. Co., 2 I. C. R. 202; Through Routes and Joint Rates, §13½ (j).
Detroit Board of Trade v. G. T. Ry. Co., 2 I. C. R. 320. Through Routes and Joint Rates, §13½ (j).
Detroit, Grand Haven & Milwaukee Ry. Co. v. Interstate Commerce Commission, 7 I. C. C. App. LXXIV. Blanket Rates, §15½ (b); Cartage and Drayage (l) (m) (n) (o) (p); Courts, §5 (p); Evidence, §14 (l) (p); Transportation, §5 (b).
Dewey Bros. Co. v. Baltimore & O. R. Co., 11 I. C. C. 481. Routing and Misrouting, §4 (h) (i) (j) (k), §6 (c) §7 (e) (f) (g).
Dewey Bros. Co. v. Baltimore & O. R. Co., 11 I. C. C. 475. Discrimination, §5½ (j); Reparation, §7½ (l); Long and Short Hauls, §5 (3v).
Diamond Mills v. Boston & Maine R. Co., 9 I. C. C. 311. Facilities and Privileges, §1 (a), §15 (aa), §18 (c) (d) (e) (f). §21 (c); Through Routes and Joint Rates, §17 (p), §20½ (f), §22 (u).
Dillon v. Erie Ry. Co., 7 I. C. C. App. XXXVII. Interstate Commerce, §2 (h); State Rates and Regulations, (7w) (7x).
Doherty v. Cotter, 8 I. C. C. App. III. Intoxicating liquors, (uu).
Donald v. Scott et al, 7 I. C. C. App. XLIX. Intoxicating liquors, (ff).
Donald v. Scott, et al, 7 I. C. C. LXXXV. Intoxicating liquors, (nn).
Donald v. Scott, et al., 7 I. C. C. App. LXXXVII. Intoxicating liquors, (oo).
Donald v. Scott, 7 I. C. C. App. LXXXVIII. Intoxicating liquors, (qq).
Donald v. Scott, et al., 7 I. C. C. App. LXXXVI. Intoxicating liquors, (pp); State Rates and Regulations (8p).
Dow v. Beidelman, 2 I. C. R. 56. Act to Regulate Commerce, I (a); Classification, §26 (a); Courts, §1 (c); Interstate Commerce, §3½ (c) (d) (e), §5 (r) (q); Passenger Fares and Facilities, §½ (aa); Procedure Before Commission, §13 (i); Statutes, (b).
Dry Goods Co. v. A. T. & S. F. R. Co., 6 I. C. C. 568; Discrimination, §4 (ta).
Duluth Shingle Co. v. Duluth, S. S. & A. R. Co. et al. 10 I. C. C. 489. Classification, §3½ (q) (rs), §18 (i).
Duncan v. A., T. & S. F. R. Co., 4 I. C. C. 385. Classification, §3 (x), §5 (n) (o) (p), §10 (h) (i) (jk); Evidence, §1 (n), §30 (a), §49 (a), §61 (c), §65 (c); Freight Agency, (ae); Loss and Damage, §5 (a) (b), §9 (a); Pooling of Traffic,

(b); Reasonableness of Rates, §27¾ (a); Reduced Rates, §4½ (f); Released Rates, §4 (a); Special Contracts, §2 (n), §2½ (n); Tariffs, §1 (b), §3 (2) (a), §8 (a).
Duncan v. Atchison, T. & S. F. R. Co., 6 I. C. C. 85. Discrimination, §4½ (h); Classification, §10 (m); Freight Agencies, (c); Through Routes and Joint Rates, §22 (m).
Durham v. Illinois C. R. Co., 12 I. C. C. 37. Long and Short Hauls, §7 (4j) (4k) (4l); Reasonableness of Rates, §7½ (aa).
Dwyer v. Gulf, C. & S. F. R. Co., 5 I. C. R. 361. Action at Law, (z); Loss and Damage, §13¾ (g); Transportation, §2 (h), §12 (a); State Rates and Regulations, (7g) (7h) (7i); Statutes (ww).

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E. T. V. & G. Ry. Co. v. I. C. C., 181 U. S. 1, 45 L. ed. 719, 21 Sup. Ct. Rep. 516, Long and Short Hauls, §7 (3j) (4g).
Eaton v. C., H. & D. Ry., 11 I. C. C., 619. Cars and Car Supply, §17a (f), §32½ (l) (m).
Eau Claire Board of Trade v. C., M. & St. P. R. Co., 4 I. C. C. 65. Branch Lines, §1 (d); Discrimination, §4 (n), §7 (b); Equalization of Rates, §3 (a) (b); Evidence, §2 (i), §13 (l) (i), §20 (h) (i) (j) (k).
Eber De. Can. v. Penn. Railroad Co., 12 I. C. C. 160. Differentials, §4 (i), §8 (z) (aa).
Edwards v. N. C. & St. L. Ry. Co., 12 I. C. C. 247. Passenger Fares and Facilities, §11 (cc) (dd) (eeff) (gg) (hhii) (jj) (kk) (ll).
Elevator Co. v. Pere Marquette R. Co., 10 I. C. C. 629. Discrimination, §3 (3n).
Elvey v. I. C. R. R., 2 I. C. C. 804. Discrimination, §4½ (d); Passenger Fares and Facilities, §7¼ (tu) (v) (w) (x); State Rates and Regulations, (3k); Tariffs, §18 (a).
Emerson v. Chicago, R. I. & P. R. Co., 6 I. C. C. 289. Passenger Fares and Facilities, §7¼ (z) (aa) (bb).
Emert v. State of Missouri, 5 I. C. R. 68. Taxes, (6h).
Endleman v. U. S., 8 I. C. C. App. XLVI. Intoxicating liquors, (3e).
English Regulation of Railways Act of 1873, §11 Appendix IV. Note I. C. R. 858. Taxes (q).
Enterprise Manufacturing Co. v. Ga. R. R. Co., 12 I. C. C. 130. Evidence, §20 (dd); Reasonableness of Rates, §25 (i), §28 (y) (z).
Enterprise Mfg. Co. v. Georgia R. R., 12 I. C. C. 451. Advanced Rates, §9 (lm), Blanket Rates, §19½ (b); Evidence, §2 (aa), §10 (f), §14 (l) (jj); Equalization of Rates, §3 (l); Evidence, §44¼ (h); Export Rates and Facilities, §6 (bb); Reasonableness of Rates, §7¼ (b), §26½ (b).
Enterprise Navigation Company v. Pennsylvania R. R. 12 I. C. C. 326 Act to Regulate Commerce, II (rr); Bridge and Tolls, §6 (a) (b); Ferry Charges, (b) (c); Terminal Facilities, §4 (a); Through Routes and Joint Rates, §1 (cc) (dd) (ee) (ff), §7 (c), §11 (2) (m), §17 (q), §20½ (g), §25 (d) (e); Water Carriers, §1 (h), §6 (k) (ka).
Evans v. Oregon Railway & Navigation Co., 1 I. C. R. 641. Evidence, §1½ (a); Reasonableness of Rates, §1 (b), §40 (a); Through Routes and Joint Rates, §13 (aa).
Evans v. U. P. R. Co., 6 I. C. C. 520. Blanket Rates, §2 (g), §3 (aa); Evidence, §13 (l) (k), §14 (l) (m), §45 (e); Reasonableness of Rates, §2 (ii) (jj), §7½ (sa); Receivers, (dd).
Exchange of Free Transportation, 12 I. C. C. 40. Common Carrier, §6½ (e); Passenger Fares and Facilities, §12 (hha) (ii) (jj).
Ex. Parte (U. S. C. C. Or.), 1 I. C. R. 28. Interstate Commerce, §3 (a) (b).
Ex parte Edgerton (C. C. D. S. C.), 4 I. C. R. 635. Intoxicating liquors, (w) (x).
Ex parte James Lennon v. 7 I. C. C. App. XIII. Courts, §1a (o), §14 (x
Ex Parte E. V. Jersey, et al, 7 I. C. C. App. LII. Intoxicating liquors, (gg).
Ex Parte Koehler (U. S. C. Ct. Or.), 1 I. C. R. 28. Act to Regulate Commerce, II (a) (b); Interstate Commerce, §½ (a), §3 (a); State Rates and Regulations, (a); Water Carriers, §1 (a).
Ex Parte Koehler, (U. S. C. Ct. Or.), 1 I. C. R. 317. Long and Short Hauls, §7 (c) (d) (w); Passenger Fares and Facilities, §7¼ (g), §12 (a) (b).

Ex Parte Koehler, 31 Fed. Rep. 315. Long and Short Hauls, §7 (w).
Ex Parte Loeb, 7 I. C. C. App. LXXXI. Intoxicating liquors, (mm).
Ex Parte Richard Lacy, 7 I. C. C. App. LVIII. Telephone and Telegraph Companies, §3 (hh).
Ex Parte Scott et al, 7 I. C. C. App. XXVII. State Rates and Regulations, (7r).
Ex Parte Simon Maier, 7 I. C. C. App. XXVIII. State Rates and Regulations, (7t).
Export and Domestic Rates, 8 I. C. C. 214. Export Rates and Facilities, §1 (f) §1½ (d) (e) (f) (g) (h) (i), §4 (e) (f), §5 (i) (j) (k), §6 (p) (q) (r) (st) (u) (v) (w) (x); Foreign Commerce, §½ (c) (d) (e); Long and Short Hauls, §9 (o).
Export Rates from Points E. & W. of Mississippi river, 8 I. C. C. 185. Export Rates and Facilities, §1½ (c), §6 (n) (o); Evidence, §32 (m); State Rates and Regulations, (10a).
Fargo v. Stevens, 1 I. C. R. 51. State Rates and Regulations, (d) (e) (f); Taxes, (c) (d).
Farmers Loan & Trust Co. v. Northern Pacific R. Co., 4 I. C. R. 744. Courts, §1a (c), §14 (w) (x) (y).
Farmers' Loan and Trust Co., v. Northern Pacific R. R. Co., 8 I. C. C. App. XXXV. Courts, §5 (r) (q); Interstate Commerce Commission, §8½ (hh).
Farmers, Merchants & Shippers Club v. A. T. & S. F. Ry. Co., 12 I. C. C. 351. Blanket Rates, §6 (c), §10 (b), §10½ (e); Evidence, §14 (l) (hh); Long and Short Hauls, §7 (4o); State Rates and Regulations, (10g) (10h).
Farmers Warehouse Co. v. Louisville & N. R. R. Co., 12 I. C. C. 457. Commodity Rates, §5 (h); Long and Short Hauls, §5 (4c); Reparation, §7½ (q) (r), §17a (f).
Farmers Warehouse Co. v. L. & N. R. R. Co., 12 I. C. C. 520. Reparation, §8½ (e).
Farrar v. Southern R. Co., 11 I. C. C. 632 Differentials, §8 (ua); Discrimination, §5½ (k), §8 (l) (aa); Evidence, §1½ (oo); Facilities and Privileges, §18 (j); Long and Short Hauls, §6⅞ (ff).
Farrar v. Southern R. Co., 11 I. C. C. 640. Advanced Rates, §17 (r); Evidence, §58 (p); Long and Short Hauls, §5 (3w), §6⅞ (gg); Reasonableness of Rates, §36 (b); Reparation, §17a (e).
Farrar & Co. v. E. Tennessee, Virginia & Georgia R. Co., 1 I. C. C. 764. Act to Regulate Commerce, II (j); Evidence, §58 (a); Through Routes and Joint Rates, §13 (b) (c) (d) (da), §15 (a).
Fellows Coal & Material Co. v. M. P. Ry., 12 I. C. C. 481. Evidence, §66 (o) (p); Reasonableness of Rates, §8 (1½) (f).
Fewell v. R. & R. R. Co., 7 I. C. C. 354. Evidence, §14 (3) (g), §32 (1); Long and short hauls, §2½ (e), §5 (ii) (jj), §7 (ff), §8 (f), §9 (j), §10 (r).
Ficklen v. Shelby County Taxing Dist. (U. S. Sup. Ct.) 4 I. C. R. 79. Taxes (4w) (4x) (4y) (4z).
Fielder v. Miss., Kans. & Tex. Ry. Co. of Texas, 7 I. C. C. App. CIV. Interstate Commerce, §4 (qq).
Fitchburg R. Co., 1 I. C. R. 26. Discrimination, §4 (a).
Fitzgerald v. Fitzgerald & M. Mallory Construction et al. 7 I. C. C. App. V. Special Contract, §2 (aa).
Fitzgerald v. Grand Trunk R. Co., 3 I. C. R. 633. Crimes, §28½a (p); Discrimination, §5½ (d); Interstate Commerce, §5 (dd); Special Contracts, §2 (k) (1).
Florida Fruit Exch. v. Savannah, F & W. R. Co. (C. C. N. D. Fla.), 4 I. C. R. 400 Aff'd on 589. Advanced Rates, §17 (cd); Courts, §14 (1); Divisions, §7 (e); Reasonableness of Rates, §27 (d).
Ft. Worth & Dodge City Ry. Co. v. Whitehead, 7 I. C. C. App. VIII. Interstate Commerce, §5 (rr).
Forwarding Co. v. Southern P. Co. et. al. 9 I. C. C. 182. Pooling of Traffic (1).
Forwarding Co. v. Southern P. Co., 10 I. C. C. 590. Minimums, §7 (h).
Foster et al. v. Cleveland, Cincinnati, Chicago, & St. Louis Ry. Co. 7 I. C. C. App. XVI. Passenger Fares and Facilities, §7¾ (a).
Fred G. Clark Co. v. Lake Shore & M. S. R. Co. 11 I. C. C. 558. Through Routes and Joint Rates, §1 (y) (z), §4 (y) (z), §11 (2) (c), §13 (3s).

Fred Miller Brewing Co. v. Stevens, 7 I. C. C. App. XCVII. Intoxicating liquors, (tt).

Frederick Brick Works v. Northern C. R. Co., 12 I. C. C. 14. Class Rates, 2 (h); Differentials, §8 (v); Reasonableness of Rates, §2 (ww); Reparation, §7½ (m).

Freeman v. A., T. & S. F. R. Co., 7 I. C. C. 202. Blanket Rates, §9 (b); Procedure Before Commission, §10 (1) (s) (t).

Freight Bureau v. C. N. O. & T. P. R. Co., 4 I. C. C. 592. Discrimination, §1 (j); Equalization of Rates, §2 (h); Evidence, §13 (1½) (a), §14 (5) (o), §20 (n) (o), §32 (f) §44½ (a), §66 (i); Freight Agency (ba); Long and short hauls, §6⅞ (k); Pooling of Traffic (h); Reasonableness of Rates, §7½ (o), §8 (1½) (b).

Freight Bureau v. Cincinnati, N. O. & T. P. R. Co., 6 I. C. C. 195. Discrimination, §10 (d); Evidence, §32 (h); Reasonableness of Rates, §7½ (q), §8 (1½) (c); Reparation, §19 (a).

Freight Bureau v. Cincinnati N. O. & T. P. R. Co., 6 I. C. C. 197; Anti-Trust Laws and Monopolies, (r); Discrimination, §1 (p) (q); Evidence, §10 (d), §20 (r), §32 (i); Reasonableness of Rates, §7½ (s), §22 (a).

Freight Bureau v. Cincinnati, N. O. & T. P. R. Co., 7 I. C. C. 180; Class Rates, §2 (d); Differentials, §8 (e); Discrimination, §9 (e) (f) (fa); Evidence, §20 (t) (u), §52½ (a); River Crossings (a).

Freight Bureau of Omaha Board of Trade v. C. B. & Q. R. 2 I. C. C. 32. Equalization of Rates, §7 (ab); Evidence, §2 (ba).

Frere v. Victor Von Schveler, 7 I. C. C. App. XXVI. Taxes (6v).

Fuqua v. Pabst Brewing Co. 7 I. C. C. (Appendix) XCII. Exclusive Contracts (ba).

Fulton v. Chicago, St. Paul, M. & O. R. R. Co., 1 I. C. R. 375. Procedure Before Commission, §1 (c), §10 (1) (f), §10 (2) (b) (c) (d).

Gallory v. Cincinnati, H. & D. R. Co. 11 I. C. C. 1. Actions at Law, (aa); Cars and Car Supply, §7 (oo), §17a (e), §32½ (i) (j) (k), §35 (a); Discrimination §17 (c); Procedure Before Commission, §5 (g) (h); Interstate Commerce Commission, §10 (b).

Galveston, Harrisburg & San Antoinio Ry. Co. Herring 7 I. C. C. App. XLVI. State Rates and Regulations (8ga).

Gardner & Clark v. Southern R. Co., 10 I. C. C. 342. Cars and Supply, §9¾ (a) Discrimination, §8 (l) (u), §8 (7) (d); Long and Short Hauls, §5 (3u), §7 (3vw), §13 (c) (d); Reasonableness of Rates, §28 (x); Reparation, §6 (d), §7½ (hi), §20½ (a).

Gatton v. Chicago, R. I. & P. R. Co. (Iowa), 5 I. C. R. 474. Act to Regulate Commerce, II. (cc); Interstate Commerce, §5 (qq); Loss and Damage, §10 (1) (b); Overcharges. (m).

Geer v. St. of Connecticut, 7 I. C. C. App. LXVIII. State Rates and Regulations (81).

Gelpi v. Schenck, 7 I. C. C. App. XXXIV. Taxes (6ya).

George Rice v. St. Louis Southwestern R. Co. 4 I. C. R., 321. Procedure Before Commission, §10 (1) (oa).

George D. Hope Lumber Co. v. M. K. & T. Ry. 12 I. C. C. 191. Long and Short Hauls, §5 (4b); Procedure Before Commission, §10 (2) (cc).

George M. Spiegle & Co. v. Chesapeake & O. R. Co., 11 I. C. C. 367. Blanket Rates, §13 (i); Long and Short Hauls, §7 (4a) (4b).

Geo. Tileston Mill Co. v. N. P. R. R. Co., 8 I. C. C. 346. Evidence, §1½ (hh) (4b), §14 (1) (w), §66 (1); Long and Short Hauls, §4¾ (c), §5 (3a) (3b), §7 (rr) (ss) (tt) (uu), §9 (q) (r) (s); Rail and Water Rates, (c).

Georgia Packing Co. v. Macon (C. C. S. D. Ga.), 4 I. C. R. 508. Courts, §14 (n); Taxes (5c).

Georgia Peach Growers' Asso. v. Atlantic Coast Line R. Co., 10 I. C. C. 255. Classification, §11 (l), §22 (nn); Loss and Damage, §9 (b); Minimum, §7 (e); Per Car Rates (c) (d) (e); Perishable Freight (e); Refrigeration, §4 (b); Released Rates, §5 (a).

Georgia R. Com. v. Clyde S. S. Co., 4 Inters. Com. Rep. 120, 5 I. C. C. Rep. 324 Through Routes and Joint Rates, §2 (t).

Gerber v. Wabash R. Co. (Mo. App) 5 I. C. R. 458. Special Contracts, §2 (u) (v).

Gerke Brewing Co. v. Louisville & N. R. Co., 4 I. C. R. 267. Evidence, §14 (1) (j), §14 (3) (e); Long and Short Hauls, §4½ (d), §5 (r) (s) (t), §6⅞ (j).
Glade Coal Co. v. Baltimore & O. R. R., 10 I. C. C. 226. Cars and Car Supply, §7 (hh) (ii) (jj), §17a (c), §32½ (c); Classification, §5 (cc), §10 (v) (wx); Evidence, §18 (o); §63 (ea); Facilities and Privileges, §21 (e).
Gladson v. Minnesota, 166 U. S. 427, 41 L. ed. 1064. Passenger Fares and Facilities, §11 (aa).
Gladson v. St. of Minn. 7 I. C. C. App. CVI. State Rates and Regulations (8s).
Globe-Wernicke Company v. B. & O. S. W. R. R., 11 I. C. C. 156. Classification, §22 (ss) (tt) (uu) (vv).
Gloucester Ferry Co. v. Commonwealth of Pennsylvania, (U. S. Sup. Ct.), 1 I. C. R. 384. Interstate Commerce, §½ (f).
Gloucester Ferry Co. v. Pennsylvania (U. S. Sup Ct.), 1 I. C. R. 382. Ferry Charges (a) (aa); Interstate Commerce, §½ (e), §4 (a), §5 (e) (g) (h) (i); Passenger Fares and Facilities, §½ (a); State Rates and Regulations (l) (m); Taxes (d) (g) (h) (i) (j).
Gloucester Ferry Co. v. Pennsylvania (U. S. Sup. Ct.) I. C. R. 382. Interstate Commerce §½ (h); Navigable Waters (a); Water Carriers, §1 (c).
Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196. Interstate Commerce, §½ (d).
Goodhue v. Chicago Great Western R. Co., 11 I. C. C. 683. Discrimination, §8 (l) (x); Long and short hauls, §7 (4f), (4g) (4h) (9g).
Goodman v. Miller & Co., 8 I. C. C. App XXIX. State Rates and Regulations (9g).
Grain Rates of Chicago Great Western Ry. Co., 7 I. C. C. 33. Crimes, §7 (b).
Grain Shippers Asso. v. I. C. R. Co., 8 I. C. R. 158. Class Rates, §2 (f); Classification, §3½ (j); Evidence, §1½ (ff), §7 (a), §14 (l) (s) (tu) (v), §14 (3) (j), §56 (c), §61 (e), §66 (k); Reasonableness of Rates, §5 (a), §28 (u); Reduced Rates, §4½ (j); Reparation, §2 (a) (b), §7½ (d).
Grain Shippers' Asso. v. Illinois Central R. Co., 8 I. C. C. 128. Equalization of Rates, §2 (k).
Green & B. R. Nav. Co. v. Chesapeake, O. & S. W. R. Co. (Ky.), 2 I. C. R. 515 Bridges and Tolls, §3 (m) (no).
Griffee v. B. & M. R. R. R. 2 I. C. C. 194. Discrimination, §4½ (a); Passenger Fares and Facilities, §12 (e) (ea).
Griffin Grocery Co. v. Southern R. Co., 11 I. C. C. 522. Local Rates and Combinations (ma); Long and Short Hauls, §6⅞ (bb).
Grimes v. Eddy et al. 7 I. C. C. App. III. State Rates and Regulations (7n).
Guckenheimer v. Sellers. 8 I. C. C. Appendix XXVII. Interstate Commerce, §½ (wa).
Guimby et al v. Clyde Steamship Co. et al., 12 I. C. C. 392. Class Rates, §2 (1).
Gulf, Colorado & Santa Fe Ry. Co. v. Dimitt, 8 I. C. C. App. II. Procedure Before Commission, §14¾ (e).
Gulf, Colorado & Santa Fe Ry., Co. V. Eddins, 7 I. C. C. App. VIII. Loss and Damage, §13½ (c).
Gulf Colorado & Santa Fe Ry. Co. v. Hefley 7 I. C. C. App. XXV. State Rates and Regulations (7p).
Gulf, Colorado & Santa Fe Railway Co. v. Gray 7 I. C. C. App. XLIV. State Rates and Regulations (8c).
Gulf, Colorado & Santa Fe Ry. Co. v. C. O. Nelson 7 I. C. C. App. XIV. Through Routes and Joint Rates, §1a (a).
Gulf, Colorado & Santa Fe R. R. Co. v. Miami Steamship Co. 8 I. C. C. App. XLVII Anti-Trust Laws and Monopolies (ddk); §14 (yy); Taxes (7n).
Gulf, Western & Pacific R. R. Co. v. Barry. 8 I. C. C. App. XLIX. State Rates and Regulations (91); Through Routes and Joint Rates, §3½ (h).
Gulf, Colorado & Santa Fe R. Co. v. State of Texas, 2 I. C. R. 335. Anti-Trust Laws and Monopolies (ab); (aa) (ac) (ad); Evidence, §10 (ba), §67 (a); Passenger Fares and Facilities, §½ (b); State Rates and Regulations (yy).
Gustin v. Atchison, T. S. F. R. Co., 8 I. C. C. 277. Basing Points and Lines, §1 (a); Class Rates, §2 (g); Evidence, §58 (n); Local Rates and Combinations (ib); Reasonableness of Rates, §2 (11); Through Routes and Joint Rates, §4 (v), §13 (vv), §13½ (w), §14 (j).

Gustin v. Burlington & M. R. R. in Nebraska, 8 I. C. C. 481. Discrimination, §8 (1) (h); Long and Short Hauls, §10 (t); Evidence, §14 (5) (u).
Gustin v. I. C. R. Co. 7 I. C. C. 376. Through Routes and Joint Rates, §1 (r) (s) (t) (u).

H

Haddock v. Delaware v. Delaware, L. & W. R. Co. (Com.), 3 I. C. C. 302. Accounting, §1 (a); Common Carrier, §8 (b); Evidence, §1 (k); Procedure Before Commission, §18 (c); Special Contracts, §2½ (f), §5 (a).
Hale Halsell Grocery Company v. M. & T. Ry., 12 I. C. C. 136. Equalization of Rates, §2 (r); Long and Short Hauls, §5 (3x); Procedure Before Commission, §10 (2) (sa); Reasonableness of Rates, §28 (bb).
Hamilton & Brown v. Chattanooga, Rome, & Columbus R. Co., 3 I. C. R. 482. Basing Points and Lines, §2 (aa), §3 (a); Long and Short Hauls, §6⅞ (d); Procedure Before Commission, §13 (r).
Harding v. Chicago, etc. R. Co., 1 I. C. R. 375. Evidence, §1 (b) (c); Procedure Before Commission, §10 (1) (g), §14½a (a) (b).
Harley v. State of Nebraska, 7 I. C. C. App. XLII. Intoxicating liquors, (ee).
Harrell v. M. K. & T. Ry. Co., 12 I. C. C. 27. Evidence, §20 (cc); Procedure Before Commission, §10 (1) (ff), §14½ (a).
Harris v. Duval, Receiver, F. Ry. & Navigation Co., 2 I. C. C. 514. Advanced Rates, §1 (1) (a); Interstate Commerce Commission, §14 (b); Procedure Before Commission, §10 (1) (nb), §21a (e).
Harth Brothers Grain Co. v. I. C. R. R., 12 I. C. C. 448. Advanced Rates, §17 (u); Blanket Rates, §19½ (a).
Harvard Co. v. Pa. Co., 3 I. C. C. 257. Classification, §3 (n) (o), §4½ (a), §5 (g), §6 (c), §10 (f), §22 (n); Discrimination, §3 (u); Reasonableness of Rates, §2 (t).
Harvey v. Louisville & N. R. Co. (Com.), 3 I. C. R. 793. Passenger Fares and Facilities, §12 (lm).
Harwell v. Columbus & Western R. R. Co., 1 I. C. R. 631. Discrimination, §4 (c) §8 (l) (ab), §12 (i), §13 (a); Long and Short Hauls, §4 (n), §7 (d) (da), §10 (a); Through Routes and Joint Rates, §13 (a).
Hastings Malting Co. v. Chicago, M. & St. P. R. Co., 11 I. C. C. 675. Discrimination, §8 (1) (bb); Evidence, §13 (1) (la), §66 (n); Long and short hauls, §7 (4c) (4d) (4e); Reasonableness of Rates, §2 (vv), §16 (g); State Rates and Regulations (10e).
Hawkins v. Lake Shore & M. S. Ry. Co., 9 I. C. C. 267. Cars and Car Supply, §7 (z) (aa) (bb) (cc) (dd) (ee), §12 (c).
Heard v. Georgia R. Co. 1 I. C. R. 314; Passenger Fares and Facilities, §14¾ (a).
Heard v. Georgia R. Co. 1 I. C. R. 493; Passenger Fares and Facilities, §11 (a) (b).
Heard v. Georgia R. R. Co., 1 I. C. R. 719. Passenger Fares and Facilities, §11 (e) (f) (g) (h).
Heard v. Georgia R. Co. (Com.) 2 I. C. R. 508. Passenger Fares and Facilities, §11 (i) (j) (k) (l) (m) (n).
Heck v. East Tennessee V. & G. R. Co., 1 I. C. R. 775. Branch Lines, §1 (a) §6 (a); Cars and Car Supply, §21½ (a); State Rates and Regulations (wa); Tap Lines, §6 (a).
Henderson Bridge Co. v. Commonwealth of Kentucky, 7 I. C. C. App. C. Bridges and Tolls, §3 (t) (u).
Hennepin Paper Co. v. Northern Pac. 12 I. C. C. 535. Routing and Misrouting, §4 (1) (m), §5 (j) (k), §9 (ba) (c), §10 (a) (b).
Hennington v. Georgia 163 U. S. 299, 41 L. ed. 166. Passenger Fares and Facilities, §11 (aa).
Hennington v. State (Ga.), 4 I. C. R. 413. Interstate Commerce, §4 (cc).
Hennington v. State of Georgia 7 I. C. C. App. LXXIII. State Rates and Regulations (8j).
Hewins v. New York N. H. & H. R. Co., 10 I. C. C. 221. Passenger Fares and Facilities, §5¼ (a) (b) (c).
Hezel Milling Co. v. St. Louis, A. & T. H. R. Co. (Com.), 3 I. C. R. 701. Allowances, §7 (a); Cartage and Drayage (d); Cars and Car Supply, §32½ (a); Drayage Charges (d) (e).

Hill & Bro. v. Nashville C. & St. L. Ry. Co., 6 I. C. C. 343; Basing Points and Lines, §3 (b); Discrimination, §3 (kk), §8 (2) (a); Long and Short Hauls, §4¾ (a) (b), §5 (v); Reasonableness of Rates, §10 (c).

Hilton Lumber Co. v. Wilmington & W. R. R., 9 I. C. C. 17. Blanket Rates, §2 (h); Divisions, §3 (aa); Evidence, §58 (o); Long and short hauls, §10 (u); Through Routes and Joint Rates, §8 (a), §14 (1), §15 (f) (fa) (fb).

Hinnington v. State of Georgia, 4 I. C. R. 413. State Rates and Regulations (5h).

Hoerr v. Chicago, M. & St. P. R. Co., 11 I. C. C. 547. Evidence, §56 (d); Differentials, §8 (u) (tc); Through Routes and Joint Rates, §13 (3r).

Holbrook v. St. Paul, Minneapolis & Manitoba R. R. Co., 1 I. C. C. 323. Cars and Car Supply, §6 (a); Interstate Commerce Commission, §1 (a) (b) (c); Procedure Before Commission, §10 (1) (d) (e).

Holdzkum v. M. C. Ry., 9 I. C. C. 42. Act to Regulate Commerce, II. (nn); Discrimination, §8 (1) (l), §8 (5) (c), §9 (g) (h); Evidence, §2 (v); Long and short hauls, §6⅞ (w), §7 (3b) (3c) (3d) (3da) (3ef), §10 (v).

Holcomb Hayes Co. v. Illinois Central R. Co., 12 I. C. C. 128. Reparation, §8 (b) (c) (d) (e).

Holmes & Co. v. Southern R. Co., 8 I. C. C. 561. Branch Lines, §1 (g); Reasonableness of Rates, §7½ (x), §25 (d) (e) (f), §32½ (c) (d) (e); Reduced Rates, §2½ (a), §4½ (k) (l); Reparation, §2 (c), §7½ (e) (f).

Hoover et al v. Penn. Ry. Co., 7 I. C. C. App. II. Discrimination, §4½ (j) (k) (1).

Hooper v. California (U. S. Sup.), 5 I. C. R. 610. Insurance (a) (b); State Rates and Regulations (7j) (7k) (7l); Statutes (zz) (3a).

Hope Cotton Oil Co. v. Texas & P. R. Co. 10 I. C. C. 696. Through Routes and Joint Rates, §7 (b), §15 (h), §16 (c) (ca), §18 (b); Routing and Misrouting, §5 (f).

Hope Cotton Oil Co. v. T. & P. Ry. Co., 12 I. C. C. 265. Crimes, §2 (op); Discrimination, §10 (i); Evidence, §13 (6) (a) (b) (c); Reasonableness of Rates, 7½ (gg); Through Routes and Joint Rates, §13 (4d), §15 (j) (k).

Hope Lumber Co. v. M. K. & T. Ry. Co., 12 I. C. C. 191. Evidence, §65 (d).

Hopkins v. Lewis, (Iowa), 4 I. C. R. 63. Intoxicating liquors, (t).

Hopkins v. U. S. 8 I. C. C. App. XVIII. Stock Yard Companies (n) (o) (p) (r) (s) (t); Telephone and Telegraph Companies, §3 (kk).

Horn Silver Minn. C. v. New York (U. S. Sup. Ct.) 4 I. C. R. 57. State Rates and Regulations, (4uv) (w) (4x) (4y); Statutes (q) (r) (s) (sa); Taxes (4s) (4t) 4u) (4v).

Hot Springs v. Western N. C. R. R. Co. 1 I. C. R. 316. Overcharges (b).

Houck v. Southern P. R. Co. (C. C. W. D. Texas), 4 I. C. R. 441. Passenger Fares and Facilities, §11 (q) (r).

Houston & Texas Central Ry. Co. et al. v. Williams, 7 I. C. C. App. XLIV. Through Routes and Joint Rates, §3½ (d) (e).

Houston & Texas Central R. R. Co. v. Sumas 8 I. C. C. App. IV. Special Rates and Services (g).

Houston Direct Navigation Co. v. Insurance Co. of North America, 7 I. C. C. LXXX. Interstate Commerce, §½ (r).

Houston, East & West Texas Ry. Co. v. Peters, 7 I. C. C. App. XCIX. Interstate Commerce, §4 (oo).

Houston, East & West Texas Ry. Co. v. Peters & Willis, 8 I. C. C. App. LIX. State Rates and Regulations (9r).

Howard Mills Co. v. Miss. Pacific Ry. Co. et. al., 12 I. C. C. 259. Classification, §3½ (bb), §11 (p) (q) (r), §22 (3e) (3f); Equalization of Rates, §3 (k), Evidence, §2 (y).

Howell v. New York, Lake Erie & Western R. Co., 2 I. C. R. 162. Blanket Rates, §2 (a) (b), §13 (b), §15½ (a); Classification, §11 (a); Discrimination, §3 (h), §4 (f); Evidence, §1 (f), §52 (c), §61 (a); Procedure Before Commission, §5 (c); Reasonableness of Rates, §2 (h) (i), §7½ (d) (e).

Hurlburt v. Lake Shore & M. S. R. Co. (Com.), 2 I. C. R. 81. Classification, §5 (a), §8a (a), §17 (b), §19 (a), §22 (c) (d) (e) (f) (g); Procedure Before Commission, §10 (3) (a), §13 (j) (k); Special Contracts, §2 (a).

I

Idaho v. Duckworth 8 I. C. C. App. XXXIX. State Rates and Regulations (9h) (9i).
Illinois Central R. R. Co. v. People of the State of Illinois Ex. Rel. Butler (U. S.) 7 I. C. R. App. IXXI. State Rates and Regulations, (8v).
Ilwaco R. & Nav. Co. v. Oregon S. L. & U. N. R. Co. (C. C. App. 9th C.) 5 I. C. R. 627 Water Carriers, §3 (f); Wharfage (e).
Imperial Coal Co. v. Pittsburgh & L. E. R. Co., 2 I. C. R., 436. Blanket Rates, §2 (e), §7 (a), §13 (c) (d) Distance Rates, §1 (b) (c); Discrimination, §3 (k) (l), §4 (h), §4½ (b), §5½ (a); Evidence, §18 (d); Long and short hauls, §12 (2) (fg).
In Re Alleged Unlawful Rates and Practices in the Transportation of Grain and Grain Products by the A. T. S. F. Ry. Co. et al., 7 I. C. C. Rep. 240. Facilities and Privileges, §11¾ (a), §18 (b).
In Re Applications of Certain Railroad Companies for an Extension of Time, etc. 9 I. C. C. 522. Safety Appliance Acts (g) (h).
In Re Rates and Practices, of M. & O. R. Co. 9 I. C. C. 373. Facilities and Privileges, §18 (g) (h).
In the Matter of Alleged Excessive Freight Rates and Charges on Food Products, 3 I. C. C. 93. Blanket Rates, §12 (a); Evidence, §45 (a), §62 (a); Reasonableness of Rates, §16 (a), §32 (a); Through Routes and Joint Rates, §4 (n).
In the matter of alleged excessive freight rates and charges on food products, 3 I. C. C. 151. Interstate Commerce Commission, §5 (a), §6 (a).
In the Matter of Alleged Unlawful Discrimination, 11 I. C. C. 587. Water Carriers, §6 (j).
In the Matter of alleged unlawful rates and practices, 7 I. C. C. 240. Discriminations, §1 (r); Through Routes and Joint Rates, §17 (j), §22 (p) (q).
In the matter of alleged unlawful rates and practices in transportation of cotton by the K. C. M. & B. R. Co., 8 I. C. C. 121. Compress Companies and Charges II (b) (c).
In the matter of alleged unlawful rates and practices in the transportation of coal and mine supplies by the A. T. & S. F. Ry. Co., 10 I. C. C. 473. Crimes, §7 (d).
In the matter of alleged unlawful discrimination against the Enterprise Transportation Company by railroad lines leading from New York, 11 I. C. C. 587. Water Carriers, §6 (h).
In the matter of alleged violations of the fourth section of the act by the Santa Fe, 7 I. C. C. 61. Long and short hauls, §2½ (d), §5 (ff), §9 (g) (h).
In the matter or alleged violations of the act by the St. L. & S. F. R. Co., 8 I. C. C. 290. Foreign Commerce, §1½ (f); Long and Short Hauls, §6⅞ (t).
In the matter of Allowances to Elevators, 10 I. C. C. 309. Allowances, §8 (3) (b) (c) (d) (e) (f); Facilities and Privileges, §9½ (e) (f).
In the matter of allowances to elevator by the U. P. R. R., 12 I. C. C. 86. Allowances, §8 (3) (ij) (k); Facilities and Privileges, §9½ (ij) (kl).
In the matter of application of the A. T. & S. F. R. Co. for a suspension of the fourth section, 7 I. C. C. 593. Passenger Fares and Facilities, §3 (3) (d).
In the Matter of the Application of F. W. Clark v. 2 I. C. R. 796. Through Routes and Joint Rates, §4 (l) (m); Water Carriers, §3 (a), §8 (b).
In the matter of charge for transportation of fruit, 11 I. C. C. 129. Cars and Car Supply, §9⅝ (e) (f), §12 (d); Refrigeration, §1 (f) (h), §3½ (e), §4½ (b)
In the matter of charges for the transportation and refrigeration of fruit shipped from points on the P. M., and N. C., 10 I. C. C. 360. Cars and Car Supply, Car Supply, §9⅝ (a) (b) (c) (d); Refrigeration, §4¾ (a).
In the matter of class and commodity rates from St. Louis to Texas. Common Points, 11 I. C. C. 238. Advanced Rates, §17 (p).
In the matter of consolidations and combinations of Carriers, 12 I. C. C. 277. Finance Dockets, §7 (a) (aa) (b) (c).
In the matter of differential freight rates to and from North Atlantic ports, 11 I. C. C. 13. Differentials, §8 (t) (ta).
In the matter of Division of Joint Rates, 10 I. C. C. 661. Allowances, §8 (7) (h); Common Carrier, §9 (p); Industrial Railroads, (ab).

In the matter of export rates from Points East and West of the Mississippi River, 8 I. C. C. 185. Differentials, §5 (a); Export Rates and Facilities, §6 (n); Tariffs, §6 (g).
In the matter of free transportation of Newspaper employees on special newspaper trains, 12 I. C. C. 16. Passenger Fares and Facilities, §2 (y), §12 (ee).
In the Matter of Freight rates between Memphis and Points in Arkansas, 11 I. C. C. 180. Through Routes and Joint Rates, §8 (c).
In the Matter of Form and Contents of rates schedules, 4 I. C. C. 698. Tariffs, §6a (b).
In the matter of Grand Trunk Railway Co., 2 I. C. C. 496. Act to Regulate Commerce II (s); Adjacent Foreign Country, (a); Canada (a); Crimes, §7 (a); Procedure Before Commission, §1a (a); Tariffs, §3 (1) (c), §4 (d); Through Routes and Joint Rates, §17 (d), §22 (e).
In the Matter of party rate Tickets, 12 I. C. C. 96. Passenger Fares and Facilities, §7 (g).
In the Matter of Proposed Advances in Freight Rates, 7 I. C. C. 382. Advanced Rates, §19½ (b).
In the Matter of Proposed Advances in Freight Rates, 9 I. C. C. 382. Advanced Rates, §1 (1) (b), §2½ (cde) (fg, §5 (½) (a) (b), §5 (4) (a), §7 (l) (a), §15 (b) (c) (d), §17 (h); Evidence, §1½ (mm) §9 (a); Export Rates and Facilities, §6 (aa); Reasonableness of Rates, §9 (b).
In the matter of the publication and filing of tariffs on export and import traffic, 10 I. C. C. 55. Foreign Commerce, §½ (h).
In the Matter of Rates on Corn and Corn Products from Missouri River Points to Points in Washington, Oregon and California, 11 I. C. C. 212. Classification, §3½ (v).
In the Matter of Rates on Corn and Corn Products, 11 I. C. C. 220. Classification, §3½ (wx) (y).
In the Matter of Rates on Corn and Corn Products from Missouri River Points to Louisiana, 11 I. C. C. 227. Classification, §3½ (zaa).
In the matter of the right of railroad companies to exchange free transportation with local transfer and baggage companies. 12 I. C. C. 45. Passenger Fares and Facilities, §12 (kk).
In the Matter of Tariffs and Classifications of Pa. R. Co., 7 I. C. C. 177. Evidence, §14 (l) (n).
In the matter of transportation of Salt from Hutchinson, Kas. 10 I. C. C. 1. Tap Lines, §6½ (a).
In the matter of transportation of salt from points in Michigan to Missouri River points and intermediate localities, 10 I. C. C. 148. Divisions, §9 (c).
In the Matter of Through Routes and Through Rates, 12 I. C. C. 163. Facilities and Privileges, §18 (k); Tariffs, §14 (ba); Through Routes and Joint Rates, §2 (y) (z) (aa) (bb) (cc) (dd) (ee) (ff) (gg).
In the Matter from Missouri River Points to Points in Washington, Oregon and California, 11 I. C. C. 212. Differentials, §4 (h).
In Petition of the C. H. & D. for relief from Fourth section, 6 I. C. C. 323. Passenger Fares and Facilities, §3 (3) (b).
Independent Ref. Association v. Pennsylvania R. R. Co., 6 I. C. C. 52. Car and Car Supply., §31 (aa); Classification, §16 (v).
Independent Refiners Asso. v. Pennsylvania R. Co., 6 I. C. C. 449. Cars and Car Supply, §10 (1); Courts, §5 (o).
Independent Refiners' Asso. v. W. N. Y. & P. R. Co., 4 I. C. C. 162. Car and Car Supply, §7 (v) (w), §10 (i) (j), §10½ (c); Classification, §3 (u), §16 (q) (r); Pooling of Traffic (a); Through Routes and Joint Rates, §1 (m).
Independent Ref. Asso. v. Wester. N. Y. & P. R. Co., 6 I. C. C. 378. Cars and Car Supply, §10 (k); Classification, §16 (x) (y); Common Carrier, §2 (a); Lease, (d); Receivers (cc); Reparation, §6 (a) (b), §17a (b), §19 (b) (c); Through Routes and Joint Rates, §22 (n) (o), §25 (a) (b).
Indiana v. Woodruff Sleeping & Parlor Coach Co. (Ind. Sup. Ct.) 1 I. C. C. 798; State Rates and Regulations (n); Taxes (a) (b) (d) (k) (l).
Interstate Commerce Commission v. Alabama M. R. Co. (C. C. M. D. Ala.), 5 I. C. R. 308. Evidence, §58 (k), §67 (i); Long and short hauls, §7 (z).

Interstate Commerce Commission v. Alabama M. R. Co., 5 I. C. R. 685. Act to Regulate Commerce, II (dd) (ee) (ff); Discrimination, §1 (l) (m) (n), §1a (i), §2 (a), §8 (1) (g); Evidence, §1½ (t) (u), §14 (1) (k), §14 (5) (pa); Interstate Commerce Commission, §8½ (s); Long and short hauls, §7 (aa); Special Contracts, §2 (y) (z); Through Routes and Joint Rates, §22 (j) (k).

Interstate Commerce Commission v. Alabama Midland Ry. Co. 7 I. C. C. App. CIX. Discrimination, §13½ (i); Interstate Commerce Commission, §8½ (z), §15 (n); Long and short hauls, §7 (11), §14 (d).

Interstate Commerce Commission v. Alabama Midland R. Co. 168 U. S. 144, 42 L. ed. 414. Long and Short Hauls, §4½ (j), §7 (jj) (ww).

Interstate Commerce Commission v. Alabama Midland R. Co. 168 U. S. 144, 42 L. ed. 414, 18 Sup. Ct. Rep. 45. Long and Short Hauls, §7 (3h) (3j), §9 (q).

Interstate Commerce Commission v. Alabama Midland R. Co. 41 U. S. App. 453, 74 Fed. Rep. 723, 5 Inters. Com. Rep. 685, 168 U. S. 173. 42 L. ed. 425. Long and Short Hauls, §5 (3i).

Interstate Commerce Commission v. Alabama Midland R. Co. 168 U. S. 164, 167, 42 L. ed. 422, 423. Long and Short Hauls, §6⅞ (q).

Interstate Commerce Commission v. Alabama Midland R. Co., 168 U. S. 170, 42 L. ed. 424. Evidence, §1½ (ee).

Interstate Commerce Commission v. Alabama M. R. Co. (C. C. M. D. Ala.) 3 I. C. R. 308. Long and Short Hauls, §7 (k).

Interstate Commerce Commission v. Atchison, T. & S. F. R. Co., (C. C. D. Cal.), 4 I. C. R. 323. Interstate Commerce Commission, §3 (c); Long and Short Hauls, §4 (j) (o), §10 (m).

Interstate Commerce Commission v. Atchison, T. & S. F. R. Co. (U. S. Sup. Ct.) 4 I. C. R. 347. Courts, §6½ (r).

Interstate Commerce Commission v. A. T. & S. F. R. Co., 50 Fed. Rep. 295. Courts, §5 (c).

Interstate Commerce Commission v. Baltimore & O. R. Co., 4 I. C. R. 92. Act to Regulate Commerce, II (y); Discriminations, §1 (g) (h), §1a (f); Passenger Fares and Facilities, §6 (r), §7 (e).

Interstate Commerce Commission v. Baltimore & O. R. R. Co. (C. C. S. D. Ohio) 3 I. C. R. 192. Passenger Fares and Facilities, §7 (c) (d).

Interstate Commerce Commission v. Bellaire, Zanesville & Cincinnati Ry. Co. 7 I. C. C. App. XXXV. Interstate Commerce Commission, §6¾ (b).

Interstate Commerce Commission v. Bellaire, Z. & C. R. Co., 77 Fed. Rep. 942. Accounting, §1 (b).

Interstate Commerce Commission v. Brimson (U. S. Sup. Ct.) 4 I. C. R. 545. Courts, §1 (cc), §6½ (aa) (bb); Interstate Commerce, §5 (ff) (gg); Procedure Before Commission, §22 (i).

Interstate Commerce Commission v. Brimson (U. S. Sup. Ct.), 545, 4 I. C. R. 315. Actions at Law, (d).

Interstate Commerce Commission v. Cincinnati, New Orleans & Tex. Pacific Ry. Co. 7 I. C. C. App. LX. Interstate Commerce Commission, §8½ (x).

Interstate Commerce Commission v. Cincinnati N. & T. P. R. Co., 4 I. C. R. 332. Courts, §5 (c); Discrimination, §3 (cc); Evidence, §14 (5) (k) (1) (m), §32 (d). Freight Agencies (a); Interstate Commerce Commission, §15 (d); Long and Short Hauls, §4 (o) (p), §4½ (e), §6⅞ (v), §7 (w), §9 (f), §10 (no); Reasonableness of Rates, §25 (c); Through Routes and Joint Rates, §1 (n), §2 (j) (k) (l) (m) (n), §3½ (ab) (b).

Interstate Commerce Commission v. Cincinnati N. O. & T. P. R. Co., 5 I. C. R. 131. Courts, §14 (dd) (ee) (ff) (gg) (hh) (ii); Interstate Commerce Commission, §15 (e) (f).

I. C. C. v. Chicago, Burlington & Quincy R. R. Co., 8 I. C. C. App. LXXIX. Courts, §5 (s) (t).

Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co., 167 U. S. 506, 42 L. Ed. 256. Long and Short Hauls, §2 (d).

Interstate Commerce Commission v. Cincinnati, New Orleans & Texas Pacific Ry. Co. et al, 7, I. C. C. L. Interstate Commerce Commission, §8½ (w).

Interstate Commerce Commission v. Cincinnati, New Orleans & Texas Pacific Ry. Co., 7 I. C. C. App. LV. Interstate Commerce Commission, §8½ (y).

Interstate Commerce Commission v. Cincinnati N. O. & T. P. R. Co. 4 I. C. R. 582. Courts, §14 (r); Interstate Commerce, §5 (hh), §15 (d); Long and Short Hauls, §10 (no).
Interstate Commerce Commission v. Delaware, L. & W. R. Co., 5 I. C. R. 144. Classification, §26 (b).
Interstate Commerce Commission v. Deleware, L. & W. R. Co., 5 I. C. R. 146. Courts, §5 (g); Interstate Commerce Commission, §15 (g).
Interstate Commerce Commission v. Detroit, Grand Haven & Milwaukee Ry. Co., 7 I. C. C. App. LVII. Cartage and Drayage (k).
Interstate Commerce Commission v. Detroit, G. H. & M. R. Co., 167 U. S. 642, 42 L. ed. 309, 17 Sup. Ct. Rep. 986. Interstate Commerce, §5 (uu).
Interstate Commerce Commission v. Detroit, G. H. & M. R. Co. (C. C. W. D. Mich.) 4 I. C. R. 722. Blanket Rates, §17 (a); Crimes, §7 (aa); Discrimination, §16 (c); Cartage and Drayage (e) (f) (g) (i) (j) (h); Procedure Before Commission, §10 (l) (ob); Switching Tracks and Switching, §4 (b).
I. C. C. v. E. Tenn., Vir., & Georgia R. R. Co., 8 I. C. C. App. XLIII. Discrimination, §10 (f); §16 (e); Long and Short Hauls, §5 (3j) (3k), §7 (3a), §12 (2) (o).
Interstate Commerce Commission v. East Tennessee. V. & G. R. Co., 85 Fed. Rep. 107. Long and Short Hauls, §4½ (j).
Interstate Commerce Commission v. L. & N. R. Co., 5 I. C. R. 656. Courts, §5 (m) (n); Discrimination, §1 (k) (l), §1a (h), §8 (l) (f), §13½ (f) (g), §14 (c); Evidence, §1½ (s), §2 (o), §20 (p) (q), §44½ (c) (d), §52½ (a); Interstate Commerce Commission, §1 (v) (w) (x), §3 (d), §3¼ (b), §5 (b) (c) (d), §8½ (q) (r), §15 (k) (l); Procedure Before Commission, §1 (cc); Reasonableness of Rates, §2 (ff); Special Contracts, §2 (w) (x).
Interstate Commerce Commission v. Louisville & N. R. Co., 190 U. S. 273, 47 L. Ed. 1047, 23 Sup. Ct. Rep. 687. Long and Short Hauls, §7 (3j).
Interstate Commerce Commission v. Lehigh Valley R. Co. (C. C. E. D. Pa.) 3 I. C. R. 796. Interstate Commerce Commission, §15 (a).
Interstate Commerce Commission v. Lehigh V. R. Co., 5 I. C. R. 643. Courts, §5 (1); Evidence, §15½ (a); Interstate Commerce Commission, §1 (u), §8½ (n) (m).
Interstate Commerce Commission v. N. R. Co. 5 I. C. R. 650. Interstate Commerce Commission, §8½ (p) (o), §15 (i) (j).
I. C. C. v. Northern, Eastern R. R. Co. of S. Carolina, 8 I. C. C. App. XXXV. Interstate Commerce Commission, §8½ (gg).
Interstate Commerce Commission v. Southern Pacific Co., et al. 7 I. C. C. App. XLVII. Courts, §6½ (qq).
Interstate Commerce Commission v. Texas & P. R. Co., (C. C. D. N. Y.), 4 I. C. R. 62. Courts, §5 (a); Interstate Commerce Commission, §15 (b).
Interstate Commerce Commission v. Texas & P. R. Co., (C. C. S. D. N. Y.) 4 I. C. R. 114. Discrimination, §3 (bb); Import Traffic, §1 (i); Interstate Commerce Commission, §15 (c).
Interstate Commerce Commission v. Texas & P. R. Co. (C. C. App. 2d C.), 4 I. C. R. 408. Courts, §5 (d), §14 (m); Evidence, §1½ (p), §13 (4) (a), §14 (5) (n); Import Traffic, §1 (j) (k).
Interstate Commerce Commission v. Western & Atlantic R. R. Co. 8 I. C. C. App. XII. Discrimination, §1a (k).
Interstate Commerce Commission v. Western & Atlantic R. R. Co., 8 I. C. C. App. XIII. Discrimination, §4 (aa); Evidence, §2 (t) (u), §18 (m); Long and Short Hauls, §4½ (j) (k), §5 (3i) (3h), §6⅞ (v), §7 (ww) (xx) (yy) (zz), §9 (t) (u).
Interstate Commerce Commission v. Western N. Y. & Philadelphia R. R. Co. 7 I. C. C. App. LXII. Courts, §6½ (pp).
I. C. C. v. Western & Atlantic R. R. Co., 8 I. C. C. App. LXXVII. Evidence, §14 (1) (q) (y); Through Routes and Joint Rates, §13 (uu).
Interstate Commerce Commission v. Western N. Y. & Philadelphia R. R. Co., 7 I. C. C. App. LXII. Interstate Commerce Commission, §1 (cca); Reparation §23 (d).
Iron Mountain R. R. Co. of Memphis v. City of Memphis, 8 I. C. C. App. XCIII. State Rates and Regulations (9z).

J

Jackson v. St. L. Arkansas & Texas R. Co., 1 I. C. R. 599. Procedure Before Commission, §10 (1) (h) (i).

Jacob's Pharmacy Co. v. City of Atlanta, 8 I. C. C. LXVI. Intoxicating liquors, (3g).

James v. Canadian P. R. Co., (Com.) 4 I. C. R. 274. Evidence, §1 (ma), §14 (5) (i) (j).

James v. East Tennessee & G. R. Co. (Com.), 2 I. C. R. 609. Evidence, §13 (l) (f); Long and Short Hauls, §5 (g), §12 (2) (1).

James & Abbott v. Canadian Pacific, 4 I. C. R. 274. Branch Lines, §1 (e); Differentials, §6 (a); Evidence, §14 (5) (h), §32 (c), §57½ (e); Procedure Before Commission, §10 (1) (nd) (o), §13 (u); Reasonableness of Rates, §2 (bb); §7½ (j), §28 (q) (r); Through Routes and Joint Rates, §13½ (n).

James & Abbott v. V & Ga. R. R., 2 I. C. C. 609. Equalization of Rates, §2 (d); Evidence, §18 (f); Long and Short Hauls, §6⅞ (b), §7 (g) (h), §12 (2) (hi) (jk) (l); Reasonableness of Rates, §10 (b).

James & Mayer Buggy Co. v. C. N. O. & T. P. R. Co., 3 I. C. C. 682. Class Rates, §2 (aa); Discrimination, §3 (z); Local Rates and Combinations (ea); Long and Short Hauls, §2 (b), §6⅞ (e), §7 (m), §10 (g), §12 (2) (n).

Jamieson v. Ind. Natural Gas & Oil Co., 3 I. C. R. 613. Evidence, §67 (e) (f); Gas Companies (ac) (ad); Special Contracts, §2 (j); State Rates and Regulations (4q).

Jerome Hill Cotton Co. v. Missouri, K. & T. R. Co., 6 I. C. C. 601. Evidence, §51 (d) (e); Long and Short Hauls, §5 (aa) (bb), §7 (cc); Reasonableness of Rates, §7½ (t); Reduced Rates, §4½ (h).

Jersey v. The Carolina et al, 7 I. C. C. App. LIII. Intoxicating liquors, (hh).

Jewell v. Richmond & D. R. Co., 7 I. C. C. 354. Long and Short Hauls, §4½ (g).

Johnston v. A. T. & S. F. R. Co, 12 I. C. C. 47. Reasonableness of Rates, §2 (xx).

Johnson v. Chicago, St. Paul, Minneapolis & Omaha R. Co., 9 I. C. C. 221. Discrimination, §4 (cc), §8 (1) (n); Evidence §1½ (11), §14 (1) (aa) (bb); Long and Short Hauls, §7½ (a); Reasonableness of Rates, §28 (w) (wa); Tariffs, §6 (i); Through Routes and Joint Rates, §8 (b), §13 (3g), §17 (o).

Johnson v. St. L. & S. F. R. R., 12 I. C. C. 73. Blanket Rates, §12 (f); Differentials, §8 (y); Reasonableness of Rates, §2 (yy) (zz) (3a) (3b) (3c) (3d).

Johnston-Larimer Dry Goods Co. v. A. T. & S. F. R. Co. 6 I. C. C. 568. Long and Short Hauls, §4½ (fa), §5 (x); Tariffs, §6a (d).

Johnston Larimer Dry Goods Co. v. A. T. & S. F. Ry., 12 I. C. C. 48. Equalization of Rates, §4 (5) (b); Reasonableness of Rates, §8 (1½) (d).

Johnston-Larimer Dry Goods Co. v. A. T. & S. F. Ry. Co., 12 I. C. C. 188. Evidence, §14 (1) (ee); Long and Short Hauls, §7 (4m); Rail and Water Rates (d) (e) (f); Reasonableness of Rates, §7½ (bb).

Johnston-Larimer Dry Goods Co. v. N. Y. & T. S. S. Co., 12 I. C. C. 58. Rail-and-Water Rates (d) (e) (f).

Johnston-Larimer Dry Co. v. Wabash R. Co., 12 I. C. C. 52. Classification, §22 (3c); Differentials, §8 (x); Procedure Before Commission, §9 (a).

Jones v. St. Louis & S. F. R. Co., 12 I. C. C. 144. Interstate Commerce Commission, §1 (gg); Passenger Fares and Facilities, §1 (f) (g), §13 (ab) (cd) (ef) (g) (h) (i), §1 (ii) (iia).

Jurisdiction of the Commission 1 I. C. R. 73. Act to Regulate Commerce, II (c); Interstate Commerce Commission, §11 (a); Long and Short Hauls, §4 (e) (f) (fa) (g) (h); Procedure Before Commission, §11 (a), §12a (a) (b) (c)

K

Kalamazoo Tank & Silo Co. v. M. C. R. R. 12 I. C. C. 154. Long and Short Hauls, §5 (3z); Reparation, §7½ (o) (p); Routing and Misrouting, §9 (a); Through Routes and Joint Rates, §13 (3y), §15 (i).

Kaufman Milling Co. v. Missouri P. R. Co. (Com.), 3 I. C. R. 400. Classification, §3 (p), §3½ (e) (f), §18 (c), §23 (c); Evidence, §1½ (j); Interstate Commerce, §5 (cc); Reasonableness of Rates, §2 (v).

Kehoe & Co. v. C. & W. C. R. Co., 11 I. C. C. 166. Cars and Car Supply, §9¾ (b); Demurage, §2 (c) (d), §8 (aa).

T. M. Kehoe & Co. v. Evansville & T. H. R. Co., 11 I. C. C. 172. Local Rates and Combinations, (1); Proportional Rates II (b) III (a), §1 (a); Through Routes and Joint Rates, §18 (c), §26 (e).
Keith v. Kentucky Central R. Co. 1. I. C. R. 316. Live Stock Shipments (a); Stock Yard Companies (a).
Keith v. Kentucky Central R. R., 1 I. C. R. 601. Live Stock Shipments, (c) (ca) Stock Yard Companies (c) (d) (ef) (fa).
Kemble v. Boston & Albany R. R. Co., 8 I. C. C. 110. Discrimination, §4½ (m); Export Rates and Facilities, §1 (c) (d), §1½ (a) (b), §5 (e) (f) (g) (h), §6 (ka) (l) (m); Foreign Commerce, §½ (a) (b) (c), §1 (a).
Kindel v. Atchison, T. & S. F. Ry. Co., 9 I. C. C. 606. Long and Short Hauls, §5 (3r) (3s).
Kendel v. Atchison, T. & S. F. R. Co., 8 I. C. C. 608. Evidence, §1½ (ii); Long and Short Hauls, §5 (3g).
Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 102. Act to Regulate Commerce, II (m) (n); Bridges and Tolls, §4 (a) (b), §5 (a); Discrimination, §3 (g); Interchange of Traffic (ab) (ac) (ad) (ae) (b); Procedure Before Commission, §13 (l) (m).
Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351. Act to Regulate Commerce, I. (c) II (n) (q); Bridges and Tolls, §3 (g) (h) (i) (j) (k) (l), §4 (a), §5 (b) (c) (aa); Courts, §5 (c) (g), §6½ (h) (i) (j), §14 (f); Crimes, §2 (b); Discrimination, §1 (a), §3 (g); Interchange of Traffic (ac) (ad); Interstate Commerce, §5 (t); Interstate Commerce Commission, §1 (i) (j) (jb) (jc); §3 (a); Routing and misrouting, §7 (a); Special Contracts, §2 (b), §2½ (b); Statutes (ca); Switch Tracks and Switching, §1 (a) (b); Terminal Facilities, §2 (a) (b) (c), §3 (a) (b) (c) (d) (e); Through Routes and Joint Rates, §1 (b) (c), §4 (b) (c) d) (e) (f) (g) (h) (i), §13 (k) (l), §13½ (d), §20½ (b).
Kentucky & Indiana Bridge Co. v. L. & N. R. Co., 2 L. R. A. 289, 37 Fed. Rep. 567. Courts, §5 (c).
Kentucky & Indiana Bridge Co. v. L. & N. R. Co., 2 Inters. Com. Rep. 389, 2 L. R. A. 325, 37 Fed. Rep. 630. Through Routes and Joint Rates, §1 (n).
Kentucky R. R. Comrs. v. Cincinnati, N. O. & T. P. R. Co., 7 I. C. C. 380. Evidence, §20 (v).
Kesting Implement & Machine Co. v. Favorite Carriage Co. et al., 7 I. C. C. App. XXXIX. Courts, §1 (vv).
Kidd v. Pearson, (U. S. Sup. Ct.), 2 I. C. R. 232. Intoxicating liquors, (g) (h) (i) (ia).
Kimmish v. Ball (U. S. Sup. Ct.) 2 I. C. R. 407. State Rates and Regulations (3a); Statutes (db).
Kindel et al. v. Atchison T. & S. F. R. Co., 8 I. C. C. 608. Discrimination, §3 (3i) §15 (a).
Kindel v. Atchison, T. & S. F. R. Co., 9 I. C. C. 606. Discrimination, §4 (ff) (gg), §8 (l) (t); Long and Short Hauls, §4 (aaa), §5 (r) (s); Reasonableness of Rates, §2 (mma).
Kindel v. Boston & A. R. Co. et al., 11 I. C. C. 495. Any Quantity Rates I (c); Classification, §4 (b), §22 (yy); Differentials, §8 (tb); Discrimination, §4½ (p); Evidence, §14 (5) (z); Local Rates and Combinations, (m); Through Routes and Joint Rates, §13 (3o) (3p) (3q) (3qa) (3qb).
Kindel v. New York N. H. & H. R. Co., 11 I. C. C. 514. Reparation, §7½ (lb).
King & Co. v. N. Y. N. H. & H. R. Co., 3 I. C. R. 272. Evidence, §18 (k); Long and Short Hauls, §7 (j), §10 (f); Reasonableness of Rates, §7½ (h); Through Routes and Joint Rates, §13 (aa); Water Carriers, §8 (a).
Kingsley v. Buffalo, N. Y. & Pa. R. Co., 3 I. C. R. 318. Evidence, §63 (c).
Kinnavey v. Terminal R. Asso. of St. L., 8 I. C. C. App. XXVI. Discriminations, §1a (1); Procedure Before Commission, §2 (q).
Kinsley v. Buffalo, N. Y. & P. R. Co. (C. C. W. D. Pa.), 3 I. C. R. 318. Discrimination, §4½ (f), §5 (ba).
Kizer v. Texarkana & Ft. Smith Ry. Co. 8 I. C. C. App. LXXXVI. Special Contracts, §2 (bb).
Koch v. Pennsylvania R. Co., 10 I. C. C. 675. Facilities and Privileges, §15 (b) (c) (d) (e), §18 (i).

L

La Crosse etc. v. Chicago etc. R. Co. 2 I. C. R. 9. Distance Rates, §1 (a), §3 (a); Evidence, §20 (a); Procedure Before Commission, §2 (a) (i).
Lafarier v. Grand Trunk R. Co. (Me.), 4 I. C. R. 198. Interstate Commerce, §4 (aa); Passenger Fares and Facilities, §13½ (b).
Lake Shore & Mich. Southern Ry. Co. v. St. of Ohio ex. rel. L. Lawrence 7 I. C. C. App. XV. State Rates and Regulations (7o).
Lake Shore & Michigan Southern Ry. Co. v. St. of Ohio. ex. rel. Lawrence 8 I. C. C. App. LVIII. State Rates and Regulations (9p) (9q).
Landa v. Missouri, K. & T. R. Co. (Mo.), 5 I. C. R. 245. Actions at Law, (m) (n) (o) (p) (q); Loss and Damage, §17 (b).
Laning Harris Coal & Grain Co. v. A. T. & S. F. Ry., 12 I. C. C. 479; Facilities and Privileges, §2 (b); Switch Tracks and Switching, §4 (h) (i); Terminal Facilities, §2 (g), §3 (m).
Larrison v. Chi. & Grand Trunk R. Co., 1 I. C. R. 369. Passenger Fares and Facilities, §6 (c) (d) (e) (f) (g) (h) (i) (ia) (j), §7¼ (h) (k), §18 (a); Tariffs, §4 (a).
Laud v. South Carolina R. Co., 4 I. C. R. 205. Procedure Before Commission, §10 (2) (j); Reasonableness of Rates, §2 (aa); Special Contracts, §5½ (b).
Lazarus E. Lebolt 7 I. C. C. App. LXXVIII; Intoxicating liquors, (11).
Lead Commercial Club v. C. & N. W. and C. B. & Q. Ry. Co., 12 I. C. C. 460. Procedure Before Commission, §10 (1) (jj), §10 (2) (gg), §14½ (b).
Leavell v. Western Union Telegraph Co. (N. C.) 5 I. C. R. 358. Telephone and Telegraph Companies, §3 (bb).
Lehigh Valley R. Co. v. Com. (Pa.), 2 I. C. R. 226. Interstate Commerce, §2 (a), §3 (g); Taxes (ww).
Lehigh Valley R. Co. v. Commonwealth of Pa., 4 I. C. R. 87. Taxes (5a).
Lehigh Valley R. Co. v. Pennsylvania (U. S. Sup. Ct.), 4 I. C. R. 87. Interstate Commerce, §2 (e), §5 (ee).
Lehman Higginson & Co. v. S. P. Co., 3 I. C. C. 80. Discrimination, §3 (r), §5 (b), §8 (1) (d); Evidence, §1½ (h), §2 (c), §14 (1) (d) (e), §18 (h) (ha), §51 (a); Long and Short Hauls, §5 (h), §6 (a) (b), §6⅞ (c), §10 (b); Reasonableness of Rates, §8 (1) (a); Through Routes and Joint Rates, §13 (z); Water Carriers, §3 (b).
Lehmann v. Texas & P. R. Co. (Com.), 3 I. C. R. 706. Branch Lines, §1 (c); Through Routes and Joint Rates, §13 (ff), §17 (f) (g), §22 (h).
Lehman-Higginson G. Co. v. A. T. & S. F. R. Co. et. al., 10 I. C. C. 460. Differentials, §4 (f), §8 (rc) (s); Reasonableness of Rates, §2 (pp); Through Routes and Joint Rates, §13 (3h).
Leisy & Co. v. Hardin, 3 I. C. R. 36. Interstate Commerce, §½ (i), §4 (c) (d) (e), §5 (y) (z) (aa) (bb); Intoxicating liquors, (j) (k) (l); State Rates and Regulations (mm) (3m).
Leloup v. Port of Mobile, 2 I. C. R. 134. Taxes (u) (v) (w); Telephone and Telegraph Companies, §3 (g) (h) (i) (j) (n).
Leonard v. Chicago & Alton R. Co., 2 I. C. R., 599; Absorption of Charges, §8 (a); Act to Regulate Commerce, I (e); Anti-Trust Laws and Monopolies (ae) (af); Interstate Commerce, §5 (u); Minimums, §7 (a); Per Car Rates (a) (b); Weights and Weighing, §2½ (a).
Leonard v. C. M. & St. P. Ry., 12 I. C. C. 492. Absorption of Charges, §8 (a); Switch Tracks and Switching, §3 (a) (bc), §9 (a); Terminal Facilities, §4 (b).
Leonard v. M. K. & T. Ry. Co. 12 I. C. R. 538. Reparation, §17a (g); Weights and Weighting, §7½ (b).
Leonard v. U. P. R. R., 1 I. C. C. 627. Cars and Car Supply, §31 (a); Procedure Before Commission, §10 (1) (j) (k).
Lewis & Company v. Harden, 3 I. C. R. 36. Interstate Commerce, §4 (c) (e), §5 (w) (x) (bb).
Lincoln Board of Trade v. Burlington & Mo. River Co., 2 I. C. R. 95. Discrimination, §4 (e); Evidence, §14 (3) (a), §14 (5) (b), §20 (b) (c), §35 (a), §58 (g); Through Routes and Joint Rates, §13 (i).
Lincoln Board of Trade v. M P. R. R. 2 I. C. C. 98. Differentials, §8 (b) (c) (d);

Discrimination, §3 (f); Equalization of Rates, §2 (b), §4 (2) (a); Evidence, §1½ (d) (e), §14 (3) (b), §63 (a); Long and Short Hauls, §9 (b).
Lincoln Board of Trade v. Union P. R. Co. (Com.) 2 I. C. R. 101. Procedure Before Commission, §10 (1) (nb).
Lincoln Creamery v. U. P. R. Co., 3 I. C. C. 794. Blanket Rates, §10½ (a); Evidence, §1 (m). §13 (1) (h); Reasonableness of Rates, §7½ (i), §40 (c).
Linehan Ry. Transfer Co. v. Pendergrass, 7 I. C. C. App. LXXVII. Taxes (7c).
Lippman & Co. v. I. C. R. Co., 2 I. C. C. 414. Local Rates and Combinations, (b) (c) (d); Reasonableness of Rates, §2 (n); Through Routes and Joint Rates, §13½ (f) (h), §14 (e).
List v. Pennsylvania (Pa. Sup. Ct.) 1 I. C. R. 784. State Rates and Regulations (n).
Listman Mill Co. v. Chicago, M. & St. P. R. Co., 8 I. C. C. 47. Classification, §3½ (i); Discrimination, §5½ (da); Facilities and Privileges, §21 (b); Reasonableness of Rates, §7½ (w).
Little Rock & Fort Smith R. Co. v. Hanniford, 1 I. C. R. 580. Bills of Lading, §7 (a); State Rates and Regulations (q) (r) (s) (t); Statutes (a).
Little Rock & Memphis R. Co. v. East Tennessee, V. & G. R. Co., 2 I. C. R. 545. Act to Regulate Commerce, II (r); Interchange of Traffic (c); Through Routes and Joint Rates, §1 (c), §20½ (b).
Little Rock & Memphis R. Co. v. East Tennessee, Virginia & Georgia R. Co., 4 I. C. R. 201. Passenger Fares and Facilities, §14 (f) (fa).
Little Rock & M. R. Co. v. East Tennessee, V. & G. R. Co., (C. C. W. D. Tenn), 4 I. C. R. 261. Courts, §6½ (p) (q); Through Routes and Joint Rates, §4 (p), §13 (kk).
Little Rock & Memphis R. Co. v. St. Louis, I. M. & S. R. Co. 2 I. C. R. 763. Courts, §1 (s); Through Routes and Joint Rates, §1 (d).
Little Rock & Memphis R. Co. v. St. Louis, I. M. & S. R. Co., 4 I. C. R. 537; Crimes, §3 (b); Forwarders (a); Freight Charges (aa); Interchange of Traffic (y); Terminal Facilities, §3 (h) (i) (j); Through Routes and Joint Rates, §1 (n), §23a (c).
Little Rock & M. R. Co. v. St. Louis, I. M. & S. R. Co., 41 Fed. Rep. 563. Through Routes and Joint Rates, §1 (n).
Little Rock M. R. Co. v. St. Louis & S. W. R. Co., 4 I. C. R. 854. Credit Account (e) (f); Crimes, §3 (c); Through Routes and Joint Rates, §4 (q).
Loud v. South Carolina R. Co., 4 I. C. C. 205. Evidence, §18 (1), §45 (d), §64 (a); Perishable Freight (c) Reasonableness of Rates, §27 (c), §30 (c), §32½ (aa) (b), §39 (a); Receivers (h); Special Contracts 5½ (b); Special Rates and Services (e).
Louisiana v. Davidson 8 I. C. C. App. LXXXIX. State Rates and Regulations (9y).
Louisville, New Orleans, Texas R. Co. v. State, 2 I. C. R. 615.. Passenger Fares and Facilities, §½ (c), §1 (e), §11 (o) (p).
Louisville, N. O. & T. R. Co. v. Mississippi (U. S. Sup. Ct.), 2 I. C. R. 801. Courts, §10 (c); Passenger Fares and Facilities, §11 (o) (p) (aa); State Rates and Regulations (3i) (3j).
Louisville & N. R. Co. v. Behlmer, 175 U. S. 648, 44 L. ed. 309, 20 Sup. Ct. Rep. 209. Long and Short Hauls, §4½ (i); §7 (3j).
Louisville & Nashville R. R. Co. v. Behlmer, 8 I. C. C. App. LIII. Courts, §10 (i).
Louisville & Nashville R. R. Co. v. Commonwealth of Kentucky, 7 I. C. C. App. L. Consolidation of Carriers (a).
Louisville & Nashville R. R. Co. v. Commonwealth of Kentucky, et al., 7 I. C. C. App. LVII. Consolidation of Carriers, (b).
Louisville & Nashville Ry Co. v. Commonwealth of Kentucky, 7 I. C. C. App. LXIX. Consolidation of Carriers (c).
Louisville & Nashville R. R. Co. v. Commonwealth of Ky., 8 I. C. C. App. LXXIII. Discrimination, §3 (3j); State Rates and Regulations (9s) (9t) (9u).
Louisville & Nashville R. R. Co., v. Commonwealth of Kentucky 8 I. C. C. App. LXXIV. State Rates and Regulations (9v).
Loup Creek Colliery Co. v. Virginia Ry. Co. 12 I. C. C. 471. Through Routes and Joint Rates, §1 (bba) (gg), §11 (2) (n) (o) (p) (q) (r) (s), §13 (4f) (4g) (4h).

Lowenstein v. Evans et al., 7 I. C. C. App. XLVIII. Anti-Trust Laws, (dd).
Lowry v. Chicago, B. & Q. R. Co., (C. C. D. Neb.), 4 I. C. R. 435. Courts, §6½ (u) (v) (w), §10 (f); Loss and Damage, §15 (a); Reparation, §23 (c).
Lumber v. G. N. Ry. Co., 21 I. C. C. 558. Procedure Before Commission, §10 (4) (g).
Lung v. Jackson, 8 I. C. C. App. XLV. Import Traffic, §1 (n).
Luxton v. North River Bridge Co., 7 I. C. C. App. XLV. Bridges and Tolls, §3 (v).
Lynchburg Bd. of Trade v. Old Dominion S. S. Co., 6 I. C. C. 632. Discrimination, §3 (nn); Long and Short Hauls, §7 (dd).
Lyng. v. Michigan (U. S. Sup. Ct.), 3 I. C. R. 143. Interstate Commerce, §4 (f) (g); Intoxicating liquors (l) (m) (ma); Taxes (3ja).

M

Macgrane Coxe v. State of N. Y. 7 I. C. C. App. XXVIII. State Rates and Regulatons (7s).
Machaughton v. McGirl 8 I. C. C. App. XXVIII. State Rates and Regulations (9f).
MacLoon v. B. & M. R. R., 9 I. C. C. 642. Evidence, §50 (c); Passenger Fares and Facilities, §2 (p) (q).
MacLoon v. Chicago & Northwestern R. Co., 3 I. C. R. 711; Credit Account (a); Demurrage, §8 (a); Interstate Commerce Commission, §14 (c); Reparation, §½ (c); Switch Tracks and Switching, §4 (a).
MacRae Terminal Co. v. Southern Ry. 12 I. C. C. 545. Switch Tracks and Switching, §7 (g).
Maine v. Grand Trunk R. Co. (U. S. Sup. Ct.), 3 I. C. R. 807. Taxes, (4l) (4m).
Major and Council of Tifton, Ga. v. Louisville & Nashville R. Co., 9 I. C. C. 160. Discrimination, §4 (bb).
Manchester & L. R. Co. v. Concord R. Co. (N. H.), 3 I. C. R. 319. Anti-Trust Laws, (cd) (e); Crimes, §28½a (f); Evidence, §10 (b); Procedure Before Commission, §20 (ab); Special Contracts, §2½ (g), §5½ (a), §6 (a) (b).
Mannheim Insurance Co. v. Erie & Western Transportation Co., 8 I. C. C. App. LXCVII. Released Rates, §4 (c).
Mannheim Insurance Co. v. Erie & Western Transportation Co., 8 I. C. C. App. LXVII. Released Rates, §7 (a).
Manufacturers Club of Terre Haute v. St. L. & N. R. R., 12 I. C. C. 157. Long and Short Hauls, §5 (4a); Procedure Before Commission, §10 (2) (w); Reasonableness of Rates, §28 (cc).
Manufacturers & Jobbers Union v. Minneapolis & St. L. R. Co., 1 I. C. R. 630. Procedure Before Commission, §10 (1) (l), §10 (2) (e) (f).
Manufacturers' & Jobbers' Union v. Minn. & St. L., 3 I. C. R. 115. Differentials, §4 (a); Discrimination, §3 (s), §4 (k); Equalization of Rates, §2 (e) (f); Evidence, §14 (l) (f) (g), §18 (j), §58 (j); Long and Short Hauls, §7 (i); Reasonableness of Rates, §28 (m).
Manchester & L. R. Co. v. Concord R. Co. (N. H.), 3 I. C. R. 319. Special Contracts, §2½ (g).
Marley & Son v. Norfolk & W. R. Co., 11 I. C. C. 616. Through Routes and Joint Rates §13 (3w), §15½ (a); Reasonableness of Rates, §27½ (a) (b); Reparation, §11 (a).
Martin v. C. B. & Q. R. R., 2 I. C. C. 32. Discrimination, §3 (3a), §4 (d), §9 (a) (b); Evidence, §2 (b); Procedure Before Commission, §1 (n); Through Routes and Joint Rates, §4 (a).
Martin v. Louisville & N. R. Co., 9 I. C. C. 581. Act to Regulate Commerce, II (oo) (pp); Differential, §8 (qa); Long and Short Hauls, §6⅞ (x), §7 (3m) (3n) (3o) (3p) (3q), §12 (2) (p) (q) (r).
Martin v. L. & N. R. R. 9 I. C. C. 587. Act to Regulate Commerce, II (qq).
Martin v. Southern P. Co. (Com.), 2 I. C. R. 1. Classification, §3½ (b), §20 (a), §23 (a), §24a (a); Local Rates and Combinations, (a); Long and Short Hauls, §5 (a) (b), §9 (a).
Mason v. C. R. I. & P. Ry. Co., 12 I. C. C. 61. Demurrage, §1 (b), §18 (a); Procedure Before Commission, §18 (e).
Mattingly v. Pennsylvania Co., 2 I. C. R. 806. Act to Regulate Commerce, II (t) (u) (v); Interchange of Traffic (d); Interstate Commerce, §3 (h), §3½ (f),

§5 (v); Routing and Misrouting, §6 (a); State Rates and Regulations, (3l); Through Routes and Joint Rates, 1 (e).
Maxelbaum & Co. v. Atlantic Coast Line R. R. Co., 12 I. C. C. 178. Interstate Commerce Commission, §1 (hh).
Mayers v. Penn. C. (Com.), 2 I. C. R. 544. Procedure Before Commission, §8 (e) (f).
Mayor and City Council of Wichita v. Atchison, T. & S. F. R. Co., 9 I. C. C. 534. Commodity Rates, §5 (c); Export Rates and Facilities, §6 (cc) (dd); Long and Short Hauls, §7 (3ia) (3j); Procedure Before Commission, §3 (d) (e).
Mayor and City Council of Wichita v. Atchison, T. & S. F. R. Co., 9 I. C. C. 507. Procedure Before Commission, §10 (1) (y) (z) (aa), §10 (2) (n).
Mayor and City Council of Wichita, Kans. v. Chicago, Rock Island & Pacific R. Co., 9 I. C. C. 569. Commodity Rates, §5 (d); Discrimination, §4 (dd) (ee), §8 (l) (s); Long and Short Hauls, §5 (3p) (3q), §7 (3l).
Mayor etc., of Wichita v. A. T. & S. F. Ry. Co., et al., 9 I. C. C. 558. Discrimination, §8 (l) (q) (r); Long and Short Hauls, §7 (3k); Procedure Before Commission, §13 (z).
Mayor and Council of Tifton, Ga. v. Louisville & Nashville R Co., 9 I. C. C. 160. Discrimination, §8 (l) (m); Evidence, §1½ (kk), §14 (l) (z), §44½ (e); Long and Short Hauls, §5 (3l) (3la) (3m) (3n); Reasonableness of Rates, §8 (l) (b), §30 (d).
Mayor, Etc., of Wichita, v. M. P. Ry. Co. et al., 10 I. C. C. 35. Classification §3½ (m) (n), §18 (f); Equalization of Rates, §1 (aa), §3 (g).
McCall v. People of State of Cal., 3 I. C. R. 181. Interstate Commerce, §½ (k), §3½ (g), §4 (k) (l) (m); Taxes, (3m) (3n).
McCann & Smitzer v. Eddy, et al. Receivers of Mo., Kan. Tex. Ry. Co., 7 I. C. C. App. XXI. Loss and Damage, §3 (f).
McClelen v. Southern R. Co., 6 I. C. C. 588. Long and Short Hauls, §4 (x), §5 (y) (z).
McGregor v. Cone, 8 I. C. C. App. XXXVIII. Taxes, (7k).
McGrew v. Missouri Pac. Ry. Co., 8 I. C. C. 630. Classification, §10 (p) (q); Commodities Clause, II (cc); Differentials, §8 (n) (na) (o); Equalization of Rates, §3 (f); Evidence, §1½ (jj) §45 (g); Reasonableness of Rates, §2 (nn); Reparation, §7½ (g) (h), §17a (d).
McLaughlin Bros. v. Adams Express Co., 12 I. C. C. 489. Express Companies, §10 (d) (e) (f); Livestock Shipments, (r).
McLeod, Receiver of Ohio Valley Ry. Co. v. Lander, 8 I. C. C. App. LX. Passenger Fares and Facilities, §11 (z).
McMillan & Co. v. W. Classification Committee, 3 I. C. R. 282. Agency, (b); Classification, §19 (c) (d) (e), §23 (b).
McMorran v. Grand Trunk R. Co., 2 I. C. R. 604. Classification, §17 (e) (d); Distance Rates §3 (aa); Evidence, §18 (e), §1 (hi); Reasonableness of Rates, §2 (o); Through Routes and Joint Rates, §13 (s) (t), §13½ (g).
McRae Grocery Co. v. Southern Ry., 12 I. C. C. 84. Procedure Before Commission, §10 (2) (r) (s).
McRae Terminal Ry. v. Southern Ry. Co., 12 I. C. C. 270. Divisions, §1 (aa); Lateral Roads, (a); State Rates and Regulations, (10f); Switch Tracks and Switching, §7 (e); Tap Lines, §2 (a).
McRae Terminal Ry. v. Southern Ry. Co., 12 I. C. C. 545. Through Routes and Joint Rates, §11 (2) (t).
Menasha Woodenware Co. v. A. T. & S. F. Ry., 11 I. C. C. 666. Discrimination, §5½ (m); Evidence, §30 (f) (g).
Mercantile Trust Co. v. Atlantic & P. R. Co., 63 Fed. Rep. 513. Telephone and Telegraph Companies, §3 (ii).
Merchants' Cotton Press & S. Co. v. Insurance Co. of North America, (U. S. Sup. Ct.), 4 I. C. R. 499. Actions at Law, (e) (f); Bills of Lading, §6 (a); Courts, §6½ (y) (z), §12 (a), §13 (a); Loss and Damage, §5½ (b).
Merchants' Union v. Northern Pacific R. Co., 4 I. C. R. 183. Act to Regulate Commerce, IV (a); Common Carrier, §6½ (a); Evidence, §14 (5) (g); Long and Short Hauls, *5 (l) (m) (n), §7 (r) (s); Through Routes and Joint Rates, §13 (ii).

Mershon & Co. v. Pottsville Lumber Co., 8 I. C. C. App. XXXII. Taxes, (7j).
Mershon, Schuette, Parker & Company v. C. R. of N. J., 10 I. C. C. 456. Basing Points and Lines, §3 (g); Differentials, §4 (e), §8 (rb); Discrimination, §4½ (n).
Merz Capsule Co. v. U. S. Capsule Co., 7 I. C. C. App. XXV. Anti-Trust Laws, (t).
Metz v. Hagerty, 7 I. C. C. App. IV. Taxes, (6m)
Mexican National Ry. Co. v. Savage, 7 I. C. C. App. LX. Interstate Commerce, §1½ (q).
Michigan Box Co. v. Flint & P. M. R. Co. et al., 6 I. C. C. 335. Classification, §17 (j) (k) (l); Procedure Before Commission, §10 (l) (oc), §10 (2) (k); Reparation, §21 (a).
Michigan Congress Water Co. v. C. & G. T. R., 2 I. C. C. 428. Agency, (a); Cars and Car Supply, §7 (p); Classification, §19 (b); Procedure Before Commission, §13 (m) (o) (p); Through Routes and Joint Rates, §23 (a); Safety Appliance Act, (a).
Mich. Telephone Co. v. City of Charlotte, 8 I. C. C. App. LXXVIII. Telephone and Telegraph Companies, §3 (oo).
Milk Producers' Protective Asso. v. Delaware, L. & W. R. Co., 7 I. C. C. 92. Association, (c) (d); Blanket Rates, §13 (g) (h); Classification, §11½ (d); Common Carrier, §8 (c) (d); Discrimination, §4½ (i); Evidence, §1½ (aa), §17 (b); Interstate Commerce, §2 (i); Long and Short Hauls, §5 (gg), §6¾ (b); Passenger Fares and Facilities, §12 (n); Procedure Before Commission, §10 (l) (q); Per Can Rates, (a) (b)
Miller Bros. v. A. T. & S. F. Ry. Co., 12 I. C. C. 157. Procedure Before Commission, §10 (2) (v) (x) (y).
Mills v. Lehigh Valley R. Co., 35 Sup. Ct. 888, 889, 892; 238 U. S. 473, 59 L. Ed. 628. Attorney Fees (c) (d).
Milwaukee Chamber of Commerce v. Chicago, M. & St. P. R. Co., 7 I. C. C. 481. Classification, §3½ (h); Reasonableness of Rates, §7½ (v); Reduced Rates, §1 (d).
Milwaukee Chamber of Commerce v. Flint & Pere Marquette R. Co., 2. I. C. R. 393. Divisions, §3 (a); Reasonableness of Rates, §7½ (ha), §28, (g) (k); Tariffs. §4 (b); Through Routes and Joint Rates, §2 (d) (e), §3 (a) (b), §4 (j), §13 (m) (n) (o) (p), §13½ (e), §22 (a) (b).
Miner v. New York, N. H. & H. R. Co., 11 I. C. C. 422. Classification, §6 (m); Facilities and Privileges, §10 (f) (g), §21 (h) (i); Interstate Commerce Commission, §15 (o); Switch Tracks and Switching, §4 (d).
Minneapolis Chamber of Commerce v. Great Northern R. Co., (Com.), 4 I. C. R. 230. Evidence, §2 (m), §20 (l).
Minneapolis E. R. Co. v. Minnesota (U. S. Sup. Ct.), 3 I. C. R. 224. State Rates and Regulations, (3x); Special Contracts, §1 (b).
Minneapolis St. Paul & Sault Ste. Marie Ry. Co. v. Milner et al., 7 I. C. C. App. LIII. State Rates and Regulations, (8d).
Minnesota v. Barber, (U. S. Sup. Ct.), 3 I. C. R. 185. Interstate Commerce, §4 (n); State Rates and Regulations, (3o).
Minn. v. Gladson, 7 I. C. C. App. XXI. State Rates and Regulations, (7pa).
Minn. v. Northern Pacific Express Co., 7 I. C. C. App. XXXI. State Rates and Regulations, (7uv).
Missouri & Illinois Railroad Tie & Lumber Co. v. C. G. & S. W. R. 1 I. C. C. 607. Cars and Car Supply, §½ (a) (b); Interstate Commerce, §3 (e) (ea), §5 (p).
Missouri & K. Shippers' Asso. v. M. K. & T. R. Co., 12 I. C. C. 483. Interstate Commerce Commission, §1 (kk) (ll); Long and Short Hauls, §12 (2) (s), §13 (e) (f); Procedure Before Commission, §1 (jj); Reparation, §7½ (la), §10½a (a) (b).
Mo., Kans. & Tex. R. R. Co. v. Withers, 7 I. C. C. App. LXI. Loss and Damage, §13½ (d).
Missouri P. R. Co. v. Sherwood (Tex.), 4 I. C. R. 240. Loss and Damage, §3 (a), §8½ (a), §10 (2) (ab) (c) (d), §13¾ (a) (b) (c) (d); Water Carriers, §1 (f).
Missouri Pacific R. Co. v. Smith, 5 I. C. R. 348. Actions at Law, (w) (x) (y); Branch Lines, §3 (ab); Evidence, §57½ (f); Overcharges, (i) (j) (k) (l); Passenger Fares and Facilities, §½ (e); State Rates and Regulations, (7d) (7e) (7f).

Missouri Pacific R. Co. v. Texas & P. R. Co., 4 I. C. R. 428. Pooling of Traffic (c) (d); Special Contracts, §2½ (o); Special Rates and Services, (f).
Missouri P. R. Co. v. Texas & P. R. Co. (C. C. E. D. La.), 4 I. C. R. 434. Cars and Car Supply, §9 (d); Long and Short Hauls, §7 (x); Receivers, (k)
Miss., Kans., & Tex., R. R. Co. v. Bowles, 7 I. C. C. App. LXII. Crimes, §16½ (c); Tariffs, §3 (l) (g), §7 (j).
Mo., Kans., & Tex., R. R. Co. v. Fookes, 7 I. C. C. App. LXI. Passenger Fares and Facilities, §½ (g).
Miss., Kans., & Tex., Ry. Co. v. Haber, 8 I. C. C. App. VIII. State Rates and Regulations, (8w) (8x) (8y).
Miss., Kansas & Tex., Ry. Co. v. Haber et al., 7 I. C. C. App. LXXIII. State Rates and Regulations, (8i).
Miss., Kans., & Texas Ry. Co. v. McCann & Smitzer, 8 I. C. C. App. LXXIX. Loss and Damage, §3 (k).
Mo., Kans., & Tex. Ry. Co. v. P. B. Stoner, 7 I. C. C. App. XV. Freight Charges, (ba).
Mitchell v. A., T. & S. F. Ry., 12 I. C. C. 325. Blanket Rates, §8 (e), §10½ (cd), §13 (o); Reasonableness of Rates, §2 (3g).
Mobile & O. R. Co., In Re Rates and Practices, 9 I. C. C. 373. Facilities and Privileges, §17 (b).
Mobile & O. R. Co. v. Dismukes (Ala.), 4 I. C. R. 200. Interstate Commerce, §4 (bb); Special Contracts, §2 (m), §2½ (m).
Mt. Vernon Milling Co. v. Chicago, M. & St. P. R. Co., 7 I. C. C. 194. Sidings and Spur Tracks, (a) (b).
Montel v. Baltimore & Ohio R. Co., 7 I. C. C. 412. Interstate Commerce Commission, §8½ (dd); Long and Short Hauls, §6⅞ (p); Procedure Before Commission, §10 (l) (u) (v); Reduced Rates, §1 (b) (c).
Moore v. Bahr, 8 I. C. C. App. XXV. Intoxicating liquors, (zz).
Moran & Son v. Missouri P. R. Co., et al., 11 I. C. C. 598. Facilities and Privileges, §21 (w); Through Routes and Joint Rates, §13 (3t) (3u) (3v).
Morgan v. M., K. & T. Ry. Co., 12 I. C. C. 525. Agency, (d); Crimes, §7 (e); Forwarders, (c); Evidence, §13 (l) (kk); Long and Short Hauls, §7 (4t); Reconsignment, §3½ (a) (b); Through Routes and Joint Rates, §15 (m) (n), §22 (aa) (bb) (cc) (dd) (ee) (eea) (ff).
Morrell v. U. P. R. Co., 4 I. C. C. 469. Branch Lines, §1 (f); Evidence, §14 (1) (l), §57½ (c); Reasonableness of Rates, §7½ (k) (lm) (n).
Morrell v. Union Pacific Ry. Co., et al., 6 I. C. C. 121. Evidence, §13 (l) (j), §47 (b); Reasonableness of Rates, §7½ (q) (r).
Morse Produce Co. v. C. M. & St. P. Ry. Co. et al, 12 I. C. C. 485. Long and Short Hauls, §6 (c), §6⅞ (jj); Reasonableness of Rates, §7½ (kk).
Munn v. Illinois, 94 U. S. 133 (24:77). State Rates and Regulations (6a).
Murphy, Wasey & Co. v. Wabash R. Co., 3 I. C. C. 725. Classification, §3 (t), §7 (a) (b); Evidence, §65 (a) (b); Interstate Commerce Commission, §8½ (h); Reasonableness of Rates, §1 (a).
Murray, 3 I. C. R. 574. Taxes, (3z).
Murray v. Chicago & N. W. R. Co., 4 I. C. R. 806. Claims, §1 (c); Courts, §1 (kk), §6½ (gg), §11 (d); Interstate Commerce, §5 (kk); Loss and Damage, §10 (1) (a); Overcharges, (f).
Muskogee Commercial Club v. M. K. & T. Ry. Co., 12 I. C. C. 312. Compress Companies and Charges I (a), II (e) (f) (g), III (a) (b) (c) (d) (f); Crimes, §2 (q); Evidence, §14 (l) (gg).
Myer v. Cleveland, Cincinnati & St. L. R. Co., 9 I. C. C. 78. Classification, §2 (b) (c), §3 (bb) (cc) (dd), §6 (h) (i), §19 (g), §22 (bb) (cc).
Meyers v. Pennsylvania, 2 I. C. C. 403. Advanced Rates, §19 (a) (b), Classification §3 (f), §17 (c), §18 (a), §22 (h) (j) (k); Reasonableness of Rates, §16½ (b) §25 (a).
Myers v. Pennsylvania Co., 2 I. C. C. 544. Classification, §3 (g).

N

Nashville, C. & St. L. R. Co. v. Alabama (U. S. Sup. Ct.), 2 I. C. R. 238. Crimes §26 (a); State Rates and Regulations, (qq); Statutes, (cb) (cc); Transportation, §9 (a) (b).

National Hay Association v. L. S. & M. S. Ry., 9 I. C. C. 264. Advanced Rates, §7 (7) (a), §9 (a) (b), §11½ (a), §15 (a), §17 (g), §19 (e); Classification, §3 (ee) (ff) (gg) (hh), §6 (k), §22 (dd) (ee) (ff) (gg) (hh); Evidence, §63 (e): Minimums, §5 (b); Reasonableness of Rates, §16 (e), §25 (g).

National Machinery & Wrecking Co. v. P., C., C. & St. L. Ry., 11 I. C. C. 581. Classification, §10 (aa), §11 (o); Reduced Rates, §5 (a) (aa).

National Petroleum Association v. Penn. R. R. Co., 12 I. C. C. 151. Procedure Before Commission, §10 (2) (t) (u); Reduced Rates, §5½ (e).

National Petroleum Association v. Pennsylvania, R. R., 12 I. C. C. 153. Long and Short Hauls, §5 (3y); Through Routes and Joint Rates, §13 (3z).

National Wholesale Lumber Dealers' Asso. v. Norfolk & Western R. Co., 9 I. C. C. 87. Differentials, §8 (q); Through Routes and Joint Rates, §13 (3e) (3f).

New Jersey Fruit Exchange v. Central R. Co. (Com.), 2 I. C. R. 84. Interstate Commerce Commission, §1 (ga); State Rates and Regulations, (oo) (pp).

Newland v. Northern P. R. Co., (Com.), 4 I. C. R., 474. Blanket Rates, §2 (f); Branch Lines, §2 (a), §4 (c); Evidence, §10 (c), §50 (a), §51 (b), §57½ (d), §66 (g) (h); Leases, (aa); Routing and Misrouting, §4 (cd) (e).

Newland v. Northern P. R. Co., 6 I. C. C. 131. Blanket Rates, §2 (g); Branch Lines, §4 (d); Discrimination, §3 (jj); Divisions, §9 (a); Evidence, §1½ (v), §2 (p), §51 (c), §62 (c); Lease, (b) (c); Rail and Water Rates, (b); Routing and Misrouting, §4 (f), §5 (e); Through Routes and Joint Rates, §13 (ll).

Newland Hauschild & Reeder v. N. P. R. Co., 4 I. C. C. 474. Blanket Rates, §3 (a), §7 (b); Evidence, §45 (c); Routing and Misrouting, §4 (e), §5 (b) (c) (d).

Newman v. N. Y. Central & H. R. Co. et al., 11 I. C. C. 517. Classification, §5 (ff) (gg), §22 (zz).

New Orleans & M. Packet Co. v. James (U. S. C. C. La.), 1 I. C. R. 599. State Rates and Regulations, (u) (v).

New Orleans Cotton Exchange v. Cincinnati, N. O. & T. P. R. Co. (Com.), 2 I. C. R. 289. Evidence, §1 (g), §1½ (f); Export Rates and Facilities, §6 (d); Evidence, §10 (a), §20 (da), §58 (h); Interstate Commerce, §2 (b) (c); Procedure Before Commission, §13 (m) (n); Reasonableness of Rates, §2 (k) (l), §7¼ (a), §29 (a).

New Orleans Cotton Exchange v. I. C. R. R., 2 I. C. C. 777. Cars and Car Supply, §7 (q), §38 (a); Classification, §16 (j); Compress Companies and Charges, II (a); Evidence, §13 (l) (g), §13 (5) (a), §14 (3) (f), §14 (5) (c) (d); Reasonableness of Rates, §2 (oa); Through Routes and Joint Rates, §4 (k), §13 (x) (y), §13½ (i) (j).

New Orleans Cotton Exchange v. I. C. R. R. Co., 3 I. C. C. 534. Through Routes and Joint Rates, §13½ (j).

New Orleans Cotton Exchange v. L. M. O. & T. R. R. Co., 3 I. C. C. 523. Procedure Before Commission, §10 (2) (i) (a); Tariffs, §6 (bc).

New Orleans Live Stock Exchange v. Texas & P. R. Co., 10 I. C. C. 327. Commodity Rates, §5 (e); Evidence, §52 (ca); Live Stock Shipments, (f); Per Car Rates (ea).

New York & N. R. Co. v. New York & N. E. R. Co. (Com.), 3 I. C. R. 542. Interchange of Traffic, (j) (k) (l); Terminal Facilities, §2 (d); Through Routes and Joint Rates, §24 (a) (b).

New York & N. R. Co. v. New York & N. E. R. Co., 4 I. C. C. 116. Interchange of Traffic, (n) (o).

N. Y. Board of Trade and Transportation v. Pa. R. Co., 3 I. C. R., 417. Commodity Rates, §1 (a); Discriminations, §1a (b), §4½ (fa); Import Traffic, §1 (a) (b) (c) (d) (e) (f) (g) (h); Procedure Before Commission, §10 (2) (h); Through Routes and Joint Rates, §17 (e); Special Contracts, §2½ (l).

New York Exchange v. B. & O. R. Co., 7 I. C. C. 612. Discriminations, §1 (t).

N. Y., Lake Erie & Western Ry. Co., v. Commonwealth of Pa., 7 I. C. C. App. I. Taxes, (6k).

N. Y. N. H. & Hartford R. R. Co. v. People of the St. of N. Y., 7 I. C. C. App. LXXXVIII. Passanger Fares and Facilities, §½ (i).

New York, N. H. & H. R. Co. v. New York, 165 U. S. 628, 41 L. ed. 853. Passenger Fares and Facilities, §11 (aa).

New York, N. H. & H. R. Co. v. Platt, 7 I. C. C. 323. Tariffs, §14 (b); Through Routes and Joint Rates, §1 (q), §3 (c) (d) (e) (f) (g), §4 (s) (t), §5 (a), §11 (2) (a), §20½ (c) (d) (e), §22 (r) (s), §24 (c).
New York Produce Exchange v. Baltimore & O. R. Co., 7 I. C. C. 612. Differentials, §½ (a) (b), §4 (d), §8 (j) (k) (l); Discrimination, §3 (xx) (yy), §5 (d), §8 (3) (b) (c); Equalization of Rates, §3 (e); Evidence, §14 (l) (o), §14 (3) (i), §20 (z) (aa), §40½ (b).
New York Produce Exchange v. N. Y. C. & H. R. Co., 2 I. C. C. 553. Export Rates and Facilities, §4 (b) (c), §5 (b) (c) (d).
New York Produce Exch. v. New York C. & H. R. R. Co. (Com.) 2 I. C. R. 553. Export Rates and Facilities, §6 (f) (g) (h) (i); Tariffs, §3 (l) (d), §3 (3) (a).
New York Team Owners Asso. v. Southern Pacific Co., 12 I. C. C. 204. Drayage Charges, (g); Facilities and Privileges, §10 (1), §21 (l) (m).
Nield v. C. St. P. M. & O. Ry. Co., 12 I. C. C. 203. Sidings and Spur Tracks, (f); Switch Tracks and Switching, §7 (d).
Nobles Bros. Gro. Co. et al. v. F. W. & D. C. Ry. et al., 12 I. C. C. 242. Blanket Rates, §6 (a) (b), §8 (b) (c) (d), §15 (b); Class Rates, §2 (i); Evidence, §1 (q); Reasonableness of Rates, §28 (dd)
Norfolk & W. R. Co. v. Commonwealth of Pa., 3 I. C. R. 178. Courts, §1 (t) (u); Interstate Commerce, §½ (j), §4 (i) (j); State Rates and Regulations, (3na); Statutes, (g) (h); Taxes, (3k) (3l).
Norfolk & Western Ry. Co. v. Commonwealth of Virginia, 7 I. C. C. App. XLII. State Rates and Regulations, (7z) (8a).
North Carolina v. Gorham, 7 I. C. C. App. XXVII. Taxes, (6w).
N. Carolina v. Southern Ry. Co., 7 I. C. C. App. LXV. State Rates and Regulations, (8g).
N. Carolina v. Southern Ry. Co., 7 I. C. C. App. LXXXII. State Rates and Regulations, (8n).
Northern Iowa Grain & Stock Shippers Asso. v. Chicago & N. W. R. Co., (Com.), 2 I. C. R. 431. Evidence, 43 (a).
Northern Pacific R. Co. v. Clark, 4 I. C. R. 641. Taxes, (5c) (5d).
Northern Pacific Ry. Co. v. Keyes, 8 I. C .C. App. LVII. Interstate Commerce, §4 (rr) (ss).
Northern P. R. Co. v. Clark (U. S. Sup. Ct.), 4 I. C. R. 641. Courts, §14 (s).
Northern P. R. Co. v. Raymond, (Dak.), 2 I. C. R. 321. Statutes, (d); Taxes, (xx) (yy) (zz).
Northwestern Iowa Grain & Stock Shippers Asso. v. C. & N. W. Ry. Co., 2 I. C. C. 431. Branch Lines, §1 (b), §3 (a), §4 (a) (b); Discrimination, §3 (j); Distance Rates, §1 (aa); Evidence, §1 (g), §20 (e), §29 (a), §57½ (b); Long and Short Hauls, §5 (e) (f); Through Routes and Joint Rates, §22 (d).

O

Ogden City v. Crossman, 8 I. C. C. App. XXXI. Telephone and Telegraph Companies, §3 (ll).
Ohio & Miss. Ry. Co., 8 I. C. C. App. XXIII. Loss and Damage, §3 (j).
Ohio & Miss. Ry. Co. v. Taber, 7 I. C. C. App. XXXIII Loss and Damage, §11 (a).
Ohsman & Effron v. C. R. I. & P. Ry., 12 I. C. C. 63. Procedure Before Commission, §10 (2) (p) (q).
Oklahoma & Arkansas Coal Traffic Bureau v. Midland Valley R. R. Co., 12 I. C. C. 516. Cars and Car Supply, §7 (rr); Through Routes and Joint Rates, §25 (f).
Omaha Cooperage Co. v. N. C. & St. L. Ry., 12 I. C. C. 251. Proportional Rates, II (d); Reasonableness of Rates, §7½ (ff); Through Routes and Joint Rates, §13 (4c), §14 (q).
Omaha Grain Exchange v. Union Pacific R. R., 12 I. C. C. 66. Bridges and Tolls, §1 (a); Facilities and Privileges, §15½ (b) (c).
Order as to Publication of Joint Tariff, 1 I. C. R. 598. Through Routes and Joint Rates, §17 (b) (c).
Oregon Short Line R. Co. v. Northern Pacific R. Co., 2 I. C. C. 639. Procedure Before Commission, §1 (s) (t), §2 (jb).

Ore. Short Line & V. N. R. Co. v. N. P. Co., 3 I. C. R. 205. Bills of Lading, §2½ (a); Interchange of Traffic, (e) (f) (g) (h) (i).
Oregon Short Line & U. N. R. Co., v. N. P. R. R. Co., 4 I. C. R. 249. Cars and Car Supply, §11¾ (g); Freight Charges, (a); Interchange of Traffic, (p) (q) (r) (s) (t) (z) (aa) (bb); Passenger Fares and Facilities, §14 (e).
Oregon Short Line & U. N. R. Co. v. Northern Pacific R. Co., 4 I. C. R. 450. Interchange of Traffic, (v).
Oregon Short Line & U. N. R. Co. v. Northern Pacific R. Co., 4 I. C. R. 718. Cars and Car Supply, §29 (a); Discrimination, §3 (gg); Passenger Fares and Facilities, §12 (ma).
Osborne v. State (Fla.), 4 I. C. R. 731. Express Companies, §1 (f); State Rates and Regulations, (6n); Taxes, (5v) (5w) (5x) (5y).
Osborne v. State of Florida, 7 I. C. C. App. XCV. Taxes, (7g).
Ottinger v. Southern Pac. R. Co., 1 I. C. R. 607. Act to Regulate Commerce, II (h); Passenger Fares and Facilities, §14¾ (aa), §19 (b) (c); Procedure Before Commission, §13 (d), §20 (a).
Ouachita etc., Packet Co. v. Aiken (U. S. Sup. Ct.), 1 I. C. R. 379. State Rates and Regulation, (l); Wharfage, (a) (b) (c) (d).

P

P. C. C. & St. L. R. Co. v. B. & O. R. Co., 2 I. C. C. 729. Passenger Fares and Facilities, §2 (i), §6 (q), §18 (de).
Pacific Coast Jobbers & Manufacturers Asso. v. Southern P. R. Co., 12 I. C. C. 319. Tariffs, §14 (bb) (bbc) (c), §18 (c); Tolls, (a).
Pacific Exp. Co. v. Seibert (U. S. Sup. Ct.), 3 I. C. R. 810. Taxes, (4o) (4p) (4q) (4r).
Pacific Purchasing Co. v. C. & N. W. Ry. Co., 12 I. C. C. 549. Cars and Car Supply, §8 (b) (ba); Minimum, §1 (a), §7 (p), §8 (c) (d); Through Routes and Joint Rates, §7 (d) (e), §17 (r) (s) (t).
Pain v. Lehigh Valley R. Co., 7 I. C. C. 218. Classification, §10 (o); Evidence, §63 (d); Export Rates and Facilities, §6 (j) (k).
Page v. D., L. & W. R. Co., 4 I. C. C. 525. Classification, §17 (h), §22 (u); Procedure Before Commission, §1 (bb), §20 (b); Special Contract, §6 (e).
Page v. Delaware, L. & W. R. Co., 6 I. C. C. 148. Classification, §17 (i); Interstate Commerce Commission, §8½ (t).
Page v. Delaware, L. & W. R. Co., 6 I. C. C. 548. Act to Regulate Commerce, II (ii); Classification, §3 (z), §6 (g), §22 (y), §26 (c) (d); Interstate Commerce Commission, §1 (z) (za) (aa), §8½ (v); Procedure Before Commission, §10 (a), §13 (w) (x); Reasonableness of Rates, §28 (s) (t).
Palmer's Dock Hay & Produce Board of Trade v. Pennsylvania R. R., 9 I. C. C. 61. Lighterage, §3 (a); Facilities and Privileges, §10 (e); Terminal Facilities, §2 (e) (f), 3 (l).
Pankey v. R. & D. R. Co. 3 I. C. C. 33. Routing and Misrouting, §1½ (a), §4 (a) (b), §5 (g).
Pankey v. Richmond & Danville R. Co., 3 I. C. R. 3. Routing and Misrouting, §7 (b) (c).
Paper Mills Co. v. Pennsylvania Railroad Co. et al., 12 I. C. C. 438. Classification, §5 (kk), §7 (m) (n); Special Rates and Services, (j).
Parks v. C. & M. V. R. R. Co., 10 I. C. C. 47. Cars and Car Supply, §7 (ff) (gg); Switch Tracks and Switching, §4 (b) (c), §4½ (a).
Parks v. Jacob Dold Packing Co. (Buff. Super. Ct.), 4 I. C. R. 486. Evidence, §67 (g); Special Contracts, §2 (o) (p), §6 (d).
Parsons v. Chicago & N. W. R. Co., 5 I. C. R. 95. Discrimination, §13½ (d), §17 (a), §18 (a); Local Rates and Combinations, (g); Tariffs, §7 (f) (g); Through Routes and Joint Rates, §17 (i).
Parsons v. Chicago & Northwestern Ry. Co., 7 I. C. C. App. XCI. Discrimination, §16 (d); Procedure Before Commission, §2 (p); Through Routes and Joint Rates, §16 (b).
Patapso Quano Co. v. Board of Agriculture of North Carolina, 8 I. C. C. App. XIII. State Rates and Regulations, (9c).
Patter Manufacturing Co. v. Chicago & G. T. R. Co., 4 I. C. R. 223. Evidence, §2 (jk).

Paxton Tie Co., v. Detroit S. R. Co., 10 I. C. C. 422. Cars and Car Supply, §7 (kk) (ll) (mm), §32½ (d); Tariffs, §6 (k).
Payne v. Atchison, Topeka & Santa Fe Railway Co., 12 I. C. C. 190. Procedure Before Commission, §10 (2) (bb); Weights and Weighing, §3 (b).
Peck v. East Tennessee, V. & G. R. Co., 1 I. C. R. 775. Courts, §1 (a) (b).
Peirce v. Van Dusen, 7 I. C. C. App. XCVIII. Loss and Damage, §3 (g).
Pembina Consol Silver Min. & Mill Co. v. Pennsylvania, (U. S. Sup. Ct.), 2 I. C. R. 24. Interstate Commerce, §3½ (a) (b).
Pennsylvania Co. v. Louisville, New Albany & Chicago R. Co., 2 I. C. R. 603. Procedure Before Commission, §1 (r) (ra), §8 (fa), §10 (l) (nb), §10 (2) (ga), §10 (4) (f).
Pennsylvania Millers State Asso. v. P. & R. R. Co., 8 I. C. C. 531. Crimes, §2 (g); Demurrage, §1 (a) (aa), §2 (a) (b), §10½ (a), §15 (a) (b); Facilities and Privileges, §10 (b) (d) (da); Interstate Commerce, §3 (k), §5 (uu); Interstate Commerce Commission, §8½ (kk); Long and Short Hauls, §5 (3f); Storage, §3 (d); Tariffs, §6 (h); Through Routes and Joint Rates, §3½ (i) (j); Transportation, §10 (a).
Pensacola & Atlantic R. Co. v. State of Florida, 2 I. C. R. 522. Courts, §1 (mn) (o) (p); State Rates and Regulation, (3d) (3e) (3f).
Pensacola Telegraph Co. v. Western Union Teleg. Co., 96 U. S. 1, 24 L. ed. 708. Interstate Commerce, §½ (c); Telephone and Telegraph Companies, §3 (ii).
People, ex rel. Moses Bijur v. Barker, 8 I. C. C. App. IV. Taxes, (7h).
People, Platt v. Wemple, (N. Y.), 2 I. C. R. 735. Taxes, (3f) (3g) (3h).
People, Parke, v. Roberts (N. Y. Sup. Ct.), 5 I. C. R. 462. Statutes, (yy); Taxes, (6i) (6j).
People of the St. of Ill., v. Ullman, 8 I. C. C. App. LIX. Passenger Fares and Facilities, §½ (j).
People of the St. of Michigan v. O. Neil, 7 I. C. C. App. LXXIV. State Rates and Regulations, (8k).
People of the St. of N. Y. v. Hawkins, 7 I. C. C. App. CIII. Interstate Commerce, §4 (pp); State Rates and Regulations, (8r).
People of the St. of New York v. Hawkins, 8 I. C. C. App. XX. State Rates and Regulations, (9d).
People of the State of N. Y. ex rel. N. England Loan & Trust Co. v. Roberts, 8 I. C. C. App. XXXVIII. Taxes, (7l).
People v. H. R. Comm. R. Corp. (N. Y. 1920) 126 N. E. 801. Bridges and Tolls, §3 (aa).
Perry v. Florida C. & P. R. Co. (Com.), 3 I. C. R. 740. Basing Points and Lines, §2 (aa); Divisions, §7 (d); Evidence, §1 (l); Interstate Commerce Commission, §8½ (i); Long and Short Hauls, §5 (j), §10 (h); Reasonableness of Rates, §1 (b), §8 (4) (a); Reparation, §3 (a), §7½ (b), §18 (a), Through Routes and Joint Rates, §13 (gg) (hh), §14 (g), §17 (h).
Petition of Cincinnati, Hamilton & Dayton R. Co., 6 I. C. C. 323. Interstate Commerce Commission, §1 (y); Long and Short Hauls, §4 (t) (u) (v) (w).
Phelps v. Texas & P. R. Co. (Com.), 4 I. C. R. 44. Crimes, §3 (a).
Phelps & Co. v. T. & P. R. Co., 4 I. C. C. 363. Credit Account, (b) (c) (d); Crimes, §5½ (a); Discrimination, §1 (i); Facilities and Privileges, §21 (a); Freight Agency, (ab); Overcharges, (ca) (d); Tariffs, §6 (d); Through Routes and Joint Rates, §2 (r); Weights and Weighing, §2½ (d), §3 (a), §5 (b).
Phelps v. Texas & P. R. Co., 6 I. C. C. 36. Crimes, §3 (d); Discrimination, §1 (o), §4 (s); Evidence, §15½ (c); Freight Charges, (b); Overcharges, (n) (o); Tariffs, §7 (h); Weights and Weighing, §2½ (e), §5 (c).
Philadelphia & Southern Mail S. S. Co. v. Penn., 1 I. C. R. 308. Act to Regulate Commerce, II (d); Interstate Commerce, §5 (c) (d) (e); Interstate Commerce Commission, §8½ (a); State Rates and Regulations, (k); Taxes, (e) (p).
Philadelphia Etc. Steamship Co. v. Pennsylvania (U. S. Sup. Ct.), 1 I. C. R. 311; Taxes, (f).
Philadelphia v. Western U. Teleg. Co. (C. C. E. D. Pa.) 2 I. C. R. 728. Taxes, (3e).
Phillips, Bailey & Co. v. Louisville & N. R. Co., 8 I. C. C. 93. Discrimination, §3 (3b) (3c), §4 (w); Evidence, §1 (o), §1½ (ee), §14 (l) (r); Interstate Commerce Commission, §8½ (ii); Long and Short Hauls, §2 (d), §5 (pp) (qq) (rr) (ss), §6⅞ (q) (r) (s), §7 (oo).

Phillips Co. v. G. T. W. Ry., 11 I. C. C. 659. Discrimination, §3 (3p), §5½ (l); Evidence, §30 (d) (e); Procedure Before Commission, §10 (l) (ee).
Pidcock v. Harrington (C. C. S. D. N. Y.), 5 I. C. R. 161. Actions at Law, (l); Courts, §14 (mm).
Pine Island Farmers Elevator Co. v. C. G. W. Ry., 11 I. C. C. 687. Long and Short Hauls, §7 (4i).
Pitts and Sons v. A. & S. F. Ry., 10 I. C. C. 691. Overcharges, (t); Procedure Before Commission, §10 (l) (cc); Proportional Rates, II (a) (aa); Reparation, §7½ (k).
Pitts and Sons v. St. L. & S. F. R. Co., 10 I. C. C. 684. Overcharges, (s); Reasonableness of Rates, §2 (ss); Reparation, §7½ (j); Tariffs, §7 (n), §12 (a).
Pittsburg, C. & St. L. R. Co. v. Baltimore & O. R. Co. (Com.), 2 I. C. R. 729. Passenger Fares and Facilities, §7 (b).
Pittsburg & S. Coal Co. v. Bates, (U. S. Sup. Ct.), 5 I. C. R., 30. Taxes, (6c), (6d) (6e).
Pittsburg & S. Coal Co. v. Louisiana, Charity Hospital, (U. S. Sup.), 5 I. C. R. 18; Navigable Waters, (d); State Rates and Regulations, (6t) (6u) (6v) (6w); Taxes, (6b).
Planters' Compress Co. v. C., C., & St. L. R. Co., 11 I. C. C. 382. Any-Quantity Rates, I (a) (b); Classification, §3 (mm), §5 (dd) (ee), §22 (ww) (xx); Evidence, §63 (j).
Planters' Compress Co. v. Missouri, K. & T. R. Co., 11 I. C. C. 606. Any-Quantity Rates, I (d); Classification, §22 (3b).
Plessy v. Ferguson, 163 U. S. 537, 41 L. ed. 256. Passenger Fares and Facilities, §11 (aa).
Plumb v. Christie, 8 I. C. C. App. LXXI. Intoxicating liquors, (3j).
Ponca Milling Co. v. M. K. & T. R. Co., 12 I. C. C. 26. Interstate Commerce Commission, §10½ (b); Junction Point Rates, (a); Reparation, §8½ (d)
Pond-Decker Lumber Co. v. Spencer, 8 I. C. C. App. LXV. Special Contracts, §6 (i); Tariffs, §3 (l) (i).
Poor Grain Co. v. C. B. & Q. Ry. Co., 12 I. C. C. 418. Commodity Rates, §5 (f) (g); Evidence, §62 (e); Reasonableness of Rates, §2 (3h), §7½ (hh), §22 (b); Reparation, §8 (f); Routing and Misrouting, §5 (g) (h) (i), §7 (h) §9 (b) Tariffs, §1 (d), §3 (l) (m) (n) (o), §3 (2) (g) (h) (i) (ia) (j) (k), §3 (3) (d) (e) (f), §7 (pa); Routing and Misrouting, §9 (b).
Poor Grain Co. v. C. B. & Q. R. Co., 12 I. C. C. 469. Evidence, §1 (s); Tariffs §3 (1) (oa) (p) (q), *3 (2) (l) (m), §3 (3) (g); Through Routes and Joint Rates, §13 (4e).
Postal Telegraph Cable Co. v. Adams, 5 I. C. R. 1. State Rates and Regulations, (6s); Taxes, (5z) (6a).
Postal Telegraph Cable Co. v. Adams, 4 I. C. R. 416. Taxes, (5b); Telephone and Telegraph Companies, §3 (q).
Postal Teleg. Cable Co. v. Charleston, (U. S. Sup. Ct.), 4 I. C. R. 637. Telephone and Telegraph Companies, §3 (r) (s); Taxes, (5f).
Potter Mfg. Co. v. Chicago & G. T. R. Co. (Com.), 4 I. C. R. 223. Classification, §11 (h) (i) (p), §22 (p); Discrimination, §1a (g); Evidence, §27 (b), §61 (b); Weights and Weighing, §2½ (c), §9 (a).
Poughkeepsie Iron Co. v. N. Y. C. & H. R. Co., 3 I. C. R. 248. Advanced Rates, §1 (2) (c); Blanket Rates, §1 (a); Evidence, §45 (b), §61 (aa); Procedure Before Commission, §13 (q); Reasonableness of Rates, §28 (o); Through Routes and Joint Rates, §13½ (j) (k) (l).
Pratt Lumber Co. v. Chicago, I. & L. R. Co., 10 I. C. C. 29. Differentials, §8 (r) (ra); Discrimination, §8 (I) (ta); Long and Short Hauls, §4¾ (d), §7 (3qa).
Prescott & Arizona Central Ry. Co. v. Atchison, Topeka & Santa Fe Ry. Co., 7 I. C. C. App. XLVIII. Interchange of Traffic, (cca).
Pressley v. Gulf, Colo. & S. F. Ry. Co. et al., 12 I. C. C. 518. Reasonableness of Rates, §2 (3i); Reparation, §16 (aa).
Preston v. Finley, 7 I. C. C. App. LXXXI. Taxes, (7b).
Preston & Davis v. D. L. & W. R. R. Co., 12 I. C. C. 114. Facilities and Privileges, §10 (i) (j) (k).
Proceedings at Atlanta, 1 I. C. R. 76. Through Routes and Joint Rates, §20½ (a).

Proctor & Gamble v. Cincinnati, H. & D. R. Co., 3 I. C. R. 131. Anti-Trust Laws, (b); Classification, §11½ (c); Weights and Weighing, §2½ (b).
Proctor & Gamble v. Cincinnati, Hamilton & Dayton R. Co., 3 I. C. R. 374. Procedure Before Commission, §8 (h).
Proctor & Gamble Co. v. Cincinnati, H. & D. R. Co., 9 I. C. C. 440. Classification, §3 (ii) (jj), §5 (aa), §7 (g) (h), §19 (h), §22 (ii) (jj) (kk); Evidence, §43 (d) (e); Reasonableness of Rates, §16 (f), §27 (e); Weights and Weighing, §5a (a) (b).
Producers' Pipe Line Co. v. St. L. I. M. & S. Ry., 12 I. C. C. 186. Procedure Before Commission, §5 (l) (m), §10 (l) (hh) (ii).
Producers' Protective Association v. D. L. & W. R. Co., 7 I. C. C. 92. Long and Short Hauls, §6¾ (b).
Providence Coal Co. v. Providence & Worchester R. Co., 1 I. C. R. 316. Discrimination, §4 (b).
Providence Coal Co. v. Providence & W. R. Co., 1 I. C. R. 363. Allowances, §8 (8) (a); Blanket Rates, §13 (a); Cars and Car Supply, §7 (a), §28 (a); Crimes, §2½ (a); Discrimination, §3 (a) (b); Facilities and Privileges, §16½ (a).
Pullman's Palace Co. v. Commonwealth of Pa., 3 I. C. R. 375. Taxes (4a) (4b).
Pullman's Palace Car Co. v. Commonwealth of Pa., 3 I. C. R. 595. Courts, §6½ (m), §10 (e); Taxes, (4c) (4d) (4e) (4f) (4g) (4h) (4i) (4j).
Pyle v. East Tennessee, Va. & Ga. R. Co., 1 I. C. R. 600. Classification, §22 (a).
Pyle v. E. T. & V. G. R. R., 1 I. C. C. 767. Classification, §3 (a) (b) (c) (d), §6 (a) (b).

Q

Quimby v. Clyde S. S. Co., 12 I. C. C. 392. Blanket Rates, §11 (a); Class Rates, §2 (m); Evidence, §14 (ii); Rail and Water Rates, (i).

R

Railroad & W. Comers. v. Eureka Springs, R. Co., 7 I. C. C. 69. Through Routes and Joint Rates, §15 (c).
Railroad Commission of Arkansas v. St. L. & N. R. R. Co., 12 I. C. C. 233. Passenger Fares and Facilities, §½ (k) (l), §2 (z) (aa).
Railroad Commission of Florida v. S. F. & W. R. Co., 3 I. C. C. 688. Advanced Rates, §2½ (ab), §3 (a) (b), §17 (a) (b), §19½ (a); Divisions, §7 (c); Procedure Before Commission, §10 (1) (nc), §13 (s); Water Carriers, §2 (b).
Railroad Commission of Kenutcky v. L. & N. R. Co., 10 I. C. C. 173. Discrimination, §3 (3m); Interchange of Traffic, (dd) (ee); Interstate Commerce Commission, §10 (a); Stock Yard Companies, (aa) (bb) (cc) (dd) (ee).
Railroad Commission of Ohio v. Hocking Valley R. Co., 12 I. C. C. 393. Cars and Car Supply, §14 (a).
Railroad Commission of Ohio v. H. V. Ry., 12 I. C. C. 398. Cars and Car Supply, §7 (qq), §13 (a), §15 (a); Courts, §1 (ww); Interstate Commerce, §½ (bb), Interstate Commerce Commission, §1 (ii) (jj); Procedure Before Commission, §1 (hh); Reparation, §½ (e).
Railroad Commission of Oregon v. C. & A. R. R., 12 I. C. C. 541. Classification, §22 (3h); Commodity Rates, §5 (i); Reasonableness of Rates, §7½ (ll).
Railroad Telegraph Contracts, 12 I. C. C. 11. Freight Charges, (c); Passenger Fares and Facilities, §12 (x); Telephone and Telegraph Companies, §2 (a).
Rates and charges on Food Products, 3 I. C. R. 93. Evidence, §18 (i), §58 (i), §63 (b); Reasonableness of Rates, §2 (p) (q), §7½ (g).
Rates and Charges on Food Products, 3 I. C. R. 151. Interstate Commerce Commission, §1 (o), §3¼ (a), §8½ (d).
Rates from St. Louis to Texas Common Points, 11 I. C. C. 238. Advanced Rates, §3 (d).
Ratterman v. Western U. Teleg. Co. (U. S. Sup. Ct.), 2 I. C. R. 59. Taxes, (r) (s) (t); Telephone and Telegraph Companies, §3 (f).
Rau v. Penn. Railroad Co., et al., 12 I. C. C. 200. Classification, §5 (jj), §20 (g).
Rauffman Milling Co. v. M. P. R. Co., 3 I. C. C. 400. Reasonableness of Rates, §2 (v).
Rause v. Yauard, 5 I. C. C. 315. Explosive and Dangerous Articles, (b); Statutes (vv).

Raworth v. N. P. R. Co., 3 I. C. C. 857. Act to Regulate Commerce IV (a); Discrimination, §1a (e); Evidence, §1½ (n), §32 (a); Interstate Commerce Commission, §8½ (j); Long and Short Hauls, §4½ (b), §6⅞ (f) (g) (h) (i), §7 (n) (o), §10½ (k), §12 (l) (h).
Raworth v. Northern Pac. R. Co., 5 I. C. C. Rep. 257. Act to Regulate Commerce IV (a).
Rawson v. N. N. & M. V. R. Co., 2 I. C. C. 626. Interstate Commerce Commission, §1 (m); Procedure Before Commission, §10 (1) (nb), §10 (2) (gb), §11 (e); Reparation, §23 (a).
Raymond v. Chicago, M. & St. P. R. Co., 1 I. C. R. 627; Discrimination, §3 (bb), §10 (a) (aa); Evidence, §2 (a), §57½ (a); Reasonableness of Rates, §2 (a).
Re Application of Certain Railroad Companies 9 I. C. C. 522. Safety Appliance Act, (h).
Re Atchison, T. & S. F. R. Co., 7 I. C. C. 593. Long and Short Hauls, §4 (aa).
Re Atchison, T. & S. F. R. Co., 10 I. C. C. 473. Crimes, §2 (i) (j); Tariffs, §3 (1) (l).
Re Atlanta & W. P. R. Co. (Com.), 2 I. C. R. 461. Interstate Commerce Commission, §1 (k).
Re Alleged Unlawful Charges, 8 I. C. C. 585. Weights and Weighing, §2½ (f), §9 (aa); Tariffs, §7 (m).
Re Alleged Unlawful Discrimination against the Enterprise Transportation Co., 11 I. C. C. 587. Water Carriers, §6 (ga) (i).
Re Alleged Unlawful Rates, etc., 8 I. C. C. 121. Compress Companies and Charges, II (c); Facilities and Privileges, §17 (a), §18 (a).
Re Alleged Unlawful Transportation Charges, 6 I. C. C. 624. Procedure Before Commission, §1a (b); Through Routes and Joint Rates, §13 (qq) (rr).
Re Alleged Useful Rates & Practices, 7 I. C. C. 33. Crimes, §2 (f).
Re Alleged Violation of the 4th Section of the Act to Regulate Commerce, 7 I. C. C. 61. Long and Short Hauls, §4 (z).
Re Alleged Violations of Act to Regulate Commerce, 8 I. C. C. 290. Discrimination, §3 (3h); Long and Short Hauls, §4½ (h), §5 (uu), §12 (1) (j).
Re Allowances to Elevators, 10 I. C. C. 309. Allowances, §8 (3) (a).
Re Allowances to Elevators by U. P. R. R. Co., 12 I. C. C. 85. Allowances, §8 (3) (g); Facilities and Privileges, §9½ (g) (h).
Re Annapolis, W. & B. R. Co., 1 I. C. R. 315. Bills of Lading, §1 (a); Interstate Commerce, §3 (c) (d).
Re Boston & M. R. Co. (Com.), 3 I. C. R. 717. Passenger Fares and Facilities, §12 (j) (k).
Re Charges for Transportation and Refrigeration of Fruit Shipped From Points on the Pere Marquette and Michigan Central Railroad, 11 I. C. C. 129. Cars and Car Supply, §7 (pp), §9⅞ (3) (da), §11½ (d); Refrigeration, §1 (de) (f) (g) (h), §2 (b), §3½ (c) (d) (e), §4 (d) (e) (f), §5 (b).
Re Charges to Grand Jury, 4 I. C. R. 777. Crimes, §2 (e), §24½ (g); Mails (a); Strikes, (a); Transportation, §11½ (b); Wages, (t).
Re Charges to Grand Jury (No. 2) (D. C. N. D. Ill.), 4 I. C. R. 781. Courts, §1 (jj); Crimes, §24½ (h), (i) (j) (k) (l) (m) (n) (o), §34 (e) (d) (f) (g) (h).
Re Charge to Grand Jury (No. 3) (D. C. N. D. Ca.), 4 I. C. R. 784. Anti-Trust Laws, (m); Crimes, §17 (p), §24½ (p) (q) (r), §34 (i); Interstate Commerce, §½ (o).
Re Charge to Grand Jury (No. 4) (C. C. N. Ill.), 4 I. C. R. 801. Crimes, §24½ (cc) (dd) (ee).
Re Charge to Grand Jury, 7 I. C. C. App. LIV. Passenger Fares and Facilities, §12 (o).
Re Chicago, St. Paul & Kansas City R. R. Co., 2 I. C. C. 137. Act to Regulate Commerce, II (p) (o); Advanced Rates, §1 (2) (a); Evidence, §1½ (ea), §13 (l) (c) (d), §20 (d); Interstate Commerce Commission, §8½ (c); Long and Short Hauls, §4¼ (a), §5 (c) (d), §7 (f), §9 (c) (d), §12 (1) (d) (e), Reasonableness of Rates, §2 (f) (g), §7½ (c), §10 (a), §16½ (a).
Re Cincinnati, H. & D. R. Co., 6 I. C. C. 323. Long and Short Hauls, §4 (t) (u).
Re Clark (Com.), 2 I. C. R. 797. Water Carriers, §9 (a).

Re Class & Commodity Rates from St. Louis to Texas Common Points, 11 I. C. C. 238. Advanced Rates, §9 (h).
Re Counselman, 3 I. C. R. 326. Courts, §1 (v); Crimes, §28½a (g) (h) (l) (m) (n) (o)
Re Debs 7. I. C. C. App. XXVII. Courts, §1a (p).
Re Detroit Grand Haven & Milwaukee R. R. Co., 1 I. C. C. 17. Long and Short Hauls, §4 (b).
Re Differential Freight Rates to and From North Atlantic Ports, 11 I. C. C. 13. Differentials, §4 (g).
Re Division of Joint Rates, etc., 10 I. C. C. 385. Divisions, §8 (b) (c) (d) (da); Common Carrier, §9 (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l); Tap Lines, §10 (e).
Re Division of Joint Rates, Etc., 10 I. C. C. 661. Allowances, §8 (7) (a) (b) (cdef); Common Carriers, §5 (a), §9 (m) (n) (o).
Re Export and Domestic Rates on Grain, 8 I. C. C. 214. Act to Regulate Commerce, II (kk) (ll) (mm); Evidence, §1½ (gg); Export Rates and Facilities, §1 (e), §1½ (g), §2 (a) (aa), §4 (e), §6 (st) (u) (v); Import Traffic, §1 (p) (q) (r); Long and Short Hauls, §7 (ppqq).
Re Export Rates from Points East and West of Miss. River., 8 I. C. C. 185. Differentials, §2½ (aa); Export Rates and Facilities, §4 (d); Local Rates and Combinations, (ia); Through Routes and Joint Rates, §13½ (v).
Re Export Trade of Boston, 1 I. C. R. 25. Export Rates and Facilities, §1 (a) (b); Procedure Before Commission, §2 (f), §10 (l) (a) (b).
Re Express Companies, 1 I. C. C. 22. Express Companies, §1 (a) (aa).
Re Express Companies, 1 I. C. C. 677. Exclusive Contracts, (a); Express Companies, §1 (bc), §1¾ (a), §40 (a).
Re Filing Copies of Joint Tariffs, 1 I. C. R. 76. Tariffs, §7 (a); Through Routes and Joint Rates, §17 (a).
Re Filing of Joint tariffs, 2 I. C. C. 9. Through Routes and Joint Rates, §17 (ca),
Re Free Transportation of Newspaper Employees, 12 I. C. C. 15. Caretakers, (a); Passenger Fares and Facilities, §12 (y) (z) (aa) (bb) (cc) (dd); Statutes, (3b).
Re Freight Rates between Memphis and Points in Arkansas, 11 I. C. C. 180. Discrimination, §5½ (e) (f); Procedure Before Commission, §11 (i); Through Routes and Joint Rates, §11 (2) (b), §13 (3j).
Re Fremont, E. & M. V. R. Co., et al., 6 I. C. C. 293. Long and Short Hauls, §4 (r) (s).
Re Gooch (C. C. D. Minn.), 3 I. C. R. 530. State Rates and Regulations, (4c).
Re Grand Trunk R. Co. (Com.), 2 I. C. R. 496. Crimes, §2½ (c); Interstate Commerce Commission, §1 (l) (ka); Tariffs, §3 (l) (b) (c), §4 (c).
Re Hennick (Sup. Ct. D. C.) 1 I. C. R. 66. Taxes, (d) (o).
Re Hennick (Sup. Ct. D. C.), 1 I. C. R. 70. Taxes (p).
Re Indian supplies, 1 I. C. C. 22. Passenger Fares and Facilities, §7¼ (c) (d) (e); Reduced Rates, §4 (a); Special Rates and Services, (a).
Re Inmates of Nat. Homes, 1 I. C. R. 73. Procedure Before Commission, §1 (4) (d).
Re Inmates of National Homes, 1 I. C. C. 75. Passenger Fares and Facilities, §7¼ (f); Procedure Before Commission, §10 (4) (e).
Re Interstate Commerce Commission, 4 I. C. R. 315. Courts, §5 (b).
Re Iowa Barb Steel Wire Co., 1 I. C. C. 605. Act to Regulate Commerce, II (g); Equalization of Rates, §1 (a), §2 (a); Interstate Commerce, §½ (g), § 1(d) Interstate Commerce Commission, §1 (ea) (f); Procedure Before Commission, §2 (d), §10 (l) (ia); Special Rates and Services, (aa).
Re Joint Water & Rail Lines (Com.), 2 I. C. R. 486. Water Carriers, §6 (a).
Re Kimmel, 3 I. C. R. 114. Taxes, (3i).
Re Langford (C. C. D. S. C.), 4 I. C. R. 437. Courts, §6½ (x); Intoxicating liquors, (u) (v); Statutes, (v).
Re Lazarus E. Lebolt, 7 I. C. C. App. LXXVIII. State Rates and Regulations, (8m).
Re Louisville & N. R. Co., 1 I. C. Rep. 278. Long and Short Hauls, §4 (p) §4½ (j).
Re Louisville & Nashville R. R. Co., 4 I. C. C. 157. Allowances, §7 (b); Crimes, §2½ (e); Evidence, §60½ (a); Reduced Rates, §4½ (d).
Re Mallory (U. S. Ct. Fla.), 1 I. C. R. 294. Receivers, (a).
Re Morris v. D. L. & W. R. Co., 2 I. C. C. 617. Cars and Car Supply, §9⅞ (d); Courts, §3 (a); Discrimination, §1 (c); Live Stock Shipments, (e).

Re Narragansette Indians, 8 I. C. C. App. XLVII. State Rates and Regulations, (9k).
Re Order of Ry. Conductors, 1 I. C. R. 18. Long and Short Hauls, §4 (c); Passengers Fares and Facilities, §10 (a) (b), §19 (a); Procedure Before Commission, §10 (4) (b) (d), §21a (b) (c).
Re Party Rate Tickets, 12 I. C. C. 95. Evidence, §14 (l) (dd); Passenger Fares and Facilities, §7 (f), §15 (ab).
Re Passenger Tariffs (Com.), 2 I. C. R. 445 . Passenger Fares and Facilities, §5 (a), §6 (p), §7 (a), §14 (d), §18 (c); Tariffs, §6a (a), §7 (d); Through Routes and Joint Rates, §22 (c).
Re Passenger Tariffs and Rate Wars 2 I. C. R. 340. Evidence, §14 (3) (c); Passenger Fares and Facilities, §2 (d) (ef) (g) (h), §3 (3) (a), §7¼ (r) (s), §14 (c), §18 (b); Tariffs, §3 (l) (a).
Re Peasley, 3 I. C. R. 333. Courts, §1 (v); Crimes, §28½a (i) (j) (l) (m) (n) (o).
Re Petition v. C. H. Mallory & Co., 1 I. C. R. 294. Receivers, (b).
Re Petition of the Receivers of the Texas & Pacific R. Co., 1 I. C. R. 30. Mexico, (a).
Re Petition of Toledo Produce Exchange (Com.), 2 I. C. R. 412. Procedure Before Commission, §8 (b) (c); Reasonableness of Rates, §28 (l).
Re Proposed Advances in Freight Rates, 9 I. C. C. 382. Advanced Rates, §2½ (c), §3 (c), §17 (i); Evidence, §1 (p), §1½ (nn), §61 (f); Procedure Before Commission, §1 (gg); Tariffs, §6 (j).
Re Proposed Increase in the Minimum Percentage of Cars in Trains Required to be Operated with Power or Train Brakes, 11 I. C. C. 429. Safety Appliance Act, (i).
Re Publication of Export Tariffs, 2 I. C. C. 9. Export Rates and Facilities, §5 (a).
Re Publication & Filing of Tariffs, 10 I. C. C. 55. Advanced Rates, §23 (a); Foreign Commerce, §1 (ab) (ac); Export Rates and Facilities, §5 (l) (m); Import Traffic, §3 (a).
Re Railroad-Telegraph Contract, 12 I. C. C. 10. Passenger Fares and Facilities, §12 (u) (v) (w) (x).
Re Rates and Charges on Food Products (Com.) 3 I. C. R. 93. Evidence, §2 (d) (e), §43 (b); Reasonableness of Rates, §30 (b).
Re Rates & Charges on Food Products (Com.), 3 I. C. R. 151. Interstate Commerce Commission, §6¾ (a), §16 (a), §17 (a); Procedure Before Commission, §1 (v), §3 (b).
Re Rates and Practices of M. & O. R. Co., 9 I. C. C. 373. Facilities and Privileges, §11¾ (a), §18 (h).
Re Rates on Corn and Corn Products from Missouri River Points to Points in Washington, Oregon and California, 11 I. C. C. 212. Classification, §3½ (u).
Re Rates on Corn and Corn Products from Missouri River Points to Points in Texas, 11 I. C. C. 220. Classification, §11 (n).
Re Rates on Corn and Corn Products from Missouri River Points to Points in Louisiana 11 I. C. C. 227. Procedure Before Commission, §10 (2) (o).
Re Rate Sheets, 1 I. C. R. 316. Tariff, §7 (aa).
Re Rebman, 3 I. C. R. 126. Courts, §6½ (k); Evidence, §67 (b) (c); State Rates and Regulations (3n).
Re Rebman (C. C. E. D. Va.) 3 I. C. R. 485. State Rates and Regulations (4b) (4ba).
Re Relative Tank and Barrel Rates on Oil, 2 I. C. R. 245. Classification, §16 (g) (h) (i); Discrimination, §13½ (b); Evidence, §13 (1) (e).
Re Religious Teachers 1 I. C. R. 21. Passenger Fares and Facilities, §7¼ (a) (b) (o); Reduced Rates, §3 (a).
Re Richmond & Alleghany R. R. Co., 1 I. C. R. 22. Long and Short Hauls, §4 (d).
Re Right of R. R. & Transfer Companies to Exchange Transportation, 12 I. C. C. 39. Common Carrier, §6½ (b) (c) (d), §9 (q); Drayage Charges (f); Passenger Fares and Facilities, §12 (gg) (hh).
Re Rome, W. & O. R. Co., 6 I. C. C. 328. Passenger Fares and Facilities, §3 (3) (ba).
Re Safety of Employes & Traders v. 6 I. C. C. 332. Safety Appliance Act (b) (c) (d).

Re St. Paul, Chicago & Kansas City R. Co., 2 I. C. C. 137. Advanced Rates, §1 (2) (b).
Re Schechter (C. C. D. Minn.), 4 I. C. R. 849. Statutes (rr).
Re Shite (C. C. W. D. Pa.),3 I. C. R. 531. Courts, §6½ (1).
Re Southern Ry. & Steamship Association, 1 I. C. C. 15. Long and Short Hauls, §4 (a).
Re Southern Pac. R. R. Co., 1 I. C. R. 16. Long and Short Hauls, §10½ (a) (b), §14 (a); Procedure Before Commission, §2 (b).
Re Southern R. & S. Asso. (Re Louisville & Nashville R. Co.), 1 I. C. R. 278. Discriminations, §1a (a); Evidence, §1 (a), §18 (a) (b); Long and Short Hauls, §2 (a), §2½ (a) (b), §4 (i) (ia), §4½ (a) (aa) (ab) (ac), §6⅞ (a), §7 (a) (b) (c) (d), §12 (l) (a), §12 (2) (b) (c) (d).
Re Spain 3 I. C. R. 738. State Rates and Regulations, (4g) (4h).
Re Tariffs & Classifications of Pa. R. R. Co. 7 I. C. C. 177. Procedure Before Commission, §10 (1) (r).
Re Tariffs of the Columbus & Western Railway, 2 I. C. R. 11. Long and Short Hauls, §16 (a); Tariffs, §1 (a).
Re Tariffs of the Transcontinental Lines, 2 I. C. C. 203. Blanket Rates, §16 (a) (b); Discrimination, §3 (i), §4 (g) (ji), §4½ (a); Reasonableness of Rates, §2 (j), §28 (g) (h); Tariffs, §3 (a), §7 (c); Transportation, §2 (g).
Re Tariffs on Export and Import Traffic, 10 I. C. C. 55. Foreign Commerce, §½ (g) (i), §1 (ac).
Re Texas etc. R. Co. (U. S. C. Ct. La.) 1 I. C. R. 30. Long and Short Hauls, §12 (2) (a).
Re Theatrical Rates, 1 I. C. R. 18. Interstate Commerce Commission, §8½ (pp); Procedure Before Commission, §10 (4) (a) (c), §21a (a) (b).
Re Through Routes and Through Rates, 12 I. C. C. 163. Tariffs, §7 (p); Through Routes and Joint Rates, §2 (w) (x), §13 (4b), §14 (p), §22 (v) (va) (w) (x) (xa) (y) (z).
Re Transportation of Coal & Mine Supplies, 10 I. C. C. 473. Crimes, §2 (h) (k) (1) (mn).
Re Transportation of Fruit, 10 I. C. C. 360. Cars and Car Supply, §½ (e), §9⅝ (a); Exclusive Contracts (bc) (c); Refrigeration, §2 (a), §3½ (b), §4 (c), §4½ (a), §4½a (a), §4¾ (a), §5 (a), §6 (a).
Re Transportation of Immigrants from New York, 10 I. C. C. 13. Passenger Fares and Facilities, §7a (a) (b); Pooling of Traffic (m) (n).
Re Transportation of Land and Immigration Agents, 12 I. C. C. 7. Passenger Fares and Facilities, §11 (bb), §12 (q) (qa) (r).
Re Transportation of Salt v. 10 I. C. C. 148. Equalization of Rates, §3 (h) (i) (j); Through Routes and Joint Rates, §14 (m) (n) (o); Water Carriers, §6 (g).
Re Transportation of Salt from Hutchinson, 10 I. C. C. 1. Common Carrier, §9 (a); Industrial Railroads (a); Intoxicating liquors, (3n); Procedure Before Commission, §10 (1) (aab); Tap Lines, §7 (a).
Re Unbilling, 1 I. C. R. 813. Crimes, §5 (a) (b) (c) (d) (e) (f); Transportation, §2 (f).
Re United States Commission of Fish and Fisheries, 1 I. C. R. 606. Passenger Fares and Facilities, §12 (c) (d); Reduced Rates, §4 (b) (c).
Re United States Commission of Fish and Fisheries 1 I. C. R. 609. Reduced Rates, §4 (d).
Re White 3 I. C. R. 531. Courts, §1 (z); Interstate Commerce, §½ (1).
Rea v. Mobile & Ohio R. Co., 7 I. C. C. 43. Blanket Rates, §8 (a), §12 (c), §15 (a); Classification, §3 (aa), §17 (n), §18 (e); Evidence, §22 (a), §22¼ (a); Routing and Misrouting, §4 (g), §7 (d) (da); Tariffs, §6 (f), §7 (i).
Reagan v. Farmers' Loan & T. Co. (U. S. Sup. Ct.), 4 I. C. R. 560. Courts, §1 (dd) (ee) (ff), §6½ (cc), §14 (o) (p); State Rates and Regulations (5m) (5n) (5o); Statutes (z) (aa).
Reagan v. Merchantile Trust Co. 4 I. C. R. 575. Courts, §14 (q); State Rates and Regulations (5p); Statutes (aa).
Red Rock Fuel Co. v. B. & O. R. Co., 11 I. C. C. 438. Cars and Car Supply, §½ (g); Discrimination, §3 (3o), §5½ (i); Facilities and Privileges, §21 (j); Side Tracks and Spur Tracks (c) (d); Switch Tracks and Switching, §4 (da) (e), §7 (a).

Red Rock Fuel Co. v. Baltimore & O. R. Co. 11 I. C. C. 441. Side Tracks and Spur Tracks (e).
Red Cloud Mining Co. v. Southern Pacific Co. 9 I. C. C. 216. Special Contracts, §2 (bba) (cc); Traffic, §3 (1) (k).
Reeves v. Texas & Pacific R. Co., 5 I. C. R. 639. Loss and Damage, §3 (e), §10¼ (a), §13½ (b), §13¾ (h).
Rend v. Chicago & Northwestern R. Co., 2 I. C. R., 313. Blanket Rates, §2 (c) (d) §12½a (a); Evidence, §66 (d) (e) (f); Reasonableness of Rates, §28 (i) (j); Reduced Rates, §4½ (a); Through Routes and Joint Rates, §1 (a), §13 (j), §13½ (c), §14 (d).
ReSchechter (C. C. D. Minn.) 4 I. C. R. 849. Statutes (rr).
Reynolds v. Western New York & P. R. Co., 1 I. C. R. 600. Evidence, §40½ (a).
Reynolds v. Western New York & Pennsylvania R. R., 1 I. C. C. 685. Classification, §3½ (a), §17 (a), §22 (b); Evidence, §1½ (b); Procedure Before Commission, §3 (a), §4 (a).
Rhodes v. St. of Iowa, 8 I. C. C. App. XII. Intoxicating liquors, (xx) (yy).
R. I. v. Fitzpatrick, 1 I. C. R. 713. Intoxicating liquors, (a).
Rhode Island Egg & B. Co. v. Lake Shore & M. S. R. Co. (Com.) 4 I. C. R. 512. Classification, §16 (s) (t) (u), §22 (t); Reduced Rates, §5½ (a).
Rhode Island Egg & B. Co. v. Lake Shore & M. S. R. Co., 6 I. C. C. 176. Classification, §12⅞ (a), §16 (w); Reduced Rates, §5½ (b) (c).
Rice v. Atchison, Topeka & Santa Fe R. Co., 3 I. C. R. 263. Blanket Rates, §12a (b); Discrimination, §5½ (b); Evidence, §14 (5) (e) (f); Long and Short Hauls, §10 (d) (e); Procedure Before Commission, §1 (w); Tariffs, §6 (a), §7 (e).
Rice v. Cincinnati, W. & B. R. Co. (Com.) 2 I. C. R. 584. Discrimination, §3 (n); Procedure Before Commission, §14¾ (b), §18 (a), §22 (b) (c) (d) (e) (f) (g) (h) (ha).
Rice v. Cincinnati, W. & B. R. Co. (Com.), 3 I. C. R. 841. Allowances, §18 (4¼) (a) (c); Cars and Car Supply, §½ (d) (cc), §10 (h); Classification, §16 (p); Discrimination, §1 (e), §1a (d), §3 (aa), §4½ (g), §8 (1) (e); Evidence, §1½ (m), §12 (1) (c); Long and Short Hauls, §10 (i); Weights and Weighing, §5 (a) (aa), §8 (a).
Rice v. Louisville & Nashville R. R. Co. 1 I. C. R. 446. Procedure Before Commission, §1 (d).
Rice v. L. & N. R. R. Co., 1 I. C. R. 722. Cars and Car Supply, §7 (de), §10 (a) (b) (c) (d), §10½ (a), §11⅞ (aa), §17a (a) (b); Classification, §10 (a) (b), §16 (a) (b); Evidence, §1 (de), §17 (a); Procedure Before Commission, §1 (e), §2 (e); Tariffs, §7 (b).
Rice v. L. & N. R. Co. 2 I. C. C. 584. Procedure Before Commission, §18 (b).
Rice v. St. Louis S. W. R. Co. (Com.) 4 I. C. R. 321. Procedure Before Commission, §5 (d), §18 (a).
Rice v. Western N. Y. & P. R. Co. (Com.), 2 I. C. R. 298. Evidence, §66 (c); Reasonableness of Rates, §7½ (f), §9 (a).
Rice v. Western New York & P. R. Co. (Com.) 2 I. C. R. 496. Interstate Commerce Commission, §1 (ka); Procedure Before Commission, §8 (d).
Rice v. Western N. Y. & P. R. Co. (Com.) 3 I. C. R. 162. Allowances, §8 (4¼) (a); Cars and Car Suply, §7 (t); Classification, §11 (f); Discriminations, §1 (e).
Rice v. Western N. Y. & P. R. Co., 6 I. C. C. 455. Interstate Commerce Commission, §5 (e); Reparation, §7½ (ba), §17a (c).
Rice, Robinson & Witherop v. W. N. Y. & P. R. R. Co., 2 I. C. R. 298. Classification, §5 (b); Equalization of Rates, §6 (a); Evidence, §1½ (g), §66 (b); Export Rates and Facilities, §6 (e); Reasonableness of Rates, §2 (m), §40 (b); Through Routes and Joint Rates, §13½ (b).
Rice Robinson & Witherop v. W. N. Y. & P. R. 2 I. C. C. 496. Procedure Before Commission, §1 (q), §8 (da).
Rice, Robinson & Witherop v. W. N. Y. & P. R. R. Co., 3 I. C. C. 162. Allowances, §8 (4¼) (b); Cars and Car Supply, §7 (u), §10 (e) (f) (g); Classification, §16 (kl) (m) (n) (o); Evidence, §14a (a), §57½ (ba). Reparation, §10 (a).
Richmond & Alleghany R. R. Co. v. Patterson Tobacco Co. 7 I. C. C. App. LXXIII. State Rates and Regulations (8h).

Richmond & Alleghany R. R. Co. v. Patterson Tobacco Co., 8 I. C. C. App. VII. Loss and Damage, §3 (i).
Richmond & A. R. Co. v. A. R. Patterson Tobacco Co., 169 U. S. 311, 42 L. ed. 759. Loss and Damage, §3 (k).
Richmond & D. R. Co. v. Reidsville (N. C.), 2 I. C. R. 416. Courts, §1 (1); Taxes (3a) (3b).
Richmond Elevator Co. v. Pere Marquette R. Co., 10 I. C. C. 629, Cars and Car Car Supply, §½ (f). Cars and Car Supply, §6 (b), §32½ (e) (f) (g) (h), §36 (a); Discrimination, §14 (d); Loss and Damage, §4 (a); Procedure Before Commission, §5 (f).
Riddle v. Baltimore & O. R. Co., 1 I. C. R. 701. Car and Car Supply, §7 (j), §9 (a); Procedure Before Commission, §4 (b) (c) (d).
Riddle Dean & Co. v. B. & O. R. R., 1 I. C. C. 778; Discrimination, §3 (bd); Reparation, §½ (a), §3 (bd); Taxes (d); Transportation, §2 (b) (c) (d) (e).
Riddle Dean & Co., v. N. Y. L. E. & W. R. R., 1 I. C. R. 787. Cars and Car Supply, §7 (f) (h) (i) (k) (l), §20 (a) (b) (c), §32½ (a) (b); Courts, §1 (a) (b); Classification, §3 (e), §10 (c); Discrimination, §13½ (a); Explosive and Dangerous articles (a); Reasonableness of Rates, §27 (a) (b); Reparation, §½ (a), §7½ (a); Transportation, §5 (a).
Riddle Dean & Co. v. N. Y. L. E. & W. R. Co., 3 I. C. R. 230. Interstate Commerce Commission, §3 (b); Procedure Before Commission, §11 (g).
Riddle v Pittsburgh & L. E. R. Co., 1 I. C. C. 601. Cars and Car Supply, §7 (c), §12 (a).
Riddle, Dean & Co. v. Pitts. & Lake Erie R. R. Co., 1 I. C. R., 688. Cars and Car Supply, §7 (b), §12 (b).
Riddle v. Pittsburg & L. E. R. Co., 1 I. C. R. 773. Procedure Before Commission, §1 (f), §8 (a) (aa), §11 (bc) (d) (da), §13 (g) (h).
Riverside Mills v. Southern Railway Co., 12 I. C. C. 388. Classification, §9 (a), §11 (s), §22 (3g); Evidence, §52 (d).
Robbins v. Taxing District of Shelby County, 1 I. C. R. 45. Interstate Commerce, §5 (a) (b) (e); State Rates and Regulations, (c); Taxes, (d).
Rock Hill Buggy Co. v. Southern Ry., 11 I. C. C. 229. Long and Short Hauls, §2½ (f), §7 (3y) (3z).
Rock Red Fuel Co. v. B. & O. R. R. 11 I. C. C. 438. State Rates and Regulations (10c).
Rogers & Co., v. P. & R. Ry. Co., 12 I. C. C. 308. Discrimination, §2 (d) (e); Embargoes (b) (c) (d) (e) (f) (g).
Root v. Long Island R. Co. (N. Y.), 2 I. C. R. 576. Crimes, §2½ (d).
Roselle v. Farmers' Bank of Norborne (McAuliffe Inte), 7 I. C. C. App. C. Lottery Tickets (b).
Roselle v. Farmers' Bank of Norborne, McAuliffe, 8 I. C. C. App. LXXV. Lottery Tickets, (c).
Roselle v. McAuliffe, 7 I. C. C. App. XI. Lottery Tickets (a).
Roswell Commercial Club v. A. T. & S. F. Ry. Co., 12 I. C. C. 339. Class Rates, §2 (j) (k); Differentials, §8 (bb).
Roth v. T. & P. Ry., 9 I. C. C. 602. Classification, §7 (i) (j) (k) (l), §19 (i).
Rothermel v. Meyerle (Pa.), 3 I. C. R. 315. State Rates and Regulations (3y) (3z); Taxes (3o) (3p) (3q).
Rouse v. Youard (Kan. App.) 5 I. C. R. 35; Actions at Law, (s) (t) (u) (v); Courts, §1 (rr); Loss and Damage, §5½ (c), §13¾. (f); State Rates and Regulations, (7b); Statutes (vv).
Rule, 2 Appendix I, 1 I. C. R. 841. Long and Short Hauls, §10½ (b) (j).
Rule 3, Appendix I, 1 I. C. R. 841. Procedure Before Commission, §5 (b).
Rule 4, Appendix I, 1 I. C. R. 841, Procedure Before Commission, §2 (c).
Rule 5, Appendix I, 1 I. C. R. 841. Procedure Before Commission, §1 (g), §2 (g), §10 (l) (m).
Rule 8, Appendix I, 1 I. C. R. 842. Procedure Before Commission, §1 (h) (m).
Rule 12, Appendix I, 1 I. C. R. 842. Procedure Before Commission, §1 (j).
Rule 6, Appendix I, 1 I. C. R. 842. Procedure Before Commission, §1 (k), §2 (h).
Rule 7, Appendix I, 1 I. C. R. 842. Procedure Before Commission, §1 (l).
Rule 9, Appendix II, 1 I. C. R. 842. Procedure Before Commission, §14¾ (a), §22 (a).

Rule 10, Appendix I, 1 I. C. R. 842. Procedure Before Commission, §1 (e) (f), §4 (e) (f).
Rule as to the application for the action of the Commission 1 I. C. R. 15. Procedure Before Commission, §2 (ab).

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S. J. & S. Cannon v. Mobile & O. R. Co., 11 I. C. C. 537. Evidence, §18 (p); Reasonableness of Rates, §7½ (z); Tariffs, §7 (o).
Safety Appliance Act of March 2, 1893 v. 8 I. C. C. 662. Safety Appliance Act. (e).
Safety Appliance Act of March 2, 1893 v. 8 I. C. C. 643. Safety Appliance Act (f).
St. Joseph & G. I. R. Co. v. Palmer, 4 I. C. R. 494. Courts, §11 (c) (d); Interstate Commerce, §4 (mm); Loss and Damage, §5½ (a).
St. L. & S. F. R. Co. 8 I. C. C. 290, 301. Long and Short Hauls, §6⅞ (t).
St. Louis & San Francisco R. R. Co. v. Ostrander 8 I. C. C. App. XCIV. Tariffs, §3 (l) (j).
St. Louis Drayage Co. v. Louisville & N. R. Co. (C. C. E. D. Mo.), 5 I. C. R. 137. Exclusive Contracts (b); Facilities and Privileges, §15½ (a).
St. Louis Hay & Grain Co. v. C. B. & Q. R. Co., 11 I. C. C. 82, 87. Transportation, §5 (c); Reconsignment, §9 (b).
St. Louis Hay & Grain Co. v. Illinois Co. 11 I. C. C. 486. Reconsignment, §2 (b) (c), §3 (c), §6¼ (a); Through Routes and Joint Rates, §13 (3m) (3n), §18 (d).
St. Louis Hay & Grain Co. v. M. O. R. R. 11 I. C. C. 90. Facilities and Privileges, §15 (ea), §21 (g); Reconsignment, §2 (a), §3 (a) (aa) (ab) (b), §10 (a); Stoppage in Transit (c); Through Routes and Joint Rates, §13 (3i).
St. Louis Southern Ry. Co. of Texas v. Carden (Tex., Civ. App.) 7 I. C. R. App. IXXI. State Rates and Regulations, (8u).
St. Louis Southern Ry. Co. of Texas v. Smith 8 I. C. C. App. LXXXIII. State Rates and Regulations (9w).
Same v. Same, 2 I. C. R. 540. Courts, §1 (r).
Samuels v. Louisville & N. R. Co. 4 I. C. R. 420. Discrimination, §14 (a); Water Carriers, §3 (c) (d).
San Bernardino Bd. of Trade v. Atchison, T. & S. F. R. Co. (Com.), 3. I. C. R. 138. Evidence, §68 (a); Long and Short Hauls, §5 (i), §10 (c), §11 (b), §12 (1) (g); Tariffs, §3 (b), §14 (a).
Sangar v. The Southern Pacific Co., 2 I. C. R. 548. Passenger Fares and Facilities, §15 (a).
Savannah Bureau of Freight & Transp. v. Charleston & S. R. Co., 7 Inters. Com. Rep. 479, 11 Ann. Rep. I. C. C. 37. Long and Short Hauls. §9 (u).
Savannah Bureau of Ft. & Trans. v. Charleston & S. R. Co., 7 I. C. C. 458. Differentials, §8 (f) (g) (h); Evidence, §14 (3) (h), §14 (5) (s), §20 (x); Interstate Commerce Commission, §1 (bb), §8½ (ee); Long and Short Hauls, §7 (ii) (jj) (kk), §9 (m) (n), §10 (s).
Savannah Bureau of F. & T. Louisville & N. R. Co., 8 I. C. C. 377. Advanced Rates, §17 (ef), §19 (d); Equalization of Rates, §6 (b); Evidence, §32 (n) (o); Through Routes and Joint Rates, §4 (w), §13 (xx) (yy), §13½ (x), §15 (e).
Savannah Bureau of Freight & Transp. v. Charleston & S. R. Co., 7 I. C. C. 601. Passenger Fares and Facilities §2 (l) (m), §3 (l) (a); Through Routes and Joint Rates, §15 (c).
Savannah, Florida & Western R. Co. v. Bundick, 5 I. C. R. 289. Tariffs, §3 (1) (e) (f).
Savannah, F. & W. R. Co. v. Florida Fruit Exchange, 4 I. C. R. 589. Advanced Rates, §22 (a).
Savery v. New York C. & H. R. R. Co. (Com.) 2 I. C. R. 210. Passenger Fares and Facilities, §1 (a) (b) (c) (d), §7¼ (p) (q), §14½ (a), §19 (d).
Sawrie v. St. of Tenn. 8 I. C. C. App. XXIV. State Rates and Regulations, (9e).
Sayles v. N. Y. N. H. & H. R. Co. 9 I. C. C. 492. Procedure Before Commission, §10 (1) (x); Reparation, §21 (b); Through Routes and Joint Rates, §15 (g).
Scheidel & Company v. C. & N. W. Ry., 11 I. C. C. 532. Classification, §17 (s), §22 (3a); Tariffs §18 (b).

Schollenberger v. Commonwealth of Penn. 8 I. C. C. App. X. State Rates and Regulations (9a) (9b).
Schumacher Milling Co. v. C., R. I. & P. R. Co., 4 I. C. C. 373. Classification, §3 (v) (w), §7 (d) (e), §11 (j) (k), §20 (b) (c) (d), §22 (s); Evidence, §22 (aa), §32 (e); Reduced Rates, §4½ (e).
Schumacher Milling Co. v. Chicago, R. I. & P. R. Co., 6 I. C. C. 61. Classification, §3 (y), §7 (f), §20 (e) (f), §22 (w).
Schwager & Nettleton v. G. N. Ry., 12 I. C. C. 521. Drayage Charges (h) (i) (j) (k) (1); Facilities and Privileges, §15½ (d) (e) (f); Tariffs, §4 (h).
Scofield v. L. S. & M. S. R. R., 2 I. C. C. 67. Act to Regulate Commerce, II (l); Car and Car Supply, §½ (c) (ca), §7 (o) (mn), §10½ (b), §11½ (a), §28 (b) (c); Classification, §16 (c) (d) (e) (f); Discrimination, §3 (e); Live Stock Shipments, (d).
Scott & Memphis R. Co. 5 I. C. R. 262. Courts, §1 (qq).
Scott v. Donald, 7 I. C. C. App. XCV. Intoxicating liquors, (rr) (ss).
Scott v. Donald, 7 I. C. C. App. LVI. Intoxicating liquors, (ii) (jj).
Seawell v. Kansas City, Ft. S. & M. R. Co. (Mo.), 5 I. C. R. 262. Actions at Law, (r); Discrimination, §14 (b), §17 (b); Interstate Commerce, §2 (g).
Selkire v. Stevens, 8 I. C. C. LXV. Interstate Commerce, §½ (z).
Selvege v. St. Louis & San Francisco Ry. Co. 7 I. C. C. App. LXXXVI. State Rates and Regulations, (8q).
Shamberg v. D. L. & W. R. Co., 3 I. C. C. 502. Cars and Car Supply, §11¾ (f), §28 (d) (e); Discrimination, §3 (y), §4 (1); Crimes, §2 (c).
Shiel & Co. v. Ill. Cent. R. R. Co. et al. 12 I. C. C. 187. Procedure Before Commission, §10 (1) (iia).
Shiel & Co. v. Ill. Central R. R. Co., 12 I. C. C. 210. Bills of lading, §2½ (c); Evidence, §18 (q), §30 (h), §42¼ (a); Facilities and Privileges, §17 (d), §22 (a); Procedure Before Commission, §10 (1) (iia); Reasonableness of Rates, §24 (a) (b); Special Contracts, §2 (dd); Stoppage In Transit (d).
Sidman v. Richmond, & D. R. Co., (Com.), 2 I. C. R. 766. Passenger Fares and Facilities, §4½ (a) (b), §5 (b) (c) (d), §9 (hi), §14¾ (b).
Singer Manufacturing Co. v. W. A. Wright, 7 I. C. C. App. XXII. Taxes (6t) (6u).
Shinkle, Wilson, & Kreis Co., v. Louisville & N. R. Co., 5 I. C. R. 282. Courts, §5 (h), §14 (qq) (rr) (ss); Interstate Commerce Commission, §1 (r).
Shippers' Union of Phoenix v. Atchison, T. & S. F. R. Co., 9 I. C. C. 250. Classification, §6 (j); Evidence, §14 (5) (v) (w), §66 (m); Long and Short Hauls, §10 (w) (x).
Shores, Jr. 7 I. C. C. App. LXVII. Water Carriers, §1 (g).
Sioux City Commercial Club v. C. M. & St. P. Ry. 12 I. C. C. 253. Procedure Before Commission, §10 (2) (ee) (eea) (ff).
Slater v. Northern Pacific R. Co., 2 I. C. R. 243. Crimes, §2 (a), §28½a (b); Interstate Commerce Commission, §1 (h); Passenger Fares and Facilities, §12 (f) (g) (h); Procedure Before Commission, §1 (p), §2 (ja).
Smith v. Lake Shore & Michigan Southern Ry. Co., 8 I. C. C. App. XXVIII. Passenger Fares and Facilities, §5 (j).
Smith v. N. P. R. R. 1 I. C. C. 611. Discrimination, §3 (ba); Passenger Fares and Facilities, §2 (b) (c), §6 (ob) (oc), §7¼ (1) (m) (n), §12a (a).
Smith v. Alabama (U. S. Sup. Ct.) 1 I. C. R. 808. Statutes (aa).
Smith v. State of Alabama 1 I. C. R. 804. State Rates and Regulations (w) (x) (y) (z) (aa) (bb) (cc) (dd) (kk).
Smith v. Alabama (U. S. Sup. Ct.), 1 I. C. R. 806. Interstate Commerce, §½ (d); State Rates and Regulation (cc).
Smith v. Alabama (U. S. Sup. Ct.) 1 I. C. R. 807. State Rates and Regulations (dd)
Smith v. Alabama (U. S. L. ed. 508) 1 I. C. R. 809. Courts, §10 (a).
Smith v. State of Tennessee, 8 I. C. C. LXXII. Passenger Fares and Facilities, §11 (aa).
Smyth v. Ames, 8 I. C. C. App. V. Local Rates and Combinations (id).
Society American Florists, Etc., v. U. S. Express Co., 12 I. C. C. 121. Advanced Rates, §9 (i); Evidence, §51 (i), §62 (d); Express Companies, §1¾ (c), §10 (a) (aa) (ab) (ac) (b), §22½ (a); Reasonableness of Rates, §9 (c) (d) §31 (a); Reduced Rates, §5½ (d).

Solan v. Chicago, M. & St. P. R. Co., (Iowa) 5 I. C. R. 468. Loss and Damage, §3 (d), §10 (2) (f).
S. Carolina, ex rel. of v. George, et al. v. City Council of Aiken, 7 I. C. C. App. XVII. Intoxicating liquors, (z).
Southern Building & Loan Association of Knoxville, Tenn. v. Norman, 7 I. C. C. App. LXXVIII. Taxes (7d).
Southern California R. C. v. Rutherford (C. C. S. D. Cal.), 4. I. C. R. 800. Courts, §14 (aa).
Southern Indiana Express Co. v. United St. Express Co., 8 I. C. C. App. LXII. Credit Account (g); Express Companies, §1 (g).
Southern Grocery Co. v. Ga. Northern Ry. Co., 12 I. C. C. 229. Evidence, §2 (x), §14 (1) (ff).
So. Grocery Co. et al., v. Ga. Nor. Ry. Co., et al., 12 I. C. C. 230. Equalization of Rates, §2 (t); Long and Short Hauls, §4½ (1).
Southern Pac. Co. v. Redding & Son, 8 I. C. C. App. II. Reasonableness of Rates, §8 (4) (b); Special Contracts, §6 (h).
Southern Paint & G. Co. v. Lake Erie & W. R. Co., 6 I. C. C. 284. Interstate Commerce Commission, §15 (m); Procedure Before Commission, §1 (dd).
Southern Ry. Co. v. City of Asherville, 7 I. C. C. App. XI. Taxes (6p).
Southwestern Kansas Farmers & Business Mens League v. A. T. & S. F. Ry. 12 I. C. C. 530. Long and Short Hauls, §5 (4d).
Spartanburg Board of Trade v. Richmond & Danville R. R. Co., 2 I. C. R. 193. Long and Short Hauls, §12 (1) (d) (f); Procedure Before Commission, §1 (oa), §10 (l) (n) (na), §10 (3) (a), §14½a (c); Reasonableness of Rates, §7¼ (ea), §28 (d).
Spellman v. New Orleans (C. C. E. D. La.) 3 I. C. R. 575. State Rates and Regulations, (4j); Interstate Commerce, §4 (t).
Spillers & Co. v. Louisville & N. R. Co., 8 I. C. C. 364. Basing Points and Lines, §3 (e); Tariffs, §4 (g), §7 (1); Long and Short Hauls, §16 (b).
Spiegle & Co. v. Chesapeake & O. R. Co. 11 I. C. C. 367. Long and Short Hauls, §6⅞ (aa), §7 (4b).
Sprigg v. D. & O. R. R. Co., 8 I. C. C. 443. Anti-Trust Laws (ff, gg); Interstate Commerce Commission, §1 (dd), §8½ (jj); Passenger Fares and Facilities, §5 (e) (f) (g) (h) (i).
Spring v. Baltimore & O. R. Co., 8 I. C. C. 443. Anti-Trust Laws (ee).
Squire & Co. v. Mich. Central R. Co., 3 I. C. R. 515 Classification, §6 (d) (e); Discriminations, §1a (c), §8 (7) (a) (b); Evidence, §1½ (1), §2 (ea), §12 (1) (b); Reasonableness of Rates, §8 (1½) (a), §28 (p).
Stahl v. Oregon R. & Nav. Co. 1 I. C. R. 314. Overcharges (a); Procedure Before Commission, §10 (2) (a).
Stanley v. Wabash St. L. & P. R. Co. (Mo.), 3 I. C. R. 176. Interstate Commerce, §4 (h); Cars and Car Supply, §6⅞ (a).
Starace v. Rossi, 7 I. C. C. LX. Intoxicating liquors, (kk).
State v. Agee (Ala.), 2 I. C. R. 21. State Rates and Regulations, (ll).
State v. Chicago, M. & St. P. R. Co., (C. C. N. D. Iowa), 4 I. C. R. 425. Courts, §6½ (s) (t); Interchange of Traffic (u); Interstate Commerce, §4 (ee).
State v. Chicago, St. P. M. & O. R. Co. (Minn.), 2 I. C. R. 519. Interstate Commerce, §2 (c); State Rates and Regulations (3c).
State v. Coonan (Iowa), 3, I. C. R. 670. Intoxicating liquors (s).
State v. Corbett, 4 I. C. R. 694. Passenger Fares and Facilities, §½ (da); Interstate Commerce, §4 (hh) (ii); State Rates and Regulations (6m) (6ma); Statutes (hh) (ii) (jj) (kk).
State v. Corrick (Iowa), 3. I. C. R. 669. Intoxicating liquors (r).
State v. Deschamps (Ark.). 3. I. C. R. 576. Intoxicating liquors (n).
State v. Fitzpatrick (Sup. Ct. R. I.), 1 I. C. R. 713. Intoxicating liquors, (f).
State v. Geer (Conn), 3 I. C. R. 732. Interstate Commerce, §4 (w); State Rates and Regulations, (4r).
State v. Grand Trunk R. Co., 3 I. C. R. 807. Taxes (4n).
State v. Gulf, C. & S. F. R. Co. (Tex. Civ. App.) 44 S. W. 542. Interstate Commerce, §½ (aa).
State v. Harrub (Ala), 4 I. C. R. 99. State Rates and Regulations, (4z); Statutes (t).

State v. Intoxicating Liquors, (Me.), 3 I. C. R. 581. Intoxicating liquors (q).
State v. Klein (Ind.), 3 I. C. R. 573. State Rates and Regulations, (4i).
Stanley v. Wabash, St. L. & P. R. Co. (Mo.) 3 I. C. R. 176. Statutes (f).
State of Alabama v. Harrub, 4 I. C. R. 99. Interstate Commerce, §4 (y) (z).
State of Conn. v. Geer., 3 I. C. R. 732. Crimes, §34 (c); State Rates and Regulations (4e).
State of Indiana v. Woodruff Sleeping & Parlor Coach Co. (Sup. Ct. Ind.) 1 I. C. R. 800. Taxes (m) (n).
State of Iowa v. Chicago, M. & St. P. R. Co., 4 I. C. R. 425. Terminal Facilities, §3 (f), §7 (a).
State of Iowa v. Rhodes, 7 I. C. C. App. II. Intoxicating liquors, (y).
State of Kansas v. Otis 8 I. C. C. App. LXXXV. State Rates and Regulations (9x).
State of Louisiana v. Davidson, 8 I. C. C. App. LXXXIX. State Rates and Regulation, (9y).
State of Louisiana v. Lagarde, 7 I. C. C. App. L. Taxes (6z).
State of Md. v. C. L. Applegarth, 7 I. C. C. App. XVII. Taxes (6s).
State of Missouri v. Parsons, 5 I. C. R. 250. Classification, §22 (v).
State of North Carolina ex rel. Ry. Commission v. Western union Telegraph Co., 7 I. C. C. App. XX. Telephone and Telegraph Companies, §3 (ff).
State of North Carolina ex rel. Goodwin v. Caraleigh Phosphate & Fertilizer Works, 7 I. C. C. App. LXXXIII. State Rates and Regulations, (8o).
State of N. Dakota, ex, rel., Bartlett v. Fraser, 3 I. C. R. 577. Intoxicating liquors (o) (p) (pa) (pb).
State of N. J. Tide Water Pipe Co., Limited, v. State Board of Assessors, 7 I. C. C. App. II. Taxes (61).
State of New York v. Hawkins, 5 I. C. R. 228. Statutes (tt) (uu).
State of So. Carolina v. Holleyman, 8 I. C. C. App. LXX. Intoxicating liquors, (3i) (3h).
State, Corwin, v. Indiana & O. Oil, G. & Min. Co. (Ind.) 2 I. C. R. 758. Gas Companies (a) (ab).
State, ex rel M. F. Selliger v. O'Connor, 7 I. C. C. App. XL. Taxes (7a).
State, Waterbury v. Newton (N. J.), 2 I. C. R. 63. State Rates and Regulations (mm) (nn); Interstate Commerce, §4 (b).
Sternberger v. Cape Fear & Y. V. R. Co. (S. C.) 2 I. C. R. 426. Interstate Commerce, §2 (c); State Rates and Regulations (3b).
Steuben v. Central Ry. Co. of N. Y. 7 I. C. C. App. XLII. State Rates and Regulations (8b).
Stevens v. St. of Ohio, 8 I. C. C. App. LXXVIII. Intoxicating liquors, (31).
Stockton v. Baltimore etc. R. R. Co. (U. S. Ct. N. J.), 1 I C. R. 411. Bridges and Tolls, §3 (a) (b) (c) (d); Interstate Commerce, §5 (j) (k) (1) (m) (n) (o); Navigable Waters (aa) (b); State Rates and Regulations (n) (o) (p).
Stone & Carter v. Detroit, Grand Haven & Milwaukee R. Co., 3 I. C. R. 60 Cartage & Drayage (a) (b) (c); Drayage Charges (a). (b) (c).
Stone & Marten v. D. G. H. & M. R. Co., 3 I. C. C. 60. Discrimination, §8 (1) (c)
Stoutenburgh v. Hennick, 2 I. C. R. 409. Act to Regulate Commerce, I. (d); Statutes (e).
Stowe-Fuller Co. v. Pennsylvania Co., 12 I. C. C. 215. Classification, §3 (nn) (oo), §10 (bb) (cc) (dd).
Stubbs, Chairman of Western Lines, 12 I. C. C. 8. Passenger Fares and Facilities, §12 (t).
Suffern, Hunt & Co. v. Indiana D. & W. R. Co. 7 I. C. C. 255. Minimums, §2 (a) (b), §5 (a), §7 (b) (c) (d); Overcharge (p); Tariffs, §3 (c), §3 (l) (h), §3 (2) (d) (e) (f), §4 (e) (f), §6a (e) (f) (g), §7 (k); Weights and Weighing, §4 (a).
Sullivan v. Booth & Flinn, 202 N. Y. S. 807. Navigable Waters (d).
Sunderland Bros. Co. v. M. & T. Ry. Co. 18 I. C. C. 425. Minimums, §2 (c).
Swaffield v. Atlantic Coast Line R. Co., 10 I. C. C. 281. Classification, §10 (wx), §11 (m), §17 (r), §18 (g), §22 (oo) (pp) (ppa).
Swift & Co. v. Philadelphia & R. R. Co., 4 I. C. R. 633. Interstate Commerce, §4 (ff) (gg), §5 (ii) (jj); Reasonableness of Rates, §2 (dd).

Swift v. Philadelphia & R. R. Co. (C. C. N. D. Ill.), 5 I. C. R. 116. Act to Regulate Commerce, II. (aa); Actions at Law, (j) (k); Courts, §1 (nn) (oo), §13 (b); Overcharges (g).
Swift v. Philadelphia & R. R. Co. (C. C. N. D. Ill.), 4 I. C. R. 633. Courts, §1 (gg), §6½ (ddee); Freight Charges (ab); State Rates and Regulations (5q) (5r); Statutes (bb).
Swift v. Sutphen (C. C. N. D. Ill.) 2 I. C. R. 656. State Rates and Regulations (3h).
Swyer v. Gulf, C. S. F. R. Co. 5 I. C. R. 361. Statutes (ww).

T

Tecumseh Celery Co. v. Cincinnati, J. & M. R. Co. (Com.), 4 I. C. R. 318. Classifiction, §1 (aa), §7 (c), §17 (g), §22 (q) (r); Procedure Before Commission, §1 (aa).
Tex. v. Gulf Colorado & Santa Fe Ry. Co., 8 I. C. C. LII. Interstate Commerce, §½ (y).
Texas v. Southern Kansas Ry. Co. of Texas, 8 I. C. C. App. XC. Interstate Commerce, §½ (aa).
Texas & Pacific Ry. Co. v. Avery, 7 I. C. C. App. LXXX. Interstate Commerce, §½ (s).
Texas & Pacific Ry. Co. v. Payne, 7 I. C. C. App. LXIII. Loss and Damage, §10 (2) (g), §15 (b).
Texas & P. R. Co. v. Interstate Commerce Commission 5 I. C. R. 405. Courts, §5 (j) (k), §6½ (kk); Discrimination, §5 (c); Evidence, §1½ (r), §14 (5) (p), §44½ (b); Foreign Commerce, §½ (c); Import Traffic, §1 (1) (m), §2 (a); Interstate Commerce, §5 (oo) (pp), Interstate Commerce Commission, §1 (t), Procedure Before Commission, §13 (v).
Texas & P. R. Co. v. Interstate Commerce Commission, 162 U. S. 197, 40 L. ed 940. 5 I. C. R. 405. Act to Regulate Commerce II (kk).
Texas Cement Plaster Co. v. St. Louis & S. F. R. Co., 12 I. C. C. 68. Discrimination, §4½ (q), §10 (h); Evidence, §32 (r); Percentage Rates (d); Through Routes and Joint Rates, §13 (3x).
Territory of Oklahoma v. C. R. I. & P. Ry., 12 I. C. C. 368. Export Rates and Facilities, §6 (z).
Thatcher v. Fitchburg R. R. Co., 1 I. C. R. 356. Interstate Commerce Commission, §8½ (b) (ab) (pp), §4 (j) (ja) (k) (l), §8 (a).
Thomas v. Cincinnati, N. O. & T. P. R. Co., (C. S. D. Ohio), 4 I. C. R. 788. Courts, §1a (d) (e) (f) (g); Crimes, §24½ (s) (t) (u) (v) (w) (xy) (zaa), §34 (j); Receivers (v) (w) (x), Strikes (b).
Thos. V. Cartor v. S. P. Co. & U. P. Ry. Co., 6 I. C. C. 113. Passenger Fares and Facilities, §6. (x).
Thomas v. Gay & Reed, 8 I. C. C. App. VIII. Taxes (7i).
Thomas v. Wabash St. L. & P. R. Co., (C. C. S. D. Ill.) 4 I. C. R. 802. Loss and Damage, §3 (b), §10 (2) (e), §10½ (a) (b) (c) (d).
Thompson v. Pennsylvania R. Co., 10 I. C. C. 640. Cars and Car Supply, §7 (nn), §17a (d). §20 (e); Classification, §10 (y).
Through Routes and Through Rates, 12 I. C. C. 164; Through Routes and Joint Rates, §2 (ff) (gg), §3 (h).
Thurber v. New York & H. R. R. Co. (Com.), 2 I. C. R. 742. Classification, §1 (a) (b), §3 (i) (j) (k), §5 (c) (d) (e) (f), §8a (c), §12 (a); Discrimination, §3 (p) (q); Evidence, §18 (fa) (g).
Tift v. Southern R. Co., 10 I. C. C. 548. Advanced Rates, §2½ (ij) (kl) (m), §5 (4) (b), §7 (2) (a), §7 (7) (cde), §9 (c) (d) (e) (fg), §9 (j) (k), §13 (a), §17 (kl) (m) (no); Association (k); Evidence, §10 (e), §22 (b), §63 (i); Reasonableness of Rates, §27 (f).
Tileston Mill Co. v. N. P. Ry. Co., 8 I. C. C. 346. Evidence, §1½ (4b); Long and Short Hauls, §4¾ (c).
Toledo A. A. & N. M. R. Co v. Pennsylvania Co. 5 I. C. R. 522. Courts, §6½ (11), §14 (tt); Crimes, §24½ (uu) (vv) (ww) (xx), §34 (ja); Employes (a) (b) (c) (d).
Toledo A. A. & N. M. R. Co., v. Pennsylvania Co., (C. C. N. D. Ohio), 5 I. C. R. 545. Courts, §1 (sstt), §1a (l) (m) (n), §6½ (mmnn), §14 (uu) (vv) (ww).

Crimes, §24½ (yy); Employes (e) (f) (g) (h) (i) (j) (k) (1); Interchange of Traffic (cc); Wages (u).
Toledo Produce Exchange v. L. S. & M. S. R. R. Co., 3 I. C. C. 830. Differentials, §4 (b), §8 (da) (db); Interstate Commerce Commission, §1 (p); Procedure Before Commission, §13 (t), §14¾ (d).
Toledo Produce Exchange v. Lake Shore & M. S. R. Co. (Com.) 3 I. C. R. 830; Through Routes and Joint Rates, §14 (h).
Tomlin Harris Machine Co. v. L. & R. R. 12 I. C. C. 134. Long and Short Hauls, §7 (4n), §9 (w); Reasonableness of Rates, §28 (aa).
Tomlin-Harris Mach. Co. v. L. N. R. R. Co., 12 I. C. C. 138. Reasonableness of Rates, §7½ (cc).
Tozer v. United States (C. C. N. D. Mo.), 4 I. C. R. 245. Crimes, §26½ (a), §31 (a); Evidence, §13 (3) (a); Through Routes and Joint Rates, §13 (jj).
Traders & Travelers Union v. Phila., etc., R. R. Co. 1 I. C. R. 371. Interstate Commerce Commission, §1 (d) (e); Passenger Fares and Facilities, §10 (ba) (c); Special Contracts, §4 (1) (a) (aa).
Traders and Travelers Union v. Phil. & Reading R. Co. 1 I. C. R. 18. Passenger Fares and Facilities, §10 (a) (b).
Trades League of Philadelphia v. P. W. & B. R. Co., 8 I. C. C. 368. Classification, §6½ (a), §16 (aa) (z).
Trammell v. Clyde Steamship Co. 4 I. C. C. 120. Discrimination, §13½ (c); Long and Short Hauls, §4½ (c), §5 (k) (dd), §7 (p) (q), §8 (b), §9 (e), §10 (j), §11 (c) (d); Receivers (g); Through Routes and Joint Rates, §1 (1), §2 (g) (h) (i), §23 (b); Water Carriers, §6 (f).
Transportation of Land and Imigration Agents 12 I. C. C. 8. Passenger Fares and Facilities, §12 (s) (t).
Transportation of newspaper employees, 12 I. C. C. 16; Caretakers (b); Facilities and Privileges, §2 (a); Passenger Fares and Facilities, §12 (ff).
Troy Bd. of Trade v. Alabama M. R. (Com.), 4 I. C. R. 348. Discrimination, §9 (c); Interstate Commerce Commission, §1 (q); Local Rates and Combinations (ec); Through Routes and Joint Rates, §2 (o) (p).
Troy Board of Trade v. Alabama M. R. Co. 6 I. C. C. 1. Receivers (bb); Through Routes and Joint Rates, §3½ (c), §13½ (r).
Tyrolu v. Warden of city Prison, 8 I. C. C. App. LI. Passenger Fares and Facilities, §14 (ha).
Truck Farmers Asso. v. Northeastern R. R. Co., 6 I. C. C. 295. Cars and Car Supply, §7 (x), §11¾ (h), §11⅞ (ab); Classification, §4 (a); Evidence, §15½ (b), §29 (b) (c), §43 (c); Refrigeration, §1 (a) (b), §3½ (a), §4 (a); Through Routes and Joint Rates, §13 (mm).

U

Ulrick and Williams v. Lake Shore & Michigan S. R. Co., 9 I. C. C. 495. Discrimination, §8 (1) (p); Long and Short Hauls, §9 (v) (va), §13 (a).
Union P. Purchasing Co. v. C. & M. W. R. Co., 12 I. C. C. 549. Tariffs, §7 (pb).
Union P. R. Co. v. United States (C. C. App. 8th C.) 4 I. C. R. 705. Courts, §3 (b), §5 (e) (f), §6½ (ff); Statutes (11); Telephone and Telegraph Companies, §1 (a), §3 (t) (ee), §4 (a) (b), §6 (a) (b) (c) (d) (e) (f) (g) (h) (i) (j).
Union Trust Co. v. Atchison, Topeka, & Santa Fe Railroad Co. (Postal Telegraph Cable Co.) 7 I. C. C. App. LXVI. Telephone and Telegraph Companies, §3 (ii).
U. S. Mich. Central R. Co., 3 I. C. R. 290. Crimes, §15 (ef).
Unlawful Rates in Trans. Cotton by K. C. M. & B. R. R. v. 8 I. C. C. 121. Compress Companies and Charges II (d).
U. S. V. C. P. & St. L. R. Co. et. al. 11 I. C. C. 698. Safety Appliance Act, (k).
U. S. v D. & R. G. R. R. Co., 18 I. C. C. 7. Demurrage, §11 (c).
U. S. v. Addyston Pipe & Steel Co. 8 I. C. C. App. XL. Anti-Trust Laws and Monopolies (ddb) (ddc) (ddd) (dde) (ddf).
U. S. v. Boyer 8 I. C. C. App. XL. State Rates and Regulations (9j).
U. S. ex rel. I. C. C. v. Chicago, K. & S. R. Co., 8 I. C. C. App. XXVI. Accounting, §1 (b).
United States v. Chicago, P. & St. L. R. Co. (U. S. Dist. Ct. S. D. Ill.) 11 I. C. C. 698. Safety Appliance Act (m) (n) (o).

United States v. Cleveland, C. & S. R. Co. (C. C. N. D. Ohio), 3 I. C. R. 290. Passenger Fares and Facilities, §12 (i); Crimes, §15 (f) (g).
U. S. v. Coal Dealers Association of California et al. 8 I. C. C. App. XLII. Anti-Trust Laws and Monopolies (ddg) (ddh) (ddi) (ddj); Interstate Commerce, §½ (x).
United States v. Debs, 5 I. C. R. 163. Anti-Trust Laws (n) (o) (p) (q); Courts, §1 (hi) (j) (k).
United States v. Debs 5 I. C. R. 163. Courts, §14 (nn) (oo) (pp); Crimes, §24½ (qqrr) (ss) (tt).
U. S. v. De Coursey, 7 I. C. C. App. LVII. Crimes, §17 (t); Receivers (gg).
United States v. Egan (D. C. E. D. Mo.), 3 I. C. R. 582. Passenger Fares and Facilities, §13½ (a).
United States v. Elliott, 5 I. C. R. 148. Courts, §14 (jj) (kk) (ll); Statutes, (ss).
United States v. Elliott (C. C. E. D. Mo.), 4 I. C. R. 708. Courts, §14 (t).
United States v. Elliott, 4 I. C. R. 798. Courts, §14 (z).
United States v. Hanley, 7 I. C. C. App. IX. Crimes, §5 (g), §16½ (b), §17 (q) (r) (s), §31 (d).
United States v. Herman Morsman, 3 I. C. R. 112. Crimes, §17 (i) (j) (k).
U. S. v. Hopkins et al, 8 I. C. C. App. XXII. Anti-Trust Laws and Monopolies, (dda); Stock Yard Companies, (u); Interstate Commerce, §½ (w).
United States v. Howell (D. C. W. D., Mo.), 4 I. C. R. 818. Actions at Law, (i); Crimes, §7 (ab), §16½ (a), §22 (a), §24½ (ff) (gg) (hh) (ii) (jj) (kk) (ll) (mm), §25 (a), §26 (b), §28½ (a) (b), §28½a (v) (w), §30 (a), §31 (b) (c); Interstate Commerce, §5 (ll).
U. S. of America v. Jellico Mt. Coke & Coal Co., 3 I. C. R. 626. Anti-Trust Laws, (fg); Courts, §6½ (o), §14 (j) (k).
United States v. James, 5 I. C. R. 578. Crimes, §24½ (bb), §28½ (p).
United States v. John Cassidy, 7 I. C. C. App. IX. Crimes, §24½ (3b) (3c) (3d); Interstate Commerce, §½ (p).
U. S. v. Joint Traffic Asso., 7 I. C. C. App. XXXVI. Freight Agencies, (d) (e) (f).
U. S. v. Joint Traffic Asso. et al., 8 I. C. C. App. LIV. Import Traffic, §1 (o).
United States v. Knight (D. C. S. D. Ill.), 3 I. C. R. 801. Through Routes and Joint Rates, §1 (k); Special Rates and Services, (d).
United States v. Knight Co., 7 I. C. C. App. XXIV. Anti-Trust Laws, (u).
United States v. Mellen (D. C. D. Kan.), 4 I. C. R. 247. Crimes, §17 (l), §26½ (b), §34 (a), §35a (a) (b); Long and Short Hauls, §5 (p).
United States v. Michigan C. R. Co. (D. C. N. D. Ill.), 3 I. C. R. 287. Crimes, §14½ (a), §15 (b) (c) (d), §28½a (c); Discrimination, §4½ (e).
United States v. Missouri P. R. Co. (C. C. D. Kan.), 5 I. C. R. 106. Act to Regulate Commerce, IV. (b); Discrimination, §13½ (e).
United States v. Morsman, 3 I. C. R. 112. Procedure Before Commission, §17 (a); Crimes, §17 (k); Express Companies, §1 (d).
United States v. Patterson, 4 I. C. R. 775. Anti-Trust Laws, (i) (j) (k) (l); Crimes, §17 (m) (n) (o), §24½ (e) (f).
United States v. Pittsburg, C. C. & St. L. R. Co. (U. S. Dist. Ct. S. D. O.), 11 I. C. C. 696. Safety Appliance Act, (j) (l).
United States v. Tozer (D. C. E. D. Mo.), 2 I. C. R. 422. Crimes, §15 (a), §17 (a) (b) (c) (d) (e) (f) (g) (h), §19 (a).
United States v. Tozer, 2 I. C. R. 540. Discrimination, §4 (i), §4½ (c).
United States v. Tozer (D. C. E. D. Mo.), 2 I. C. R. 597. Courts, §1 (r); Discrimination, §1 (b); Through Routes and Joint Rates, §13 (q) (r), §32a (a).
United States v. Trans-Missouri Freight Association, 4 I. C. R. 443. Anti-Trust Laws and Monopolies, (fga) (fgb) (fgc) (fgd); Crimes, §2 (d), §24½ (a), §34 (b); Evidence, §68 (b). Freight Agencies, (ad) (b); Special Contracts, §2½ (p), §5½ (c); Statutes, (w) (x) (y).
United States v. Workingmen's Amalgamated Council, 4 I. C. R. 831. Courts, §14 (bb); Crimes, §24½ (nn) (oo) (pp), §26½ (c).
U. S. A. v. Trans.-Mo. Freight Asso., 7 I. C. C. App. CI. Anti-Trust Laws, (s) (v) (w) (x) (y) (z) (aa) (bb) (cc); Pooling of Traffic, (k).
U. S. ex rel, I. C. C. v. Seaboard Ry. Co., 8 I. C. C. App. XXV. Interstate Commerce, §3 (i) (j).

V

Van Camp Burial Vault Co. v. C. I. & L. Ry. Co., 12 I. C. C. 79. Classification, §5 (ii), §22 (3d).

Vance v. Vandercook Co., 8 I. C. C. App. XI. Intoxicating liquors, (vv) (ww).

Vandercook Co. v. Vance, 8 I. C. C. App. XXIX. Intoxicating liquors, (3a), (3b) (3c).

Vermont & C. R. Co. v. Vermont C. R. Co. (Vt.), 3 I. C. R. 488. Lease, (a); Taxes, (3r) (3s) (3t) (3u) (3v) (3w) (3x).

Village of Goodhue, Minn. v. C. G W. Ry., 11 I. C. C. 683. Long and Short Hauls, §7 (4h).

Violations of Act to Reg. Comm. by St. L. & S. F. Ry. Co., 8 I. C. C. 290. Long and Short Hauls, §5 (tt) (uu) (vv) (ww); Through Routes and Joint Rates, §3½ (a) (aa).

W

Wabash Ry. Co. v. Elliott, 43 Sup. Ct. 406. Attorney Fees (e).

Wabash etc. R. Co. v. People (U. S. Sup. Ct.), 1 I. C. R. 31. Interstate Commerce, §½ (b); State Rates and Regulations, (b) (ba) (j).

Wabash, St. Louis & P. R. Co. v. People (U. S. Sup. Ct.), 1 I. C. R. 37. Taxes, (b); Telephone and Telegraph Companies, §3 (a) (b).

Wabash etc. R. Co. v. People (U. S. Sup. Ct.), 1 I. C. R. 44. Water Carriers, §1 (b).

Walker v. Baltimore & Ohio R. R. Co., et al., 12 I. C. C. 196. Express Companies, §1 (h), §1¾ (d) (e) (ea), §13 (a); Passenger Fares and Facilities, §5 (k), §10 (d).

Wanash etc. R. Co. v. People, (U. S. Sup. Ct.), 1 I. C. R. 31. Taxes, (a) (aa).

Washer Grain Co. v. M. P. R. Co., 15 I. C. C. 147. Procedure Before Commission, §9 (b).

Warner v. New York Central & H. R. R. Co., 3 I. C. R. 74. Classification, §3 (l) §11 (c) (d) (e), §11½ (a) (b), §17 (f).

Warner v. N. Y. C. & H. R. Co., 3 I. C. C. 77. Classification, §3 (m).

Warren Ehrt Co. v. C. R. R. of N. J. R. Co., 8 I. C. C. 598. Procedure Before Commission, §13 (y); Through Routes and Joint Rates, §14 (k), §13 (3d), §13½ (z) (za) (aa), §23 (f).

Warren Mfg. Co. et al. v. Southern Ry. Co. et al., 12 I. C. C. 381. Anti-Trust Laws, (hha) (ii) (jj); Consolidation of Carriers, (ca); Evidence, §1½ (qqa), §20 (ee), §29 (d), §43 (f); Finance Dockets, §3 (a); Rail and Water Rates, (h); Reasonableness of Rates, §16 (h); Reduced Rates, §4½ (m).

Waterhouse v. Comer. (C. C. S. D. Ga.), 5 I. C. R. 564. Crimes, §24½ (zz) (3a); Employes, (m) (n) (o) (p) (q); Receivers, (y) (z).

Watten-Ehret Co. v. Central R. of New Jersey, 8 I. C. C. 598. Floatage, (a) (ab).

Waxelbaum & Co. v. Atlantic Coast Line R. R. Co., 12 I. C. C. 178. Minimum, §7 (i) (j); Perishable Freight, (f); Reasonableness of Rates, §2 (3f); Refrigeration, §4 (g); Tariffs, §1 (c), §6 (l) (la); Transportation, §2 (i).

Webster v. McK. Bell, 7 I. C. C. App. XXIX. Taxes, (6x).

Weil v. Pennsylvania R. R. Co., 11 I. C. C. 627. Classifications, §5 (hh); Evidence, §30 (c); Reasonableness of Rates, §2 (tt) (uu), §27¾ (b).

Weleetka Light & Power Co. v. Ft. S. & W. R. R. Co., 12 I. C. C. 503. Sidings and Spur Tracks, (g) (h); Switch Tracks and Switching, §1 (c) (d), §4½ (aa) (b) (c), §7 (f), §11 (a).

W. Virginia v. Reuben Lichtenstein, 8 I. C. C. App XXXVI. Intoxicating liquor, (3d).

Western Paper Bag Co. v. Johnson & Co., 7 I. C. C. App. LXIX. State Rates and Regulations, (8e) (8f).

Western Union Telegraph Co. v. Bright, 7 I. C. C. XLV. Telephone and Telegraph Companies, §3 (gg); Taxes, (6r).

Western Union Telegraph Co. v. Burlington & S. W. R. Co., 11 Fed. Rep. 1; Telephone and Telegraph Companies, §3 (ii).

Western Union Telegraph Co. v. Burgess (Tex., Civ. App.), 8 I. C. C. App. XXXIII. Telephone and Telegraph Companies, §3 (jj).

Western Union Telegraph Co. v. Eubank, 7 I. C. C. App. LXXXIX. Loss and Damage, §10 (2) (h).

Western Union Telegraph Co. v. Fremont, 5 I. C. R. 46. Taxes, (6f) (6g); State Rates and Regulations, (6x) (6y) (6z); Telephone and Telegraph Companies, §3 (z).
Western U. Teleg. Co. v. Fremont (Feb.), 5 I. C. R. 66. Courts, §11 (e).
Western Union Telegraph Co. v. Games, 7 I. C. C. LXXI. Telephone and Telegraph Companies, §3 (nn).
Western Union Telegraph Co. v. Howell, 5 I. C. R. 516. Telephone and Telegraph Companies, §3 (cc) (dd), §4 (j) (k).
Western Union Telegraph Co. v. Lark & I. C. C. App. XL. State Rates and Regulations, (7y).
Western Union Telegraph Co. v. Michelson, 5 I. C. R. 236. Courts, §1 (pp); Special Contracts, §6 (g); State Rates and Regulations, (7a); Telephone and Telegraph Companies, §3 (aa), §4 (i).
Western Union Telegraph Co. v. Millan, 8 I. C. C. App. XLV. Telephone and Telegraph Companies, §3 (mm).
Western Union Telegraph Co. v. Miss. R. R. Commission, 7 I. C. C. XCII. Telephone and Telegraph Companies, §3 (pp).
Western Union Telegraph Co. v. Mayor of New York, 2 I. C. R. 533. Special Contracts, §2½ (c); State Rates and Regulation, (3g); Courts, §1 (q); Telephone and Telegraph Companies, §3 (k) (l) (m).
Western Union Tel. Co. v. N. Y. (C. C. S. D. N. Y.) 2 I. C. R. 533. Courts, §1 (q).
Western Union Telegraph Co. v. Pennsylvania (U. S. Sup. Ct.), 2 I. C. R. 241. Telephone and Telegraph Companies, §3 (n).
Western Union Telegraph Co. v. Pendleton (U. S. Sup. Ct.), 1 I. C. R. 306. Telephone and Telegraph Companies, §3 (a) (b) (c) (d) (e); State Rates an Regulations, (j).
Western Union Tel. Co. v. Pendleton (U. S. Sup. Ct.) 1 I. C. R. 307. Interstate Commerce, §½ (c); Taxes (d).
Western Union Telegraph Co. v. Powell, 7 I. C. C. App. CVI. Telephone and Telegraph Companies, §3 (qq).
Western U. Teleg. Co. v. Seay (U. S. Sup. Ct.), 2 I. C. R. 726. Courts, §10 (v), §13 (b); Taxes, (3c) (3d); Telephone and Telegraph Companies, §3 (n) (o) (p).
Western Union Telegraph Co. v. Tyler, 4 I. C. R. 481. Telephone and Telegraph Companies, §3 (y), §4 (g) (h).
Westheimer v. Weisman, 8 I. C. C. App. LXXII. Intoxicating liquors, (3k).
White v. M. C. R. Co., 2 I. C. C. 641. Allowances, §8 (4¾) (a); Interstate Commerce Commission, §1 (n); Procedure Before Commission, §1 (u), §2 (jc) (k), §14¾ (c).
White & Co. v. B. & O. S. W. R. R. Co., 12 I. C. C. 307. Weights and Weighing, §2½ (g), §3 (c), §5 (ef) (g).
Wiemer & Rich v. C. N. W. Ry., 12 I. C. C. 462. Cars and Car Supply, §8 (a); Minimum, §7 (k) (l) (m), §8 (a).
Wight v. U. S., 7 I. C. C. App. XCV. Cartage and Drayage, (q).
Wilhoit v. Missouri Kansas & Texas Ry. Co., 12 I. C. C. 139. Reasonableness of Rates, §8 (1½) (e); Equalization of Rates, §2 (s); Evidence, §1½ (qq); Procedure Before Commission, §10 (l) (gg) (gga); Reasonableness of Rates, §8 (1½) (e) (d) (ef).
Wilhoit v. M. K. & T. Ry., 12 I. C. C. 159. Procedure Before Commission, §10 (2) (z) (aa).
Wilson v. Rock Creek R. Co., 7 I. C. C. 83. Electric Lines, I (a) (b); Interstate Commerce, §½ (u), §4 (nn); Passenger Fares and Facilities, §2 (k), §7¼ (cc) (dd), §14 (g) (h).
Williams v. Phipps. State of Kansas, 4 I. C. R. 299. State Rates and Regulations, (5f) (5g); Statutes, (ua).
Wilmington Tariff Asso. of North Carolina v. Cincinnati, Portsmouth & Va. R. Co., 9 I. C. C. 118. Discrimination, §3 (3k) (31), §5½ (db), §7 (c), §11½ (a); Equalization of Rates, §6 (c); Percentage Rates, (c); Reasonableness of Rates, §28 (va).
Wind, et al v. Iler & Co., 7 I. C. C. App. XVIII. Intoxicating liquors, (aa).
Wind et al. v. Iler & Co., 7 I. C. C. App. XVII. Intoxicating liquors, (bb).

Wichita v. Missouri P. R. Co., 10 I. C. C. 35. Classification, §3½ (n), §17 (q); Equalization of Rates, §2 (m); Evidence, §32 (p).
Wichita v. Atchison, T. & S. F. Ry. Co. et al, 9 I. C. C. 507. Procedure Before Commission, §10 (l) (y) (z) (aa).
Worchester Excursion Car Co. v. Pennsylvania R. Co. (Com.), 2 I. C. R. 792. Car and Car Supply, §½ (cd), §7 (r) (s), §11½ (b), Common Carrier, §8 (a); Passenger Fares and Facilities, §½ (d), §9 (j) (k) (l), §17 (a) (aa); Transportation, §11½ (a).
Wolf Brothers v. Allegheny Valley R. Co., 7 I. C. C. 40. Classification, §17 (m), §22 (z) (aa).
Wrigley v. Cleveland, C. C. & St. L. R. Co., 10 I. C. C. 412. Classification, §15 (a) (b) (ba); Minimum, §7 (f) (g).
Wylie v. Northern P. R. Co., 11 I. C. C. 145. Passenger Fares and Facilities, §2 (t) (u) (v) (w), §9 (m) (n) (o), §14 (j) (k); Through Routes and Joint Rates, §2 (v).

Y

Yearteau v. Joseph Bacon's Estate, 7 I. C. C. App. XXIII. Intoxicating liquors, (cc).

Index of Commodities

Volumes 1 I. C. R., through 12 I. C. C. is the period covered.

(References are to sections under subjects)

A

Agricultural implements. Blanket Rates, §10½ (f).
Alcohol. Commodity Rates, §5 (i).
Alcoholic liquors. See Intoxicating Liquors, Beer. Intoxicating Liquors, (ff) (3a).
Ale. Classification, §11 (c) (d); Intoxicating Liquors, (l) (ma).
Alfalfa. Class Rates, §2 (j) (k).
Alfalfa meal. Class Rates, §2 (k) (j).
Animals. State Rates and Regulations, (9w).
Anthracite coal. See Coal. Cars and Car Supply, §17a (d) §20 (e); Classification, §3 (q); Land Grant Railroads, (b); Long and Short Hauls, §7 (4d); Reasonableness of Rates, §2 (vv), §16 (c); Special Contracts, §2½ (f).
Apples. See Fruits. Blanket Rates §13 (m). Class Rates, §2 (j) (k); Procedure before Commission, §10 (2) (bb); Weights and Weighing, §2½ (g), §3 (b) (c), §5 (e).
Ardent spirits. Intoxicating Liquors, (l).
Asbestos. Through Routes and Joint Rates, §13 (ww).
Asbestos articles. Long and Short Hauls, §5 (xx) (zz), §6⅞ (u).
Asbestos pipe covering. Through Routes and Joint Rates, §22 (t).
Asparagus. See Vegetables. Classifications, §22 (q) (r).
Axes. Blanket Rates, §10½ (f).

B

Bacon. See Meats. Through Routes and Joint Rates, §13 (yy).
Bags. See Paper bags. Classification, §5 (jj).
Baking powder. Discrimination, §8 (1) (t).
Baled cotton goods. Export Rates and Facilities, §6 (bb).
Baled hay. See Hay. Lighterage, §3 (j).
Bananas. See Fruits. Cars and Car Supply, §9¾ (a); Classification, §7 (l); Discrimination, §8 (1) (u), §8 (7) (d); Long and Short Hauls, §5 (3u), §7 (3vw), §13 (c) (d); Reparation, §6 (d).
Barley. See Cereal products. Blanket Rates, §12 (b); Classification, §3½ (t); Reasonableness of Rates, §2 (y).
Barrels. Interstate Commerce, §½ (wa).
Barrell material. Reasonablenes of Rates, §7½ (x); Reparation, §7½ (e).
Beans. See Vegetables. Classification, §17 (n), §18 (e).
Bed material. Classification, §7 (a).
Beef cattle. See Meat. Commodity Rates, §5 (e); Divisions, §3 (a) (ab) (b); Live Stock Shipments, (f); Through Routes and Joint Rates, §11 (2) (d) (e) (f) (g) (ga) (h) (i) (j), §14 (r).
Beer. See Beverage Intoxicating Liquors. Classification, §11 (c) (d); Intoxicating Liquors, (l) (ma); Long and Short Hauls, §5 (r), §6⅞ (ii); Reasonableness of Rates, §2 (vva); Reparation, §16 (a).
Berries. See Fruits. Classification, §22 (q); Reasonableness of Rates, §8 (4) (a).
Beverage. See Beer, Bitters, Intoxicating Liquors. Intoxicating Liquors, (3c).
Billets. Net Rates, (a).
Birds. Interstate Commerce, §4 (w).
Bitters. Classification, §17 (c), §22 (i).

Bituminous coal. See Soft coal. Cars and Car Supply, §17a (d), §20 (d) (e); Classification, §3½ (g), §10 (z); Demurrage, §16 (p); Discrimination, §3 (3la), §4½ (o); Distance Rates, §3 (f); Embargoes, (a); Long and Short Hauls, §7 (4d); Reasonableness of Rates, §2 (vv).
Blankets. Discrimination, §8 (1) (t).
Blister copper. Insurance, (f).
Bolts. Net Rates, (a).
Book cases. Classification, §22 (ss) (tt) (uu) (vv).
Books. Courts, §1 (y), §4 (a), §5 (d), §6½ (aa); Crimes, §35 (a); Discrimination, §8 (1) (t); Interstate Commerce Commission, §6¼ (a).
Boot heels. Discrimination, §8 (1) (t).
Boxes. See Box shooks. Interstate Commerce, §½ (wa).
Box shooks. See Boxes and crate material. Classification, §17 (j) (k) (l).
Brass. Classification, §11 (o).
Brass beds. Minimums, §8 (c) (d).
Brewed liquors. Intoxicating Liquors, (m).
Brick. See Building brick, common brick, fire brick, brick articles, Class Rates, §2 (h); Classification, §10 (bb) (cc); Differentials, §8 (v); Distance Rates, §3 (d) (e) (g); Evidence, §19¾ (a); Reasonableness of Rates, §2 (ww), §32½ (f); Reparation, §7½ (m).
Brick articles. See Brick. Distance Rates, §3 (d) (e) (g).
Brick machinery. Long and Short Hauls, §7 (4k) (4l); Reasonableness of Rates, §7½ (aa).
Bristles. Classification, §17 (o).
Brush. Classification, §17 (o) (p), §22 (ll).
Buggies. Long and Short Hauls, §7 (3c) (3y) (3z), §10 (v).
Building brick. See Brick. Classification, §3 (oo), §10 (dd).
Butter. See Dairy products. Oleomargarine. Blanket Rates, §10½ (a); Long and Short Hauls, §5 (c), §6⅞ (jj); Reasonableness of Rates, §7½ (kk), §40 (c).

C

Cabbages. See Vegetables. Classification, §4 (a).
Calves. See Live stock. Live Stock Shipments, (hh); Through Routes and Joint Rates, §15 (g).
Canned milk. See Groceries. Classification, §11½ (d); Discrimination, §4 (jj); Equalization of Rates, §2 (q).
Canned goods. See Canned Milk. Long and Short Hauls, §6⅞ (hh).
Cars. Accident Reports, (a).
Car strikes. Allowances, §8 (6) (a).
Car freight. Allowances, §8 (6) (b).
Carriages. Long and Short Hauls, §7 (3c), §10 (v).
Cattle. See Live stock. Indian cattle, Mexican cattle. Cars and Car Supply, §9⅞ (b), §9⅞ (3) (d), §11¾ (f), §28 (d), §31 (a); Classification, §3½ (o) (p), §6 (d), §18 (h); Discrimination, §5 (e); Interstate Commerce, §½ (q); Live Stock Shipments, (e); Live Stock Shipments (eb) (h) (i) (j) (pa); Minimums, §7 (a); Per Car Rates, (a); Procedure before Commission, §10 (2) (v) (x) (y); State Rates and Regulations, (hh) (4i) (7b) (8i) (8w) (8x) (8y) (9j); Stock Yard Companies, (n) (q) (s); Taxes, (7i); Through Routes and Joint Rates, §3½ (h), §18 (a).
Cauliflower. See Vegetables. Classification, §7 (c), §22 (q) (r).
Celery. See Vegetables, Classification, §7 (c), §17 (g), §22 (q) (r).
Cement. See Asphaltum, Portland cement. Discrimination, §4 (gg), §4½ (l).
Cement burial vaults. Classification, §5 (ii), §22 (3d).
Cement plaster. Discrimination, §4½ (q); Percentage Rates, (d).
Cereal products. See Barley, rice. Classification, §7 (d) (e) (f), §11 (j), §20 (c) (e) (s) (w).
Chair stuff. Classification, §7 (a) (b).
Cheap bedroom sets. Classification, §11 (h) (i).
Cheroke cattle. State Rates and Regulations, (7n) (8q).
China clay. Lighterage, §5 (d).

Chocolate. Discrimination, §8 (1) (t).
Cigarette. See Tobacco. State Rates and Regulations, (9e); Taxes, (6m).
Cigarette paper. State Rates and Regulations, (9e).
Cigarette wrappers. Taxes, (6m).
Citrus fruits. See Fruits. Blanket Rates, §12 (e); Minimums, §7 (h); Pooling of Traffic, (l) (o); Refrigeration, §4¾ (b).
Clover. Classification, §10 (wx), §11 (m).
Coal. See Slack Coal, Anthracite Coal, Bituminous Coal, Lump Coal, Coke, Mill Coal, Mine Run Coal, Nut Coal, Soft Coal, Fire Brick. Advanced Rates, §5 (3) (a), §17 (st); Allowances, §7 (b), §8 (8) (a); Anti-Trust Laws and Monopolies, (ddg) (ddh) (fg); Blanket Rates, §2 (c) (d), §12 (f), §12a (a), §13 (a) (c); Branch Lines, §6 (a); Cars and Car Supply, §7 (a) (b) (f) (g) (i) (l) (ff) (ii) (nn), §9 (b), §9⅞ (3) (d), §13 (a), §17a (c) (d); §20 (e) (h), §28 (a), §32½ (b); Credit Account, (a); Classification, §10 (q) (v) (y); Commodities Clause, II (a) (b) (c); Common Carrier, §9 (m); Crimes, §2 (j) (k) (mn), §2½ (a) (c) (d), §7 (a) (d), §23 (a) (b), §24 (b); Demurrage, §15 (b); Differentials, §8 (n) (o) (y); Discrimination, §3 (a), §4 (b) (h) (ii), §4½ (k) (l), §5½ (g) (h), §8 (1) (q) (r) (y) (z) (bb); Equalization of Rates, §2 (n), §3 (f), §3½ (a); Evidence, §1 (k), §1½ (jj), §14 (l) (cc), §15½ (a), §20 (cc), §32 (l), §52½ a (a), §60½ (a), §65 (d), §66 (o) (p); Facilities and Privileges, §10 (b), §16½ (a), §21 (e); Freight Charges, (m) (n) (p); Interstate Commerce, §5 (rr); Interstate Commerce Commission, §8½ (dd), §15 (s); Long and Short Hauls, §5 (ii) (jj) (4b) (4d), §6 (d), §6⅞ (m), §7 (3k) (4c) (4q), §9 (w); Overcharges, (h); Procedure before Commission, §10 (l) (u) (ff), §10 (2) (cc) (ffa), §14½ (a); Reasonableness of Rates, §2 (zz) (3b) (3c) (3d), §7½ (cc), §8 (1½) (f), §27½ (a) §28 (aa); Reduced Rates, §1 (c), §4½ (d); Reparation, §11 (a); Sidings Tracks and Spur Tracks. (d) (e); Special Contracts, §5 (a); State Rates and Regulations, (6v) (10c) (10e); Switch Tracks and Switching, §3 (a) (b) (c), §4 (a) (b) (da). §4½ (a). §7 (a) (c), §9 (a); Tariffs, §3 (2) (c); Taxes, (6c); Through Routes and Joint Rates, §11 (2) (n) (o) (p) (r), §13 (j) (3l) (3w) (4f), §14 (d), §15½ (a), §24 (c), §26 (c); Weights and Weighing, §7½ (b).
Coarse grain. See Grain. Discrimination, §4 (hh).
Cocoa. Discrimination, §8 (1) (t).
Coffee. Discrimination, §4 (ta); Long and Short Hauls, §5 (x) (3c).
Coke. See Coal. Cars and Car Supply, §7 (b); Crimes, §2½ (c), §7 (a); Demurrage, §15 (b); Facilities and Privileges, §10 (b); Long and Short Hauls, §5 (4a); Procedure before Commission, §10 (2) (w); Reasonableness of Rates, §28 (cc); State Rates and Regulations, (6v); Through Routes and Joint Rates, §11 (2) (n) (o) (p).
Common soap. See Soap. Anti-trust Laws and Monopolies (b); Classification, §6 (a) (b), §22 (a).
Convict made goods. State Rates and Regulation, (8w).
Copper. See Copper ore, Scrap copper. Classification, §11 (o); Discrimination, §4 (gg).
Copper bullion. Insurance, (f).
Copper matte. Insurance, (f).
Corn. See Grain, Snapped corn. Blanket Rates, §12 (a); Cars and Car Supply, §7 (oo), §17a (e), §32½ (k), Class Rates §2 (f); Crimes, §2½ (b); Classification, §3½ (c) (d) (k) (u) (v) (wx) (y) (zaa), §11 (b), §22 (l) (o); Differentials, §4 (h), §8 (la); Equalization of Rates, §2 (k), Evidence, §58 (i); Export Rates and Facilities, §1½ (c), §2 (aa), §4 (d) (g) (h), §6 (n) (o) (z); Minimums, §7 (b); Overcharges, (s); Reasonableness of Rates, §2 (q), §7½ (hh), §28 (u); Reparation, §7½ (j); Special Contracts, §2½ (aa); Through Routes and Joint Rates, §22 (d).
Cornmeal. Classification, §3½ (k) (wx), §11 (n); Differentials, §8 (la); Procedure before Commission, §10 (2) (o).
Corn products. Classification, §3½ (c) (d) (u) (v) (y) (zaa), §11 (b), §22 (l) (o); Differentials, §4 (h).

Cotton. See Cotton Goods, Linters, Compressed cotton, Uncompressed cotton. Any-Quantity Rates, I (a) (b) (d); Blanket Rates, §10 (a); Cars and Car Supply, §7 (q), §38 (a); Classification, §5 (dd) (ee), §16 (j), §22 (ww); Compress Companies and Charges, I (a) (b) II (a) (b) (c) (d) (e) (f) (g) (h), III (a) (b) (c) (d) (e) (f); Concentrating Rates and Privileges, (e) (h) (i); Differentials, §8 (p); Discrimination, §3 (m) (hh), §4 (j) (q), §5½ (f), §9 (d), §10 (b); Evidence, §1½ (f); Export Rates and Facilities, §6 (d); Facilities and Privileges, §17 (a); Fumigation in Transit, (a); Local Rates and Combinations, (c); Long and Short Hauls, §5 (aa), §7 (cc); Loss and Damage, §8½ (a); §10½ (b) (c); §13¾ (a) (c); Reasonableness of Rates, §2 (k) (xx), §7½ (t); Reduced Rates, §4½ (h); Through Routes and Joint Rates, §8 (c), §13 (a) (x) (y) (yy), §22 (f); Weights and Weighing, §2½ (d) (e), §3 (a), §5 (b) (c).

Cotton goods. Classification, §9 (a), §11 (s), §22 (3c); Equalization of Rates, §4 (5) (b); Evidence, §44¼ (h), §52 (d); Reasonableness of Rates, §8 (1½) (d), §26½ (b), §28 (y) (z).

Cotton linters. Concentrating Rates and Privileges, (i).

Cotton piece goods. Advanced Rates, §9 (j); Any Quantity Rates, I (c); Classification, §22 (yy); Differentials, §8 (tb (x); Discrimination, §4 (ta), §4½ (r); Export Rates and Facilities, §6 (ya); Long and Short Hauls, §5 (x); Rail and Water Rates, (h); Through Routes and Joint Rates, §13 (3o) (3qa) (3qb).

Cotton regins. Concentrating Rates and Privileges, (i).

Cotton seed. Reasonableness of Rates, §2 (3i), §7½ (gg); Reparation, §16 (aa); Routing and Misrouting, §5 (f); Through Routes and Joint Rates, §15 (j) (k), §16 (ca).

Cotton seed meal. Long and Short Hauls, §5 (ee); Procedure before Commission, §10 (2) (m).

Cotton seed oil. See Oil. Cars and Car Supply, §10 (h); Class Rates, §2 (b); Discrimination, §4½ (g).

Cotton waste. Classification, §9 (a), §11 (s), §22 (3g); Reasonabness of Rates, §28 (y) (z).

Cowpeas. Classification, §10 (wx), §11 (m), §17 (r), §18 (g), §22 (oo) (pp) (ppa).

Cows. See Live stock. Through Routes and Joint Rates, §15 (g).

Crates. Interstate Commerce, §½ (wa).

Cream. See Dairy products. Blanket Rates, §12a (c) (d), §13 (g) (h); Branch Lines, §7 (e); Common Carrier, §8 (c) (d); Equalization of Rates, §2 (ii); Per-Can Rates, (a) (b).

Cross ties. See Hewed ties. Cars and Car Supply, §7 (kk) (mm), §32½ (d); Reparation, §8 (c) (d) (e).

Crude oils. See Oils. Differentials, §8½ (a).

Cut flowers. Advanced Rates, §9 (i); Express Companies, §10 (ab); Reduced Rates, §5½ (d).

D

Deer meat. See Meats. State Rates and Regulations, (7t).

Denatured alcohol. Classification, §22 (3h); Reasonableness of Rates, §7½ (ll).

Distilled liquors. See Intoxicating liquors. Intoxicating Liquors, (l) (ma).

Documents. Courts, §6½ (aa).

Dressed meats. See Meats. Advanced Rates, §17 (i); State Rates and Regulations, (3h) (3o).

Dressed stock products. Classification, §6 (d).

Dried fruits. Classification, §3½ (b), §20 (a).

Drills. Through Routes and Joint Rates, §13 (3qa).

Dynamo. Classification, §10 (aa), §17 (s); Reduced Rates, §5 (a) (aa); Tariffs, §18 (b).

E

Egg cases. Classification, §12⅞ (a), §16 (t), §22 (t); Reduced Rates, §5½ (a) (b) (c).

Egg plant. See Vegetables. Classification, §22 (q) (r).
Eggs. See Dairy products. Classification, §5 (j) (l); Long and Short Hauls, §6 (c), §6⅞ (jj); Reasonableness of Rates, §7½ (kk); Reduced Rates, §4 (b) (c) (d), §5½ (a) (c).
Electrical apparatus. Classification, §17 (s).
Electrical machinery. Tariffs, §18 (b).
Empty boxes. Reduced Rates, §5½ (d).
Envelopes. Classification, §17 (m), §22 (z) (aa).
Extracts. Discrimination, §8 (t).

F

Feed. Demurrage, §15 (a); Differentials §4 (i), §8 (z) (aa); Through Routes and Joint Rates, §13 (4a).
Fertilizer. Evidence, §14 (3) (h); Long and Short Hauls, §7 (ii) (jj), §9 (m), §10 (s) State Rates and Regulations, (8o) (9c); Taxes, (6z).
Finished cheap bedroom sets. See Cheap bedroom sets, Unfinished cheap bedroom sets. Evidence, §61 (b).
Fire brick. See Brick. Classification, §3 (oo), §10 (dd).
Fish. See Live fish, Dead fish, Salmon, Canned salmon. Reduced Rates, §4 (b) (c) (d); State Rates and Regulations, (7uv) (8k); Through Routes and Joint Rates, §11 (2) (m); Water Carriers, §6 (k) (ka).
Flour. Blanket Rates, §12 (a); Cartage and Drayage, (d); Classification, §3 (p), §3½ (e) (f) (h) (l) (m) (n) (bb), §7 (d) (e) (f), §11 (j) (q), §16 (bb), §17 (q), §18 (c) (f), §22 (s) (w); Demurrage, §15 (a); Differentials, §2 (a), §4 (d) (g) (i), §8 (l) (j) (l) (ta) (w) (z) (aa); Discrimination, §4 (jj), §5½ (da); Drayage Charges, (d); Equalizations of Rates, §2 (q); Export Rates and Facilities, §4 (e) (f), §6 (q) (r) (st) (w); Facilities and Privileges, §21 (k); Interchange of Traffic, (ff): Junction Point Rates, (a); Long and Short Hauls, §5 (3a), §6⅞ (ccdd) (ee) (hh), §7 (j); Reasonableness of Rates, §2 (p), §7½ (g) (h) (ha) (z); Through Routes and Joint Rates, §2 (d), §13 (aa) (3t) (3u) (4a); Water Carriers, §8 (a).
Food. State Rates and Regulations, (5l) (9y).
Food products. Blanket Rates, §12 (a); Interstate Commerce Commission, §3¼ (a); Procedure before Commission, §3 (b).
Freight articles. Advanced Rates, §3 (d) §9 (h), §17 (p); Cars and Car Supply, §7 (kk) (ll) (mm); §32½ (d), Differentials, §4 (g); Discrimination, §3 (rr).
Fresh fruit. See Fruit. Classification, §6 (m).
Fresh Meats. See Meats, Packing House Products. Evidence, §67 (c); Classification, §6 (m); State Rates and Regulations, (3n) (4b); Switch Tracks and Switching, §4 (d).
Fruits. See Apples, Bananas, Berries, Fresh fruits, Oranges, Peaches, Cherries, Pineapples, Citrus fruits, Cull apples, Fresh apples, Strawberries, Grapefruits, Lemons, Watermelons. Cars and Car Supply, §9⅝ (c) (d) (f), §9⅞ (3) (da), §20 (g); Classification, §11 (l), §22 (q) (r) (nn); Crimes, §5 (i) (j), §5½ (b); Interstate Commerce, §4 (t); Loss and Damages, §9 (a); Overcharges, (r); Per Car Rates, (c); Reasonableness of Rates, §27 (d); Refrigeration, §2 (a) (b), §4 (d) (f), §4½ (b); Released Rates, §5 (a) State Rates and Regulations, (oo) (4j).
Fuel oils. See Oils. Advanced Rates §5 (3) (a). Procedure before Commission, §10 (2) (dd) (ee).
Fur scraps. Classification, §6 (h), §22 (bb) (cc).
Furs. See Skins. Classification, §6 (h), §22 (bb) (cc).
Furniture. See Chairs. Classification §11 (h) (i); Through Routes and Joint Rates, §8 (b).

G

Game. See Quail, Ruffled Grouse. State Rates and Regulations, (4e) (8k) (8l).
Gas. Gas Companies, (e).
Gas coal. See Coal. Proportional Rates, II (c).
Glue. Discrimination, §4 (gg).

Goat skins. Discrimination, §4 (gg).
Government supplies. State Rates and Regulations, (9p).
Grain. See Grain products, Corn, Rye, Oats, Wheat.. Advanced Rates, §2½ (fg), §3 (c), §5 (½) (b), §11½ (a), §15 (c), §17 (h) (i), (u); Allowances, §8 (3) (c) (e) (h) (ij) (k) (lm) (o) (p), §8 (7) (i) §8 (9) (a); Blanket Rates, §10 (b), §19½ (a) (b); Bridges and Tolls, §1 (a); Cars and Car Supply, §7 (ff) (gg), §20 (h), §32½ (h) (l) (m); Class Rates, §2 (f) (j) (k); Classification, §3½ (i) (t), §11 (p) (r), §17 (d) (e), §22 (3e); Crimes, §7 (b); Demurrage, §15 (a); Differentials, §2 (a), §4 (d) (g) (i), §8 (a) (i) (j) (l) (ta) (z) (aa); Discrimination, §4 (hh) (jj) §8 (1) (v) (w) (x), §10 (aa); Equalization of Rates, §2 (q), §3 (d), §6 (m); Export Rates and Facilities, §1½ (i), §5 (j), §6 (b) (j) (k) (u) (cc) (dd); Evidence, §1 (p), §1½ (mm), §2 (l), §14 (l) (hh); §14 (3) (j), §14 (5) (q), §20 (y) (bb), §63 (d); Facilities and Privileges, §9½ (a) (b) (c) (e) (g) (ij) (kl), §11¾ (a) (b), §15 (a) (aa) (d) (e), §15½ (b) (c), §18 (b) (c) (e) (g) (h) (i), §21 (b) (c); Inspection, (a) (c); Interstate Commerce, §3 (o), §4 (jj); Interestate Commerce Commission, §5 (i); Local Rates and Combinations, (k) (y); Long and Short Hauls, §4 (l), §5 (e), §6⅞ (hh), §7 (4f) (4g) (4h) (4i), §10½ (i), §12 (1) (c); Minimums, §2 (a), §7 (b) (c); Percentage Rates, (a); Procedure before Commission, §2 (j); Reasonableness of Rates, §2 (a) (p), §7½ (ha) (v) (w). §9 (b), §28 (u); Reconsignment, §2 (d), §3 (ca) (d); Reduced Rates, §1 (d), §4½ (j); Special Contracts, §2½ (j); State Rates and Regulations, (6a) (6c) (6d); Statutes, (o) (cc), §1 (a); Switch Tracks and Switching, §4 (h) (i); Tariffs, §3 (1) (h), §7 (f); Through Routes and Joint Rates, §13 (3ha) (4a), §22 (p) (q) (u); Weights and Weighing, §4 (a).
Grain products. See Grain. Advanced Rates, §2½ (fg), §3 (c), §5 (½) (b), §15 (c), §17 (h) (i) (u); Blanket, §19½ (b); Class Rates, §2 (j) (k); Classification, §11 (p) (r), §17 (d) (e), §22 (3e); Commodity Rates, §5 (n); Differentials, §8 (w); Evidence, §1 (p), §1½ (mm); Interchange of Traffic, (ff) Local Rates and Combinations, (y); Reasonableness of Rates, §9 (b).
Grapes. See Fruits. Classification, §22 (q); Intoxicating Liquors, (n).
Grass matting. Reasonableness of Rates, §7½ (dd).
Grass rugs. Reasoableness of Rates, §2 (3e).
Grass twine. See Twine. Reasonableness of Rates, §7½ (dd).
Grass twine matting. Rail and Water Rates, (g); Reasonableness of Rates, §2 (3e); Grass twine rugs; Rail and aWter Rates, (g).
Grasses. Classification, §10 (wx), §11 (m).
Gravel. Demurrage, §19 (d).
Green apples. See Fruits. Blanket Rates, §13 (k) (l).
Green Fruit. See Fruits. Classification, §7 (l).
Green peas. See Vegetables. Classification, §22 (q (r).
Groceries. See Canned Goods. Classification, §5 (c) (e).
Ground bark. Classification, §5 (jj).

H

Hair. Discrimination, §4 (gg).
Harbor facilities. Evidence, §25¼ (a).
Hard coal. See Coal. Long and Short Hauls, §7 (4e).
Hats. Classification, §6 (h), §22 (bb).
Hay. See Baled hay. Advanced Rates, §11½ (a) §17 (g) §19 (e); Blanket Rates, §19½ (a); Cars and Car Supply, §17a (f), §20 (d), §32½ (e) (g) (h) (l) (m); Classification, §22 (dd) (ee) (ff) (gg) (hh); Demurrage, §2 (c), §15 (a); Discrimination, §3 (3la), §4 (jj), §5½ (j); Embargoes, (a) (c) (d) (e); Equalization of Rates, §2 (q); Facilities and Privileges, §10 (e), §21 (d); Long and Short Hauls, §5 (3v), §6¾ (a) (hh), §13 (e); Minimums, §7 (m); Overcharges, (t); Proportional Rates, II (a) (aa) (b), III (a); Reconsignment, §2 (b), §3 (a) (aa) (b), §6½a (a), §9 (a), §10 (a); Reparation, §7½ (k) (l); Routing and Misrouting, §4 (i), §7 (e); Tariffs, §7 (j); Terminal Facilities, §2 (f); Through Routes and Joint Rates, §18 (c), §26 (e).
Hemp. Discrimination, §8 (1) (t).

Hewed ties. See Cross Ties. Procedure before Commission, §10 (1) (i).
Hides. See Pelts, Salted Hides. Classification, §19 (e); Discrimination, §4 (gg).
Hogs. See Live stock. Classification, §3½ (o) (p), §6 (d), §18 (b) (h); Discrimination, §3 (t), §5 (e); Evidence, §12 (a); Live Stock Shipments, (ea) (i) (j) (ssa); Procedure before Commission, §10 (2) (v) (x) (y); Special Rates and Services, (g); State Rates and Regulations, (9j); Stoppage in Transit, (d).
Hog products. Live Stock Shipments, (ea).
Honey. Discrimination, §4 (gg).
Horses. See Live stock. Express Companies, §10 (d) (e) (f); Live Stock Shipments, (g) (r); Long and Short Hauls, §13 (b); Loss and Damage, §10¼ (a), §13¾ (h); Weights and Weighing, §5 (d).
Hostetter's Bitters. Classification, §22 (h) (j).
Household goods. Classification, §10 (m); Reduced Rates, §4½ (f); Released Rates, §4 (a) (b); Tariffs, §18 (a).
Hut blocks. Classification, §5 (a), §22 (d).

I

Ice. Discrimination, §8 (l) (p); Long and Short Hauls, §9 (v), §13 (a); Refrigeration, §3 (b).
Indian cattle. See Cattle. State Rates and Regulations, (7n) (8q).
Intoxicating liquors. See Alcoholic liquors, Beer, Whiskey. Anti-Trust Laws and Monopolies, (dd); Intoxicating Liquors, (o) (p) (s) (w) (y) (z) (aa) (bb) (gg) (ii) (kk) (ll) (mm) (pp) (ss) (tt) (uu) (vv) (ww) (xx) (3g) (3j) (3k) (3l); Statutes, (v).
Iron. See Iron articles. Descrimination, §4 (r); Evidence, §14 (5) (q) (r); Lighterage, §4 (a).
Iron articles. See Iron pipe fittings, Pig iron. Advanced Rates, §7 (1) (a), §17 (i); Differentials, §8 (ta); Evidence, §9 (a); Reasonableness of Rates, §39 (b).
Iron burial vaults. Classification, §5 (ii), §22 (3d).
Iron ore. See Ores. Classification, §3 (q); Demurrage, §15 (b); Facilities and Privileges, §10 (b); Procedure before Commission, §10 (4) (g).
Iron Pipe, Fittings. See Iron articles. Classification, §6½ (a), §16 (z) (aa).
Iron scrap. Classification, §11 (o).
Iron work sets. Lighterage, §6 (a).

J

Junk. Classification, §10 (aa).

K

Kindred products. Blanket Rates, §19½ (b).
Knit goods. Rail and Water Rates, (d) (f); Reasonableness of Rates, §7½ (bb).

L

Lath. Classification, §17 (j) (l).
Laundry soap. See Soap. Classification, §10 (e), §22 (ii).
Leather scraps. Classification, §5 (ff) (gg), §22 (zz).
Lemons. See Fruits. Blanket Rates, §12 (d); Classification, §7 (i) (j) (k) (l), §22 (rr); Interstate Commerce Commission, §10¼ (a).
Lettuce. See Vegetable. Classification, §22 (q) (r).
Lightning rods. Taxes, (6w).
Liquors. See Intoxicating liquors, Alcoholic liquors. Intoxicating Liquors, (ia) (v) (nn) (oo) (qq).
Live cattle. See Live Stock, Cattle. Classification, §6 (d).
Live Hogs. See Live Stock. Cattle. Classification, §6 (d).
Live poultry. Long and Short Hauls, §5 (tt) (uu) (vv), §9 (p), §12 (1) (j).
Live stock. See Animals, Cattle, Cows, Hogs, Horses, Mules, Sheep, Stock, Absorption of Charges, §3 (a); Advanced Rates, §17 (q); Association, (e) (f) (g) (i); Cars and Car Supply, §6⅞ (b), §11¾ (e), §20 (d); Class Rates, §2 (b); Crimes, §7 (e); Discrimination, §3 (31a), §5 (e); Facilities and Privileges, §10 (c); Interstate Commerce, §½ (v), §4 (v); Live Stock Shipments, (a) (c) (d) (ea) (k) (l) (m) (o) (p) (t) (u) (v) (aa) (bb) (dd) (ee) (ff) (gg) (ii) (jj) (kk) (ll) (mm) (nn) (oo) (rr) (ss); Long and Short Hauls §5 (e); State

Rates and Regulations, (8c); Stock Yard Companies, (c) (d) (e) (fa) (g) (h) (i) (j) (k) (l) (m) (ma) (o) (p) (r) (u) (w) (x) (z) (za) (aa) (bb) (cc) (dd) (ee) (ff) (gg) (ii) (jj) (kk) (ll); Terminal Facilities, §5 (a) (aa) (c), §10 (a); Through Routes and Joint Rates, §3½ (d), §11 (2) (k) (l), §22 (eea).

Live stock products. Classification, §3½ (p), §18 (h); Livestock Shipments, (h) (j).

Logs. See Shingle logs. Evidence, §32 (c); Net Rates, (a); Tap Lines, §6½ (c), §9 (b), §11 (a).

Lumber. See Logs, Pine lumber. Advanced Rates, §7 (7) (cde), §9 (fg), §13 (a), §15 (e), §17 (j) (m) (r), §18 (4) (a); Basing Points and Lines, §3 (g); Cars and Car Supply, §7 (kk) (ll) (mm), §32½ (d); Class Rates, §2 (j) (k); Classification, §3½ (a) (q) (rs), §5 (a), §17 (a) (b) (j) (k) (l), §22 (d); Commodity Rates, §5 (d); Demurrage, §8 (b), §14 (e); Differentials, §4 (e), §8 (q) (qa) (r) (rb); Discrimination, §4 (n) (dd) (ee) ,§4½ (n), §5½ (k), §8 (1) (s) (aa); Divisions, §9 (c); Drayage Charges, (h); Evidence, §13 (1) (i), §14 (5) (q), §63 (h); Facilities and Privileges, §17 (c); Freight Charges, (mm); Interstate Commerce Commission, §1 (m); Long and short hauls, §4½ (d), §5 (g) (3q) (3w), §6⅞ (ff) (gg), §7 (31 (3n) (3o) (3p), §10 (u), §12 (2) (jk) (l); Reasonableness of Rates, §7½ (j); Special Contracts, §2 (bb); Tap Lines, §6½ (c), §7 (d), §9 (b), §10 (a), §11 (a); Through Routes and Joint Rates, §13 (b) (3e) (3f), §15 (f) (fa) (fb).

Lump coal. See Coal. Advanced Rates, §5 (3) (a), §17 (st); Classification, §10 (p), §22 (qq); Reasonableness of Rates, §2 (yy) (3a).

M

Machinery. Long and Short Hauls, §12 (2) (hi); Special Contracts, §2 (bba) (cc); Tariffs, §3 (l) (k).

Machines. State Rates and Regulations, (7c).

Mail. Anti-Trust Laws and Monopolies (m); Crimes, §2 (e), §24½ (3b), §34 (d) (i); State Rates and Regulations, (8v) (9p).

Malt. Intoxicating Liquors, (m).

Manufactured articles. Discrimination, §4½ (aa).

Mattress material. Classification, §7 (a) (b).

Meal. Blanket Rates, §12 (a); Reasonableness of Rates, §2 (p).

Meat. See Deer meat, Dressed meats, Fresh meats, Packing House Products, Facilities and Privileges, §10 (f) (g), §21 (h) (i); Interstate Commerce, §4 (s); Reasonableness of Rates, §28 (n); Taxes, (5c).

Medical apparatus. Tariffs, §18 (b).

Medical instruments. Classification, §17 (s).

Medicine. Classification, §22 (v).

Melons. See Fruit. Evidence, §12 (e); Perishable Freight, (d); Procedure before Commission, §10 (2) (j).

Men's clothing. Passenger Fares and Facilities, §7¾ (b) (c).

Men's furnishings. Passenger Fares and Facilities, §7¾ (b) (c).

Merchandise. Allowances, §7 (a), §8 (7) (cdefg); Bill of Lading, §7 (b); Classification, §3 (e), §5 (m); Crimes, §24½ (nn), §35a (a); Discrimination, §4½ (m); Distance Rates, II (a); Drayage Charges, (e); Equalization of Rates, §2 (b); Export Rates and Facilities, §6 (a) (g) (l); Express Companies, §11 (1) (a); Freight Charges, (cc); Import Traffic, §1 (a) (b) (c) (d) (e) (f) (g) (h); Interstate Commerce, §4 (dd), §5 (ss); Interstate Commerce Commission, §8½ (hh); Long and Short Hauls, §7 (3d); Procedure before Commission, §10 (2) (r); State Rates and Regulations, (5j); Taxes, (6x); Through Routes and Joint Rates, §3½ (j), §17 (e); Tolls, (a); Water Carriers, §1 (g), §3 (d); Weight and Weighing, §7½ (a).

Mexican cattle. See Cattle. State Rates and Regulations, (7n) (8q).

Milk. See Canned milk. Association, (c) (d); Blanket Rates, §12a (c) (d), §13 (b) (g) (h); Branch Lines, §7 (e); Classification, §11½ (d); Common Carrier, §8 (c) (d); Discrimination, §3 (h), §4 (f), §4½ (i); Equalization of Rates §2 (ii); Evidence, §1½ (aa); Per Can Rates, (a) (b); Procedure before Commission, §5 (c).

Mill coal. See Coal. Classification, §10 (p).
Mill stuffs. Through Routes and Joint Rates, §2 (d); Reasonableness of Rates, §7½ (ha).
Mine run coal. See Coal. Advanced Rates, §5 (3) (a), §17 (st); Classification, §10 (p).
Mineral water. Classification, §11 (c) (d), §19 (b).
Mohair. Discrimination, §4 (gg).
Molasses. Discrimination, §4 (ta); Long and Short Hauls, §5 (x) (rr) (ss) (3c), §7 (oo).
Mules. See Live stock. Live Stock Shipments, (g); Long and Short Hauls, §13 (b); Weights and Weighing, §5 (d).

N

Natural gas. Gas Companies, (a) (d) (f) (g); Evidence, §67 (f).
Newspapers. See Papers. Caretakers, (a); Taxes, (7b).
Nursery stock. Statutes, (rr).
Nut coal. See Coal. Clasification, §10 (p); Evidence, §60½ (a).

O

Oak headings. Proportional Rates, II (d); Reasonableness of Rates, §7½ (ff).
Oak lumber. See Lumber. Blanket Rates, §13 (i); Long and Short Hauls, §6⅞ (aa), §7 (4a) (4b).
Oak staves. Proportional Rates, II (d); Reasonableness of Rates, §7½ (ff).
Oats. See Grain. Blanket Rates, §12 (a); Evidence, §58 (i), §63 (d); Reasonableness of Rates, §2 (q).
Oil. See Cottonseed oil, Crude oil, Fuel oil, Petroleum, Refined oil. Allowances, §8 (4¼) (a) (b); Cars and Car Supply, §10 (b) (f) (h) (i) (j) (k) (l); Classification, §10 (b) §16 (a) (d) (e) (h) (i) (kl) (m) (n) (o) (q) (r), (x) (y); Discrimination, §5½ (b); Evidence, §1½ (g) (qq), §14 (5) (f), §52 (a) (b); Export Rates and Facilities, §6 (e); Procedure before Commission, §10 (1) (gga) (gg), §10 (2) (z); Taxes, (6l); Through Routes and Joint Rates, §13 (f); Reparation, §6 (a) (b), §10 (a); Reasonableness of Rates, §7½ (f), §40 (b).
Oleomargerine. See Butter. State Rates and Regulations, (4c) (mm) (8z) (9a) (9b).
Oranges. See Fruits. Advanced Rates, §17 (a) (b) (cd), §22 (a); Basing Points and Lines, §3 (h); Blanket Rates, §10½ (b); Classification, §7 (l); Courts, §14 (l); Long and Short Hauls, §10 (h); Reasonableness of Rates, §8 (4) (a).
Ore. See Iron ore. Cars and Car Supply, §7 (b); Classification, §21 (d).
Oysters. Interstate Commerce, §4 (y) (z); Taxes, (6s); State Rates and Regulations, (4z); Statutes, (t).
Oyster plant. See Vegetables. Classification, §22 (q) (r).

P

Packing house products. See Fresh meats. Advanced Rates, §15 (b), §17 (i); Class Rates, §2 (b); Classification, §18 (b); Discrimination, §3 (t), §4 (jj); Equalization of Rates, §2 (q); Export Rates and Facilities, §6 (aa); Long and Short Hauls, §6⅞ (hh).
Paint. Commodity Rates, §5 (i).
Paper. See Newspapers. Courts, §1 (k) (y), §6½ (aa). Crimes, §28½a (i); Interstate Commerce Commission, §6¼ (a).
Paper bags. See Bags. Classification, §5 (kk), §7 (m) (n).
Patent medicines. See Medicines. Classification, §11 (c) (d).
Paving brick. See Brick. Classification, §3 (oo), §10 (dd).
Peaches. See Fruits. Classification, §11 (l), §22 (q) (nn); Evidence, §20 (g); Minimums, §7 (e) (i); Per Car Rates, (c) (d); Perishable Freight, (a) (f) (g); Procedure before Commission, §11 (h); Reasonableness of Rates, §2 (3f); Refrigeration, §4 (b) (g); Released Rates, §5 (a); Through Routes and Joint Rates §14 (f).
Pearline. See Soap. Classification, §6 (a) (b), §22 (a).
Pelts. See Hides. Agency, (b); Classification, §19 (e); Perishable Freights. Cars and Car Supply, §20 (d); Discrimination, §3 (31a).

Petroleum. See Petroleum oils, Petroleum products, Oil. Blanket Rates, §12a (b); Classification, §16 (c) (g); Crimes, §11 (a), §27 (a); Discrimination, §8 (1) (e); Evidence, §14 (5) (f); Long and Short Hauls, §5 (3y), §10 (d) (e); Procedure before Commission, §10 (2) (dd) (ee) (u); Reduced Rates, §5½ (e); Reparation, §23 (d); Through Routes and Joint Rates, §1 (z), §11 (2) (c), §13 (3s).
Petroleum oils. See Petroleum. Cars and Car Supply, §10 (c) (e) (l); Classification, §10 (a), §11 (f); Courts, §6½ (pp); Facilities and Privileges, §10 (i) (j) (k); Tariffs, §7 (b); Weights and Weighing, §5 (aa).
Petroleum products. See Petroleum. Blanket Rates, §12a (b); Cars and Car Supply, §10 (e); Classification, §10 (e), §11 (f), §16 (g); Commodity Rates, §2 (bb), §5 (i); Crimes §11 (a); Evidence §14 (5) (f); Long and Short Hauls §5 (3y); §10 (e) (d); Procedure before Commission, §10 (2) (t) (u); Reduced Rates, §5½ (e); Through Routes and Joint Rates, §1 (z), §11 (2) (c), §13 (3s) (3z).
Pickled sheep skins. Import Traffic, §4 (a).
Pig iron. See Iron. Advanced Rates, §1 (2) (c); Blanket Rates, §1 (a); Classification, §3 (q); Demurrage, §15 (b); Evidence, §45 (b), §61 (aa); Facilities and Privileges, §10 (b); Local Rates and Combinations, (gb); Long and Short Hauls, §6⅞ (m), §9 (w); Reasonableness of Rates, §28 (aa).
Pineapples. See Fruit. Classification, §7 (i) (j) (k) (l).
Pine lumber. See Lumber. Differentials, §8 (ua); Facilities and Privileges, §18 (j).
Pipes. Gas Companies, (ab) (ac) (ad).
Plants. Allowances, §8 (5) (c) (e).
Poles. Net Rates, (a).
Pork. Live Stock, (ea).
Portland cement. See Cement. Minimums. §2 (c).
Potatoes. See Vegetables. Blanket Rates, §9 (b); Classification, §4 (a), §18 (e); Differentials, §8 (tc) (u); Evidence, §56 (d); Procedure before Commission, §10 (l) (s), §10 (4) (g); Refrigeration, §3 (a), §4 (a); Routing and Misrouting, §7 (da); Through Routes and Joint Rates, §13 (3r).
Print paper. Routing and Misrouting, §5 (j).
Provisions. Differentials, §8 (l).

Q

Quail. See Game. Crimes, §34 (c); State Rates and Regulations, (4r).
Quarantine lime. See Lime. Advanced Rates, §17 (q).

R

Railroad ties. See Ties. Classification, §3½ (a), §17 (a).
Raisins. See Dried fruits. Classification, §3½ (b), §20 (a).
Refined oils. See Oil, Petroleum. Differentials, §8½ (a) Equalization of Rates, §2 (s); Procedure before Commission, §10 (2) (aa); Reasonableness of Rates, §8 (1½) (e); Through Routes and Joint Rates, §1 (z).
Rice. See Cereals. Discrimination, §4 (ta), §8 (1) (t); Interstate Commerce, §3 (l); Long and Short Hauls, §5 (x) (3c).
Roofing slag. Floatage, (a) (ab); Through Routes and Joint Rates, §13 (3d).
Rosin. Through Routes and Joint Rates, §13 (xx).
Rough hub blocks. Classification, §17 (b).
Ruffled grouse. See Game. Crimes, §34 (c); State Rates and Regulations, (4r).
Rye. See Grain. Classification, §3½ (t); Discrimination, §4 (hh); Through Routes and Joint Rates, §13 (3ha).

S

Sad irons. See Iron. Blanket Rates, §10½ (f).
Salted hides. See Hides. Agency, (b).
Salt. Blanket Rates, §13 (f); Class Rates, §2 (j) (k); Commodity Rates, §1 (b), §5 (h); Divisions, §8 (h), §9 (c); Evidence, §2 (f); (g) (h); Industrial Lines, (a); Long and Short Hauls, §5 (4c); Through Routes and Joint Rates, §14 (n); Water Carriers, §6 (g).
Sand. Demurrage, §19 (d); Procedure before Commission, §10 (1) (w).

Scrap iron. See Iron. Classification, §10 (aa); Procedure before Commission, §10 (2) (p) (q).
Scheidel outfit. Classification, §17 (s), §22 (3a); Tariffs, §18 (b).
Scientific apparatus. Tariffs, §18 (b).
Scientific instruments. Classification, §17 (s).
Sealskins. Discrimination, §4 (gg).
Seashells. Discrimination, §4 (gg).
Sheep. See Live stock. Cars and Car Supply, §6⅞ (a); Interstate Commerce, §4 (h); State Rates and Regulations, (4i) (9h) (9j).
Sheepskins. See Hides. Discrimination, §4 (gg).
Sheetings. Through Routes and Joint Rates, §13 (3qa).
Shingles. See Lumber products. Classification, §3½ (q) (rs), §17 (j) (l), §18 (i); Reasonableness of Rates, §7½ (j), §28 (q).
Shingle logs. Evidence, 32 (c); Classification, §17 (o).
Shoe heels. Discrimination, §8 (1) (t).
Silos. Long and Short Hauls, §5 (3z); Reparation, §7½ (p); Routing and Misrouting, §9 (a); Through Routes and Joint Rates, §13 (3y), §15 (i).
Skins of fur-bearing animals. Discrimination, §4 (gg).
Slack coal. See Coal. Advanced Rates, §5 (3) (a), §17 (st); Blanket Rates, §12 (f); Classification, §10 (p), §22 (qq); Evidence, §60½ (a); Reasonableness of Rates, §2 (yy) (3a).
Snapped corn. See Corn. Reasonableness of Rates, §2 (ss); Tariffs, §7 (n).
Soap. Anti-Trust Laws and Monopolies, (b); Classification, §5 (aa), §6 (a), §10 (e) (g), §11½ (c), §22 (jj) (kk); Passenger Fares and Facilities, §11 (mm); Reasonableness of Rates, §27 (e).
Soft coal. See Bituminous coal, Coal. Classification, §10 (p); Long and Short Hauls, §7 (4e).
Spirituous liquors. Intoxicating Liquors, (3d).
Spring bed material. Classification, §7 (b).
Spurs. Allowances, §8 (5) (c).
Staves. Lighterage, §6 (b), §7 (c).
Steel. Evidence, §14 (5) (q) (r); Long and Short Hauls, §6⅞ (o).
Steel articles. Steel Rails. Differentials, §4 (g), §8 (ta); Discrimination, §4 (r); Lighterage, §4 (a); Reasonableness of Rates, §39 (b).
Steel rails. Evidence, §1½ (w); Long and Short Hauls, §6⅞ (o); Minimums, §7 (n) (oa), §8 (b).
Stone. Cars and Car Supply, §7 (kk) (ll) (mm), §32½ (d).
Stock. See Live stock. Crimes, §2 (f), §7 (b); Demurrage, §16½ (a); Evidence, §67 (h); Finance Dockets, §7 (a); Industrial Railroads, (e); Interchange of Traffic, (g); Interstate Commerce, §½ (y); Loss and Damage, §11 (a).
Straw. See Baled straw. Advanced Rates, §11½ (a), §17 (g), §19 (e); Classification, §16 (3e), §22 (dd) (ee) (ff) (gg) (hh); Embargoes, (c) (d) (e); Lighterage, §3 (j).
Strawberries. See Fruit. Evidence, §15½ (b) (c), §29 (b); Expedited Service, (b) (e); Freight Charges, (q); Perishable Freight, (g); Refrigeration, §4 (a) (h); Through Routes and Joint Rates, §13 (gg) (mm).
String beans. See Vegetables. Classification, §22 (q) (r).
Sugar. Anti-Trust Laws and Monopolies, (u); Class Rates, §2 (b); Crimes, §28 (a); Discrimination, §4 (ta) (bb), §8 (1) (d) (h); Differentials, §4 (f), §8 (rc) (s); Equalization of Rates, §2 (r); Evidence, §1½ (ii), §14 (5) (u), §32 (a); Foreign Commerce, §1 (g); Long and Short Hauls, §4¾ (b), §5 (x) (rr) (ss) (3c) (3x), §7 (o), §10 (t); Procedure before Commission, §10 (1) (z) (aa), §10 (2) (n) (sa); Reasonableness of Rates, §2 (pp), §28 (bb); Through Routes and Joint Rates, §13 (yy), §17 (f).
Sulphur. Long and Short Hauls, §4 (3d).
Surgical chairs. Classification, §4½ (a).
Syrup. Class Rates, §2 (b) (c).

T

Texas cattle. State Rates and Regulations, (3e) (7n) (8q); Statutes, (db).

Ticking. Through Routes and Joint Rates, §13 (3qa).
Toilet soap. See Soap. Classification, §10 (e).
Tomatoes. See Vegetables. Classification, §17 (n), §18 (e).
Transformers. Classification, §17 (s); Tariffs, §18 (b).
Turpentine. Cars and Car Supply, §10 (h); Discrimination, §4½ (g); Through Routes and Joint Rates, §13 (xx).
Twine. Procedure before Commission, §10 (1) (g), §14½a (a).

U

Uncompressed cotton. See Cotton. Advanced Rates, §17 (ef), §19 (d); Credited Account, (c).
Unfinished cheap bedroom sets, Cheap bedroom sets; Finished cheap bedroom sets. Evidence, §61 (b).

V

Vanilla beans. See Vegetables. Discrimination, §4 (gg).
Vehicles. Class Rates, §2 (aa).
Vegetables. See Cabbage, Onions, Oyster plants, Celery, Potatoes, Tomatoes, Vanilla beans; Classification, §7 (c), §18 (e), §22 (q) (r); Evidence, §15½ (b) (c), §29 (b); Interstate Commerce, §4 (t); Refrigeration, §4 (a); State Rates and Regulations, (4j); Tariffs, 7 (m); Through Routes and Joint Rates, §13 (mm); Weights and Weighing, §2½ (f), §9 (aa).
Vinous liquors. Intoxicating Liquors, (ll).

W

Wagon material. Classification, §5 (a), §22 (d).
Water. Discrimination, §8 (5) (a).
Watermelons. See Fruit. Reasonableness of Rates, §32½ (b).
Whalebone. Discrimination, §4 (gg).
Whale oil foots. Discrimination, §4 (gg).
Whiskey. See Intoxicating liquors. Commodity Rates, §5 (i); Intoxicating Liquors, (s).
Wheat. See Grain. Allowances, §8 (4¾) (a); Blanket Rates, §8 (e), §10 (b), §10½ (cd), §12 (a) (b); Branch Lines, §1 (f), §3 (aa), §4 (c) (d); Classification, §3 (p) §3½ (e) (f) (h) (l) (m) (n) (j) (t) (bb), §11 (q), §18 (c) (f); Commodity Rates, §5 (c) (f) (g); Differentials, §2 (a), §8 (a); Discrimination, §4 (o) (p), §5½ (da); Evidence, §12 (d), §20 (l); Export Rates and Facilities, §2 (aa),§4 (e) (g) (h), §6 (q) (z) (st); Facilities and Privileges, §21 (b); Long and Short Hauls, §5 (kk), §10½ (i), §12 (1) (c); Procedure before Commission, §2 (jc) (k); Reasonableness of Rates, §2 (y) (ii) (jj) (3g), §7½ (g) (hh), §40 (a); Routing and Misrouting, §5 (c); Through Routes and Joint Rates, §2 (d), §13 (aa) (ll).
Wheat flour. Classification, §3½ (e).
Window shades. Classification, §6 (g), §17 (h), §22 (u) (x) (y), §26 (b) (c) (d).
Wire screen windows. Evidence, §30 (d) (e).
Wood. State Rates and Regulations, (7q).
Woodcock. Crimes, §34 (c); State Rates and Regulations, (4r).
Woodenware. Discrimination, §5½ (m); Evidence, §30 (g).
Wool. Discrimination, §4 (gg); State Rates and Regulations, (9f).
Wool in the grease. Classification, §5 (hh); Reasonableness of Rates, §2 (tt), §27¾ (b).
Wrapping paper. See Paper. Classification, §5 (kk), §7 (m) (n).

X

X-ray apparatus. Tariffs, §18 (b).

Y

Yellow pine lumber. See Lumber. Advanced Rates, §15 (e).

Index of Localities

Volumes 1 I. C. R. thru 12 I. C. C. is the period covered.

(References are to sections under subjects)

A

Afton, Va., to Philadelphia and Gordonsville, Va. Oak lumber. Long and Short Hauls §6⅞(aa).

Alabama. Evidence, §67 (i); State Rates and Regulations, (x); Transportation §9 (b).

Alabama. Coal. Long and Short Hauls, §5 (jj).

Alabama. Cotton. Discrimination. §9 (d).

Alabama Flour. Classification, §16 (bb).

Alabama. Goods. Taxes. (3z).

Alabama. Pig iron. Evidence, §45 (b).

Alabama to Mobile and New Orleans. Cotton. Discrimination, §10 (b).

Alabama mines to points west of Meridian, Miss. Coal. Long and Short Hauls, §5 (ii).

Alabama mines to Vicksburg, Miss. Coal. Evidence, §32 (l).

Alabama points from Savannah and Charleston. Differentials, §8 (h).

Albany, Ga. Basing Points and Lines. §3 (d).

Albany from Nashville, Cincinnati and Chattanooga. Discrimination §3 (3d)

Alexandria, Ind., from Thacker District, W. Va. Coal. Through Routes and Joint Rates, §15½ (a).

Alton, Ill. Common Carriers, §9 (o) (p).

Amarillo, Tex. Blanket Rates, §8 (c) (d).

Amarillo, Tex., from eastern territory. Blanket Rates, §8 (b).

Amarillo, Tex., from Indian Territory and Kansas points. Crude petroleum and fuel oils Procedure before Commission, §10 (2) (dd) (ee).

Amarillo, Tex., from St. Louis. Blanket Rates, §6 (b).

Amarillo, Tex., from Texas points. Blanket Rates, §15 (b).

Americus, Ga. Basing Points and Lines, §3 (d).

Arkansas. Procedure before Commission, §13 (i); Statutes (b); Through Routes and Joint Rates, §13 (ss), §15 (c).

Arkansas. Coal. Procedure before Commission, §10 (1) (ff), §14½ (a).

Ash Fork. Evidence, §14 (5) (v).

Ashland to Portland. State Rates and Regulations, (a).

Atlanta. Local Rates and Combinations, (ma); Long and Short Hauls, §4 (n), §6⅞ (v), §7 (yy); Through Routes and Joint Rates §2 (m).

Atlanta, Ga., from Kentucky points. Grain and grain products. Advanced Rates, §17 (u).

Atlanta to August, Ga. Through Routes and Joint Rates, §2 (j).

Atlanta to New York. Peaches. Minimums, §7 (e); Per Car Rates, (d).

Atlanta, Ga., to Philadelphia, New York, Washington and Baltimore. Peaches. Minimums, §7 (i); Perishable Freight, (f); Reasonableness of Rates, §2 (3f).

Atlanta, Ga., to Washington, D. C., Baltimore, Md., Philadelphia, Pa., and New York City. Peaches. Refrigeration. §4 (g).

Atlantic Ports. Long and Short Hauls, §4 (3d); Pooling of Traffic, (m) (n).

Atlantic ports from Kentucky, Tennessee and Mississippi. Cotton. Cars and Car Supply, §7 (q).

Atlantic ports, from Southern states. Cotton. Through Routes and Joint Rates, §13 (x) (y).

Atlantic ports to Augusta, Ga. Class Rates, §2 (l).

Atlantic seaboard points. Reasonableness of Rates, §28 (h).
Atlantic seaboard points from western points. Reasonableness of Rates, §28 (c).
Atlantic seaboard points to Chattanooga, Memphis and Nashville. Long and Short Hauls, §10 (k) (l).
Atlantic seaboard territory. Blanket Rates, §16 (a); Reasonableness of Rates, §2 (j).
Augusta, Ga. Class Rates, §2 (m); Evidence, §14 (5) (m); Passenger Fares and Facilities, §11 (k).
Augusta, Ga., from Atlantic ports. Rail and Water Rates, (i).
Augusta, Ga., from Jackson and Ellenton, S. C. Passenger Fares and Facilities, §2 (x), §3 (1) (c).
Augusta, Ga., to New York. Cotton piece goods. Rail and Water Rates, (h).
Augusta, Ga., to New York. Cotton waste. Classification, §11 (s), §22 (3g).
Avon, Wash., to Minot, N. D. Drayage Charges, (h).
Avon, Wash., to Sawyer, N. D. Lumber. Drayage Charges (h).

B

Brainbridge, O. Lumber, stone and other freight articles. Cars and Car Supply, §7 (ll).
Baltimore. Differentials, §8 (t); Discrimination, §8 (7) (d); Evidence, §14 (5) (m); Procedure before Commission, §2 (p).
Baltimore. Coal. Through Routes and Joint Rates, §13 (3l).
Baltimore. Freight articles. Differentials, §4 (g).
Baltimore. Grain, flour. Differentials, §8 (j).
Baltimore. Wheat. Export Rates and Facilities, §16 (p).
Baltimore, Md., from Washington, Bradford and Clarendon and Olean, N. Y. Oil. Through Routes and Joint Rates, §13 (f).
Baltimore, Md., to Alabama points. Long and Short Hauls, §5 (z).
Baltimore to Lynchburg Bananas. Long and Short Hauls, §5 (3u).
Baltimore to Troy, Ala., Montgomery and Columbus. Long and Short Hauls, §5 (u).
Baltimore to Washington. Passenger Fares and Facilities, §5 (e) (i).
Barton, Vt. Milk and cream. Branch Lines, §7 (e).
Basic City, Va. Oak Lumber. Long and Short Hauls, §6⅞ (aa).
Bay City, Mich., to New York points. Box shooks, lumber. Classification, §17 (k).
Bay City, Mich., to New York points. Box shooks, lumber, lathes and shingles. Classification, §17 (j).
Bayou Sara, La., to St. Louis, Mo. Horses. Live Stock Shipments (g).
Bayou Sara, La., to St. Louis, Mo. Horses and mules. Live Stock Shipment (g). Long and Short Hauls, §13 (b); Weights and Weighing, §5 (d).
Berry, Ala., from Louisville and Evansville. Flour. Long and Short Hauls, §6⅞ (ccdd) (ee).
Birmingham. Pig iron. Evidence, §45 (b).
Birmingham, Ala., from Ft. Worth, Tex. Beef cattle. Through Routes and Joint Rates §11 (2) (i) (j), §14 (r).
Birmingham, Ala., to Cordele, Ga. Local Rates and Combinations, (gb).
Birmingham, Ala., to Cordele, and Macon, Ga. Coal. Reasonableness of Rates, §7½ (cc).
Birmingham, Ala., to Georgia points. Pig iron and coal. Long and Short Hauls, §6⅞ (m).
Birmingham, Ala., to Cordele and Macon, Ga. Coal and pig iron. Long and Short Hauls, §9 (w); Reasonableness of Rates, §28 (aa).
Blackville, S. C., to New York, Philadelphia, Baltimore and Washington. Watermelons. Reasonableness of Rates, §32½ (b).
Blackwell, Okla. Grain products and flour. Differentials, §8 (w).
Bliss, Okla., to Kansas City and St. Joseph, Mo. Cattle and hogs. Procedure before Commission, §10 (2) (v) (x) (y).

Boston. Differentials, §4 (g) (t) (aa); Evidence, §18 (k); Export Rates and Facilities, §1 (a) (b); Long and Short Hauls, §4 (a) (j); Procedure before Commission, §2 (p); Through Routes and Joint Rates, §22 (o).
Boston. Cotton-piece goods. Through Routes and Joint Rates, §13 (3o) (3qa).
Boston. Flour. Reasonableness of Rates, §7½ (h); Through Routes and Joint Rates, §13 (aa).
Boston. Merchandise. Export Rates and Facilities, §6 (a).
Boston points, Mass., from Sheridan, Ind. Lumber. Differentials, §8 (r).
Boston from Cairo and St. Louis. Cotton. Discrimination. §5½ (f).
Boston from Chicago and other western points. Differentials, §8 (da).
Boston from Fort Fairfield, Me., and Fredericton, Can. Shingles. Reasonableness of Rates, §28 (q).
Boston, Mass., from Fort Fairfield, Stevens Siding and Hurds Siding, Me., Fredericton, Tracey and Russia-gornish, Can. Lumber and shingles. Reasonableness of Rates, §7½ (j).
Boston, Mass., from New Jersey and Delaware. Peaches. Through Routes and Joint Rates, §14 (f).
Boston from Schenectady, N. Y. Grain. Long and Short Hauls, §4 (l).
Boston from Sheridan and Indianapolis, Ind. Lumber. Long and Short Hauls, §4¾ (d).
Boston to Chicago and western points. Differentials, §4 (b).
Boston, Mass., to Detroit, Mich. Long and Short Hauls, §10½ (h).
Boston, Mass., to Janesville, Wisc. Passenger Fares and Facilities, §2 (p) (q).
Boston to New York and Chicago. Export Rates and Facilities, §4 (a).
Bridgeport, Tenn. Water Carriers, §6 (c).
Brighton. Cars and Car Supply, §7 (cc) (dd) (ee).
Bristol, Tenn. Lumber. Long and Short Hauls, §6⅞ (gg).
Brooklyn, N. Y., to Jersey City. Hay. Lighterage, §3 (a); Terminal Facilities, §2 (f).
Brooklyn. Petroleum Oil. Facilities and Privileges, §10 (i) (j) (k).
Buffalo. Common Carrier, §9 (b); Export Rates and Facilities, §4 (a).
Buffalo, N. Y. Coal. Cars and Car Supply, §7 (b); Special Contracts, §5 (a).
Buffalo to Boston. Grain. Through Routes and Joint Rates, §22 (u).
Buffalo, N. Y., to New England points. Grain. Facilities and Privileges, §18 (e), §21 (c); Evidence, §63 (d); Export Rates and Facilities, §6 (j).
Buffalo, N. Y., to Philadelphia. Grain and oats. Evidence, §63 (d); Export Rates and Facilities, §6 (j).
Buffalo to Twin Cities. Class Rates, §2 (a).
Burnt District, Tex,. from Kansas City and Missouri River points. Class Rates, §2 (i).

C

Cactus, Ariz. Live Stock. Allowances, §8 (⅞) (a).
Cadillac, Mich., to Texas points and Mississippi river points. Potatoes. Procedure before Commission, §10 (1) (s).
Cairo. Through Routes and Joint Rates, §11 (2) (b).
Cairo, Ill., from Iowa, Nebraska and Missouri. Grain. Equalization of Rates, §6 (m).
Cairo, Ill., from points south of the Ohio river. Logs, bolts, billets and poles. Net Rates, (a).
Cairo, Ill., to Mobile, Ala., Meridian, Miss., Tupelo, Aberdeen, Columbus, West Point, and Starkville, Miss. Long and Short Hauls, §7 (3u)
California. Alcohol. Commodity Rates, §5 (i).
California points. Oil. Discrimination, §5½ (b).
California points from eastern territory. Long and Short Hauls, §5 (i).
California points from Marquette and Phillips, Nebr. Wheat and corn. Reasonablness of Rates, §7½ (hh).
California from Texas and Louisiana points. Sulphur. Long and Short Hauls, §4 (3d).
California points from Wichita and other Kansas points. Flour and Wheat. Classification, §3½ (bb).

California points to eastern destinations. Citrus fruits. Minimums, §7 (h); Pooling of Traffic, (o).
California to New York City. Interstate Commerce, §3½ (g), §4 (m).
California points to New York City, Pennsylvania, Ohio, and West Virginia. Petroleum and petroleum products. Blanket Rates, §12a (b).
California to points on and east of the Missouri river. Citrus fruit. Pooling of Traffic (l).
Camden, Ark., to Wichita, Kansas. Lumber. Commodity Rates, §5 (d).
Canada. Brick. Evidence, §19¾ (a).
Canada points. Coal and coke. Crimes, §2½ (c).
Canada points from Buffalo, Black Rock and Suspension Bridge. Coke and Coal. Crimes, §7 (a).
Canada from United States points. Special Rates and Services (d); Tariffs, §3 (1) (b).
Canada points to Brooklyn, N. Y. Local Rates and Combinations, (ff).
Canada points to United States points. Canada, (b); Foreign Commerce, §½ (j); Passenger Fares and Facilities, §3 (3) (d); Tariffs, §4 (d).
Canton. O., to Boston, Mass. Surgical chairs. Classification, §4½ (a).
Cannon Falls, Minn., to Chicago, East St. Louis and Louisville. Grain. Local Rates and Combinations, (j).
Cannon Falls to Louisville and East St. Louis. Rye, barley, wheat and coarse grain. Classification, §3½ (t).
Cannon Falls, Minn., to Minneapolis. Grain. Local Rates and Combinations, (k).
Cannon Falls to Minneapolis. Rye and grain. Dirscrimination, §4 (hh).
Cannon Falls to Minneapolis and Duluth. Evidence, §2 (w).
Cape Girardeau, Mo. Cars and Car Supply, §½ (b).
Cedar Rapids, Ia., to Chicago, East St. Louis, Ill., and St. Louis, Mo. Scrap iron. Procedure before Commission, §10 (2) (p) (q).
Cement, Okla., to Kansas City and St. Louis, Mo. Cement plaster. Percentage Rates, (d).
Centerville, Ia., to Albany and St. Joseph, Mo. Coal. Long and Short Hauls, §7 (4q); Procedure before Commission, §10 (2) (ffa).
Central West from Ohio, Potomac and Mississippi river points. Classification, §15 (b) (ba).
Chanute, Kans., to Denison, Ia., and Council Bluffs. Portland cement. Minimums, §2 (c).
Charleston. Interstate Commerce, §½ (t).
Charleston. Strawberries and vegetables. Evidence, §15½ (b).
Charleston, S. C., from Chicago, St. Louis, Louisville and other Ohio and Mississippi river points. Long and Short Hauls, §6⅞ (z).
Charleston to Danville and Lynchburg. Bananas. Discrimination, §8 (1) (u), §8 (7) (d); Long and Short Hauls, §5 (3u), §7 (3vw), §13 (c) (d).
Charleston to Florida points. Evidence, §14 (5) (s).
Charleston to intermediate points. Fertilizer. Long and Short Hauls, 10 (s).
Charleston to Jersey City. Strawberries. Refrigeration, §4 (a).
Charleston to Jersey City. Strawberries and vegetables. Evidence, §29 (b).
Charleston to Lynchburg. Bananas. Cars and Car Supply. §9¾ (a).
Charleston to New York. Evidence, §43 (c).
Charleston, S. C., to points in North Carolina, South Carolina, Georgia, Florida and Alabama. Fertilizers. Long and Short Hauls, §9 (m).
Charleston to Valdosta. Fertilizer. Evidence, §14 (3) (h); Long and Short Hauls, §7 (jj).
Charlotte, N. C., from New York and Louisville and Chicago. Equalization of Rates, §2 (p).
Charlotte, N. C., from New York, Louisville, Chicago and other northern, eastern and western points. Long and Short Hauls, §7 (3x).
Chase, Ind. Passenger Fares and Facilities, §13 (ef) (h).
Chatham, N. J., to New York, N. Y. Cut flowers. Express Companies, §10 (ab).
Chattanooga. Evidence, §18 (m).

Chattanooga from New York and eastern points. Long and Short Hauls, §6⅞ (y).
Chattanooga points to Cincinnati, O. Strawberries. Expedited Service, (e).
Chattanooga, Tenn., to Dalton, Ga. Passenger Fares and Facilities, §11 (hhii).
Chattanooga to Nashville. Long and Short Hauls, §5 (o).
Cherryvale, Kans., to Duncan, Ind., and Chickasha and Rock Island. Brick. Reasonableness of Rates, §32½ (f).
Chicago. Common Carrier, §6½ (c) (e), §9 (b); Discrimination, §10 (aa); Evidence, §14 (5) (xy), §20 (r), §58 (l), §66 (f); Live Stock Shipments, (k) Long and Short Hauls, §4 (ff), §4½ (h), §6⅞ (u); Passenger Fares and Facilities, §3 (3) (b); Procedure before Commission, §2 (p), §10 (1) (dd); Reconsignment, §3 (cb); Reduced Rates, §5½ (e); River Crossings, (b); Stock Yard Companies, (y) (hh); Through Routes and Joint Rates, §23 (h); Trackage Agreements, (d).
Chicago. Asbestos. Long and Short Hauls, §5 (yy).
Chicago. Cattle. Classification, §3½ (o); Live Stock Shipments, (i).
Chicago. Coal. Blanket Rates, §2 (d); Through Routes and Joint Rates, §14 (d); Export Rates and Facilities, §6 (o).
Chicago. Grain. Percentage Rates, (a); Reconsignment, §2 (d), §3 (ca) (d).
Chicago, Ill. Harbor facilities. Evidence, §25¼ (a).
Chicago. Hay. Minimums, §7 (m).
Chicago. Hogs. Classification, §3½ (o); Discrimination, §3 (t); Live Stock Shipments, (ea) (i).
Chicago. Hog products. Live Stock, (ea).
Chicago. Live Stock. Association, (e) (g); Interstate Commerce, §½ (v); Live Stock Shipments, (l) (p); Stock Yard Companies, (g) (h) (i) (j) (k) (l) (ma) (x) (z) (ff) (gg) (ii) (jj) (kk) (ll).
Chicago. Potatoes. Through Routes and Joint Rates, §13 (3r).
Chicago. Silos. Routing and Misrouting, §9 (a).
Chicago. Water. Discrimination, §8 (5) (a).
Chicago. Water. Discrimination, §8 (5) (a).
Chicago points. Woodenware. Discrimination, §5½ (m).
Chicago from Boston and New York. Export Rates and Facilities, §4 (a).
Chicago from and to Boston and East Boston. Export Rates and Facilities, §6 (ka).
Chicago, Ill., from Cannon Falls and Minneapolis, Minn. Grain. Through Routes and Joint Rates, §13 (3ha).
Chicago, Ill., from Dock Siding, McCools and Willow Creek, Ind. Sand. Procedure before Commission, §10 (1) (w).
Chicago from Granite Falls, Minn., and Peperstone, Minn. Butter and eggs. Long and Short Hauls, §6⅞ (jj).
Chicago from Granite Falls and Whitestone, Minn. Butter and eggs. Reasonableness of Rates, §7½ (kk).
Chicago, Ill., to Hammond, La. Household goods. Tariffs, §18 (a).
Chicago from Hocking Valley and Pittsburgh points. Coal. Through Routes and Joint Rates, §13 (j).
Chicago from Illinois points. Live stock. Terminal Facilities, §5 (c).
Chicago from Iowa points. Grain and live stock. Long and Short Hauls, §5 (e).
Chicago from Iowa points and Dakota points. Corn and grain. Reasonableness of Rates, §28 (u).
Chicago, Ill., from Kansas City, Mo. Cattle. Through Routes and Joint Rates, §18 (a).
Chicago, Ill., from Kentucky and Virginia. Coke. Procedure before Commission, §10 (2) (w); Reasonableness of Rates, §28 (cc).
Chicago from Marshfield and Springfield, Mo. Live poultry. Long and Short Hauls, §9 (p).
Chicago from Michigan points. Fruit. Crimes, §5 (i) (j), §5½ (b).
Chicago, Ill., from Mississippi river points. Iron and steel rails. Long and Short Hauls, §6⅞ (o).
Chicago from Missouri. Corn and oats. Blanket Rates, §12 (a).
Chicago from Missouri points. Live poultry. Long and Short Hauls, §5 (vv).

Chicago from Missouri river and South St. Paul, Minn. Cattle, hogs and live stock. Discrimination, §5 (e); Live Stock Shipments, (h).
Chicago from Ogdensburg and points east of Richland. Passenger Fares and Facilities, §3 (3) (c).
Chicago from Pine Island, Minn., Red Wing and Claybrook, Minn. Grain. Long and Short Hauls, §7 (4i).
Chicago, Ill., from Port Huron and Detroit, Mich. Passenger Fares and Facilities, §6 (i) (ia).
Chicago from Springfield and Marshfield. Through Routes and Joint Rates, §3½ (a).
Chicago from Texas, Colorado, Wyoming, Nebraska, Kansas, Indian Territory and New Mexico. Cattle. Live Stock Shipments, (pa).
Chicago, Ill., from Union Stock Yards. Live stock. Stock Yard Companies, (za).
Chicago to Boston. Merchandise. Discrimination, §4½ (m); Export Rates and Facilities, §6 (l).
Chicago to Boston and New York. Discrimination, §4 (a).
Chicago to Griffin, Ga., Macon, Americus, Albany and Dawson, Ga. Long and Short Hauls, §6⅞ (bb).
Chicago to Hammond, La. Passenger Fares and Facilities, §7¼ (v).
Chicago to Hudson. Twine. Procedure before Commission, §10 (1) (g), §14½a (a).
Chicago to Janesville, Minn., Mankato, St. Paul, Minneapolis and Lake Superior ports. Evidence, §58 (f).
Chicago to Kansas points. Live poultry. Long and Short Hauls, §5 (tt).
Chicago to Kearney, Nebr. Class Rates, §2 (g).
Chicago, Ill., to La Crosse, Wisc. Merchandise. Distance Rates, II (a).
Chicago, Ill., to Lincoln, Nebr., Fremont, Nebr., and Omaha. Equalization of Rates, §7 (ab).
Chicago, Ill., to Lincoln, Omaha and other Nebraska towns. Through Routes and Joint Rates, §13 (i).
Chicago to Mankato. Differentials, §4 (a); Procedure before Commission, §10 (2) (f).
Chicago to Mankato, Waterville and Minneapolis, Minn. Long and Short Hauls, §7 (i).
Chicago, Ill., to Marshalltown, Ia. Equalization of Rates, §1 (a), §2 (a).
Chicago to Mazeppa and Milwaukee. Grain. Reasonableness of Rates, §2 (a).
Chicago, Ill., to Minnesota points. Long and Short Hauls, §5 (c).
Chicago to Mississippi river and eastern cities. Corn, oats and food products. Blanket Rates, §12 (a).
Chicago to Missouri river. Common Carrier, §9 (c) (j); Equalization of Rates, §1 (a), §2 (a).
Chicago to New Jersey points. Grain, flour and feed. Differentials, §8 (aa).
Chicago to New York. Discrimination, §4½ (e); Texas, (3m).
Chicago to New York City. Cattle. Cars and Car Supply, §28 (d).
Chicago to New York. Grain and grain products. Advanced Rates, §2½ (fg), §3 (c), §5 (½) (b) §15 (c), §17 (i); Evidence, §1 (p), §1½ (mm); Reasonableness of Rates, §9 (b).
Chicago to New York and Boston. Differentials, §8 (db).
Chicago to Norfolk, Nebr. Discrimination, §4 (cc); Through Routes and Joint Rates, §17 (o).
Chicago to Norfolk and Columbus, Nebr. Reasonableness of Rates, §28 (w).
Chicago to Northwestern cities and Southern territory. Evidence, §14 (5) (o).
Chicago to Northern Pacific Coast points and Oregon points. Denatured alcohol. Resonableness of Rates, §7½ (ll).
Chicago to Ohio River crossings. Long and Short Hauls, §6⅞ (z).
Chicago to Ohio river crossings and Charleston. Reasonableness of Rates, §26½ (a).
Chicago to Ohio river crossings, Charleston and Wilmington. Procedure before Commission, §10 (1) (dd); Through Routes and Joint Rates, §13 (3k).
Chicago to Omaha. Evidence, §20 (c).

Chicago to Omaha. Chair-stuff, spring bed and mattress material. Classification, §7 (a) (b).
Chicago to Pacific Coast. Classification, §5 (q).
Chicago to Pacific and oregon points. Alcohol. Commodity Rates, §5 (i).
Chicago to Pacific terminals. Denatured alcohol. Classification, §22 (3h).
Chicago to Philadelphia, Baltimore and New York. Grain and flour. Differentials, §4 (d), §8 (l).
Chicago to St. Paul. Horses. Express Companies, §10 (f); Live Stock Shipments, (r).
Chicago to St. Paul and Minneapolis, Minn. Procedure before Commission, §10 (2) (b).
Chicago to St. Peter. Procedure before Commission, §1 (na).
Chicago to Sioux City and Sioux Falls. Discrimination, §4 (t); Percentage Rates, (b); Procedure before Commission, §10 (2) (eea) (ff).
Chicago to southern territory. Reasonableness of Rates, §22 (a).
Chicago to Tennessee and Georgia points. Wheat. Long and Short Hauls, §5 (ll).
Chicago to Waterville. Procedure before Commission, §10 (2) (e).
Chicago to Waterville, Minn., Red Wing and Minneapolis. Procedure before Commission, §10 (2) (f).
Chicago, Ill., to West, Northwest and Southwest points. Cattle, hogs and live stock products. Classification, §18 (h).
Chicago, Ill., to westward points. Cereal products and flour. Classification, §7 (d).
Cincinnati. Bridges and Tolls, §3 (rs); Discrimination, §5½ (db); Evidence, §14 (5) (m), §20 (r); Facilities and Privileges, §16½ (c) (d) (e) (f); River Crossings, (a).
Cincinnati, O. Pine lumber. Facilities and Privileges, §18 (j).
Cincinnati, O. Soap. Anti-Trust Laws and Monopolies, (b); Classification, §11½ (c).
Cincinnati, O., from Chattanooga and Oakdale, Tenn. Strawberries. Refrigeration, §4 (h).
Cincinnati, O., from Cleveland and Charleston, Tenn. Lumber. Discrimination §5½ (k), §8 (1) (aa)
Cincinnati, O., from Louisville and Montgomery territory. Differentials, §8 (e).
Cincinnati from Louisville, Montgomery, Alabama and Mississippi river. Evidence, §52½ (a).
Cincinnati to Atlanta. Courts, §5 (i).
Cincinnati, O., to Atlanta, Ga. Vehicles. Class Rates, §2 (aa).
Cincinnati to Atlanta and Birmingham. Reasonableness of Rates, §25 (c).
Cincinnati to Augusta. Courts, §14 (r); Discrimination, §3 (cc); Through Routes and Joint Rates, §2 (n), §3½ (ab).
Cincinnati, O., to Cordele and Fitzgerald, Ga. Canned goods, grain, flour, hay and packing house products. Equalization of Rates, §2 (q).
Cincinnati, O., to Georgia points. Goods. Long and Short Hauls, §2 (b); Through Routes and Joint Rates, §2 (k).
Cincinnati, O., to Helena and McRae, Ga. Canned goods, grain, hay and packing house products. Equalization of Rates, §2 (q).
Cincinnati, O., to Middlesborough, Ky. Beer. Long and Short Hauls, §5 (r).
Cincinnati to Moultrie, Ga. Long and Short Hauls, §4½ (l).
Cincinnati to Northeastern cities and Southern territory. Evidence, §14 (5) (o).
Cincinnati, O., to points in Official Classification territory. Book cases. Classification, §22 (ss).
Cincinnati, O., to points in the southeast and southwest. Class Rates, §2 (d).
Cincinnati to Social Circle. Courts, §14 (r); Discrimination, §3 (cc).
Cincinnati to southern territory. Reasonableness of Rates, §22 (a).
Clarksfield, O. Cars and Car Supply, §7 (cc) (dd) (ee).
Cleburne, Tex., from Berwyn and Marietta, Okla. Cottonseed. Reparation, §16 (aa); Reasonableness of Rates, §2 (3i).
Cleveland, O. Coal. Cars and Car Supply, §9 (b), §32½ (b).

Cleveland, O., to New England points. Pig iron. Advanced, §1 (2) (c).
Clinton, Ind., to Bazil, Ind. Bituminous coal. Distance Rates, §3 (f).
Collins, O. Cars and Car Supply, §7 (z) (aa) (bb).
Colorado. Coal. Crimes, §2 (j) (k) (mn), §7 (d). Procedure before Commission, §10 (1) (ff).
Colorado points to Kansas points. Coal. Long and Short Hauls, 5 (4d).
Columbia, S. C. Storage, §2 (b) (c), §3 (f).
Columbia, Kans., from Marshfield, Mo., and Springfield, Mo. Live poultry. Long and Short Hauls, §9 (p).
Columbus. Discrimination, §13 (a); Long and Short Hauls, §4 (n), §8 (g).
Columbus, Ga. Cotton. Through Routes and Joint Rates, §13 (a).
Columbus, O. Hay. Discrimination, §5½ (j).
Columbus, O., to Kansas City, Mo. Horses. Express Companies, §10 (f); Live Stock Shipments, (r).
Columbus, O., to Kansas City and St. Paul. Horses. Express Companies, §10 (d) (e).
Columbus, O., to St. Paul, Minn. Horses. Express Companies, §10 (f); Live Stock Shipments, (r).
Condit, O., to Washington, D. C. Hay and bituminous coal. Embargoes, (a).
Condit, O., to Washington, D. C. Hay. Facilities and Privileges, §21 (d).
Connecticut to New York. Interchange of Traffic, (k); Through Routes and Joint Rates, §24 (a).
Cordele to Macon, Ga. Pig iron. Local Rates and Combinations, (gb).
Council Bluffs. Blanket Rates, §5 (a).
Council Bluffs, Ia. Grain. Allowances, §8 (3) (e) (ij); Facilities and Privileges, §9½ (e).
Council Bluffs from Iowa and Mississippi river points. River Crossings, (b).
Council Bluffs to Nebraska points. Grain. Bridges and Tolls, §1 (a).
Council Bluffs to Omaha. Evidence, §2 (r), §52½ (b).
Council Bluffs, Ia., to Omaha and South Omaha. Grain. Facilities and Privileges, §15½ (b).
Covington, Ky. Live stock. Live Stock Shipments, (a); Stock Yard Companies, (c) (d) (fa).
Covington, Va., to New York City, N. Y. Lumber. Interstate Commerce Commission, §1 (m).
Crowder City, Ind. T., to Kansas City, Mo. Live Stock. Through Routes and Point Rates, §22 (eea).
Cumberland, Md., to North Garden, Va. Coal. Interstate Commerce Commission, §8½ (dd); Reduced Rates, §1 (c).
Cumberland, Md., to North Garden, and Lynchburg, Va. Coal. Procedure before Commission, §10 (1) (u).
Cumberland, Md., to Virginia points. Coal. Long and Short Hauls, §6⅞ (p).

D

Dakota. Procedure before Commission, §1 (na).
Dakota territory to Milwaukee and Chicago. Wheat. Branch Lines, §3 (aa); Differentials, §8 (a).
Dakota territory to Minneapolis and St. Paul. Wheat. Blanket Rates, §3 (aa).
Dallas, Tex., from Indian Territory mines and Arkansas points. Coal. Advanced Rates, §5 (3) (a).
Dallas, Tex., from St. Louis, Mo. Axes. Blanket Rates, §10½ (f).
Dallas, Tex., from St. Louis, Mo. Sad irons. Blanket Rates, §10½ (f).
Dallas, Tex., to Galveston and Houston, Tex. Long and Short Hauls, §7 (3g).
Dallas, Tex., to New Orleans, La. Cotton. Differentials, §8 (p).
Dalton. Lumber. Discrimination, §8 (aa).
Dalton, Tex., from Indian Territory and Southern Arkansas. Slack coal. Advanced Rates, §17 (st).
Dallas, Tex., from St. Louis, Mo. Agricultural implements. Blanket Rates, §10½ (f).
Dalton, Ga., to Knoxville, Johnson City and Bristol, Tenn., and Lynchburg, Va. Lumber. Through Routes and Joint Rates, §13 (b).

Dalton, Ga., to Virginia points. Lumber. Advanced Rates, §17 (r); Long and Short Hauls, §5 (3w), §6⅞ (gg).
Danville, Va. Equalization of Rates, §7 (aa); Long and Short Hauls, §7 (e), Reparation, §7½ (i).
Danville from New Orleans and western points. Through Routes and Joint Rates, §13 (zz) (3b).
Danville, Va., from New Orleans and other points. Sugar, molasses, rice and coffee. Long and Short Hauls, §5 (3c).
Danville from St. Louis and Chicago. Basing Points and Lines, §3 (f).
Danville, Va., from St. Louis, Chicago, and Virginia points. Long and Short Hauls, §5 (3d).
Dawson, Ga. Basing Points and Lines, §3 (d).
Dawson, Ga., from eastern cities. Basing Points and Lines, §3 (d).
Dawson from Nashville, Cincinnati and Chattanooga. Discrimination, §3 (3d).
Dawson from New York and other eastern points. Discrimination, §3 (3e).
Dawson from New York, Nashville, Cincinnati, Chattanooga and New Orleans. Discrimination, §3 (3g).
Dawson, Ga., to Alabama and Georgia points. Freight Rates. Discrimination, §4 (x).
Dayton to Cincinnati. Cars and Car Supply, §7 (k), §32½ (a).
Dayton to Cincinnati. Coal. Cars and Car Supply, §7 (f).
Deadwood, S. D. Demurrage, §10 (c).
Decatur, Ala. Water Carriers, §6 (c).
Delaware to Jersey City and Philadelphia. Procedure before Commission, §1 (z).
Delaware district to Boston. Peaches. Procedure before Commission, §11 (h).
Delaware Peninsula to Boston, Mass. Peaches. Evidence, §20 (g).
Denver, Discrimination, §4 (ff); Long and Short Hauls, §5 (3s).
Denver from the East. Cotton-piece goods. Any-Quantity Rates, I (c).
Denver, Colo., from Lincoln, Kans. Butter. Blanket Rates, §10½ (a); Reasonableness of Rates, §40 (c).
Denver from Missouri River and points east. Long and Short Hauls, §5 (3g).
Denver from New York, Boston and other eastern points. Cotton-piece goods. Through Routes and Joint Rates, §13 (3b).
Denver to and from Pacific coast points. Reasonableness of Rates, §2 (mma).
Denver, Colo., to New Mexico points. Class Rates, §2 (j).
Detroit-Cleveland territory. Procedure before Commission, §10 (1) (s).
Detroit. Grain. Percentage Rates, (a).
Detroit, Mich., from Fountain Head, Gallatin, St. Blaise, Pilot Knob and Nashville, Tenn. Lumber. Long and Short Hauls, §7 (3n) (3o) (3p).
Detroit to Omaha. Classification, §7 (b).
Detroit, Mich., to Omaha, Nebr. Chair stuff, bed and mattress material. Classification, §7 (a).
Detroit to Seabord points. Grain. Percentage Rates, (a).
District of Columbia. Act to Regulate Commerce, I (d); Electric Lines, I (a) (b); Passenger Fares and Facilities, §14 (g) (h); Statutes, (e).
Duluth, Minn. Reasonableness of Rates, §2 (3e).
Duluth, Minn. Grain. Through Routes and Joint Rates, §13 (3ha).
Duluth, Minn. Harbor facilities. Evidence, §25¼ (a).
Duluth to Emerson, Nebr. Reasonableness of Rates, §28 (w); Through Routes and Joint Rates, §8 (b).
Duluth, Minn., to Chicago, Ill. Lumber and shingles. Classification, §3½ (q) (rs), §18 (i).
Duluth, Minn., to Hastings and Superior, Wisc. Coal. State Rates and Regulations, (10e).

E

East Providence. Coal. Discrimination, §3 (a).
East St. Louis. Allowances, §8 (7) (a), Reconsignment, §6½a (a); Through Routes and Joint Rates, §11 (2) (b).
East St. Louis. Flour. Drayage Charges, (d).

East St. Louis. Grain. Facilities and Privileges, §11¾ (a), §18 (g).
East St. Louis. Hay. Reconsignment, §2 (b), §9 (a).
East St. Louis, Ill., from Lochland, Ky., and Louisville. Long and Short Hauls, §7 (4j).
East St. Louis, Ill. from Lochland, Ky., and Louisville, Ky. Brick machinery. Long and Short Hauls, §7 (4k) (4l).
East St. Louis, Ill., to Kansas City, Mo. Cotton goods. Classification, §22 (3c); Differentials, §8 (x).
East St. Louis to Keokuk and Alexandria. Through Routes and Joint Rates, §13 (4c).
East St. Louis, to Mobile, Ala., Meridian, Miss., Tupelo, Aberdeen, Columbus, West Point and Starkville, Miss. Long and Short Hauls, §7 (3u).
East St. Louis to Ohio river points. Hay. Reconsignment, §3 (a).
East St. Louis, Ill., to points west of Mississippi river. Allowances, §8 (7) (a).
East St. Louis, Ill., to points west of Mississippi river. Merchandise. Allowances, §8 (7) (cdefg).
East St. Louis, Ill., to points west of Mississippi river. Allowances, §8 (7) (h).
East St. Louis, Ill., to St. Louis, Mo. Allowances, §8 (7) (b).
East St. Louis to southeastern points. Hay. Reconsignment, §3 (ab).
East St. Louis to Southern destinations. Hay. Reconsignment, §3 (a) (b), §10 (a).
East St. Louis to Vicksburg. Grain. Facilities and Privileges, §18 (b), §18 (h).
East St. Louis, Ill., to Wichita, Kans. Cotton goods. Classification, §22 (3c).
East Boston, Mass. Refined oil. Through Routes and Joint Rates, §1 (z).
East Providence. Coal. Blanket Rates, §13 (a).
Eastern points from Kentucky, Tennessee and Mississippi. Cotton. Cars and Car Supply, §7 (q).
Eastern points to Chicago and Duluth. Through Routes and Joint Rates, §23 (d).
Eastern points to San Grancisco. Evidence, §14 (5) (z).
Eastern points to Troy, Ala., Montgomery and Columbus. Long and Short Hauls, §5 (u).
Eastern Seaboard point to California. Petroleum and petroleum products. Long and Short Hauls, §10 (e).
Eau Claire. Discrimination, §7 (b).
Eau Claire to Missouri river points. Lumber. Evidence, §13 (1) (i).
Emerson, Nebr., to Norfolk. Reasonableness of Rates, §28 (w).
England. Courts, §1 (gg); Interstate Commerce, §5 (ii).
Enid, Okla., from Henryetta District, Ind., Terr. Lump and slack coal. Reasonableness of Rates, §2 (yy) (3a).
Enid, Okla., from Indian Territory points. Coal. Blanket Rates, §12 (f).
Enid, Okla., from San Bois District, Ind. Terr. Coal. Reasonableness of Rates, §2 (zz) (3b).
Erie, Kans., to Joplin and St. Louis, Mo. Refined oil. Reasonablenes of Rates, §8 (1½) (e).
Erie, Kans., to Missouri points. Refined oil. Equalization of Rates, §2 (s).
Erie, Kans., to Springfield and St. Louis, Mo. Oil. Procedure before Commission, §10 (2) (z), (aa).
Erie, Pa., to Salton, Calif. Machinery. Special Contracts, §2 (bba); Tariffs, §3 (1) (k).
Eufaula, Ala. Basing Points and Lines, §3 (d).
Eufaula from New York and other eastern points. Discrimination, §3 (3e).
Eureka Springs. Reduced Rates, §4½ (i).
Evansville, Ind. Hay. Proportional Rates, III (a); Through Routes and Joint Rates, §18 (c).
Evansville to Berry, Ala., and Gordo, Ala. Flour. Reasonableness of Rates, §7½ (z).

F

Fairmont District, W. Va. Coal. Side Tracks and Spur Tracks, (d) (e); Switch Tracks and Switching, §4 (da), §7 (a).

Fall River to New York City and other New England cities. Water Carriers, §6 (i).
Fargo, N. D. Long and Short Hauls, §4½ (b).
Fargo., N. D. Intoxicating liquor. Intoxicating Liquors, (o).
Federick, Mr., to Elberon, N. J. Brick. Differentials, §8 (v).
Fernandino, Fla., to Savannah, Ga. Passenger Fares and Facilities, §3 (1) (b).
Fenton, Mich., to Winooski, Vt. Wire screen doors and windows. Evidence, §30 (d) (e).
Fitzgerald. Long and Short Hauls, §4¾ (l).
Flemington, N. J. Fruit. State Rates and Regulations (oo).
Florida. Procedure before Commission, §10 (1) (nc), §13 (s).
Florida from Savannah, Ga. Bacon. Through Routes and Joint Rates, §13 (yy).
Florida points to Georgia points. Differentials, §8 (f).
Florida to northeastern cities. Oranges. Advanced Rates, §17 (cd), §22 (a); Courts, §14 (l).
Florida to northern and northeastern points. Vegetables. Tariffs, §7 (m); Weights and Weighing, §2½ (f).
Florida to New York. Oranges. Advanced Rates, §17 (a).
Florida points to New York and northern points. Oranges. Advanced Rates, §17 (b).
Florida points to New York City. Strawberries. Through Routes and Joint Rates, §13 (gg).
Florida points to New York and other northeastern and northern destinations. Vegetables. Weights and Weighing, §9 (aa).
Florida points to Pensacola, Fla., and Savannah, Ga. Rosin and turpentine. Through Routes and Joint Rates, §13 (xx).
Florida to Savannah. Uncompressed cotton. Advanced Rates, §17 (ef), §19 (d).
Foreign countries to San San Francisco. Iron and steel. Evidence, §14 (5) (r).
Fort Smith. Cotton. Compress Companies and Charges, II (e), III (a).
Ft. Worth, Tex. Hay. Reparation, §7½ (k).
Fort Worth, Tex., to Birmingham, Ala. Beef cattle. Divisions, §3 (ab) (b); Through Routes and Joint Rates, §11 (2) (ga).
Fort Worth, Tex., to Birmingham, Ala. Shreveport, La., and Meridian. Beef cattle. Through Routes and Joint Rates, §11 (2) (h).
Fort Worth to Galveston and Houston, Tex. Long and Short Hauls, §7 (3g).
Fort Worth, Tex., to New Orleans, La. Beef cattle. Commodity Rates, §5 (e); Live Stock Shipments, (f).
Frankfort. Grain. Long and Short Hauls, §10½ (i), §12 (1) (c).
Freeport, Ill., from Oil City, Pa. Petroleum products. Through Routes and Joint Rates, §13 (3z).
Frederick, Md., to Elberon, N. J. Brick. Class Rates, §2 (h); Reasonableness of Rates, §2 (ww).

G

Gainesville. Long and Short Hauls,, §5 (j).
Gale. Through Routes and Joint Rates, §11 (2) (b).
Gallatin. Basing Points and Lines, §3 (e).
Gallatin, Tenn., from Cincinnati, O., and Louisville, Ky. Long and Short Hauls, §16 (b).
Galveston. Evidence, §14 (5) (e); Export Rates and Facilities, §6 (yb); Long and Short Hauls, §7 (4m).
Galveston. Grain. Evidence, §14 (1) (hh).
Galveston, Tex., to New Mexico points. Class Rates, §2 (j).
Galveston to Wichita and Kansas City. Through Routes and Joint Rates, §13 (3h).
Gardiner to Yellowstone Park. Passenger Fares and Facilities, §2 (w), §9 (n) (o).
Gauley, W. Va. Brick and related articles. Distance Rates, §3 (g).
Geneva, N. Y. Coal. Switch Tracks and Switching, §7 (c).
Georgia points. Long and Short Hauls, §8 (g); State Rates and Regulations, (7a) (10b) (10d); Storage, §2 (b) (c); Taxes, (6u); Telephone and Telegraph Companies, §4 (j).

Georgia points. Cotton. Concentrating Rates and Privileges, (i).
Georgia points. Cotton linters. Concentrating Rates and Privileges, (i).
Georgia points. Cotton regins. Concentrating Rates and Privileges, (i).
Georgia points. Peaches and other fruit. Classification, §11 (l); Loss and Damage, §9 (b); Released Rates, §5 (a).
Georgia points from Charleston and Savannah. Differentials, §8 (g).
Georgia points from Cincinnati, O., and Memphis, Tenn. Canned goods, grain, flour, hay and packing house products. Discrimination, §4 (jj); Long and Short Hauls, §6⅞ (hh).
Georgia points from Cincinnati, O., and Louisville, Ky. Long and Short Hauls. §5 (hh).
Georgia points from Cincinnati, Louisville, Evansville and Nashville. Goods. Long and Short Hauls, §5 (3a).
Georgia points from Louisville and Cincinnati. Long and Short Hauls, §7 (ee).
Georgia points from Nashville, Tenn., Cincinnati, O., Louisville, Ky., and Evansville, Ind. Long and Short Hauls, §5 (3n).
Georgia points from New York, Boston, Philadelphia and Baltimore. Merchandise. Procedure before Commission, §10 (2) (r).
Georgia points from New York. Long and Short Hauls, §5 (3m)
Georgia points to Boston. Fruit. Classification, §22 (nn); Per Car Rates, (c).
Georgia points to Dalton, Ga. Pine lumber. Facilities and Privileges, §18 (j).
Georgia points to Dalton, Chattanooga and Cincinnati. Lumber. Long and Short Hauls, §6⅞ (ff).
Georgia points to Chattanooga, Tenn. Pine lumber. Facilities and Privileges, §18 (j).
Georgia points to Chattanooga, Tenn., Dalton and Cincinnati, O. Pine lumber. Differentials, §8 (ua).
Georgia points to New York. Peaches. Minimums, §7 (e).
Georgia points to northern and eastern markets. Peaches. Per Car Rates, (d).
Georgia points to Ohio river points. Lumber. Advanced Rates, §9 (fg), §13 (a).
Georgia to Ohio river destinations. Lumber. Advanced Rates, §17 (m).
Georgia points to San Francisco and other Pacific coast points. Cotton goods and Cotton waste. Reasonableness of Rates, §28 (y) (z).
Glen Alum, W. Va., to Alexandria, Ind. Coal. Reasonableness of Rates, §27½ (a).
Gloucester, N. J., to Philadelphia, Pa. Ferry Charges, (aa).
Good Thunder, Minn., to Washington, D. C. Potatoes. Through Routes and Joint Rates, §13 (3r).
Good Thunder to Washington and Scranton. Potatoes. Differentials, §8 (tc).
Good Thunder to Washington, Scranton and other eastern destinations. Potatoes. Evidence, §56 (d).
Goodhue, Minn., to Chicago, Ill. Grain. Discrimination, §8 (1) (x); Long and Short Hauls, §7 (4f) (4g) (4h).
Goodhue, Minn., to and from Red Wing, Minn. Grain. Long and Short Hauls, §7 (4f).
Gordo, Ala., from Ava and Cairo, Ill. Flour. Long and Short Hauls, §6⅞ (ccdd); Reasonableness of Rates, §7½ (z).
Gordo from Evansville, Ind., and Louisville, Ky. Flour. Long and Short Hauls, §6⅞ (ee) (ccdd).
Gordo, Ala., from St. Louis, Mo., Ava and Cairo, Ill. Flour. Long and Short Hauls, §6⅞ (ee).
Grand Rapids, Mich. Drayage Charges, (a).
Granite City, Ill. Common Carrier, §9 (n); Industrial Lines (ab).
Granite Falls, Minn., to Chicago, Ill. Butter and Eggs. Long and Short Hauls, §6 (c).
Grand Haven to Detroit and St. Clair. Long and Short Hauls, §4 (b).
Grand Rapids, Mich. Potatoes. Procedure before Commission, §10 (1) (s).
Grand Rapids, Mich., from eastern points. Cartage and Drayage, (c).
Grand Rapids, Minn., to Allouez Bay, Wisc. Iron ore. Procedure before Commission, §10 (4) (g).

Great Lake. Merchandise. Water Carriers, §1 (g).
Greenleaf, Kans. Differentials, §8 (na).
Griffin, Ga., from Cincinnati, O., and Louisville, Ky. Freight articles. Discrimination, §3 (rr).
Grove, Indian Territory, to Marshal, Tex.. and Paris, Tex. Corn. Overcharges, (s).
Grove, I. T., to Paris, Tex. Snapped corn. Reasonableness of Rates, §2 (ss).
Grove, I. T., to Paris and Marshall, Tex. Corn. Reparation, §7½ (j).
Grover Hill, O. Hay. Cars and Car Supply, §17a (f).
Gulf ports. Long and Short Hauls, §4 (3d).

H

Hampton from St. Louis, Nashville and Chattanooga. Discrimination, §10 (e).
Hampton, Fla., from St. Louis, Nashville, Chattanooga and Palatka. Long and Short Hauls, §4½a (a).
Hartland, O. Cars and Car Supply, §7 (cc) (dd) (ee).
Harlem river. Evidence, §20 (g).
Harlem river station from Leesport, Pa., and Communipaw. Roofing slag. Floatage (a) (ab); Through Routes and Joint Rates, §13 (3d).
Harrisburg. Facilities and Privileges, §15 (b) (c).
Harrison district. Reduced Rates, §4½ (i).
Harrison district from Seligman and Eureka Springs. Goods. Reasonableness of Rates, §2 (kk).
Hawkinsville, Ga. Barrel material. Reparation, §7½ (e).
Hawkinsville, Ga., from the west. Barrel material. Reasonableness of Rates, §7½ (x).
High Bridge, N. Y. Terminal Facilities, §2 (d).
Hillsdale, Mich., to Springfield and Columbus. Ice. Long and Short Hauls, §13 (a)
Hoboken, N. Y. Coal. Special Contracts, §5 (a).
Hoboken, N. J. Milk and cream. Blanket Rates, §13 (h); Per Can Rates, (a) (b).
Hocking Valley points to the northwest. Coal. Through Routes and Joint Rates, §13 (j).
Hollow Rock to Southern Omaha, Nebr., Alexandria, Mo., and Keokuk, Ia. Through Routes and Joint Rates, §13 (4c).
Hope, Ark. Through Routes and Joint Rates, §7 (b), §18 (b).
Hope. Cotton seed. Routing and Misrouting, §5 (f); Through Routes and Joint Rates, §16 (c).
Hope, Ark., from Shreveport, La. Through Routes and Joint Rates, §13 (4d).
Hope, Ark. from Pennsboro, Everton and Lamar, Mo. Flour. Through Routes and Joint Rates, §13 (3u).
Hope, Ark., from Shreveport, Ala. Cotton seed. Reasonableness of Rates, §7½ (gg).
Hope, Ark., from Shreveport, La. Cotton seed. Through Routes and Joint Rates, §15 (j) (k).
Hopkinsville, Ky., to Herrin and Pawnee Junction, Ill. Cross-ties. Reparation, §8 (e).
Hopkinsville, Ky., to Illinois points. Cross-ties. Reparation, §8 (d).
Hot Springs, N. C. Overcharges, (b).
Houston, Tex., from Siloam Springs, Ark. Blanket Rates, §13 (m).
Hutchinson, Kans. Industrial Lines, (a); Tap Lines, §6½ (a).
Hutchinson, Kans. Salt in sacks. Class Rates, §2 (j).

I

Illinois. Cars and Car Supply, §½ (b); Courts, §1 (hh); State Rates and Regulations, (9o).
Illinois. Coal. Blanket Rates, §12a (a); Through Routes and Joint Rates, §14 (d).
Illinois. Corn. Export Rates and Facilities, §4 (d).
India Point, R. I. Refined oil. Through Routes and Joint Rates, §1 (z).
Indian Territory points to Kansas City, Mo. Livestock. Crimes, §7 (e).
Indian Territory to Oklahoma Territory. Coal. Differentials, §8 (y).
Indiana. Facilities and Privileges, §15 (b) (c); State Rates and Regulations (mm); Telephone and Telegraph Companies, §3 (e).

Indiana points to Evansville and points south of the Ohio River. Hay. Through Routes and Joint Rates, §26 (e).
Indiana points to Ohio points. Local Rates and Combinations, (l).
Indiana points to points south of the Ohio river. Hay. Proportional Rates, II (b) III (a); Through Routes and Joint Rates, §18 (c).
Indianapolis to Boston. Differentials, §8 (ra).
Indianapolis to Michigan City, Ind. Lumber. Differentials, §8 (r).
Indianapolis to New York, Corn and Corn Products. Classification, §3½ (d); Classification, §22 (o).
Indianapolis, Ind., to seaboard points. Corn and corn products. Classification, §22 (l).
Intermediate points to Galveston and New Orleans. Wheat and corn. Export rates and Facilities, §4 (h).
Iona, Mich. Drayage Charges, (a).
Iona. Mich., from eastern points. Cartage and Drayage, (c).
Iowa. Evidence, §52½ (b).
Iowa points. Pork-packing. Live Stock, (ea).
Iowa. Corn. Export Rates and Facilities, §6 (o).
Iowa points. Hogs. Evidence, §12 (a).
Iowa. Intoxicating liquor. Intoxicating liquor, (tt).
Iowa points to Nebraska, South Dakota, and Missouri River points. Brick and related articles. Distance Rates, §3 (d).

J

Jackson, Mich., to San Francisco and Los Angeles, Calif. Buggies and Carriages. Long and Short Haul, §10 (v).
Jackson, Miss. Coal. Long and Short Hauls, §5 (jj).
Jacksonville. Evidence, §14 (l) (x).
Jacksonville to Savannah and Fernandino. Passenger Fares and Facilities, §3 (l) (b).
Jamestown, R. I., from Fall River and New York City. Fish. Water Carriers, §6 (k) (ka).
Jamestown, R. I., to Philadelphia. Fish. Through Routes and Joint Rates, §11 (2) (m).
Jamestown to Philadelphia and New York. Fish. Water Carriers, §6 (ka).
Janesville, Wisc. Demurrage, §8 (a).
Janesville, Wisc. Coal. Switch Tracks and Switching, §4 (a).
Jersey City. Facilities and Privileges, §10 (e).
Jersey City, N. J. Cream and milk. Blanket Rates, §13 (h); Per Can Rates, (a) (b).
Jersey City. Strawberries and vegetables. Evidence, §15½ (b).
Jersey City from Charleston and New York. Vegetables. Refrigeration, §4 (a).
Jewett, Kans., to Kansas City, Mo. Coal. Evidence, §66 (o) (p); Reasonableness of Rates, §8 (1½) (f).
Johnson City, Tenn., to Boston, Mass. Lumber. Long and Short Hauls, §6⅞ (b).
Johnstown, Pa., to Kankakee, Ill. Steel rails. Minimums, §8 (b).
Johnstown, Pa., to Seattle, Wash. Steel rails. Minimums, §7 (oa), §8 (b).
Joplin, Mo., from St. Louis, Pittsburgh, Pa., East St. Louis, Ill. Oil. Procedure Before Commission, §10 (l) (gga) (gg).

K

Kalamazoo, Mich., to Chicago and Elkhorn, Wis. Silos. Through Routes and Joint Rates, §13 (3y).
Kalamazoo, Mich., to Elkhorn, Wis. Silos. Long and Short Hauls, §5 (3z); Reparation, §7½ (p); Through Routes and Joint Rates, §15 (i).
Kansas. Cattle. State Rates and Regulations, (8w) (8x).
Kansas. Coal. Differentials, §8 (n); Procedure Before Commission, §10 (l) (ff), §14½ (a).
Kansas. Salt. Evidence, §2 (f) (h).
Kansas. Wheat and wheat flour. Classification, §3½ (e).
Kansas from Texas. Cattle. State Rates and Regulations, (7b).

Kansas to Galveston and New Orleans. Wheat and corn. Export Rates and Facilities, §4 (h).
Kansas to Michigan, Missouri, Iowa, Illinois, Nebraska. Salt. Evidence, §2 (g).
Kansas to Missouri. Coal. Tariffs, §3 (2) (c).
Kansas to Texas. Flour. Classification, §18 (f).
Kansas to Texas points. Flour and wheat. Classification, §3½ (m).
Kansas to Texas. Flour, grain, and meal. Reasonableness of Rates, §2 (p).
Kansas City Territory. Blanket Rates, §13 (l).
Kansas City. Classification, §18 (c); Differentials, §4 (f); Evidence, §14 (l) (ee); §67 (g).
Kansas City. Coal. Switch Tracks and Switching, §3 (a) (b) (c), §9 (a).
Kansas City. Grain. Allowances, §8 (3) (ij); Facilities and Privileges, §9½ (e), §2 (d); Reconsignment, §3 (ca); Switch Tracks and Switching, §4 (h) (i).
Kansas City. Live stock. Stock Yard Companies, (r).
Kansas City. Lumber. Discrimination, §4 (dd).
Kansas City. Refined oil. Reasonableness of Rates, §8 (1½) (e).
Kansas City. Sugar. Differentials, §8 (rc).
Kansas City from Colorado points. Divisions, §9 (b).
Kansas City from Minden, Mo., McAlester, I. T., and Russellville, Ark. Coal. Long and Short Hauls, §7 (3k).
Kansas City, from Sioux City. Grain. Evidence, §14 (3) (j).
Kansas City and Texas points. Divisions, §9 (b).
Kansas City from Texas, Colorado, Wyoming, Nebraska, Kansas, Indian Territory and New Mexico. Cattle. Live Stock Shipments, (pa).
Kansas City to Amarillo, Tex. Blanket Rates, §6 (b); Class Rates, §2 (i).
Kansas City to Chicago. Grain. Crimes, §7 (b).
Kansas City to Fort Worth. Class Rates, §2 (i).
Kansas City to Topeka. Trackage Agreements, (a).
Kansas City, Kan. State Rates and Regulations, (10h).
Kansas City, Mo. Allowances, §8 (3) (q); State Rates and Regulations, (10h).
Kansas City, Mo. Grain. Allowances, §8 (3) (e); Allowances, §8 (7) (i).
Kansas City, Mo., from Kansas City. Grain. Reconsignment, §3 (d).
Kansas City, Mo., from Louisiana, Arkansas and Texas. Lumber. Discrimination, §8 (l) (s).
Kansas City, Mo., from Piqua, Neosha Falls, Hartford, Burlington and Bristol, Kans. Hay. Long and Short Hauls, §13 (e).
Kansas City, Mo., to Chicago. Grain. Through Routes and Joint Rates, §22 (p) (q).
Kansas City, Mo., to eastern points. Grain. Class Rates, §2 (f).
Kansas City, Mo., to El Paso, Tex. Apples. Procedure Before Commission, §10 (2) (bb); Weights and Weighing, §3 (b).
Kansas City, Mo., to New Mexico points. Class Rates, §2 (j).
Kansas points. Allowances, §8 (3) (q).
Kansas points. Grain. Allowances, §8 (3) (p), §8 (7) (i).
Kansas points. Salt. Blanket Rates, §13 (f).
Kansas points to California points. Flour. Classification, §11 (q).
Kansas points to California points. Wheat. Classification, §11 (q).
Kansas points to Galveston, Tex. Grain. Blanket Rates, §10 (b).
Kansas points to Joplin. Oil. Evidence, §1½ (qq).
Kansas points to Kansas City, Mo. Grain. Blanket Rates, §10 (b).
Kansas points to Kansas City. Oil. Evidence, §1½ (qq).
Kansas points to Kansas City, St. Louis and Galveston. Grain. Evidence, §20 (bb)
Kansas points to Texas points. Corn and cornmeal. Classification, §3½ (k).
Kansas points to Texas points. Wheat and flour. Classification, §3½ (l).
Kansas points to and from Texas. Corn and cornmeal. Differentials, §8 (la).
Kansas points to St. Louis. Oil. Evidence, §1½ (qq).
Kearney, Neb., from Chicago, Omaha, and eastern cities. Reasonableness of Rates, §2 (ll).
Kearney, Neb., from Chicago and Omaha. Through Routes and Joint Rates, §13 (vv).

Kearney, Neb., from Memphis, New Orleans, Dallas and other southern and southwestern points. Through Routes and Joint Rates, §1 (r) (t).
Kendalls. Through Routes and Joint Rates, §11 (2) (b).
Kenosha, Wis., to Los Angeles, Calif. Brass beds. Minimums, §8 (c).
Kentucky. Bridges and Tolls, §3 (rs); Lease, (f).
Kentucky points. Hay and grain. Blanket Rates, §19½ (a).
Kentucky. Stock. Loss and Damage, §11 (a).
Kentucky points to Atlanta, Ga. Grain and grain products, Blanket Rates, §19½ (b).
Keystone Junction. Cars and Car Supply, §7 (hh), §32½ (c).
Kipton, O. Cars and Car Supply, §7 (z) (aa) (bb).
Knoxville, Tenn., from New York, Providence and Boston, §5 (cc).
Kramer, Ga., from interstate points. Basing Points and Lines, §3 (a).
Kramer, Georgia from New York, Boston, Providence, Louisville, Evansville, and Nashville. Long and Short Hauls, §6⅞ (d).

L

La Crosse, Wis., to Chicago, Ill. Grain. Facilities and Privileges, §15 (a).
La Crosse, Wis., to Chicago and Milwaukee. Grain. Classification, §3½ (i); Facilities and Privileges, §21 (b); Reasonableness of Rates, §7½ (w).
La Crosse, Wis., to Milwaukee, Wis. Grain, Facilities and Privileges, §15 (a).
La Crosse to Missouri river points. Lumber. Evidence, §13 (l) (i).
Lake City. Discrimination, §10 (a) (aa).
Lake Erie. Coal. Blanket Rates, §13 (c); Discrimination, §4 (h).
Lake Michigan to Chicago. Equalization of Rates, §3 (h).
Lake Michigan to Chicago. Salt. Divisions, §9 (c).
Lake Superior Mines from Youngstown, Pittsburgh and Bessemer. Ore. Cars and Car Supply, §7 (b).
Lancaster, Tex. Blanket Rates, §6 (c).
Lansing, Mich., to Oakland, Calif. Cheap bedroom sets. Classification, §11 (h) (i); Evidence, §61 (b).
Laredo, Tex. Through Routes and Joint Rates, §11 (2) (d).
Laredo, Tex. Beef cattle. Through Routes and Joint Rates, §11 (2) (e).
Lawrence. Trackage Agreements, (a).
Lawtey. Long and Short Hauls, §5 (j).
Lead from Chicago and Omaha. Procedure Before Commission, §10 (l) (jj), §10 (2) (gg), §14½ (b).
Ledyard, Ia., to Minneapolis, Minn., and Perkin, Ill. Hay. Minimums, §7 (m).
Lehigh District, Indian Territory, to Enid, Okla. Coal. Reasonableness of Rates, §2 (3c).
Lehigh Valley. Blanket Rates, §13 (e).
Leipsic, Ohio. Corn. Cars and Car Supply, §7 (oo), §17a (e), §32½ (k).
Lincoln. Equalization of Rates, §2 (b); Evidence, §1½ (d), §63 (a).
Lincoln, Neb. Furniture. Through Routes and Joint Rates, §8 (b).
Lincoln, Neb. Lumber. Discrimination, §4 (dd).
Lincoln, Neb., to Atchison, Kans. Passenger Fares and Facilities, §12 (ea).
Little Falls, Minn., to Butte, Mont., and Boise, Idaho. Print paper. Routing and Misrouting, §5 (j).
Little Rock territory. Blanket Rates, §13 (l).
Little Rock, Ark., from Lamar, Pennsboro and Everton. Flour. Through Routes and Joint Rates, §13 (3t).
Little Rock, Ark., from Pennsboro and Everton. Flour. Through Routes and Joint Rates, §13 (3u).
Little Rock to and from Hope. Flour. Facilities and Privileges, §21 (k).
Lochland, Ky., to East St. Louis, Ill. Brick machinery. Reasonableness of Rates, §7½ (aa).
Lomar, Mo., to Hope, Ark. Flour. Through Routes and Rates, §13 (3t).
Long Island Sound. Water Carriers, §6 (h) (j).
Long Island Sound. Fish. Water Carriers, §6 (k) (ka).
Louisiana. Concentrating Rates and Privileges (g); Navigable Waters, (d); State Rates and Regulations, (v) (6w); Taxes, (6b) (6e) (6v).

Louisiana. Coal. Taxes (6c).
Louisiana points. Lumber. Class. Rates, §2 (j).
Louisiana from Pennsylvania and Alabama. Coal and Coke. State Rates and Regulations, (6v).
Louisiana from Texas. Animals. State Rates and Regulations, (9w).
Louisiana points to Hope and Texarkana, Ark. Cotton seed. Through Routes and Joint Rates, §16 (ca).
Louisville. Discrimination, §5½ (db); Procedure Before Commission, §10 (l) (dd); River Crossings, (a).
Louisville. Live stock. Stock Yard Companies (aa) (bb) (dd) (ee).
Louisville to Berry, Ala., and Gordo, Ala. Flour. Reasonableness of Rates, §7½ (z).
Louisville, to Moultrie, Ga. Long and Short Hauls, §4½ (l).
Louisville, Ky. Lumber. Long and Short Hauls, §7 (3o).
Louisville, Ky., from Cannon Falls and Minneapolis, Minn. Rye. Through Routes and Joint Rates, §13 (3ha).
Louisville, Ky., to East St. Louis. Brick machinery. Reasonableness of Rates, §7½ (aa).
Louisville, Ky., to Los Angeles. Reduced Rates, §4½ (f).
Louisville, Ky., to Newport News, Va. Wheat. Evidence, §12 (d); Long and Short Hauls, §5 (ll).
Louisville, Ky., to points in southeast and southwest. Class Rates, §2 (d).
Louisville, Tenn., from Fountain Head, Gallatin, St. Blaise, and Pilot Knob. Lumber. Differentials, §8 (qa).
Los Angeles. Discrimination, §8 (5) (c), §9 (h); Evidence, §14 (5) (v); Long and Short Hauls, §6⅞ (w).
Los Angeles from the east. Discrimination, §8 (l) (l).
Los Angeles from the east. Merchandise. Long and Short Hauls, §7 (3d).
Los Angeles from eastern points. Carriages and buggies. Long and Short Hauls, §7 (3c).
Lynchburg. Basing Points and Lines, §3 (f); Reparation, §7½ (i); Through Routes and Joint Rates, §13 (zz) (3b).
Lynchburg, Va., from New Orleans and other points. Long and Short Hauls, §5 (3c).
Lynchburg, Va., from New York. Providence and Boston. Long and Short Hauls, §5 (cc).
Lynchburg to Danville. Bananas. Cars and Car Supply, §9¾ (a); Reparation, §6 (d)

M

Macon, Ga. Storage, §2 (d), §3 (f).
Macon, Ga. Barrel material. Reparation, §7½ (e).
Macon, Ga., from Cincinnati and Louisville through Griffin. Discrimination, §3 (rr).
Macon, Ga., from the West. Barrel material. Reasonableness of Rates, §7½ (x).
Macon, Ga., to Philadelphia, New York, Washington and Baltimore. Peaches. Minimums, §7 (i); Perishable Freight, (f); Reasonableness of Rates, §2 (3f).
Macon, Ga., to Washington, D. C., Baltimore, Md., Philadelphia, Pa., New York City. Peaches. Refrigeration, §4 (g).
Maine. Passenger Fares and Facilities, §12 (j).
Maine to Canada. Shingle logs. Evidence, §32 (c).
Mankato, Minn., to Scranton, Pa. Potatoes. Through Routes and Joint Rates. §13 (3r).
Mankato to Washington and Scranton. Potatoes. Differentials, §8 (tc).
Mankato to Washington, Scranton and other eastern destinations. Potatoes. Evidence, §56 (d).
Maricopa. Evidence, §14 (5) (v).
Marietto, Ga., to Cleveland, O. Dynamo. Classification, §10 (aa).
Marietta, Okla., to Plano, Tex. Cotton seed. Reasonableness of Rates, §2 (3i).
Marshall, Texas from Grove, Indian Territory. Snapped corn. Tariffs, §7 (n).
Marshalltown, Ia., to Missouri River. Equalization of Rates, §1 (a), §2 (a).

Maryland. Electric lines, I (a) (b), Interstate Commerce §3 (d); Passenger Fares and Facilities, §14 (g) (h).
Maryland to Jersey City and Philadelphia. Procedure Before Commission, §1 (z).
Maryland to and from District of Columbia. Interstate Commerce, §1½ (u), §4 (nn).
Massachusetts. Passenger Fares and Facilities, §12 (j).
Mason City, Ia., to Nebraska, South Dakota, Missouri River and Minnesota points. Brick and related articles. Distance Rates, §3 (e).
Mazeppa. Discrimination, §10 (a).
Mazeppa. Grain. Discrimination, §10 (aa).
McAlester District, Ind. Terr., to Enid, Okla. Coal. Reasonableness of Rates, §2 (3d).
Memphis. Evidence, §14 (5) (s); Long and Short Hauls, §4 (q); Reconsignment, §6½a (a); Through Routes and Joint Rates, §11 (2) (b).
Memphis. Coal. Evidence, §60½ (a); Reduced Rates, §4½ (d).
Memphis, Tenn. Hay. Reconsignment, §10 (a).
Memphis to Arkansas points. Discrimination, §5½ (e).
Memphis, Tenn., to Arkansas points. Cotton. Through Routes and Joint Rates, §8 (c).
Memphis to Atlantic, eastern and Gulf points. Cotton. Compress Companies and Charges, II (b).
Memphis, Tenn., to Charleston, S. C. Long and Short Hauls, §4 (q).
Memphis, Tenn., to Coldwater, Miss. Procedure Before Commission, §10 (2) (l).
Memphis, Tenn., to Cordele and Fitzgerald, Ga. Canned goods, grain, flour, hay and packing-house products. Equalization of Rates, §2 (q).
Memphis, Tennessee, to Helena and McRae, Ga. Canned goods, grain, hay, and packing-house products. Equalization of Rates, §2 (q).
Memphis to Moultrie, Ga. Long and Short Hauls, §4½ (l).
Memphis, Tenn., to Summerville, S. C. Hay. Long and Short Hauls, §6¾ (a), §4 (q).
Memphis, Tenn., to Union Springs, Ala., Columbus, Opelika, and Eufaula, Ala. Long and Short Hauls, §10 (z).
Menasha, Wis., to North Pacific coast terminal. Woodenware. Discrimination, §5½ (m); Evidence, §30 (f) (g).
Meridian, Miss., from St. Louis, Mo., East St. Louis and Cairo, Ill. Grain. Long and Short Hauls, §5 (3t).
Meridian, Miss., to New Orleans. Cotton. Cars and Car Supply, §7 (q); Export Rates and Facilities, §6 (d); Reasonableness of Rates, §2 (k).
Mexico from El Paso, Tex. Long and Short Hauls, §12 (2) (a).
Mexico to El Paso, Tex. Mexico, (a).
Meyersdale. Cars and Car Supply, §7 (hh) (jj), §32½ (c).
McRae, Ga. Lateral Roads, (a).
Michigan. Evidence, §14 (5) (a).
Michigan. Fruits. Cars and Car Supply, §9 ⅝ (c) (d); Exclusive Contracts, (bc); Refrigeration, §2 (a), §4 (d) (f).
Michigan. Hay. Cars and Car Supply, §32½ (e) (g).
Michigan. Salt. Evidence, §2 (f) (h).
Michigan points to Chicago. Fruit. Overcharges, (r).
Michigan points to the east and south. Hay and grain. Cars and Car Supply, §32½ (h).
Michigan points to Missouri River points. Salt. Divisions, §9 (c); Through Routes and Joint Rates, §14 (n); Water Carriers, §6 (g).
Michigan to Springfield. Ice. Discrimination, §8 (l) (p).
Michigan points to Springfield and Columbus, O. Ice. Long and Short Hauls, §9 (v), §13 (a).
Michigan to western Trunk Line Territory. Salt. Blanket Rates, §13 (f).
Middle West. Discrimination, §4 (ff); Long and Short Hauls, §5 (3s).
Middle West to intermediate points. Procedure Before Commission, §1 (ff).
Middle West points to Pacific coast. Classification, §5 (q) (u) (v) (w) (x) (y).
Midland Valley, Ar., to Kansas City, Mo. Coal. Weights and Weighing, §7½ (b).
Milwaukee. Across Lake Rates, (a); Discrimination, §10 (aa); Long and Short Hauls, §6⅞ (u).

Milwaukee. Grain rates. Evidence, §20 (y).
Milwaukee. Wheat rates. Evidence, §12 (d).
Milwaukee, Wisc., from Iowa, Minnesota and South Dakota. Wheat, grain, flour. Differentials, §2 (a), §8 (i).
Milwaukee to eastern points. Asbestos pipe coverings. Through Routes and Joint Rates, §22 (t).
Milwaukee, Wis., to Eastern seaboard points. Flour, grain and mill stuffs. Reasonableness of Rates, §7½ (ha).
Milwaukee to Minneapolis. Divisions, §3 (a).
Milwaukee, Wis., to Oklahoma City, Okla., and Woodward, Okla. Beer. Reasonableness of Rates, §2 (vva).
Milwaukee to Tennessee and Georgia points. Wheat. Long and Short Hauls, §5 (ll).
Milwaukee, Wis., to Woodward, Okla., and Oklahoma City, Okla. Beer. Long and Short Hauls, §6 7-8 (ii); Reparation, §16 (a).
Mineral, Kans., to Freeman, and Harrisonville, Mo. Coal. Procedure Before Commission, §10 (2) (cc).
Mineral, Kansas to Missouri points. Coal. Long and Short Hauls, §5 (4b).
Minetto, N. Y., to Chicago, Ill. Window shades. Classification, §17 (h).
Minneapolis. Long and Short Hauls, §4 (f); Passenger Fares and Facilities, §7¼ (l); Reconsignment, §3 (cb).
Minneapolis. Grain rates. Evidence, §20 (y); Facilities and Privileges, §15 (f); Reconsignment, §2 (d), §3 (d) (ca).
Minneapolis. Flour. Export Rates and Facilities, §4 (f), §6 (st).
Minneapolis. Wheat. Facilities and Privileges, §21 (b).
Minneapolis, Minn., from Iowa, Minnesota, South Dakota. Wheat, grain, flour. Differentials, §2 (a).
Minneapolis, Minn., from North and South Dakota. Wheat. Discrimination, §4 (p) (o).
Minneapolis to Chicago. Grain. Discrimination, §4 (hh), §8 (l) (w); Local Rates and Combinations, (k).
Minneapolis to Chicago, East St. Louis and Louisville. Discrimination, §8 (l) (v).
Minneapolis, Minn., to Chicago and East St. Louis, Ill., and St. Louis, Mo. Scrap iron. Procedure Before Commission, §10 (2) (p) (q).
Minneapolis to Eastern points. Grain. Flour and mill stuffs. Reasonableness of Rates, §7½ (ha).
Minneapolis to New York, Philadelphia and Boston. Potatoes. Through Routes and Joint Rates, §13 (3r).
Minneapolis to New York. Wheat, flour, and mill stuffs. Through Routes and Joint Rates, §2 (d).
Minneapolis, Minn., to St. Louis, Louisville, and East St. Louis. Grain. Through Routes and Joint Rates, §13 (3ha).
Minnesota. Courts, §10 (d); Interstate Commerce, §½ (z); Procedure Before Commission, §1 (na); State Rates and Regulations, (3c) (6o) (10f).
Minnesota points. Lumber. Discrimination, §4 (n).
Minnesota points to eastern points. Flour. Long and short Hauls, §5 (3a).
Minnesota points to Iowa, Wisconsin and Illinois points. Grain. Differentials, §8 (a).
Minnesota points to New York and Philadelphia, Pa. Potatoes. Differentials, §8 (u).
Minnesota points to Washington, D. C. Potatoes. Differentials, §8 (u).
Mississippi. State Rates and Regulation, (3i).
Mississippi River points. Blanket Rates, §16 (c); Minimums, §7 (f); Navigable Waters, (d); Procedure Before Commission, §10 (l) (dd); Tap Lines, §7 (h), §9 (xx) (ca); Taxes, (6b).
Mississippi River Crossing. Corn. Export Rates and Facilities, §6 (o).
Mississippi points. Grain. Long and Short Hauls, §5 (3t).
Mississippi River points. Woodenware. Discrimination, §5½ (m).
Mississippi River from Kansas and Nebraska points. Corn and oats. Blanket Rates, §12 (a).

Mississippi River to Eastern Cities, Chicago, East St. Louis and New York City. Corn and oats. Evidence, §58 (i).
Mississippi River to Gulf, and New Orleans. Taxes, (6v).
Mississippi River points to Kansas City, Mo., Omaha and Lincoln, Nebraska and Topeka, Kansas. Lumber. Long and Short Hauls, §5 (3p).
Mississippi River to Missouri River and Denver. Cotton piece goods. Through Routes and Joint Rates, §13 (3qb).
Mississippi River to and from New York City. Wheat and flour. Blanket Rates, §12 (a).
Mississippi River points to Omaha. Classification, §7 (b).
Mississippi River points to Pacific Coast. Goods. Classification, §10 (i) (jk) (l) (m).
Mississippi River points to Pacific Coast terminals. Household goods. Classification, §10 (m); Reduced Rates, §4½ (f).
Missouri. Cars and Car Supply, §½ (b); Classification, §18 (c); Loss and Damage, §3 (k); Newspapers. Taxes, (4r) (7b).
Missouri. Through Routes and Joint Rates, §13 (ss), §15 (c).
Missouri River territory. Blanket Rates, §16 (a) (c); Common Carrier, §9 (b); Differentials, §4 (f); Discrimination, §4 (ff); Long and Short Hauls, §4 (ff), §5 (3s); Reasonableness of Rates, §2 (j), §28 (h).
Missouri River points. Denatured alcohol. Classification, §22 (3h).
Missouri points. Coal. Differentials, §8 (o).
Missouri river points. Hogs. Evidence, §12 (a).
Missouri points. Salt. Blanket Rates, §13 (f); Industrial Lines, (a).
Missouri. Wheat and flour. Classification, §3½ (e).
Missouri River. Woodenware. Discrimination, §5½ (m).
Missouri River from Denver. Cotton-piece goods. Through Routes and Joint Rates, §13 (3o).
Missouri River points from Pacific coast terminals. Petroleum and petroleum products. Procedure Before Commission, §10 (2) (t).
Missouri River points from Southern California. Citrus Fruits. Blanket Rates, §12 (e).
Missouri River points from Southern California. Lemons. Blanket Rates, §12 (d).
Missouri to Cape Girardeau. Cars and Car Supply, §½ (a).
Missouri River to Chicago. Cotton goods. Classification, §22 (3c).
Missouri River to Chicago and Mississippi River. Corn and oats. Reasonableness of Rates, §2 (q).
Missouri River points to Chicago, intermediate points in Iowa and Missouri to Chicago. Live hogs. Live Stock, (ea).
Missouri River points to Denver. Cotton-piece goods. Classification, §22 (yy); Differentials, §8 (tb).
Missouri to Galveston and New Orleans. Wheat and corn. Export Rates and Facilities, §4 (h).
Missouri points to Kansas. Special Contracts, §2 (s).
Missouri river points to Louisiana points. Corn and corn products. Classification, §3½ (zaa).
Missouri River points to Northern Pacific Coast terminals and Oregon points. Denatured alcohol. Reasonableness of Rates, §7½ (ll).
Missouri river points to Pacific coast. Corn products and corn. Classification, §3½ (u); Differentials, §4 (h).
Missouri River to Pacific Coast and Oregon points, Alcohol. Commodity Rates, §5 (i).
Missouri River to San Francisco. Telephone and Telegraph Companies, §6 (h).
Missouri river points to Texas points. Corn meal and corn. Classification, §3½ (wx) (y).
Missouri River points to Texas points. Corn-meal. Classification, §11 (n).
Missouri to Texas points. Flour and wheat. Classification, §3½ (m).
Missouri to Texas. Flour. Classification, §18 (f).
Missouri points to Washington, Oregon and California. Corn and corn products. Classification, §3½ (v).
Mobile. Evidence, §14 (5) (e); Reconsignment, §6½a (a); Taxes, (v).

Mobile. Cotton. Discrimination, §9 (d).
Mobile, Ala., from St. Louis, Mo., East St. Louis and Cairo, Ill. Grain. Long and Short Hauls, §5 (t) (3t).
Mobile to New Orleans. Cotton. Discrimination, §3 (hh), §9 (d).
Montgomery. Discrimination, §13 (a); Evidence, §14 (5) (pa), §67 (i); Long and Short Hauls, §4 (n).
Montgomery, Ga. Cotton. Through Routes and Joint Rates, §13 (a).
Moultrie, Ga., Evidence, §2 (x).
Moultrie, Ga., from Louisville, Cincinnati, Memphis, and Nashville. Equalization of Rates, §2 (t).
Mount Holley, N. J., from Chicago and other western points. Grain, flour and feed. Through Routes and Joint Rates, §13 (4a).
Mt. Vernon. Side Tracks and Spur Tracks, (a).
Muskogee, Okla., to South McAlester. Cotton. Compress Companies and Charges, III (b).
Myrick, Mo., to points north, west, and south of Atchison, and Atchison. Coal. Differentials, §8 (na).

N

Nashville. Basing Points and Lines, §3 (e); Evidence, §60½ (a).
Nashville, Tenn. Coal. Allowances, §7 (b); Reduced Rates, §4½ (d).
Nashville, Tenn. Hay. Reconsignment, §10 (a).
Nashville, Tenn., from Cincinnati, O., and Louisville, Ky. Long and Short Hauls, §16 (b).
Nashville, Tenn., from New York and eastern points. Long and Short Hauls, §6⅞ (y).
Nashville, Tenn., to Georgia points. Long and Short Hauls, §5 (v).
Nashville to Moultrie, Ga. Long and Short Hauls, §4½ (l).
Nashville, Tenn., to Oklahoma City, Okla. Hogs. Live Stock, (ssa).
Nashville, Tenn., to Union Springs, Ala., Columbus, Opelika and Eufaula, Ala. Long and Short Hauls, §10 (z).
Nebraska. Courts, §1 (mm).
Nebraska City Junction. Differentials, §8 (na).
Nebraska points. Discrimination, §3 (f); Equalization of Rates, §4 (5) (d).
Nebraska points. Coal. Differentials, §8 (n) (o).
Nebraska points from Louisiana, Arkansas, and Texas. Lumber. Discrimination, §8 (l) (s).
Nebraska points to California. Wheat. Commodity Rates, §5 (f) (g).
Nebraska to Chicago. Corn. Through Routes and Joint Rates, §22 (d).
Nebraska points to Turner, Ill. Corn. Through Routes and Joint Rates, §22 (d).
Neodesha to Springfield. Oil. Procedure Before Commission, §10 (2) (z).
New Albany, Ind., to Michigan City. Wheat. Long and Short Hauls, §10½ (i), §12 (l) (c).
New England points. Reasonableness of Rates, §7½ (ee).
New England. Cotton-piece goods. Discrimination, §4½ (r).
New England points from Cleveland, O., Pittsburg, Pa., and other Pennsylvania and Ohio points. Petroleum and petroleum products. Through Routes and Joint Rates, §1 (z), §11 (2) (c).
New England, from Detroit and Chicago. Grain. Export Rates and Facilities §6 (b).
New England from Northwestern states and territories. Grain. Export Rates and Facilities, §6 (b).
New England points from Ohio, Pennsylvania and New York points. Pig iron. Blanket Rates, §1 (a).
New England points to Orient. Cotton piece goods. Export Rates and Facilities, §6 (ya).
New Hampshire. Passenger Fares and Facilities, §12 (j).
New Haven, Pa., to Youngstown, O. Coal and coke. Cars and Car Supply, §7 (b).
New Jersey. Taxes, (3f).
New Jersey. Oleomargarine. State Rates and Regulations, (mm).
New Jersey points from Chicago. Grain, flour and feed. Differentials, §4 (i).

New Jersey to Boston, Massachusetts. Peaches. Evidence, §20 (g).
New Jersey to New York City, N. Y. State Rates and Regulations, (pp).
New Jersey points to New York City. Cut flowers. Express Companies, §10 (ab).
New London, Conn. Refined oil. Through Routes and Joint Rates, §1 (z).
New Mexico. Courts, §15 (g).
New Mexico points. Differentials, §8 (bb).
New Mexico. Coal. Crimes, §2 (j) (k) (mn), §7 (d).
New Mexico. Livestock. Livestock Shipments, (q); Through Routes and Joint Rates, §11 (2) (k).
New Mexico from Hutchison, Kans. Salt. Class Rates, §2 (j).
New Mexico points from Kansas City and St. Louis, Mo., Galveston, Tex., and Denver, Colorado. Class Rates, §2 (j).
New Mexico points from Texas and Oklahoma and Louisiana. Grain, grain products and lumber. Class Rates, §2 (j).
New Mexico points to Ft. Worth, Texas. Apples, Alfalfa and Alfalfa Meal. Class Rates, §2 (j).
New Orleans. Concentrating rates and privileges, (g); Evidence, §14 (5) (e); Passenger Fares and Facilities, §12 (lm); Reconsignment, §6½a (a).
New Orleans. Cotton. Cars and Car Supply, §38 (a); Evidence, §1½ (f).
New Orleans. Sugar. Differentials, §4 (f).
New Orleans. Uncompressed cotton. Credit Account, (c).
New Orleans from Kentucky, Tennessee and Mississippi. Cotton. Cars and Car Supply, §7 (q).
New Orleans from Liverpool. Evidence, §13 (4) (a), §14 (5) (n).
New Orleans from Mobile. Cotton. Discrimination, §4 (q).
New Orleans to Albany, Ga. Basing Points and Lines, §3 (d).
New Orleans to Americus, Ga. Basing points and Lines, §3 (d).
New Orleans to Atlanta and La Grange. Reasonableness of Rates, §7½ (u), §28 (ua); Through Routes and Joint Rates, §13 (tt).
New Orleans, La., to Cullman, Ala. Salt. Commodity Rates, §5 (h); Long and Short Hauls, §5 (4c).
New Orleans, La., to Dallas, Tex. Lemons and Pineapples. Classification, §7 (l).
New Orleans to Dawson. Basing Points and Lines, §3 (d); Discrimination, §4 (y).
New Orleans to Georgia points. Long and Short Hauls, §5 (mm) (nn) (oo).
New Orleans to Hogansville, Newman, Palmetto, Fairburn. Discrimination, §3 (ww).
New Orleans to Kansas City, and Dallas, Tex. Long and Short Hauls, §7 (mm).
New Orleans, La., to Kansas, Missouri and other Missouri points. Sugar. Differentials, §8 (s).
New Orleans to Kansas City. Sugar. Through Routes and Joint Rates, §17 (f).
New Orleans to LaGrange. Discrimination, §3 (ww), §4 (v).
New Orleans, La., to McAlester, I. T. Sugar. Equalization of Rates, §2 (r).
New Orleans, La., to McAlester, Ind. Territory and Muskogee, Indian Territory. Sugar. Long and Short Hauls, §5 (3x); Procedure Before Commission, §10 (2) (sa).
New Orleans to McAlester, Ind., T. Sugar. Reasonableness of Rates, §28 (bb).
New Orleans to Nashville. Sugar and molasses. Long and Short Hauls, §5 (rr) (ss), §7 (oo).
New Orleans to San Francisco. Evidence, §13 (4) (a), §14 (5) (n).
New Orleans to Tifton, Ga. Sugar. Discrimination, §4 (bb).
New Orleans to Wichita. Sugar. Reasonableness of Rates, §2 (pp).
New York. Classification, §6 (h); Courts. §15 (c); Differentials. §4 (b) (g), §8 (l) (aa); Drayage Charges, (g); Evidence, §14 (5) (xy); Export Rates and Facilities, §4 (c), *6 (h); Facilities and Privileges, $10 (k) (l); Import Traffic, §1 (h); Interchange of Traffic, (l); Long and Short Hauls. §4 (a) (ff); Passenger Fares and Facilities, §½ (i), §1 (c); Procedure Before Commission, §2 (p); Reasonableness of Rates, §28 (ua); Receivers (aa); State Rates and Regulations, (7x); Taxes, (4s).
New York. Convict made goods. State Rates and Regulations, (8w).
New York. Cotton-piece goods. Through Routes and Joint Rates, 13 (3o).
New York. Eggs. Classification, §5 (j).

New York. Flour. Reasonableness of Rates, §7½ (h).
New York. Grain. Statutes (o).
New York points. Hay. Facilities and Privileges, §10 (e).
New York. Lumber. Differentials, §4 (e); Discrimination, §4½ (n).
New York. Merchandise. Export Rates and Facilities, §6 (a).
New York City. Milk. Blanket Rates, §13 (b).
New York, N. Y. Milk and cream. Blanket Rates, §13 (h); Per Can Rates, (a).
New York. Pig iron. Evidence, §45 (b).
New York, N. Y. Steves. Lighterage, §7 (c).
New York. Strawberries and vegetables. Evidence, §15½ (b).
New York. Sugar. Evidence, §32 (a); Long and Short Hauls, §4½ (b).
New York. Wheat and corn. Export Rates and Facilities, §2 (aa).
New York. Wheat. Export Rates and Facilities, §6 (p).
New York, from Charleston, S. C., and Jersey City. Strawberries and vegetables. Through Routes and Joint Rates, §13 (mm).
New York from Chicago and other western points. Differentials, §8 (da).
New York from Chicago. Corn. Export Rates and Facilities, §1½ (c).
New York from Chicago. Grain, flour. Differentials, §8 (j).
New York City from Chicago. Wheat and flour. Reasonableness of Rates, §7½ (g).
New Orleans, La., from Dallas, Tex. Cotton. Blanket Rates, §10 (a).
New York City from East St. Louis. Food products, corn and oats. Blanket Rates, §12 (a).
New York from Georgia points. Peaches. Refrigeration, §4 (b).
New York from Gilman and Peoria, Ill. State Rates and Regulations, (ba).
New York City from Illinois points. Apples. Weights and Weighing, §2½ (g); Weights and Weighing, §3 (c), §5 (e).
New York from Indianapolis. Wheat. Long and Short Hauls, §10½ (i), §12 (l) (c).
New York from Mississippi River. Corn. Export Rates and Facilities, §1½ (c).
New York City from New Jersey and Pennsylvania points. Cut flowers. Advanced Rates, §9 (i); Reduced Rates, §5½ (d).
New York City from New York points. Milk and cream. Common Carrier, §8 (c).
New York from Peoria. Corn. Export Rates and Facilities, §1½ (c).
New York from Saginaw, Mich., and Buffalo, N. Y. Lumber. Differentials, §8 (rb)
New York from St. Paul and Duluth. Rail-And-Water Rates, (c).
New York, N. Y., from West Virginia and southwestern Virginia. Lumber. Through Routes and Joint Rates, §13 (3e) (3f).
New York to Atlanta. Pearline and soap. Classification, §6 (a) (b).
New York, N. Y., to Boston. Passenger Fares and Facilities, §5¼ (c).
New York to Boston and Readville. Flour. Water Carriers, §8 (a).
New York to Boston. Peaches and fruit. Classification, §22 (nn); Per Car Rates (c) (d).
New York to California points. Petroleum and petroleum products. Evidence, §14 (5) (f).
New York to Charleston. Strawberries and vegetables. Evidence, §15½ (c).
New York points to Chattanooga, Memphis and Nashville. Long and Short Hauls, §10 (k) (l).
New York to Chicago. Horses. Live Stock Shipments, (r); Express Companies, §10 (f).
New York to Chicago and Denver. Cotton-piece goods. Through Routes and Joint Rates, §13 (3qb).
New York to Chipley, Pensacola, Mobile and New Orleans, and other points in Florida. Sugar. Through Routes and Joint Rates, §13 (yy).
New York to Cleveland. Coal and Coke. Cars and Car Supply, §7 (b).
New York to Columbus, Ohio. Horses. Express Companies, §10 (f); Live Stock Shipments, (r).
New York to Dawson, Georgia. Basing Points and Lines, §3 (d).
New York to Denver, San Francisco, Salt Lake City. Ticking, drills, and sheetings. Through Routes and Joint Rates, §13 (3qa).

New York to Fall River, Mass., and other New England cities. Water Carriers, §6 (h) (j).
New York to Galveston, Tex., and Wichita, Kans. Knit goods. Rail-And-Water, (d) (f).
New York points to Galveston, Tex., Wichita, Kans., and Topeka, Kans. Knit goods. Reasonableness of Rates, §7½ (bb).
New York to Jacksonville. Interstate Commerce, §½ (t).
New York to Jersey City. Evidence, §43 (c).
New York to Jersey City. Milk. Discrimination, §3 (h), §4 (f).
New York to Kansas City. Horses. Express Companies, §10 (f); Live Stock Shipments, (r).
New York City to Mississippi River. Wheat and flour. Reasonableness of Rates, §7½ (g).
New York to Nashville and Chattanooga. Long and Short Hauls, §7 (3r) (3s).
New York City to New York points. Facilities and Privileges, §21 (l).
New York to New York City. Cream and milk. Common Carrier, §8 (d).
New York to Pacific coast terminals. Evidence, §14 (5) (xy).
New York to Readville, Mass., and Boston, Mass. Flour. Long and Short Hauls, §7 (j).
New York to St. Louis, Mo. Horses. Express Companies, §10 (f); Live Stock Shipments, (r).
New York to San Francisco. Discrimination, §8 (l) (o); Evidence, §14 (5) (xy); Long and Short Hauls, §5 (3s), §10 (y).
New York to San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, and San Diego, Calif. Petroleum and petroleum products. Long and Short Hauls, §10 (d) (e).
New York to Tifton. Long and Short Hauls, §5 (3n).
New York to Topeka, Kans. Knit goods.. Rail-And-Water Rates. (d) (f).
New York to Troy, Ala., Montgomery and Columbus. Long and Short Hauls, §5 (u).
New York to Vermont points. Petroleum. Crimes, §27 (a).
New York to western points. Horses. Express Companies, §10 (f).
New York points to Wichita, Kans., Topeka Kans. Long and Short Hauls, §7 (4m).
New York to Wilmington, N. C. Water Carriers, §8 (b).
Newport News. Wheat. Export Rates and Facilities, §6 (p).
Newport, Vt. to Pawtucket, R. I., and Worcester, Mass. Cows and calves. Through Routes and Joint Rates, §15 (g).
Newark, N. J., to Stanley, Luray and Greenville, Va. Bags. Classification, §5 (jj).
Newark, N. J., to Virginia points. Burlap bags. Classification, §20 (g).
Niagara-on-the-Lake, Canada to Buffalo, N. Y. Passenger Fares and Facilities, §2 (r).
Nicholasville, Ky. Wheat rates. Evidence, §12 (d).
Nicholasville, Ken., to Tennessee and Georgia points. Wheat. Long and Short Hauls, §5 (ll).
Norwalk, O. Cars and Car Supply, §7 (z) (aa) (bb) (cc) (dd) (ee).
Norfolk, Va. Discrimination, §5½ (db).
Norfolk. Coal. Evidence, §14 (l) (cc); Through Routes and Joint Rates, §13 (3l).
Norfolk. Wheat. Export Rates and Facilities, §16 (p).
Norfolk, Va. Lumber. Demurrage, §8 (b).
Norfolk from Cincinnati, Louisville, St. Louis, and Chicago. Percentage Rates, (c); Reasonableness of Rates, §28 (va).
Norfolk, Neb., from Chicago. Through Routes and Joint Rates, §13 (3g).
Norfolk, Neb., from Chicago and Duluth. Furniture. Through Routes and Joint Rates, §8 (b).
Norfolk, Va., to Jersey City and Philadelphia. Procedure Before Commission, §1 (z).
Norfolk, Va., to Philadelphia, Jersey City and Boston Lumber. Long and Short Hauls, §10 (u); Through Routes and Joint Rates, §15 (fa).
North Atlantic ports. Class Rates, §2 (m); Differentials, §8 (t).
North Atlantic ports to suburban mills. Blanket Rates, §11 (a).
North Carolina. State Rates and Regulations, (3b).

North Carolina points to New Orleans. Cowpeas. Classification, §22 (oo) (pp).
North Dakota. State Rates and Regulations, (6b); Taxes, (5d).
North Dakota. Coal. Cars and Car Supply, §20 (h).
North Dakota. Grain. Facilities and Privileges, §9½ (c); State Rates and Regulations, (6a), (6c) (6d).
North Dakota. Intoxicating liquor. Intoxicating liquors, (p).
North Dakota to Minneapolis. Wheat. Evidence, §20 (l).
Northwest Territory. Grain. Cars and Car Supply, §20 (h).
Northwestern Territories from New England. Export Rates and Facilities, §6 (c).
Nowata, Ind. Terr., to points in Texas. Oil. Procedure Before Commission, §10 (l) (ii).
Norwood, N. Y., to Montpelier, Vt. Bituminous coal. Classification, §10 (z); Discrimination, §4½ (o).
Norwood, N. Y., to Montpelier, Vt. Coal. Through Routes and Joint Rates, §26 (c).

O

Oakdale, Tex., to Cincinnati, Ohio. Strawberries. Expedited Service, (e).
Oakland, Calif. Merchandise. Tolls, (a).
Official Classification territory. Advanced Rates, §5½ (d), §11 (a).
Official Classification Territory. Ale. Classification, §11 (c).
Official Classification Territory. Hay and straw. Classification, §22 (ee).
Official Classification Territory. Leather scraps. Classification, §22 (zz).
Official Classification Territory. Shoe blacking daubers. Classification, §17 (o).
Ohio. Bridges and Tolls, §3 (rs); Crimes, §24½ (u); Facilities and Privileges, §15 (b) (c); State Rates and Regulations, (7o); Taxes (r) (5j).
Ohio. Coal. Blanket Rates, §13 (c).
Ohio to California points. Oil. Evidence, §14 (5) (f).
Ohio points to New York City. Brick. Classification, §10 (bb).
Ohio points to New York City. Fire, building and paving brick. Classification, §10 (dd).
Ohio to Pacific coast terminals. Petroleum and petroleum products. Procedure Before Commission, §10 (2) (t).
Ohio River. Basing Points and Lines, §3 (f); Bridges and Tolls, §4 (b); Freight Agencies, (a); Minimums, §7 (f); Procedure Before Commission, §10 (l) (dd); River Crossings, (a).
Ohio river points. Hay. Reconsignment, §10 (a).
Ohio River points from Mississippi, Louisiana and Alabama points. Lumber. Advanced Rates, §15 (e), §17 (j), §18 (4) (a).
Ohio River to and beyond Georgia. Lumber. Advanced Rates, §7 (7) (cde).
Oil City, Pa., to Freeport, Ill. Petroleum and its Products. Long and Short Hauls, §5 (3y); Procedure Before Commission, §10 (2) (u).
Oil City, Pa., to New York and New York Harbor points. Oil. Classification, §16 (r).
Oklahoma. Cattle. Taxes, (7i).
Oklahoma points. Grain and grain products. Class Rates, §2 (j).
Oklahoma to Galveston. Wheat and corn. Export Rates and Facilities, §6 (z).
Oklahoma City, Okla., from West Virginia points and St. Louis, Mo. Coal. Procedure Before Commission, §10 (l) (ff), §14½ (a).
Oklahoma City, Okla., to Gainesville and Fort Worth, Tex. Wheat. Blanket Rates, §8 (e); Reasonableness of Rates, §2 (3g).
Olean, N. Y., to Norwood, N. Y. Petroleum and products. Crimes, §11 (a).
Omaha, Nebr. Blanket Rates, §5 (a); Differential, §8 (b) (c); Equalization of Rates, §2 (b), §4 (2) (a); Evidence, §1½ (d), §14 (3) (b); Through Routes and Joint Rates, §1 (r) (t).
Omaha, Nebr. Lumber. Discrimination, §4 (dd).
Omaha from Mississippi River points and Iowa points. River Crossings, (b).
Omaha, Nebraska from St. Louis. Evidence, §63 (a).
Omaha from Texas. Cotton-seed oil. Class Rates, §2 (b).
Omaha to Chicago, Ill., Lincoln, Neb., and Fremont, Neb. Equalization of Rates, §7 (ab).

Omaha to Council Bluffs. Grain. Facilities and Privileges, §15½ (c).
Omaha, Neb., to South Omaha, Iowa points and Mississippi River points. Discrimination, §9 (fb).
Omaha to Texas points. Class Rates, §2 (b).
Omaha to Texas. Packing-house products. Class Rates, §2 (b).
Omaha to Texas. Syrup. Class Rates, §2 (b).
Omaha to and from Texas points. Syrup. Class Rates, §2 (c).
Opelika. Discrimination, §13 (a); Long and Short Hauls, §4 (n).
Opelika to New Orleans. Cotton. Through Routes and Joint Rates, §13 (a).
Opelika to Savannah. Discrimination, §4 (c).
Orient to Southwestern mills. Reasonableness of Rates, §7½ (ee).
Ottawa, Ill., to Pittsburgh, Pa., Buffalo, N. Y., and other points. Discrimination, §8½ (a).

P

Pacific Coast. Coal. Cars and Car Supply, §20 (h).
Pacific coast points from Boston and New England Territory. Passenger Fares and Facilities, §3 (f).
Pacific coast points from the East. Cotton-piece goods. Any Quantity Rates, I (c).
Pacific coast from eastern points. Tariffs, §6 (e).
Pacific Coast territory from Middle West. Commodity Rates, §5 (a) (b).
Pacific coast points from New York and Boston. Reasonableness of Rates, §28 (z).
Pacific coast to Denver and Missouri River. Long and Short Hauls, §5 (3r).
Pacific coast points to Kearney, and Omaha, Neb. Sugar. Long and Short Hauls, §10 (t).
Pacific coast points to Missouri river points. Classification, §3½ (b).
Pacific coast to Missouri river points. Rice, hemp, baking powder, blankets, books, boot and shoe heels, chocolate, cocoa and extracts. Discrimination, §8 (t).
Pacific coast to Missouri river and Denver. Seashells, vanilla beans, whalebone, whale oil foots, hair, copper, cement, glue, honey, mohair, hides, wool, sealskins, goatskins, sheepskins, and skins of furbearing animals. Discrimination, §4 (gg).
Pacific ports. Long and Short Hauls, §4 (3d).
Pacific ports from southern mills. Cotton goods. Evidence, §44¼ (h); Reasonableness of Rates, §26½ (b).
Pacific ports to Asiatic ports. Baled cotton goods. Export Rates and Facilities, §6 (bb).
Pacific terminals. Blanket Rates, §8 (f).
Pacific coast terminals. Evidence, §14 (5) (g); Procedure Before Commission, §1 (ff).
Pacific coast terminals from eastern points. Long and Short Hauls, §7 (s).
Pacific coast terminals from Pennsylvania and Ohio points. Petroleum and petroleum products. Reduced Rates, §5½ (e).
Pacific coast terminals from St. Louis, Chicago and New York. Long and Short Hauls, §10 (y).
Pacific coast terminals to Missouri and Mississippi river points and Chicago. Woodenware. Evidence, §30 (f) (g).
Page, W. Va. Coal and coke. Through Routes and Joint Rates, §11 (2) (n) (o) (p).
Palatka from St. Louis, Nashville and Chattanooga. Discrimination, §10 (e).
Palatka to Hampton. Discrimination, §8 (l) (i); Evidence, §14 (l) (x).
Paris, Tex., to Marshall, Tex. Snapped corn. Tariffs, §7 (n).
Pataskala, O. Hay. Discrimination, §5½ (j).
Pataskala, O., to Wilmington and Greenville, N. C. Hay. Long and Short Hauls, §5 (v) (3v); Reparation, §7½ (l).
Pemberton, N. J., from Chicago and western points. Grain, flour, feed. Differentials, §8 (z); Through Routes and Joint Rates, §13 (4a).
Pennsylvania. Facilities and Privileges, §15 (b) (c); Interstate Commerce, §½ (j); Taxes, (tt) (uu) (6e) (6k).
Pennsylvania points. Coal. Crimes, §23 (a).
Pennsylvania. Natural gas. Gas Companies, (f).

Pennsylvania to Baltimore. Coal. Discrimination, §5½ (g) (h), §8 (l) (y) (z).
Pennsylvania to Baltimore, Md., and Norfolk, Va. Gas coal. Proportional Rates, II (c).
Pennsylvania to California points. Long and Short Hauls, §10 (e).
Pennsylvania to California points. Oil. Evidence, §14 (5) (f).
Pennsylvania to Hoboken and Buffalo. Anthracite coal. Special Contracts, §2½ (f).
Pennsylvania to New Jersey points. Coal. Crimes, §23 (b).
Pennsylvania points to New York City. Cut flowers. Express Companies, §10 (ab).
Pennsylvania points to other States. Coal. Cars and Car Supply, §7 (ii).
Pennsylvania to Pacific coast terminals. Petroleum and petroleum products. Procedure Before Commission, §10 (2) (t).
Pennsylvania to the seaboard. Petroleum oil. Courts §6½ (pp).
Pennsylvania points to Southern Classification territory. Paper bags and wrapping paper. Classification, §7 (m).
Peoria. Corn. Export Rates and Facilities, §6 (o).
Peoria, Ill., to Chicago, Ill. Corn. Export Rates and Facilities, §6 (n).
Philadelphia, Pa. Express Companies, §1¾ (d), §13 (a); Demurrage, §10½ (a); Differentials, §8 (t); Ground Storage, (a); Import Traffic, §1 (h); Procedure Before Commission, §2 (p); State Rates and Regulations, (3na); Taxes, (31).
Philadelphia. Coal. Facilities and Privileges, §10 (b).
Philadelphia. Coke. Facilities and Privileges, §10 (b).
Philadelphia. Freight articles. Differentials, §4 (g).
Philadelphia. Hay and straw. Embargoes, (c) (d) (e).
Philadelphia. Iron ore. Facilities and Privileges, §10 (b).
Philadelphia, Pa. Lumber. Through Routes and Joint Rates, §13 (3f).
Philadelphia. Pig iron. Facilities and Privileges, §10 (b).
Philadelphia. Wheat. Export Rates and Facilities, §6 (p).
Philadelphia from Memphis and Dyersburg. Cotton-seed meal. Procedure Before Commission, §10 (2) (m).
Philadelphia from Newport and Jamestown. Fish. Water Carriers, §6 (k) (ka).
Philadelphia, Pa., from Tennessee points. Cotton seed meal. Long and Short Hauls, §5 (ee).
Philadelphia from Virginia points. Oak lumber. Long and Short Hauls, §7 (4a). (4b).
Philadelphia, Pa., to Atlanta, Ga. Passenger Fares and Facilities, §11 (k).
Philadelphia, Pa., to Fort Wayne, Ind. Wool in the grease. Classification, §5 (hh); Evidence, §30 (c); Reasonableness of Rates, §2 (tt), §27¾ (b).
Philadelphia, Pa., to suburban points. Express Companies, §1¾ (e) (ea).
Phoenix, Ariz. Evidence, §14 (5) (v).
Phoeniz, Ariz. Wheat and flour. Classification, §3½ (bb).
Phoenix, Ariz., from California and Kansas points. Wheat. Classification, §11 (q).
Phoenix, Ariz., from Chicago, Ill., New York, N. Y., and Los Angeles, Calif. Long and Short Hauls, §10 (w).
Phoenix, Ariz., from New York, Chicago, St. Louis and other eastern points. Evidence, §66 (m), §14 (5) (v).
Pipestone, Minn., to Chicago. Butter and Eggs. Long and Short Hauls, §6 (c).
Pittsburgh. Common Carriers, §9 (b); Facilities and Privileges, §15 (b) (c); Long and Short Hauls, §4 (ff).
Pittsburgh, Pa. Coal. Blanket Rates, §13 (c); Evidence, §32 (l).
Pittsburgh. Oil. Evidence, §52 (b).
Pittsburgh points to Harrisburg, Pa. Grain. Facilities and Privileges, §15 (e).
Pittsburgh points to the northwest. Coal. Through Routes and Joint Rates, §13 (j).
Pittsburgh, Pa., to United States points. Hostetter's Bitters. Classification, §22 (h).
Ponca City, Okla., to Maud, Ind. Flour. Junction point rates, (a).
Port Huron to Buffalo. Grain and grain products. Classification, §17 (e).
Port Los Angeles from Atlantic seaboard. Carriages and buggies. Long and Short Hauls, §7 (3c).
Portland. Merchandise. Export Rates and Facilities, §6 (a).

Portland, Ore. Wheat. Reasonableness of Rates, §40 (a).
Portland, Ore., from Pullman, Wash. Wheat. Branch Lines, §1 (f).
Portland, Ore., from Walla Walla and Dayton, Wash. Wheat. Reasonableness of Rates, §2 (ii) (jj).
Portland to San Francisco. State Rates and Regulations, (a).
Portsmouth, Va., to Philadelphia, New Jersey, and Boston. Lumber. Long and Short Hauls, §10 (u); Through Routes and Joint Rates, §15 (fa).
Patomac river territory. Minimums, §7 (f).
Prichard, Ala., to Verona, Miss. Classification, §18 (e).
Prichard, Ala., to Verona, Miss., and East St. Louis. Blanket Rates, §8 (a); Classification, §18 (e).
Providence. Long and Short Hauls, §4 (a).
Providence. Coal. Allowances, §8 (8) (a); Blanket Rates, §13 (a); Discrimination, §3 (a), §4 (b).
Providence, R. I. Meat. Facilities and Privileges, §10 (f) (g), §21 (h) (i); Switch Track and Switching, §4 (d).
Providence, R. I., to Chicago, Ill., Burlington, Ia., and other western points. Egg cases. Classification, §22 (t); Reduced Rates, §5½ (b).
Pueblo, Colorado to San Francisco, California. Courts, §6½ (qq).
Pueblo to San Francisco. Iron and steel articles. Discrimination, §4 (r).
Pueblo, Colo., to San Francisco. Iron, steel and steel rails. Long and Short Hauls, §6⅞ (o).

Q

Quanah to Kansas City. Cement. Discrimination, §4½ (l).
Quanah, Tex., to Kansas City and St. Louis, Mo. Cement plaster. Percentage Rates, (d).
Quanah, Tex., to St. Louis, Mo. Cement plaster. Discrimination, §4½ (q).
Quitman. Long and Short Hauls, §4¾ (l).

R

Readville. Flour. Reasonableness of Rates, §7½ (h).
Red Wing. Discrimination, §10 (a) (aa).
Red Wing, Minn., to Chicago. Grain. Long and Short Hauls, §7 (4g) (4h).
Reno, Nev., from Marquette, Neb. Grain. Through Routes and Joint Rates, §13 (4e).
Rhode Island. State Rates and Regulations, (9k).
Rich Hill. Coal. Equalization of Rates, §3 (f), §3½ (a).
Rich Hill, Mo., to Kansas points. Coal. Differentials, §8 (n).
Richmond. Passenger Fares and Facilities, §2 (o).
Richmond, Mo., to Mankato, Kan. Coal. Overcharges, (h).
Richmond, Mo., to St. Joseph, Mo. Coal. Overcharges, (h).
Richmond, Va. Discrimination, §5½ (db); Passenger Fares and Facilities, §14 (i).
Rochelle. Procedure Before Commission, §2 (p).
Rock Hill, S. C., to Tallahassee, Fla. Buggies. Long and Short Hauls, §7 (3y).
Rock Hill, S. C., to Tallahassee, Fla., and Quincy, Fla. Buggies. Long and Short Haul, §7 (3z).
Rocky Ford, Colo., to Wichita and Hutchison, Kans. Sugar. Procedure Before Commission, §10 (l) (z) (aa), §10 (2) (n).
Ritzville, Wash., to Portland, Ore. Wheat. Routing and Misrouting, §5 (c).
Ritzville, Wash. to St. Paul, Minn. Wheat and barley. Reasonableness of Rates, §2 (y).

S

Saginaw, Mich. Lumber. Differentials, §4 (e).
Saginaw, Mich., to Buffalo, N. Y. Lumber. Basing Points and Lines, §3 (g).
Saginaw, Mich., to New York points. Lumber. Basing Points and Lines, §3 (g).
St. Cloud, Minnesota to eastern points. Flour. Long and Short Hauls, §5 (3a).
St.. Joseph, Mo., from Piqua,, Neosha Falls, Hartford, Burlington and Bristol, Kans. Hay. Long and Short Hauls, §13 (e).
St. Joseph, Mo., to Mankato, Kans. Coal. Overcharges, (h).
St. Louis, Missouri. Allowances, §8 (7) (a) (b); Equalization of Rates, §2 (b); Evidence, §14 (3) (b); Procedure Before Commission, §10 (l) (dd); Reconsignment, §3 (cb).

St. Louis. Cotton piece goods. Through Routes and Joint Rates, §13 (3qb).
St. Louis. Flour. Drayage Charges, (d).
St. Louis. Grain. Reconsignment, §2 (d), §3 (ca) (d).
St. Louis, Missouri. Salt. Evidence, §2 (f).
St. Louis. Wheat rates. Evidence, §12 (d).
St. Louis from Kendalls, Gale, Thebes, Cairo and East St. Louis. Through Routes and Joint Rates, §13 (3j).
St. Louis from Indian Territory points. Cotton. Reduced Rates, §4½ (h).
St. Louis from Marshfield and Springfield, Mo. Live poultry. Long and Short Hauls, §9 (p).
St. Louis, Mo., from South Canadian and Eufaula Indian Territory, and Dennison, Tex. Cotton. Long and Short Hauls, §5 (aa).
St. Louis from Texas, Colorado, Wyoming, Nebraska, Kansas, Indian Territory and New Mexico. Cattle. Live Stock Shipments (pa).
St. Louis to Amarillo, and Ft. Worth, Tex. Reasonableness of Rates, §28 (dd).
St. Louis to Dallas. Reduced Rates, §1 (e).
St. Louis to Eureka Springs. Goods. Class Rates, §2 (e).
St. Louis to Gordo and Ava. Flour. Long and Short Hauls, §6⅞ (ccdd); Reasonableness of Rates, §7½ (z).
St. Louis to Griffin, Macon, Americus, Albany and Dawson, Ga. Long and Short Hauls, §6⅞ (bb).
St. Louis to Harrison district. Goods. Class Rates, §2 (e).
St. Louis, Mo., to Kansas City, Mo. Horses. Express Companies, §10 (f); Live Stock Shipments, (r).
St. Louis, Mo., to Lincoln, Neb. Differentials, §8 (b) (d); Evidence, §1½ (e).
St. Louis, Mo., to Mobile, Ala., Meridian, Miss., Tupelo, Aberdeen, Columbus, West Point and Starkville, Miss. Long and Short Hauls, §7 (3u).
St. Louis, Mo., to New Mexico points. Class Rates, §2 (j).
St. Louis to Omaha. Equalization of Rates, §2 (c); Evidence, §1½ (e); Long and Short Hauls, §9 (b).
St. Louis to Pacific Coast. Classification, §5 (q); Long and Short Hauls, §10 (y)
St. Louis, Mo., to points west of Mississippi River. Allowances, §8 (7) (a) (h).
St. Louis, Mo., to points west of Mississippi river. Merchandise. Allowances, §8 (7) (cdefg).
St. Louis to Tennessee and Georgia points. Wheat. Long and Short Hauls, §5 (ll).
St. Louis, Mo., to Texas points. Advanced Rates, §3 (d), §9 (h), §17 (p).
St. Louis to Union Springs, Ala., Columbus, Opelika and Eufaula, Ala. Long and Short Hauls, §10 (z).
St. Paul. Passenger Fares and Facilities, §6 (ob), §7¼ (l).
St. Paul. Sugar. Evidence, §32 (a).
St. Paul, Minn., from Duluth and Superior. Class Rates, §2 (a).
St. Paul from the east. Sugar. Long and Short Hauls, §4½ (b).
St. Paul, Minn., from Ritzville, Wash. Wheat and barley. Blanket Rates, §12 (b).
St. Paul to Boston. Evidence, §56 (e); Reparation, §7½ (n).
St. Paul, Minn., to Boston, Mass. Grass twine matting and rugs. Reasonableness of Rates, §2 (3e), §7½ (dd).
St. Paul, Minn., to Chicago and East St. Louis, Ill., and St. Louis, Mo. Scrap iron. Procedure Before Commission, §10 (2) (p) (q).
St. Paul, Minn., to Duluth, Minn., and Boston, Mass. Grass twine matting and rugs. Rail and Water Rates, (g).
St. Paul, Minn., to Gardiner, Mont., and Yellowstone Park. Passenger Fares and Facilities, §2 (v), §14 (j).
St. Paul to New York, Philadelphia and Boston. Potatoes. Through Routes and Joint Rates, §13 (3r).
St. Paul, Minn., to Portland, Ore. Mens clothing and furnishings. Passenger Fares and Facilities, §7¾ (b) (c).
St. Paul to Washington and Scranton. Potatoes. Differentials, §8 (tc).
St. Peter to Pierre. Evidence, §1 (ea); Procedure Before Commission, §1 (na).
Salt Lake City from the east. Cotton-piece goods. Any Quantity Rates, 1 (c).

San Bernardino. Discrimination, §8 (1) (l); §8 (5) (c), §9 (h); Long and Short Hauls, §6⅞ (w).
San Bernardino, Calif. Carriages and buggies. Long and Short Hauls, §7 (3c).
San Bernardino from the east. Merchandise. Long and Short Hauls, §7 (3d)
San Francisco. Long and Short Hauls, §7 (3c); Taxes. (3m); Tariffs, §18 (c).
San Francisco, Calif. Merchandise. Tolls, (a).
San Francisco. Sugar. Evidence, §32 (a); Long and Short Hauls, §4½ (b).
San Francisco from Chicago and Mississippi and Missouri river points. Iron, lumber, grain, steel, goods. Evidence, §14 (5) (q).
San Francisco from eastern points. Goods. Through Routes and Joint Rates, §13 (3q).
San Francisco from Missouri River and points east. Long and Short Hauls, §5 (3g).
San Francisco from New York, Boston and other eastern points. Cotton piece goods. Through Routes and Joint Rates, §13 (3qb).
San Francisco to Atlantic seaports. Evidence, §14 (5) (u).
San Francisco to Denver, Colo. Long and Short Hauls, §5 (b).
San Francisco to Denver. Sugar. Evidence, §1½ (ii).
San Francisco, Calif., to Denver, Colo., and Kansas City, Mo. Long and Short Hauls, §5 (a).
San Francisco to Denver and Missouri River. Long and Short Hauls, §9 (a).
San Francisco, Calif., to Fargo, N. D., and St. Paul, Minn. Sugar. Long and Short Hauls, §7 (o).
San Francisco to Gulf of Mexico and Atlantic seaports. Sugar. Long and Short Hauls, §10 (t).
San Francisco to Gulf of Mexico, Atlantic seaports and Omaha, Nebr. Sugar Discrimination, §8 (l) (h).
San Francisco to Gulf of Mexico, Omaha, and Kearney, Nebr. Sugar. Evidence, §14 (5) (u).
San Francisco to Kansas City. Sugar. Discrimination, §8 (l) (d); Evidence, §1½ (ii).
San Francisco to Omaha, Nebraska. Evidence, §14 (5) (u).
San Francisco to Omaha, Chicago and Minneapolis. Passenger Fares and Facilities, §6 (t) (u) (x).
San Francisco to and from Pacific coast terminals and Missouri River points. Reasonableness of Rates, §2 (mma).
Santa Barbara, Cal. Blanket Rates, §8 (f); Equalization of Rates, §4 (4) (a).
Santa Barbara, Calif., from the east. Long and Short Hauls, §7 (4r).
Savannah to Florida points. Evidence, §14 (5) (s).
Savannah to intermediate points. Fertilizer. Long and Short Hauls, §10 (s).
Savannah, Ga., to points in North Carolina, South Carolina, Georgia, Florida and Alabama. Fertilizers. Long and Short Hauls, §9 (m).
Savannah, Ga., to South Carolina points. Passenger Fares and Facilities, §3 (l) (a).
Seattle from Boston and New England territory. Passenger Fares and Facilities, §3 (3) (f).
Scranton, Pa., Courts, §15 (c).
Seligman, Mo., to Eureka, Ark. Passenger Fares and Facilities, §2 (j).
Seligman, Mo., to Leslie, Ark. Passenger fares and Facilities, §2 (aa).
Sheridan to Boston. Differentials, 8 (ra); Discrimination, §8 (l) (ta).
Sioux City. Evidence, §58 (l).
Sioux City. Wheat. Classification, §3½ (j).
Sioux City from Atlantic seaboard points. Through Routes and Joint Rates, §23 (d).
Sioux City from Iowa, and South Dakota. Corn. Equalization of Rates, §2 (k).
Sioux City, Iowa to Eastern markets. Live hogs. Classification, §18 (b).
Sioux City to Eastern markets and Seaboard cities. Live hogs. Live Stock, (ea)
Sioux City, Ia., to eastern points. Grain. Class Rates, §2 (f).
Siloam, Ark., to Houston, Tex. Green Apples. Blanket Rates, §13 (k).
Sioux City, Iowa to Mississippi river points. Live hogs and packing house products. Classification, §8 (b).

Sioux City to Mississippi points. Live hogs. Live Stock Shipments (ea).
Sioux Falls. Evidence, §58 (l).
Sioux Falls, S. Dak. Side Tracks and Spur Tracks, (f); Switch Tracks and Switching, §7 (d).
Sioux Falls from Atlantic seaboard points. Through Routes and Joint Rates, §23 (d).
Snow Shoe Region, Pa., to Perth Amboy, N. J. Bituminous coal. Classification, §3½ (g).
Social Circle, Ga. Vehicles. Class Rates, §2 (aa).
Social Circle from Atlanta, and Cincinnati, O. Through Routes and Joint Rates, §2 (n).
South Carolina. Intoxicating liquors, (rr); State Rates and Regulations, (3b) (10d).
South Carolina. Alcoholic liquors. Intoxicating liquors, (3a).
South Carolina. Liquor. Intoxicating liquors, (dd) (jj) (nn) (qq) (3b) (3m).
South Carolina. Liquor, wine, and beer. Intoxicating liquors. (zz).
South Carolina points from Boston, Mass., and Providence, R. I. Rail and Water Rates, (i).
South Carolina points to New Orleans. Cowpeas. Classification, §22 (oo) (pp).
South Carolina to New York. Melons. Evidence, §12 (e), §58 (m).
South Carolina to New York and other points in northern and northwestern states. Melons. Perishable Freight, (d).
South Carolina points to San Francisco and other Pacific points. Cotton goods and cotton waste. Reasonableness of Rates, §28 (y) (z).
South Dakota. Side Tracks and Spur Tracks, (a).
South McAlester. Cotton. Compress Companies and Charges, II (e) III (a).
South McAlester, I. T., to Denison, Tex. Coal. Classification, §22 (qq); Eqaulization of Rates, §2 (n).
South Omaha to Council Bluffs. Grain. Facilities and Privileges, §15½ (c).
South Wanatah. Grain. Long and Short Hauls, §10½ (i), §12 (l) (c).
Southern California to Missouri river points. Lemons. Classification, §22 (rr).
Southern California to points on and east of the Missouri river. Oranges. Basing Points and Lines, §3 (h); Blanket Rates, §10½ (b).
Southern Classification territory. Basing Points and Lines, §3 (f).
Southern Classification Territory. Flour. Tariffs, §7 (o).
Southern Minnesota. Grain. Facilities and Privileges, §15 (f).
Southern Minnesota divisions to La Crosse, Wis. Grain. Classification, §3½ (i).
Southern Minnesota points to Chicago and Milwaukee. Flour. Discrimination, §5½ (da).
Southern Minnesota points to LaCrosse and Minneapolis. Wheat. Discrimination, §5½ (da).
Southern Minnesota to Milwaukee and Chicago. Wheat. Facilities and Privileges, §21 (b).
Southern states to eastern mills. Cotton. Through Routes and Joint Rates, §13 (x) (y).
Southern territory from Chicago and Cincinnati. Evidence, §13 (1½) (a).
Southern territory from eastern seaboard territories, Chicago, Ill., and Cincinnati, O. Equalization of Rates, §2 (h).
Southern territory from northern points. Iron pipe fittings. Classification, §6½ (a), §16 (z).
Spartanburg, S. C. Procedure Before Commission, §10 (l) (n).
Spokane. Long and Short Hauls, §5 (l).
Staten Island Sound. Bridges and Tolls, §3 (b) (e); Navigable Waters (aa).
Staunton, Va. Oak lumber. Long and Short Hauls, §6⅞ (aa).
Sugar City, Colo., to Wichita and Hutchison, Kans. Sugar. Procedure Before Commission, §10 (l) (z) (aa).
Sugar City, Colo., to Wichita, Hutchison, Kans., and Kansas City, Mo. Sugar. Procedure Before Commission, §10 (2) (n).
Summerdale, Ill., to Lima, Ohio. Asbestos articles. Long and Short Hauls, §5 (zz), §6⅞ (u).

Summerdale to Lima, O. Asbestos pipe coverings. Through Routes and Joint Rates, §22 (t).
Summerdale to Milwaukee. Asbestos articles. Long and Short Hauls, §5 (xx).
Summerville, S. C. Long and Short Hauls, §4 (q).
Summerville, S. C., to Charleston, S. C. Hay. Long and Short Hauls, §6¾ (a).
Summitt, O., to Lenoir, N. C. Hay. Routing and Misrouting, §4 (i), §7 (e).
Superior Lakes. Evidence, §14, (5) (a).
Superior, Wisc., to Afton, Minn. Coal. Discrimination, §8 (l) (bb).
Superior, Wisc., to Afton and Hastings. Coal. Long and Short Hauls, §7 (4c), §7 (4d), §7 (4e).
Superior, Wisc., to Hastings, Minn. Bituminous and anthracite coal. Reasonableness of Rates, §2 (vv).
Superior, Wisc., to Hastings, Nebr. Coal. Discrimination, §8 (l) (bb).

T

Tecumseh, Mich., to Kansas City, Mo. Celery. Classification, §17 (g).
Tecumseh to Kansas City. Celery and cauliflower. Classification, §22 (r).
Tennessee. Tap Lines, §6 (a).
Tennessee. Coal. Cars and Car Supply, §21½ (a).
Tennessee points from Nicholasville, Ky. Wheat. Long and Short Hauls, §5 (kk).
Tennessee points to East St. Louis, Alexandria, Mo., and Keokuk, Ia. Oak staves and headings. Proportional Rates, II (d).
Tennessee points to East St. Louis and South Omaha, Nebr. Oak staves and headings. Proportional Rates, II (d).
Tennessee points to East St. Louis, South Omaha, Nebr., Alexandria, Mo., and Keokuk, Ia. Oak staves and headings. Reasonableness of Rates, §7½ (ff); Through Routes and Joint Rates, §13 (4c).
Tennessee River. Water Carriers, §6 (c).
Terre Haute, Indiana. Hay. Demurrage, §2 (c).
Terre Haute, Ind., from Kentucky and Virginia. Coke. Long and Short Hauls, §5 (4a); Procedure Before Commission, §10 (2) (w); Reasonableness of Rates, §28 (cc).
Texarkana, Ark. Through Routes and Joint Rates, §7 (b), §18 (b).
Texarkana. Cotton seed. Routing and Misrouting, §5 (f); Through Routes and Joint Rates, §16 (c).
Texas. Anti-Trust Laws and Monoplies, (ab) (ad); Association, (gb); Blanket Rates, §6 (a), §10½ (cd) (e), §14 (a), §16 (c); Courts, §15 (g); Evidence, §2 (z); Loss and Damage, §10 (2) (g); Reparation, §6 (e); State Rates and Regulations, (yy) (8e).
Texas points. Long and Short Hauls, §7 (3i).
Texas. Goods. State Rates and Regulations, (7h) (8f).
Texas points. Grain and grain products. Class Rates, §2 (j).
Texas. Live stock. Live Stock Shipments, (q); State Rates and Regulations, (8c); Through Routes and Joint Rates, §11 (2) (k).
Texas points. Lumber. Class Rates, §2 (j).
Texas. Newspaper. Taxes, (7b).
Texas. Wheat. Blanket Rates, §10½ (cd); Classification, §18 (c).
Texas. Wheat and wheat flour. Classification, §3½ (e).
Texas from Cadillac, Mich. Potatoes. Blanket Rates, §9 (b).
Texas common points from eastern territory. Blanket Rates, §8 (b).
Texas points from Kansas and Missouri points. Flour and wheat. Classification, §3½ (n), §17 (q).
Texas points from La Junta, Colo., and Dodge City, Kans. Hay. Reparation, §7½ (k).
Texas points from Robinson and La Junta, Colo., and Dodge City, Kans. Hay. Overcharges, §x (t); Proportional Rates, II (a) (aa).
Texas to Colorado, Western Nebraska, Wyoming, Montana and North Dakota and South Dakota. Cattle. Live stock, (pa).
Texas points to Colorado, Western Nebraska, Wyoming, Montana, North and South Dakota, Illinois, Missouri and Kansas. Live stock. Advanced Rates, §17 (q).
Texas points to Dallas, Tex., New Orleans, La. Evidence, §66 (j).

Texas to Indian Territory. Cattle. Interstate Commerce, §½ (q).
Texas points to Kansas City and Missouri River points. Cotton piece goods, molasses, sugar, rice, coffee. Discrimination, §4 (ta); Long and Short Hauls, §5 (x).
Texas points to Kansas City, St. Louis, Omaha and Chicago. Cotton. Reasonableness of Rates, §2 (xx).
Texas points to Missouri points. Class Rates, §2 (i).
Texas points to New Orleans, La. Beef cattle. Through Routes and Joint Rates, §11 (2) (d) (e) (f) (g).
Texas to Omaha. Live stock. Class Rates, §2 (b).
Texas to Omaha. Sugar. Class Rates, §2 (b).
Texas points to Omaha, Kansas City and Chicago. Equalization of Rates, §4 (5) (b).
Texas points to Wichita, Kans. Sugar, molasses, rice, coffee, and cotton piece goods. Discrimination, §4 (ta); Reasonableness of Rates, §8 (1½) (d).
Texas points to and from Chicago. Class Rates, §2 (c).
Texas points to and from Davenport, Rock Island and Moline. Class Rates §2 (c).
Texas points to and from St. Joseph, Kansas City, Mississippi River and Chicago, Ill. Class Rates §2 (b).
Thacker District, W. Va., to Alexandria, Ind. Coal. Reparation §11 (a); Through Routes and Joint Rates §13 (3w).
Thebes. Through Routes and Joint Rates, §11 (2), (b).
Thomasville. Long and short hauls, §4¾ (l).
Tifton. Long and short hauls, §4¾ (l).
Tifton from Cincinnati, Louisville, Evansville, Nashville. Long and short hauls §5, (3m).
Tifton, Ga., from Nashville, Tenn., Cincinnati, Ohio, Louisville, Ky. and Evansville, Ind., Long and short hauls, §5, (3n).
Tifton. From Cincinnati, Louisville, Evansville and Nashville. Goods. Long and short hauls, §5, (31).
Tifton to Valdosta, Georgia, Long and short hauls, §5 (3m).
Titusville, Pa., to Buffalo, N. Y. Oil. Evidence, §1½, (g); Export Rates and Facilities, §6 (e); Reasonableness of rates, §40, (b); Reparation §10, (a).
Titusville, Pa. to Buffalo, N. Y., Perth Amboy, N. J. Oil. Reasonableness of rates, §7½ (f(.
Titusville, Pa., to New York and New York Harbor points. Oil. Classification §16 (r).
Topeka, Kans. from Louisiana, Arkansas and Texas. Lumber. Discrimination, §8 (1), (s).
Trinity, Texas, to Wichita, Kansas. Lumber. Commodity Rates, §5, (d).
Troupe, Tex., to Fort Lawn, S. C. Routing and misrouting, §4 (a).
Troupe, Tex., to Fort Lawn, S. C. Vicksburg, Jackson, Meridian, Birmingham, Atlanta, Augusta and Columbia. Routing and misrouting, §7 (c).
Turner. Procedure before commission, §2 (p).

U

Umatilla. Wheat. Through Routes and Joint rates, §13 (aa).
Union Springs, Ala. Cotton. Compress Companies and charges III (e).
United States, Act to Regulate Commerce, II (t); Courts, §5 (e) (q) §6½ (b) (h) (p) (t) (z) (bb) (ii) §10 (c) (e), §14 (f) (j), §16 (a); Crimes, §17 (i), §24½ (j) (k), §28½a (g), §34 (e) (f); Discrimination, §8 (1) (g); Evidence §14 (5) (p); Export Rates and Facilities, §1½ (b) (d) §5 (a) (e) (f) (g); Finance Dockets §2 (n) (p); Freight Agencies (e); Import Traffic §1 (d) (j); Interstate Commerce §4 (b) §4 (k) §5 (j) (k) (jj); Interstate Commerce Commission, §1 (q) (z) §3 (b) (d) §8½ (ii) §15 (a) (d); Live Stock Shipments (ea); Long and Short Hauls, §6⅞ (q).
United States. Books, documents and papers. Courts, §6½ (aa).
United States. Coal and Coke. Crimes, §2½ (c).
United States. Goods. Crimes, §36 (a).
United States. Intoxicating liquor. Intoxicating Liquors. (ww).
United States. Merchandise. Import Traffic, §1 (b) §1 (c) (d) (e) (f) (g) (h).

United States from Cuba. Evidence. §26 (a).
United States from Florida. Evidence. §26 (a).
United States Points to Canada points. Canada. (a); Through Routes and Joint Rates, §1 (k).
United States point to foreign destinations. Export rates and facilities, §1½ (d) §2 (a).
United States points to foreign countries. Foreign Commerce, §½ (a) (c).
United States to foreign countries. Merchandise. Water Carriers, §1 (g).
United States to and from Canada. Branch Lines. §1 (h).
United States points to and from New Mexico points. Grain, grain products, lumber, salt, apples, alfalfa, alfalfa meal. Class Rates, §2 (k).

V

Valdosta. Long and Short Hauls, §4¾ ((l).
Valdosta, from Savannah and Charleston, Ga. Fertilizer. Long and short hauls, §7 (ii).
Vermont. Passenger fares and facilities. §12 (j).
Verona, Miss., to East St. Louis, Ill., Beans and tomatoes. Classification, §18 (e).
Verona, Miss., to Cleveland, Ohio., Potatoes, Classification. §18 (e); Routing and Misrouting §7 (da).
Vicksburg, Evidence, §14 (5) (e); Facilities and Privileges, §11¾ (a); Local Rates and Combinations (da).
Vicksburg. Cotton. Discrimination §3 (m).
Vicksburg, Mississippi. Cotton. Discrimination, §4 (j); Through Routes and Joint Rates §22 (f).
Vicksburg from Kansas, Missouri and Illinois. Grain. Facilities and privileges §18 (h).
Vicksburg, Miss., from St. Louis, Mo., and East St. Louis, Ill., Grain. Facilities and privileges §18 (h).
Victoria, Canada to Black Rock, N. Y. and Buffalo. Passenger Fares and Facilities, §2 (r).
Virginia cities, Equalization of Rates, §2 (p); Interstate Commerce §½ (o); Loss and Damage, §3 (i); State Rates and Regulations (3na); Telephone and Telegraph Companies, §3 (hh).
Virginia points to Philadelphia. Oak Lumber. Blanket Rates, §13 (i).
Virginia points to and from Newark. Ground bark. Classification §5 (jj).

W

Wabash. Discrimination §10 (aa).
Wabash, Ind. Furs and fur scraps. Classification, §22 (cc).
Wabash, Ind. Hats. Classification §6 (h).
Wabash to Lake City, Red Wing, and McCracken. Grain. Reasonableness of Rates §2 (a).
Walla Walla to Portland, Ore. Wheat. Reasonableness of Rates, §40 (a); Through Routes and Joint Rates, §13 (aa).
Washington points from eastern points. Long and short hauls, §7 (r).
Washington from Pittsburg. Oil. Evidence, §52 (a).
Washington to Mosley. Passenger Fares and Facilities, §2 (o), §14 (i).
Waterbury, Conn. Roofing slag. Through Routes and Joint Rates, §13 (3d).
Waterville, Minneapolis, Differentials, §4 (a).
Waterville to Mankato. Red Wing and Minneapolis. Procedure Before Commission §10 (2) (e).
Weehawken. Milk and Cream. Blanket Rates, §12a (d) §13 (h); Per can Rates (a) (b).
Weleetka, Ind. T. Switch Tracks and Switching. 4½ (aa).
Western Pennsylvania to New York Harbor points. Oil. Classification §16 (y).
Western Pennsylvania to New York Harbor points and Boston and Boston points, Oil. Classification, §16 (x).
Western points to the east. Hogs. Stoppage in Transit (d).
Western points to Philadelphia, Baltimore and New York. Grain, flour and provisions. Differentials, §8 (l).

Western Trunk Line Territory from Kansas fields. Salt, Blanket Rates, §13 (f).
Western Wisconsin, Minnesota and Dakota from Illinois, Blanket Rates, §2 (c).
West to Baltimore Philadelphia, Boston, and New York. Differentials, §8 (ta).
West Virginia. Coal. Side Tracks and Spur Tracks (d) (e).
West Virginia points to New York City, N. Y. Lumber. Differentials, §8 (q).
Wichita, Differentials, §4 (f); Evidence, §14 (1) (ee) §67 (g).
Wichita, Discrimination §4 (dd).
Wichita. Sugar. Differentials, §8 (rc).
Wichita, Kan. from Louisiana, Arkansas and Texas. Lumber. Discrimiation, §8 (1) (s); Long and short hauls, §5 (3p).
Wichita from Minden Mo., McAlester, I. T., and Russellville, Ark., Coal. Discrimination, §8 (1) (q).
Wichita from Minden, Mo., McAlester, I. T., Russellville, Ark., and Kansas City. Coal. Discrimination, §8 (1) (r).
Wichita, Kans., from Minden, Mo., McAlester, I. T., and Russellville. Ark. Coal Long and short hauls, §7 (3k).
Wichita, Kans. from Texas points. Cotton goods. Equalization of Rates, §4 (5) (b).
Wichita, Kans., from western points. Lumber. Long and short hauls, §7 (31).
Wichita, Kansas to Galveston, Texas. Grain. Export Rates and Facilities, §6 (cc) (dd).
Wichita to Galveston. Wheat. Commodity Rates, §5 (c).
Wichita to Kansas City, Omaha, and Lincoln, Neb. Lumber. Long and short hauls, §7 (31).
Wichita, Kan. to Topeka, Kan. Lumber. Discrimination, 4 (ee); Long and short hauls, §5 (3q).
Williston, S. C. to New York, Philadelphia, Baltimore and Washington. Watermelons. Reasonableness of Rates, §32½ (b).
Wilmington, N. C., from Chicago and St. Louis. Discrimination, §5½ (db).
Wilmington, N. C. from Chicago, St. Louis, Louisville and other Ohio and Mississippi River points. Long and short hauls, §6 7-8 (z); Reasonableness of Rates, §26½ (a).
Wilmington, N. C., from Chicago, St. Louis, and other points, Discrimination §3 (3k); Equalization of Rates, §6 (c).
Wilmington, N. C. from Chicago, St. Louis, Louisville, and Ohio River and Mississippi River points. Procedure Before Commission, §10 (1) (dd).
Wilmington, N. C. from Chicago, St. Louis, Louisville, and other Ohio River and Mississippi River points. Through Routes and Joint Rates, §13 (3k).
Wilmington from Cincinnati, Louisville, Chicago, St. Louis, and East St. Louis. Percentage Rates (c).
Wilmington, N. C., from Louisville, Ky., Cincinnati, O., St. Louis, Mo. Chicago Equalization of Rates, §6 (c).
Wilmington, Del., to Norfolk and Portsmouth, Va. Lumber. Long and short hauls, §10 (u); Through Routes and Joint Rates, §15 (fa).
Wilmington, Del., to Philadelphia, Pa., Jersey City, N. J., and Boston, Mass. Lumber. Long and Short hauls, §10 (u); Through Routes and Joint Rates, §15 (f).
Wilmington to Philadelphia, Jersey City, Boston, Portsmouth and Pinners point. Lumber. Through Routes and Joint Rates, §15 (fb).
Wilmington, N. C., to points in North Carolina, South Carolina, Georgia, Florida, and Alabama. Fertilizers. Long and Short Hauls, §9 (m).
Wilson Point, Conn. Refined oil. Through Routes and Joint Rates, §1 (z).
Winona to Missouri river points. Lumber. Evidence, §13 (1) (i).
Winooski, Vt., to Detroit, Michigan, Evidence, §30 (e).
Winooski, Vt. to Detroit. Wire screen doors and windows. Evidence, §30 (d).
Wisconsin. Procedure before commission, §1 (na).
Wisconsin, Intoxicating liquor. Intoxicating Liquors, (tt).
Wisconsin points. Lumber. Discrimination, §4 (n).
Wyoming, Del., to Boston, Mass. Peaches. Perishable Freight (a).

Y

Yazoo City, Miss. to New Orleans, La., Cotton. Local Rates and Combinations (c).
Yellowstone Park to Gardiner, Mont. Passenger Fares and Facilities, §2 (t).
Youngstown, O. Pig iron. Evidence, §45 (b).
Youngstown, Ohio to New England points. Pig iron. Advanced Rates, §1 (2) (c).

I. C. C. and I. C. R. Cases

(There were two publishers of the first five volumes of the decisions of the Commission. The Government published one set. These are referred to as the I. C. C. or Interstate Commerce Commission reports. A private company published a set, referred to as the I. C. R. or Interstate Commerce reports. The two sets were not printed alike. The following table shows where a case reported in one set can be found in the other.)

Complainant	Defendant	I. C. C. Rep.		I. C. Rep.	
		Vol.	Page	Vol.	Page
Alford, D. S.	C. R. I. & P. Ry. Co.	3	519	2	771
Alleged excessive freight rates	Food Products	4	48	3	93
Alleged excessive freight rates	Food Products	4	116	3	151
Allen, D. F.	L. N. A. & C. R. R. Co.	1	199	1	621
American Wire Nail Co.	Q. & C. F. F. Line	3	224	2	604
Andrews Soap Co.	P. C. & St. L. Ry. Co.	4	41	3	77
Anthony Salt Co.	M. P. Ry. Co.	5	299	4	33
Application for relief	C. St. P. & K. C. Ry. Co.	2	231	2	137
Applications for relief	L. & N. R. R. Co.	1	31	1	278
Associated Grocers, St. Louis	M. P. Ry. Co.	1	156	1	393
Atlanta & W. P. R. R. Co.	In re Tariffs	3	19	2	461
Bates, H. & H.	Pa. R. R. Co.	3	435	2	715
Bates, H. & H.	Pa. R. R. Co.	4	281	3	296
Beaver & Co.	P. C. & St. L. Ry. Co.	4	733	3	564
Behlmer, H. W.	M. & C. R. R. Co.	6	257	4	520
Bishop, P. P.	Duval, receiver Fla. Ry. & Nav. Co.	3	128	2	514
Board of Trade & Transportation, New York.	Pa. R. R. Co.	4	447	3	417
Board of Trade, Chattanooga	E. T. V. & G. Ry. Co.	5	546	4	213
Board of Trade, Chicago	C. & A. R. R. Co.	4	158	3	233
Board of Trade, Detroit	G. T. Ry. of Canada	2	315	2	199
Board of Trade, Eau Claire	C. M. & St. P. Ry. Co.	5	264	4	65
Board of Trade, Farmington	C. M. & St. P. Ry. Co.	1	215	1	608
Board of Trade, Lincoln	B. & M. R. R. R. in Nebr.	2	147	2	95
Board of Trade, Lincoln	M. P. Ry. Co.	2	155	2	98
Board of Trade, Lincoln	U. P. Ry. Co.	2	299	2	101
Board of Trade, Lincoln	U. P. Ry. Co.	3	221	2	101
Board of Trade, San Bernardino	A. T. & S. F. R. R. Co.	4	104	3	138
Board of Trade, Spartanburg	R. & D. R. R. Co.	2	304	2	193
Board of Trade, Troy, Ala.	Ala. Mid. Ry. Co.	6	1	4	348
Boston & Albany R. R. Co.	B. & Lowell R. R. Co.	1	158	1	500
Boston & Maine R. R. Co.	In re Reduced Rates	5	69	3	717
Boston Chamber of Commerce	L. S. & M. S. Ry. Co.	1	436	1	754
Boston Chamber of Commerce	N. Y. C.& H.R. R. R. Co.	1	436	1	754
Boston Fruit & Pro. Ex.	N. Y. & N. E. R. R. Co.	4	664	3	493
Boston Fruit & Pro. Ex.	N. Y. & N. E. R. R. Co.	5	1	3	604
Brady, J. W. S.	Pa. R. R. Co.	2	131	2	78
Brownell, C. H.	C. & C. Midland R.R.Co.	5	638	4	285
Buchanan, D.	N. P. R. R. Co.	5	7	3	655
Burton Stock Car Co.	C. B. & Q. R. R. Co.	1	132	1	329
Business Men's Asso., Minn.	C. St. P. M.& O. Ry. Co.	2	52	2	41
Business Men's Asso., Minn.	C. & N. W. Ry. Co.	2	73	2	48

Complainant	Defendant	I. C. C. Rep. Vol.	I. C. C. Rep. Page	I. C. Rep. Vol.	I. C. Rep. Page
Capehart, S. C.	L. & N. R. R. Co.	4	265	3	278
Cator, T. V.	S. P. Co.	6	113	4	397
Chamber of Commerce, Boston	L. S. & M. S. Ry. Co.	1	436	1	754
Chamber of Commerce, Boston	N.Y.C.& H. R. R. R. Co.	1	436	1	754
Chamber of Commerce, Milwaukee	Flint & P. M. R. R. Co.	2	553	2	393
Chamber of Commerce, Minneapolis	G. N. Ry. Co.	5	571	4	230
Chappelle, L. B.	C. & A. R. R. Co.	3	241	2	599
Chattanooga Board of Trade	E. T. V. & G. Ry. Co.	5	546	4	213
Chicago & A. R. R. Co.	Pa. R. R. Co.	1	86	1	357
Chicago Board of Trade	C. & A. R. R. Co.	4	158	3	233
Chicago, R. I. & P. Ry. Co.	C. & A. R. R. Co.	3	450	2	721
Chicago, R. I. & P. R. R. Co.	N.Y.C.& H. R. R. R. Co.	1	86	1	357
Chicago, St. L. & P. R. R. Co.	C. C. C. & St. L. Ry. Co.	3	223	2	603
Chicago, St. P. & K. C. Ry. Co.	Application for Relief	2	231	2	137
Cincinnati Freight Bureau	C. N. O. & T. P. Ry. Co.	6	195	4	592
Clark, F. W., of Seaboard Air Line	Boat Lines	3	649	2	797
Columbus & W. Ry. Co.		1	626	2	11
Conductors, Ry., Order of	Free transportation	1	8	1	18
Cotton Ex., New Orleans	C. N. O. & T. P. Ry. Co.	2	375	2	289
Cotton Ex., New Orleans	I. C. R. R. Co.	3	534	2	777
Cotton Ex., New Orleans	L. N. O. & T. Ry. Co.	4	694	3	523
Councill, W. H.	Western & A. R. R. Co.	1	339	1	638
Coxe Bros. & Co.	Lehigh Val. R. R. Co.	4	535	3	460
Crews, B. S.	R. & D. R. R. Co.	1	401	1	703
Delaware State Grange	N. Y. P. & N. R. R. Co.	2	309	2	187
Delaware State Grange	N. Y. P. & N. R. R. Co.	4	588	3	554
Delaware State Grange	N. Y. P. & N. R. R. Co.	5	161	3	828
Detroit Board of Trade	G. T. Ry. of Canada	2	315	2	199
Disabled Soldiers & Sailors		1	28	1	75
Duncan, B.	A., T. & S. F. R. R. Co.	6	85	4	385
Eau Claire Board of Trade	C. M. & St. P. Ry. Co.	5	264	4	65
Elvey, C.	I. C. R. R. Co.	3	652	2	804
Evans, M.	O. Ry. & Nav. Co.	1	325	1	641
Export Case, N. Y. Pro. Ex.	N. Y. C. & H.R.R.R.Co.	3	137	2	553
Export Trade of Boston		1	24	1	25
Express Companies		1	349	1	677
Farrar, W. B., & Co.	E. T. V. & G. Ry. Co.	1	480	1	764
Fish & Fisheries, U. S. Com.		1	21	1	606
Florida R. R. Commission	S. F. & W. Ry. Co.	5	13	3	688
Florida R. R. Commission	S. F. & W. Ry. Co.	5	136	3	750
Food Products Case		4	48	3	93
Food Products Case		4	116	3	151
Form of Rate Schedules		6	267	4	698
Freight Bureau, Cincinnati	C. N. O. & T. P. Ry.Co.	6	195	4	592
Fruit & Pro. Ex., Boston	N. Y. & N. E. R. R. Co.	4	664	3	493
Fruit & Pro. Ex., Boston	N. Y. & N. E. R. R. Co.	5	1	3	604
Fruit Ex., New Jersey	C. R. R. of N. J.	2	142	2	84
Fulton, M. A.	C. St. P. M. & O. R. R.	1	104	1	375
Georgia R. R. Commission	Clyde S. S. Co.	5	324	4	120
Gerke Brewing Co.	L. & N. R. R. Co.	5	596	4	267

Complainant	Defendant	I. C. C. Rep. Vol.	I. C. C. Rep. Page	I. C. Rep. Vol.	I. C. Rep. Page
Grand T. Ry. of Canada		3	89	2	496
Greene, T. L., Mgr., etc.	N. Y. C.&H. R. R. R. Co.	3	473	2	742
Griffee, C. H.	B. & M. R.R.R.in Nebr.	2	301	2	194
Grocers of St. Louis, Asso. of	M. P. Ry. Co.	1	156	1	393
Haddock, J. C.	D., L. & W. R. R. Co.	4	296	3	302
Hamilton & Brown	Chat. Rome & C. R. R.	4	686	3	482
Harding, F. D.	C. St. P. M. & O. R. R.	1	106	1	375
Harris, J. A.	Duval, receiver Fla. R. R. & Nav. Co.	3	128	2	514
Harvard Co.	Pa. Co.	4	212	3	257
Harvey, W. H.	L. & N. R. R. Co.	5	153	3	793
Harwell, W. O.	Col. & W. R. R. Co.	1	236	1	631
Heard, W. H.	Georgia R. R. Co.	1	428	1	719
Heard, W. H.	Georgia R. R. Co.	3	111	2	508
Heck & Petree	E. T. V. & G. Ry. Co.	1	495	1	775
Hezel Milling Co.	St. L. A. & T. H. R. R.	5	57	3	701
Holbrook, W. M.	St. P. M. & Manitoba R. R. Co.	1	102	1	323
Howell, N. W.	N. Y. L. E. & W. R. R.	2	272	2	162
Hurlburt, F. L.	L. S. & M. S. Ry. Co.	2	122	2	81
Hurlburt, F. L.	Pa. R. R. Co.	2	130	2	84
Imperial Coal Co.	P. & L. E. R. R. Co.	2	618	2	436
Independent Refiners' Asso.	W. N. Y. & P. R. R. Co.	5	415	4	162
Independent Refiners' Asso.	Pa. R. R. Co.	6	52	4	369
Indian Supplies		1	15	1	22
In re—					
Alleged Excessive Freight Rates	Food Products	4	48	3	93
Alleged Excessive Freight Rate	Food Products	4	116	3	151
Boston & M. R. R. Co.	Reduced Rates	5	69	3	717
C., St. P. & K. C. Ry. Co.	Fourth Section	2	231	2	137
Clark, F. W., Seaboard Air Line.	Boat Lines	3	649	2	797
Columbus & W. Ry. Co.		1	626	2	11
Disabled Soldiers & Sailors		1	28	1	75
Export Trade, Boston		1	24	1	25
Express Companies		1	349	1	677
Grand T. Ry. of Canada		3	89	2	496
Import Rates	Pa. R. R. Co.	4	447	3	417
Indian Supplies		1	15	1	22
Iowa Steel Barb Wire Co.		1	17	1	605
Joint Rail & Water Lines		2	645	2	486
L. & N. R. R. Co.	Fourth Section	1	31	1	278
L. & N. R. R. Co.	Coal Rates	5	466	4	157
Order of Ry. Conductors	Free transportation	1	8	1	18
Passenger Tariffs		2	649	2	445
Passenger Tariffs, Rate Wars		2	513	2	340
Produce Ex., Toledo		2	588	2	412
Rate Schedules		6	267	4	698
Relative Tank & Barrel Rates on Oil.		2	365	2	245
Rice, Robinson & Witherop	W. N. Y. & P. R. R. Co.	3	87	2	496
St. Louis Millers' Asso.		1	20	1	22
Southern P. R. R. Co.	Fourth Section	1	6	1	16

Complainant	Defendant	I. C. C. Rep. Vol.	I. C. C. Rep. Page	I. C. Rep. Vol.	I. C. Rep. Page
Southern Ry. & S. S. Asso.	Fourth Section	1	31	1	278
Tariffs & Classifications	Atlanta & W.P.R.R. Co.	3	19	2	461
Traders & Travelers' Union		1	8	1	18
Transcontinental Lines	Tariffs	2	324	2	203
Underbilling		1	633	1	813
U. S. Commission, Fish & Fisheries.		1	21	1	606
Iowa Steel Barb Wire Co.		1	17	1	605
Jackson, G. M.	St. L. A. & T. Ry. Co.	1	184	1	599
James & Abbott	E. T. V. & G. Ry. Co.	3	225	2	609
James & Abbott	Canadian P. Ry. Co.	5	612	4	274
James & Mayer Buggy Co.	C. N. O. & T. P. Ry. Co.	4	744	3	682
Joint Rail & Water Lines		2	645	2	486
Kauffman Milling Co.	M. P. Ry. Co.	4	417	3	400
Keith, C. W.	Kentucky C. R. R. Co.	1	189	1	601
Kentucky & I. Bridge Co.	L. & N. R. R. Co.	2	162	2	102
King, W. S., & Co.	N. Y. N. H. & H. R. R.	4	251	3	272
La Crosse Manufacturers' & Jobbers' Union.	C. M. & St. P. Ry. Co.	1	629	2	9
Larrison, L.	C. & G. T. Ry. Co.	1	147	1	369
Leggett, F. H., & Co.	N. Y. C. & H.R.R.R. Co.	3	473	2	742
Lehmann, Higginson & Co.	S. P. Co.	4	1	3	80
Lehmann, Higginson & Co.	T. & P. Ry. Co.	5	44	3	706
Leonard, A.	C. & A. R. R. Co.	3	241	2	599
Leonard, L.	U. P. Ry. Co.	1	185	1	627
Letter to Black, J. C.		1	28	1	75
Lincoln Board of Trade	B. & M. R.R.R.in Nebr.	2	147	2	95
Lincoln Board of Trade	M. P. Ry. Co.	2	155	2	98
Lincoln Board of Trade	U. P. Ry. Co.	2	229	2	101
Lincoln Board of Trade	U. P. Ry. Co.	3	221	2	101
Lincoln Creamery	U. P. Ry. Co.	5	156	3	794
Lippman, L., & Co.	I. C. R. R. Co.	2	584	2	414
Little Rock & M. R. R. Co.	E. T. V. & G. R. R. Co.	3	1	2	454
Logan, T. M. C.	C. & N. W. Ry. Co.	2	604	2	431
Loud, P. H., Jr.	S. C. Ry. Co.	5	529	4	205
L. & N. R. R. Co.		1	31	*1	278
L. & N. R. R. Co.	Coal Rates	5	466	4	157
McMillan J., & Co.	West. Class. Comm.	4	276	3	282
McMorran, H.	G. T. Ry. of Canada	3	252	2	604
Macloon, W. H.	C. & N. W. Ry. Co.	5	84	3	711
Manufacturers & Jobbers' Union of Mankato.	M. & St. L. Ry. Co.	1	227	1	630
Manufacturers & Jobbers' Union of Mankato.	M. & St. L. Ry. Co.	4	79	3	115
Martin, E.	C. B. & Q. R. R. Co.	2	25	2	32
Martin, J. H.	S. P. Co.	2	1	2	1
Mattingly, B. D.	Pa. Co.	3	592	2	806
Merchants' Union, Spokane Falls	N. P. R. R. Co.	5	478	4	183
Mich. Cent. R. R. Co.	C. & G. T. Ry. Co.	1	147	1	369
Mich. Congress Water Co.	C. & G. T. Ry. Co.	2	594	2	428
Milwaukee Chamber of Commerce	F. & P. M. R. R. Co.	2	553	2	393

* Referred to in I. C. R. as So. Ry. and S. S. Asso.

Complainant	Defendant	I. C. C. Rep. Vol.	I. C. C. Rep. Page	I. C. Rep. Vol.	I. C. Rep. Page
Minneapolis Chamber of Commerce	G. N. Ry. Co.	5	571	4	230
Minnesota Business Men's Asso.	C. St. P., M. & O. Ry.	2	52	2	41
Minnesota Business Men's Asso.	C. & N. W. Ry. Co.	2	73	2	48
Mo. & Ill. R. R. Tie & Lumber Co.	C. G. & S. W. Ry. Co.	1	30	1	607
Morrell, C. O.	U. P. Ry. Co.	6	121	4	469
Murphy, Wasey & Co.	Wabash R. R. Co.	5	122	3	725
Myers, M. L. (Hostetter)	Pa. Co.	2	573	2	403
Myers, M. L. (Hostetter)	Pa. Co.	3	130	2	544
New Jersey Fruit Ex.	C. R. R. of N. J.	2	142	2	84
Newland, A. S.	N. P. R. R. Co.	6	131	4	474
New Orleans Cotton Ex.	C. N. O. & T. P. Ry. Co.	2	375	2	289
New Orleans Cotton Ex.	I. C. R. R. Co.	3	534	2	777
New Orleans Cotton Ex.	L. N. O. & T. Ry. Co.	4	694	3	523
New York & N. Ry. Co.	N. Y. & N. E. R. R. Co.	4	702	3	542
New York Board of Trade & Transportation.	Pa. R. R. Co.	4	447	3	417
New York Produce Ex.	N. Y. C. & H. R. R. R.	3	137	2	553
Oil Tank & Barrell Rates	Pa. R. R. Co.	2	365	2	245
Order of Ry. Conductors	Free transportation	1	8	1	18
Oregon Short Line Ry. Co.	N. P. R. R. Co.	3	264	2	639
Ottinger, A.	S. P. R. R. Co.	1	144	1	606
Page, A. S.	D., L. & W. R. R. Co.	6	148	4	525
Pankey, J. B.	R. & D. R. R. Co.	3	658	3	33
Parkhurst & Co.	Pa. R. R. Co.	2	131	2	78
Parkhurst & Co.	Pa. R. R. Co.	5	635	4	283
Passenger Tariffs		2	649	2	445
Passenger Tariffs & Rate Wars		2	513	2	340
Pennsylvania Co.	L. N. A. & C. Ry. Co.	3	223	2	603
Perry, C. P.	Fla. C. & P. R. R. Co.	5	97	3	740
Phelps & Co.	T. & P. Ry. Co.	6	36	4	363
P. C. & St. L. Ry. Co.	B. & O. R. R. Co.	3	465	2	729
Potter Manufacturing Co.	C. & G. T. Ry. Co.	5	514	4	223
Poughkeepsie Iron Co.	N. Y. C. & H. R. R. R.	4	195	3	248
Proctor & Gamble	C. H. & D. Ry. Co.	4	87	3	131
Proctor & Gamble	C. H. & D. Ry. Co.	4	443	3	374
Produce Ex., New York	N. Y. C. & H. R. R. R.	3	137	2	553
Produce Ex., Toledo	Rehearing	2	588	2	412
Produce Ex., Toledo	L. S. & M. S. Ry. Co.	5	166	3	830
Providence Coal Co.	Providence & Wor. R.R.	1	107	1	363
Pyle, J., & Sons	E. T. V. & G. Ry. Co.	1	465	1	767
Rail & Water Lines		2	645	2	486
R. R. Commission, Florida	S. F. & W. Ry. Co.	5	13	3	688
R. R. Commission, Florida	S. F. & W. Ry. Co.	5	136	3	750
R. R. Commission, Georgia	Clyde S. S. Co.	5	324	4	120
Ry. Conductors, Order of	Free transportation	1	8	1	18
Rate Schedules		6	267	4	698
Rate Wars		2	513	2	340
Raworth, E. M.	N. P. R. R. Co.	5	234	3	857
Rawson, W. L.	N. N. & M. V. Co.	3	266	2	626
Raymond, E. B.	C. M. & St. P. Ry. Co.	1	230	1	627
Raymond Bros. & Co.	C. B. & Q. R. R. Co.	3	221	2	101
Reed, W. H.	Oregon Ry. & Nav. Co.	1	325	1	641

Complainant	Defendant	I. C. C. Rep. Vol.	I. C. C. Rep. Page	I. C. Rep. Vol.	I. C. Rep. Page
Rend, W. P.	C. & N. W. Ry. Co.	2	540	2	313
Reynolds, T. J.	W. N. Y. & P. Ry. Co.	1	393	1	685
Rhode Island Egg & Butter Co.	L. S. & M. S. Ry. Co.	6	176	4	512
Rice, G.	L. & N. R. R. Co.	1	503	1	722
Rice, G.	C. W. & B. R. R. Co.	3	186	2	584
Rice, G.	A. T. & S. F. R. R. Co.	4	228	3	263
Rice, G.	C. W. & B. R. R. Co.	5	193	3	841
Rice, G.	St. L. S. W. Ry. Co.	5	660	4	321
Rice, Robinson & Witherop	W. N. Y. & P. R. R. Co.	2	389	2	298
Rice, Robinson & Witherop	W. N. Y. & P. R. R. Co.	3	87	2	496
Rice, Robinson & Witherop	W. N. Y. & P. R. R. Co.	4	131	3	162
Riddle, Dean & Co.	B. & O. R. R. Co.	1	372	1	701
Riddle, Dean & Co.	B. & O. R. R. Co.	1	608	1	778
Riddle, Dean & Co.	P. & L. E. R. R. Co.	1	374	1	688
Riddle, Dean & Co.	P. & L. E. R. R. Co.	1	490	1	773
Riddle, Dean & Co.	N. Y. L. E. & W. R. R.	1	594	1	787
Riddle, Dean & Co.	B. & O. R. R. Co.	1	608	1	778
Rising, J. M.	S. F. & W. Ry. Co.	5	120	3	749
St. Louis Grocers' Asso.	M. P. Ry. Co.	1	156	1	393
St. Louis Millers' Asso.		1	20	1	22
San Bernardino Board of Trade	A. T. & S. F. R. R. Co.	4	104	3	138
Sanger, Maj. J. P.	S. P. Co.	3	134	2	548
Savery, J. C., & Co.	N. Y. C. & H. R. R. R.	2	338	2	210
Schumacher, F., Milling Co.	C. R. I. & P. Ry. Co.	6	61	4	373
Scofield, W. C.	L. S. & M. S. Ry. Co.	2	90	2	67
Seaboard Air Line, Clark, F. W.	Boat Lines	3	649	2	797
Shamberg, J.	D. L. & W. R. R. Co.	4	630	3	502
Sidman, G. D.	R. & D. R. R. Co.	3	512	2	766
Slater, J. F.	N. P. Ry. Co.	2	359	2	243
Smith, W. U.	N. P. R. R. Co.	1	208	1	611
Soldiers & Sailors disabled		1	28	1	75
Southern P. R. R. Co.	Fourth Section	1	6	1	16
Spartanburg Board of Trade	R. & D. R. R. Co.	2	304	2	193
Spokane Falls Merchants' Union	N. P. R. R. Co.	5	478	4	183
Squire, J. P., & Co.	Mich. Cent. R. R. Co.	4	611	3	515
Stone & Carten	D. G. H. & Mil. Ry. Co.	3	613	3	60
Tariffs & Classifications	Atlanta & W.P.R.R.Co.	3	19	2	461
Tecumseh Celery Co.	C. Jackson & M. Ry. Co.	5	663	4	318
Thatcher, R. W.	D. & Hudson Canal Co.	1	152	1	356
Thurber, F. B.	N. Y. C. & H. R.R.R.Co	3	473	2	742
Toledo Produce Ex.	Rehearing	2	588	2	412
Toledo Produce Ex.	L. S. & M. S. Ry. Co.	5	166	3	830
Traders & Travelers' Union	Free transportation	1	8	1	18
Traders & Travelers' Union	P. & R. R. R. Co.	1	122	1	371
Trammell, L. N., R. R. Com., Georgia.	Clyde S. S. Co.	5	324	4	120
Transcontinental Lines	Tariffs	2	324	2	203
Troy Board of Trade	Ala. Mid. Ry. Co.	6	1	4	348
Underbilling		1	633	1	813
Vermont State Grange	B. & Lowell R. R. Co.	1	158	1	500
Warner, H. H.	N. Y. C. & H. R. R. R.	4	32	3	74
White, F. A.	Mich. Cent. R. R. Co.	3	281	2	641
Wholesale Grocers, St. Louis	M. P. Ry. Co.	1	156	1	393
Worcester Excursion Car Co.	Pa. R. R. Co.	3	577	2	792

Additional Cross References

A

Absorption of Charges. See Allowances, §8 (7) (b); Dockage, (e); Reparation, §8 (g); Storage, §2 (q); Switch Tracks and Switching, §3, §6 (b), §9 (c); Tap Lines, §2 (c); Tariffs, §14 (s); Terminal Facilities, §4 (d), §11 (d).

Act to Regulate Commerce. See Advanced Rates, §1 (6) (a), §7 (7) (a), §9 (b); Association, (j); Basing Points and Lines, §3 (c); Blanket Rates, §13 (h), (y); Bridges and Tolls, §3 (y) (z), §4 (a), §5 (a); Cars and Car Supply, §½ (c), (f), §7 (b), §28 (k), §32½ (j); Cartage and Drayage, (e) (k); Classification, §3½ (h), §5 (f), §22 (i); Commodities Clause, II (b); Common Carrier, §2 (a), §8 (c), §9 (d), (e); Courts §1 (3g), §6½ (i); Crimes, §2 (b), (j) (k), §6 (b), §7 (c); Demurrage, §10 (h); Differentials, §4 (d), §8 (m); Discrimination §1 (a), (c) (dd) (11) (mm), §1a (b) (c) (m), §2 (c) (o), §3 (e) (i) (ee), §4 (ta) (x) (jj), §4½ (fa), §5 (d) (e), §10 (a) (c); Divisions, §3 (a), §8 (a) (b) (d); Electric Lines, I (b); Equalization of Rates, §3 (ja); Evidence, §1½ (s), §2 (u), §14 (1) (b), §14 (5) (a) (f) (3m), §32 (j), §56 (a) (b), §58 (a) (d); Exclusive Contracts, (b) (c); Export Rates and Facilities, §1 (f), §1½ (a) (c) (f) (g) (h) (j) §2 (a), §5 (e) (g) (i) (1), §6 (ka) (m) (n) (q) (st) (v); Express Companies, §5 (b); Facilities and Privileges, §1 (b), §10 (e), §17 (i), §21 (f); Foreign Commerce, §½ (c) (d) (e), §1 (c) (i); Forwarders, (b); Import Traffic, §1 (a) (g) (i) (q) (r), §3 (a); Interchange of Traffic, (n) (dd); Interstate Commerce, §½ (ee), §2 (b) (c), §4 (y); Interstate Commerce Commission, §1 (i) (n) (z) (za) (rr), §3 (b), §8½ (d) (f) (w), §10 (a), §13½ (a), §15 (n); Lease (d); Long and Short Hauls, §2 (b) (d), §2½ (c), §4 (n) (p) (s) (t) (u) (v) (x) (aa) (2n), §4½ (a), §4½ (c) (e) (f) (fa), §4¾ (a) (b), §5 (f) (j) (y) (dd) (ff) (jj) (xx) (3 la) (3m) (3u), §6⅞ (f) (i) (q) (s), §7 (q) (aa) (cc) (dd) (ff) (ll) (mm) (ww) (3ia) (3j) (3p) (4f), §8 (c) (d) (f), §9 (e) (f), §10 (k) (r), §10½ (1), §11 (c); Loss and Damage, §2 (s) (x), §5 (a) (c), §19 (a); Mexico (c); Overcharges (q); Passenger Fares and Facilities, §3 (3) (ba), §4½ (b), §5 (a) (e), §5 (h), §6 (cc), §11 (c) (g), §12 (j) (pp), §13½ (a), §14 (a); Personal Injuries (a); Pipe Lines, §3 (b); Pooling of Traffic, (a) (n); Procedure Before Commission, §1 (u), §2 (jc), §5 (i), §10 (1) (ga) (nc) (u), §11 (f), §14¾ (c), §16 (a), §20 (a), §22 (h) (ha); Reasonableness of Rates, §1 (b), §2 (f) (ff), §16 (b), §25 (a) (b); Receivers, (i); Reconsignment, §3½ (i); Reduced Rates, §2½ (a), §4½ (k); Refrigeration, §1 (a), §2 (a); Reparation, §7½ (g) (hi), §19 (c); Routing and Misrouting, §7 (da); Siding and Spur Tracks, (a) (c); Special Contract, §2 (q) (t) (w) (z) (cc), §2½ (b) (f) (n), §6 (j); State Rates and Regulations, (10a) (10b); Stock Yard Companies, (i) (j) (k) (l) (ma) (aa) (cc) (dd); Storage, §1 (b), §2 (a) (b) (c), §3 (b) (f); Tap Lines, §6 (a), §7 (c) (d) (e) (f), §9 (c), §10 (a) (d) (e), §13 (a); Tariffs, §3 (1) (b) (k), §3 (2) (a), §6 (j) (k) (l), §6a (c), §7 (h), §14 (b); Telephone and Telegraph Co.'s, §3 (rr) (zz) (3a); Terminal Facilities, §2 (c), §3 (e) (k), §5 (a) (aa); Through Routes and Joint Rates, §1 (b) (n) (y) (z) (jj) (kk), §2 (f) (j) (p) (q) (t) (v), §3 (c), §3½ (f), §4 (i) (k) (s) (v), §13 (d) (aa) (3c), §13½ (v), §15 (e) (f), §17 (f) (p), §20½ (b) (c) (d) (f), §22 (f) (m), §25 (m), §26 (d); Trackage Agreements, (b); Transportation, §2 (i); §3 (a), §7 (a); Water Carrier, §1 (w), §2 (q), §3 (e), §6 (a) (c) (f) (p) (x); Weights and Weighing, §2 (d).

Actions at Law. See Demurrage, §22; Finance Dockets VIII; Long and Short Hauls, §17; Special Contracts, IV.

Additional Charges and Services. See Tap Lines, §7 (s).

Adjacent Foreign Country. See Export Rates and Facilities, §1½ (k); Import Traffic, §4 (c); Long and Short Hauls, §2 (h), §4½ (ffb); Routing and Misrouting, §1 (g); Tariffs, §4 (c); Transportation, §1 (a).

Advanced Rates. See Differentials, §4 (f); Reparation, §2 (g).

Agency. See Anti-Trust Laws, (jjb); Common Carrier, §½ (g); Crimes, §15; Taxes, (5f) (6r); Terminal Facilities, §3½.

Agreements. See Reparation, §20 (a) (b); Through Routes and Joint Rates, §1 (h) (m) (u) (x), §2 (u), §4 (l) (o) (z).

Allowances. See Advanced Rates, §15 (e); Association, (h); Bills of Lading, §6 (a); Cars and Car Supply, §4 (a), §9⅞ (c), §10 (d) (f), §11¾ (i), §11⅞ (b) (aa); Cartage and Drayage, (q); Classification, §16 (h); Common Carrier, IV; Compress Companies and Charges, II (j) (l); Courts, §1 (3i) (3j) (3k), §10 (m); Distance Rates, §2 (a); Discrimination, §16 (a); Divisions, §2½ (e), §8 (g) (q); Drayage Charges, (n); Evidence, §17 (z), §52½ (a) Facilities and Privileges, §15 (d); Lighterage, III; Reparation, §6 (1); Switch Tracks and Switching, §4½ (c), §5 (c) (h); Tap Lines, §1 (a) (b), §4 (b) (ea), §6½, §7, §9, §13 (a) (e); Tariffs, §1 (h), §3 (l), (bb); Terminal Facilities, §9 Transportation, §10 (h); Weights and Weighing, §2½ (hh), §7 (g) (h), §14 (a), VIII.

Amendments. See Procedure Before Commission, §4.

Anti Trust Laws and Monopolies. See Advanced Rates, §9 (c); Association (f) (g); Evidence, §10 (1); Exclusive Contracts, (ba); Finance Dockets, §3 (o); Transportation, §2 (u).

Any Quantity Rates. See Classification, §13 (c); Reasonableness of Rates, §28 (1).

Application of Rates. See Differentials, II; Tariffs, §7 (3t).

Association. See Advanced Rates, §9 (fg); Anti-Trust Laws and Monopolies, (dda) (ddg) (ddh) (ddj); Discrimination, §1 (j) (p); Stock Yard Companies, (q) (r).

B

Back Haul. See Evidence, §5½; Facilities and Privileges, §7; Siding and Spur Tracks, (v); Stoppage-in-Transit, (f).

Baggage Car Service. See Courts, §14 (zz); Expedited Service, (i); Passenger Fares and Facilities, §10.

Barge Lines. See Erie Canal, (a).

Basing Points and Lines. See Evidence, §5; Telephone and Telegraph Co.'s, §2 (g).

Bills of Lading. See Accounting, §1 (b); Actions at Law (bb); Agency (j); Alternative Rates, (c) (e); Blanket Rates, §11 (e); Business Secrets (f); Claims, §7 (d), §8 (i); Classification, §9¼ (a), §10 (s) (u), §16½ (c); Common Carrier, §½ (b); Compress Companies and Charges III (p) (q) (u) (v); Concentrating Rates and Privileges, (a); Courts, §6½ (3f) (3g), §8 (b), §9 (n), §10 (v); Credit Account, (o); Crimes, §2¼ (a), §5 (h), §35a (c); Demurrage, §3½ (n), §6 (a), §7 (a), §12 (d), §14¾ (a), §16 (i) (r); Discrimination, §4 (c); Dressing-in-Transit (a); Embargoes (3na); Evidence, §1 (dd); Export Rates and Facilities, §1 (i) (k) (m); §2 (d), §3 (h), II, §7 (b) (c); Forwarders, (b); Foreign Commerce, §1 (h) (q) (s); Freight Charges, (j) (s) (z) (aa) (bb) (ff) (hh) (ii); Import Traffic, §4 (d); Interstate Commerce, §½ (r), §4 (oo); Intoxicating Liquors, (3r); Loss and Damage, §2 (11); §2¼ (a) (b) (c) (d) (e); §2¼a (a) (b) (c); §2½ (d) (f); §3 (k), §5 (g), §5½ (b) (j), §6 (k), §6 (l) (m), §8 (c), §8½ (a) (b), §9 (l) (p) (w) (x) (y) (bb), §10 (c) (d) (k), §10, (l) (d), §10 (2) (c) (o), §10¼ (f), §11 (b) (c) (d) (ia) (j) (l) (m) (p), §13a (a), §13½ (h), §13¾ (i) (k) §13⅝ (b) (c), §15 (g), §17 (f), §3 (a); Reconsignment, §3½ (k) (o), §6½ (a) (f); Refrigeration, §3½ (r); Reparation, §6 (n); Routing and Misrouting, §1 (f), §1½ (i), §2 (a), §3 (c) (f) (g) (h) (j), §3½, §4 (i) (u), §5 (j), §5½ (a) (d) (e), §7 (l) (v) (dd) (ee); State Rates and Regulations (q) (r) (s) (5i) (7h) (7g) (7i) (7p) (9r); Statutes (ww); Stoppage in Transit, (b); Storage, §2 (ii), §3 (i); Substitution of Tonnage (c); Switch Tracks and Switching, §4 (mm); Tariffs, §3 (l) (m), §3 (2) (f) (k); §3 (3) (f); §18 (h); Through Routes and Joint Rates, §1 (yy), §2 (e) (j) (k) (s) (cc) (dd), §3 (a) (b), §3½ (e), §4 (g), §12 (a) (b) (c), §13 (a), §17 (ca), §20½ (b), §22 (a) (b) (zz) (3d) (31) (3w); Tolls (b); Trackage Agreements (k); Transportation, §2 (bb), §5 (r), §11 (a), §12

(a); Undercharges, §3 (e), §3½ (a); Water Carrier, §2 (c) (d), §3 (r) (x), §4 (k), §5½; Warehousing, (i) (k).

Blanket Rates. See Branch Lines, §1 (o); Evidence, §20 (gg); Reasonableness of Rates, §36 (1).

Blanket Rates II. See Advanced Rates, §18 (4) (c).

Branch Lines. See Advanced Rates, §12, §12 (1) (a); Blanket Rates, §10 (e), §11 (k), §13 (y); Cars and Car Supply, §21½; Discrimination, §10 (aa); Distance Rates, §2 (g), §3 (c) (f); Electric Lines VI, (a); Evidence, §13(1) (3db), §14 (l) (zz), §37 (a) (c), §58 (t); Finance Dockets, §1 (3l) (3q), §3 (d), §4 (k); Long and Short Hauls §5 (f); Routing and Misrouting, §4 (s); Reasonableness of Rates, §2 (a), §20 (a) (c); Switch Tracks and Switching, §14; Tariffs, §13 (b); Through Routes and Joint Rates, §9 (d); Water Carriers, §7 (j).

Bridges and Tolls. See Discrimination, §9 (fb); Evidence, §6½ (b).

Bulk Shipments. See Classification, §12. Tariffs, §16.

Burden of Proof. See Absorption of Charges, §1½ (a), §7 (e); Advanced Rates, §1 (1) (c), §3, §6 (3) (b), §8 (1) (a), §13 (f); Bills of Lading, §6 (i), §11 (a); Blanket Rates, §16; Cars and Car Supply, §7 (tt); Classification, §5 (k); Courts, §1 (jj), §5 (f), §6 (b); Crimes, §24½ (1); Discrimination, §14; Divisions, §2½ (1), §9 (y), §10 (f) (m); Evidence §1 (a) (b) (c) (de) (j) (l) (ma) (u) (v) (w) (y) (z) (aa) (bb) (cc) (ee) (ff), §3 (b); Long and Short Hauls, §12 (1); Loss and Damage, §15; Passenger Fares and Facilities, §14¾a; Procedure Before Commission, §1 (vv), §14½a; Reduced Rates, §9; Reparation, §2 (i), §7½ (aa) (b) (f), §10½ (d) (y); Routing and Misrouting, §8; State Rates and Regulations, (9w) (10z); Switch Tracks and Switching, §3 (k) (cc), §4 (v); Telephone and Telegraph Companies, §3 (ee), §4 (j); Through Routes and Joint Rates, §4 (ii), §11 (2) (l), §13a (b), §13½ (p) (r), §17 (gg); Trap Cars (f); Undercharges, §5 (d); Weights and Weighing III.

C

Canada. See Foreign Countries, §½ (j); Long and Short Hauls, §4½ (z); Through Routes and Joint Rates, §1 (ss) (3a).

Car Ferry. See Allowances, §8 (½) (a).

Car Floatage. See Explosive and Dangerous Articles, (f).

Car-Mile Revenue. See Equalization of Rates, §8 (i); Evidence, §8; Reasonableness of Rates, §6.

Caretakers. See Passenger Fares and Facilities, §3a.

Carmack Amendment. See Alternative Rates I (d); Bills of Lading, §6 (j) (k), §13 (d); Claims, §11 (a); Courts, §6 (t), §6½ (3o); Export Rates and Facilities, §1½ (m); Loss and Damage I, §2 (f) (g) (k) (o) (q) (s) (p) (t) (u) (v) (oo), §3 (m) (o) (p) (q), §4 (k), §5½ (j), §6 (a) (c) (e) (d) (f) (g) (h), §7 (a) (b), §8 (c), §10 (h) (i) (j), §10 (1) (f) (g), §10½ (e), §12 (a) (b), §13 ⅝ (a), §13½ (h), §16 (a), §17 (e); Mexico (g); Released Rates, §½ (b); Special Contract, §2 (xx); Telephone and Telegraph Co.'s, §4 (m) (n).

Cars and Car Supply. See Common Carrier, §6 (b); Through Routes and Joint Rates, §25 (g) (i) (j) (k); Track Storage II, (c); Transfer (a).

Cartage and Drayage. See allowance, §11 (j), §14 (d); Drayages Charges (m).

Claims. See Actions at Law (cc) (dd); Bills of Lading, §11 (c) (d) (f), §11½ (e); Classification, §12¾ (a); Courts, §1 (a) (b) (bb) (3m), §5 (o), §6 (r); §6½ (zz); Crimes, §28½a (f); Demurrage, §21 (e); Express Companies, §30; Industrial Rail Roads (b); Long and Short Hauls, §10½ (c); Loss and Damage, §1 (a) (b), §13⅝ (c); Overcharges, (mm) (nn); Passenger Fares and Facilities, §14¾ (a); Procedure Before Commission, §4 (ma) Reparation §7, §23 (h); Telephone and Telegraph Companies, §3 (3p).

Class Rates. See Advanced Rates, §5 (3) (b), §6 (4) (a), §11½ (a), §14 (a), §17 (g) (p) (y), §19 (e); Blanket Rates, §6 (b), §8 (a) (b), §10½ (1), §11 (a); Bridges and Tolls, §1 (f); Classification, §5 (j), §7 (aa), §16 (z), §19 (k), §22 (i); Commodity Rates, §1 (a) (b) (e) (k) (t), §2, §2½ (b) (c) (e); Differentials, §8 (v) (x) (tb) (bb); Discrimination, §8 (3) (g); Distance Rates, §2

(e); Evidence, §13 (1½); Express Companies, §10 (u); Log Scale Rates (a); Long and Short Hauls, §5 (n), §6⅞ (z), §7 (3s) (4r), §10 (w) (z), §16; Procedure Before Commission, §2 (uv), §10 (2) (ff); Rail and Water Rates (f) (i); Reasonableness of Rates, §2 (5wb), §25 (k), §28 (zz); Reduced Rates, §5 (i); Reparation, §7½ (y) (z), §10½ (m), §16 (aa); Special Contracts, §2½ (1); State Rates and Regulations (§1a); Substitution of Tonnage (y); Tariffs, §7 (r) (w), §12¼ (c); Through Routes and Joint Rates, §11 (2) (u), §13 (4w), §15 (x), Weights and Weighing, §2½ (ii), §3 (b).

Classification. See Agency, (b); Class Rates, §1 (e); Commodity Rates, §1 (k); Evidence, §11 (a), §14 (l) (uu), §55 (a); Telephone and Telegraph Companies, §2 (o), §3 (3d).

Classification §5. See Differentials, §3.

Classification §11. See Through Routes and Joint Rates, §20¾ (b).

Combination Rates. See Tariffs, §8½ (h), §9a (a).

Commodity Rates. See Advanced Rates, §5 (2) (e), §5 (3) (b) (g), §6 (4) (a), §8½ (d), §11½ (a), §13 (a), §14 (a), §15 (h), §17 (m) (p) (q) (y) (2g) (2h), §19 (d) (e), §23 (d); Basing Points and Lines, §3 (l); Bills of Lading, §5 (c); Blanket Rates, §6 (b), §8 (e), §10½ (f), §12 (j), §12½ (1) (c) (d); Branch Lines, §1 (g); Bridges and Tolls I, (f); Caretakers, (b); Class Rates, §1 (a) (c) (d) (f) (i), §2 (i) (j) (k) (o) (cc); Classification, §23 (g); Compress Companies and Charges II (z); Differentials §8 (v) (aa) (bb); Discrimination §3 (5ha), §8 (3) (g); Distance Rates, §1 (m), §2 (e); Embargoes (i); Emergency Rates, (c) (h); Evidence, §1 (t), §13 (1½) (b), §18 (ss), §30 (c) (e), §32 (x), §59 (a); Expedited Service (e); Long and Short Hauls, §5 (3y) (3z) (4a) (4b) (4c) (4d) (4u), §6⅞ (ee), §7 (r) (3k) (4b) (3z) (4e) (4h) (4k) (4q), §10 (u), §16 (h); Passenger Fares and Facilities, §2 (y); Percentage Rates (i); Procedure Before Commission, §2 (uv), §3 (c), §10 (1) (aa), §10 (2) (p) (x) (aa) (dd), §19 (a); Proportional Rates II (c) (d); Reasonableness of Rates, §27½ (a); Released Rates, §1½ (e); Special Contracts, §2½ (1); State Rates and Regulations (11a); Storage-In-Transit, (h); Substitution of Tonnage, (y) (ii); Tariffs, §7 (r), §12¼ (c), §18 (s) (ii) (mm); Through Routes and Joint Rates, §11 (2) (u); §13 (4w); §15 (g); §20¾ (b), §24 (r), §25 (q); Weights and Weighing, §3 (c), §5 (p).

Common Carriers. See Accounting, §1 (f); Actions at Law, (m) (p); Act to Regulate Commerce II, (3d) (3r); Adjacent Foreign Country, (a) (f); Allowances, §8 (4¾) (a), §10 (b); §12 (2) (c), §15 (b); Bills of Lading, §2½ (b), §7½ (a); Bridges and Tolls, §3 (g) (h) (i), §5 (b) (c); Brokers (b); Business Secrets, (a) Cars and Car Supply, §7 (h) (s) (3r) (3sa) (3v), §9⅞ (b), §10 (k), §20 (c), §29 (b), §30 (j), §31 (d), §32 (d); Cartage and Drayage, (a); Circus Trains, (b) (e); Classification, §2 (d), §3 (ee) (ff), §6 (k), §7½ (c), §10 (c), §16 (x); Commodities Clause I, (a), II (i) (k); Courts, §1 (ee), §12 (m), §14 (3p); Crimes, §2½ (e), §5 (d) (e), §28½a (p); Demurrage, §2 (c), §9 (c); Discrimination, §1 (f) (hh), §3 (d) (x) (z), §4 (z), §5 (a), §5½ (c) (d), §6 (a); Divisions, §3 (bb), §6 (a), §8 (h), §9 (f) (i) (r); Drayage Charges, (b) (f); Embargoes (oo); Equalization of Rates, §2 (a) (ab), (l) (u); Evidence, §1½ (b), §14 (1) (ww), §14 (5) (k), §22 (h), §48½ (b), §60½ (a); Explosive and Dangerous Articles, (a) (b); Express Companies, §1 (bc) (e) (g), §7½a (a), §12 (d) (e); Facilities and Privileges, §10 (c); Finance Dockets, §1 (aa) (bb) (cc) (dd), §5 (r), §7 (n) (t); Freight Charges, (ii); Industrial Rail Roads, (ac); Interchange of Traffic, (ab) (b); Lease (i); Lighterage, §1 (b), §3 (d); Loss and Damage, §2¼ (a), §3 (a) (f) (i) (h), §4 (c), §5 (e); Long and Short Hauls, §4 (gg), §8 (f); Loss and Damage, §5½ (h), §9 (a); Passenger Fares and Facilities, §1 (f), §3 (3) (ba), §12 (i) (lm) (s) (ii) (pp) (ss); Personal Injuries, (g); Pipe Lines, §1 (a) (b) (e), II, III, §7 (a) (c); Procedure Before Commission, §1 (u), §2 (k); Rail and Water Rates (b); Reasonableness of Rates, §2 (u) (v) (w); Receivers, (cc); Refrigeration, §2 (a); Reparation, §3½ (a), §6 (i), §23 (b); Reports, (c); Routing and Misrouting, §4 (r), §5 (d) (e), §7 (a); Safety Appliance Acts, (e); Side Tracks and Spur Tracks, (m) (q) (ta); Special Contracts, §2 (b) (c) (fa) (h) (t) (y), §2½ (a) (i) (k); State Rates and Regulations, (3c) (5e) (6m) (9z);

Station Facilities, (b); Stock Yard Companies, (i) (m) (tt); Storage, §1 (a), §2 (r) (w); Switch Tracks and Switching, §1 (a) (b), §4 (a) (h) (i) (pp), §4½ (d), §5 (g), §6 (x), §7 (m) (n) (o), §7½ (b); Tap Lines, §1 (aa), §2 (aa), §3 (1) (a) (c) (d) (e) (g), §3 (2) (a), §4 (b) (ea), §6, §6½ (c) (f) (l) (m), §7 (g) (k) (m) (n) (q) (x) (z) (bb), §9 (e) (1), §10 (d), §11 (c), §12½ (b); Tariffs. §3 (a); §3 (1) (e) (f) (v), §6 (bc) (f), §6a (b), §7 (c) (w); Telephone and Telegraph Companies, §1 (m), §2 (m), §2½ (b) (d), §3 (uu) (xx) (3i) (3j) (3m); Terminal Facilities, §1 (g), §2 (b) (e), §3 (e) (f) (h) (k) (l) (gg) (hh) (iijj), §11 (d); Through Routes and Joint Rates, §1 (c) (qq) (pp), §2 (sa), §3 (j), §4 (b) (c) (f) (h) (rr), §5 (i), §11 (2) (y) (bb), §14 (x), §17 (d), §18 (v), §20½ (g), §24 (a); Time Zone, (g); Track Storage II, (f); Trackage Agreements, (a) (h) (i) (j) (n); Transfer Companies, (a) (b); Transportation, §2 (a) (c) (d) (g) (j) (m), §5 (x) (z) (jj); Unpublished Rates, (f); Warehousing, (g) (aa); Water Carriers, §1 (f) (u), §2 (b), §3 (c) (i) (j), §6 (m), §6½ (a); Wharfage (f).

Competition. See Act to Regulate Commerce II, (y); Advanced Rates, §5 (7) (a), §7 (4), §7 (5), §18 (2); Allowances, §13 (1); Anti-Trust Laws and Monopolies, (ddb); Any Quantity Rates, (c) (f); Basing Points and Lines, §3 (d); Blanket Rates, §3 (i), §4 (c) (f), §6 (a), §15½ (n), §19; Branch Lines, §4; Class Rates, §2 (aa); Classification, §5 (d) (r) (v) (hh) (nn), §6; Commodity Rates, §5 (1); Consolidation of Carriers, (j); Differentials, §4 (e) (i), §8 (aa) (b); Discrimination, §1a (n), §3 (k) (3j) (3k) (4c), §4 (ii) (pp) (ss) (3b), §4½ (u), §5 (g), §5½ (n), §6 (c), §8, §8 (2), §8 (2½), §8 (3), §8 (5) (b) (c) (d) (f) (g) (h), §8 (7), §10 (k), §11½ (d); Equalization of Rates, §4 (l), §4 (5) (b); Evidence, §14 (1), §14 (1½), §17 (mm); Express Companies, §21; Finance Dockets, §5 (a); Long and Short Hauls, §4½a (a), §7, §7½, §8 (b) (e) (g) (h) (i) (j) (k) (l) (m), §9 (na); Reasonableness of Rates, §8 (1); Reparation, §10½ (f); State Rates and Regulations, (yy) (4j); Storage-In-Transit, (h); Switch Tracks and Switching, §5 (b), §13 (g); Through Routes and Joint Rates, §13 (3qa), §15 (m), §19 (j); Water Carriers, §3 (n) (s).

Complaint. See Discrimination, §18.

Compress Companies and Charges. See Evidence, §14 (1) (gg).

Concentrating Rates and Privileges. See Allowances, §8 (1) (a); Compress Companies and Charges II, (u); Facilities and Privileges, §4.

Consignee. See Agency (m); Bills of Lading, §12 (j) (k); Business Secrets, (c) (d); Cars and Car Supply, §29 (h); Classification, §10 (r) (s) (t), §12 (a) (b) (i); Demurrage, §3½ (e); Demurrage, §4, §8 (ab) (g), §14¼ (a), §21 (g), §23 (b); Discrimination, §15 (b); Embargoes, (rr); Express Companies, §12 (b); Reparation, §6 (k), (qq); Undercharges, §7 (a) (b).

Consolidation of Carriers. See Evidence, §14a, §57½ (ba); Express Companies, §41; Finance Dockets III; Taxes, (5k); Transportation, §2 (u).

Contracts. See Anti-Trust Laws and Monopolies, (bb) (cc) (dd); Attorney Fees, (e); Cars and Car Supply IV; Compress Companies and Charges II (d); Demurrage, §9 (c); Reparation, §6 (ii) (3h) (3o); State Rates and Regulations, (4q) (5r) (8ga); Tap Lines, §7 (aa); Telephone and Telegraph Companies, §1 (j) (o); §2½ (a) VI; Terminal Facilities, §3 (i); Through Routes and Joint Rates, §1 (o), §23a (c); Trackage Agreements, (g); Weights and Weighing, §2½ (r).

Courts. See Advanced Rates, §20 (g) (h); Anti-Trust Laws and Monopolies (uu); Bills of Lading, §1 (f); Cars and Car Supply, §33 (q) (r); Reparation, §23; Special Contracts, §5½ (e), §6 (1); Through Routes and Joint Rates, §23a; Undercharges, §1½; Wages (gd).

Courts V. See Allowances, §14½ (c); Cars and Car Supply, §33 (y) (z) (cc); Routing and Misrouting, §13.

Credit Account. See Crimes, §3; Evidence, §19.

Cummins Amendment. See Bills of Lading, §11 (e), §11½ (a). Demurrage, §13 (c); Export Rates and Facilities, §1½ (l) (m); Foreign Countries, §½ (m); Loss and Damage I, §2 (a) (b) (d) (h) (m) (na) (aa) (ii) (jj) (kk) (ll) (mm) (oo), §2½, §5½ (ic) (ie), §9 (f) (g) (h) (i) (jk), §10 (k), §10 (1) (k), §10¼ (b) (f), §11 (h) (o), §13½ (f) (h), §13⅝ (d); Mexico (g); Released Rates, §½ (b), §2 (d) (e) (g) (j) (l), §4 (d) (f) (hb) (i) (1) (o), §6 (c); Tariffs, §18 (ua); Water Carrier, §1 (n)

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Damages. See Canada (m); Cars and Car Supply, §6, §12 (x), §17a (e), §28 (1), §33 (g) (k) (lm) (dd) (ee); §34 (b); Courts, §1 (3d) (3e) (3f) (3l), §6½ (u), §11 (g) (o) (s), §12 (n) (ee), §13 (c) (d); Discrimination, §15 (b) (d) (h) (i); Facilities and Privileges, §22 (b); Reconsignment, §10; Reparation, §6 (c) (j) (l) (z) (cc) (pp) (3f) (3i), §7 (ta) (tb) (x) (aa). §7½ (a) (g) (w), §8½ (a), §9 (b) (c), §10½ (e) (s) (t) (u) (v) (w), §16 (b), §18 (b) (c) (d) (e), §19 (b), §20¾ (a); §21 (c) (d) (e) (h). §21 (q); §23 (b) (c) (e) (f), §24 (b); Routing and Misrouting, §7 (k), §9 (ba) (d) (e) (f); §10 (c); §13 (a); Sleeping Car Companies (j) (k) (m); State Rates and Regulations (3a) (8b) (8x); Storage, §1 (f); Switch Tracks and Switching, §7 (k), §9 (aa) (b), Tariffs, §3 (2) (b); Telephone and Telegraph Companies IV; Through Routes and Joint Rates, §16 (c) (ca) (d) (g).

Delivery. See Weights and Weighing, §2 (d).

Demurrage. See Bills of Lading, §12 (p); Cars and Car Supply, §7 (3g), §7¼ (a), §7½a (b); Commodities Clause II (m); Courts, §9 (d) (g), §10 (y), §11 (w), §17 (a); Crimes, §17 (v), §31 (e); §32 (b); Detention Charges (b); Embargoes, (t) (x) (y) (dd (rr) (3l) (3m) (3o) (3q); Explosive and Dangerous Articles, (f); Export Rates and Facilities, §1 (h), §7 (e) (g) (h) (i) (j), VI; Ground Storage, (a); Loss and Damage, §13 (a); Reconsignment, §3 (x), §4½ (e), §5 (ib), §7 (a); Side Tracks and Spur Tracks, (v); Storage, §2 (p) (s) (ff), §3 (n) (p) (q) (u); Substitution of Tonnage, (hh); Switch Tracks and Switching, §4 (a); Tap Lines, §7 (w), §12½ (c); Tariffs, §18 (pp); Track Storage I (a), II (b) (d), III (d) (e) (f) (k); Trackage Agreements (k); Terminal Facilities, §11 (d); Undercharges, §3½ (a); Weights and Weighing, §2 (d), §6 (g).

Differentials. See Advanced Rates, §11½ (b); Any-Quantity Rates, (b); Blanket Rates, §10 (a); Class Rates, §2 (d); Classification, §3½ (d), (k) (m) (v) (wx) (y) (zaa), §5 (s) (tu) (w) (x) (y) (dd), §11 (n), §18 (c) (f), §22 (3c); Long and Short Hauls, §10 (y); River Crossings, (a); Through Routes and Joint Rates, §13 (3qb), §13½ (jj).

Discrimination. See Absorption of Charges, §2 (a), §3 (c), §4 (c); Accounting, §1 (a); Act to Regulate Commerce IV, (b); Actions at Law (aa); Advanced Rates, §5 (2) (d), §5 (3) (b), §5 (8) (a), §17 (g), §19 (a) (c), §20 (d); Allowances III, §7 (k), §8 (3) (h) (u), §8 (5) (k) (o), §9 (e) (k), §14½ (a); Auction Company (a); Basing Points and Lines, §3 (a); Bills of Lading, §6 (g); Blanket Rates, §2 (j) (k) (o), §3 (h), §4 (e) (g), §6 (h), §7 (f), §8 (i), §10½ (q), §11 (c) (h) (m), §12 (c), §13, §20 (b) (d) (f); Branch Lines, §1 (c), §7 (c); Bridges and Tolls, §2; Cable Rates (c); Cars and Car Supply, §½ (a) (j) (b) (k); §1 (f) (g), §6 (i), §7 (f) (j) (k) (aa) (bb) (cc) (dd) (ee) (ff) (hh) (ii) (jj) (ll) (mm) (oo), §8 (f), §9¾ (b) (e), §10 (h), §11¾ (m), §11⅞ (a), §12 (g), §13 (a) (k), §14 (c), §15 (b) (c) (f), §20 (d), §21 (a), §21½ (a), §24 (b), §26 (a), §27 (a), §29 (f), §31 (a) (c) (f) (h) (aa), §32½ (b) (e) (f) (g) (h) (i) (k) (p) (q), §33 (a) (n) (t) (u) (v) (z) (aa) (ff), §35 (a), §36 (a); Cartage and Drayage, (p); Class Rates II; Classification, §2 (a), §3 (t) (aa), §3½ (a) (c), §4½ (a) (d), §5 (1), §6 (m), §6½ (a), §7 (m) (w), §10 (a) (g) (h) (i) (l) (m) (n) (z), §11 (b), §11½ (d), §16 (c) (g) (q) (v), §17 (v) (y), §18 (b) (e) (g) (h) (i), §19 (f), §20 (b) (f), §22 (l) (o) (ee) (ff) (hh) (ss) (vv), §23 (e); Commodity Rates III; Compress Companies and Charges II (a) (e) (f) (k) (o); Concentrating Rates and Privileges, (b) (c); Courts, §3 (a), §4 (a) (b), §5 (jj) (pp), §9 (j) (k), §11 (j) (k) (l), (cc) (dd), §13 (k), §15 (e); Credit Account (b); Crimes II,

§8 (a), §17 (r) (s) (t), §31 (d), §32 (b); Demurrage, §3, §5½ (a); Differentials, §1½ (c), §4 (e) (h), §7 (a), §8 (ra) (rb) (ee), IV; Divisions, §1 (c), §3 (a), §8 (i) (o), §11 (a), V; Drayage Charges, (c); Electric Lines I, (d) (e); Embargoes, (a), (c); Equalization of Rates, §1 (aa), §2 (g) (m) (n) (t) (bb), §3 (g), §4 (1) (f), §4 (1) (g), §4 (2) (a), §4 (3) (b), §5 (b), §6 (n), §7 (aa) (zz) (ab) (ac), §8 (e) (m); Evidence, §1½ (aa) (dd), §2 (c) (ee), §2½ (a), §3 (e); §12 (1) (a) (c), §13 (1) (h), (l) (p) (dd), §14a (a), §14 (1) (qq) (rr), §14 (5) (cc), §17 (b), §23 (a), §26¾ (a), §30 (d) (f) (g), §32 (p), §56½ (d); Export Rates and Facilities III, §5 (b); Express Companies, §1 (g), III; Facilities and Privileges, §1 (c) (ea), IV, §12½ (j), §13 (b), §15 (e) (bb), §19 (d) (e), §21 (o); Forwarders, (a); Import Traffic II; Industrial Rail Roads, (ac); Interchange of Traffic, (j) (k) (bb); Intoxicating Liquors, (3i); Lighterage, §3; Long and Short Hauls, §4 (hh) (ii), §4½ (o), §4¾ (d), §5 (qq), §6 (a), §6⅞, §7 (da) (3qa) (4g) (4u), §8 (a) (h), §9 (r) (va) (w); §10 (e), (y); Loss and Damage, §11 (b), §18 (a); Minimums, §7; Overcharges (n); Passenger Fares and Facilities, §2 (t), II, §5 (d), §5¼ (b), III, §7 (d) (x) (z), §7¼ (tw) (aa) (cc), §10 (ba) (c) (e) (o), §11 (a) (mm), §13 (1), §14 (fa), §19 (b) (c); Pooling of Traffic, (c) (m); Percentage Rates, (a) (b); Precooling, (i); Procedure Before Commission, §10 (1) (bb); Proportional Rates II; Rail and Water Rates, (a); Reasonableness of Rates, §28 (a) (ab); Receivers, (a) (j); Reconsignment II; Reduced Rates, §1 (f), §4½; Reparation, §1 (a), §2 (hh), §3 (b), §3½ (c), §7 (y), §7½ (aa); §10 (a); §10½ (b) (d) (e), §17 (b); Restricted Rates (d) (j) (m) (n) River Crossings, (b); Routing and Misrouting, §1½ (b), §7 (d); Side Tracks and Spur Tracks (e); Special Contracts, §2 (h) (k) (ff) (hh) (oo) (yy), §2½ (aa), §5, §6 (n); Special Rates and Services (o) (ba) (3h) (3k) (3o) (5c) (5d) (6i) (6v) (7z) (9l) (9s) (9u) (10k) (10x) (11j) (11q) (12a) (12b) (12p) (12t) (13b) (13d); Station Facilities (a); Statutes (u) (ee) (mm) (oo); Stock Yard Companies, (fa) (ee), Strikes (c); Storage, §2 (m); Substitution of Tonnage, (x) (jj); Switch Tracks and Switching, §2 (d), §3 (a) (h) (m) III, §4 (b) (c) (da) (e) (k), §4½ (a), §5 (b), §6 (e), §7 (a), §7½ (b); Tap Lines, §4 (b), §6 (f); §6½ (q), §7 (b) (i) (q), §9 (d) (q), §10 (c) (g), §12 (b), §13 (f); Tariffs, §3 (1) (ff), §3 (2) (c), §4 (k), §7 (oo); Telephone and Telegraph Companies, §1 (a) (b) (d) (e) (f) (k), §2 (g), §3 (ee), (3h); Terminal Facilities, §3 (a) (c) (e), §5 (a), §10; Through Routes and Joint Rates, §1 (gg), §3 (o), §3½ (g) (k), §7 (g), §8 (a) (b) (c), §11 (1) (f), §11 (2) (q), §12 (c), §13, §13½ (d) (h) (i), §14 (q), §17 (o) (z), §19 (e), §22 (jj), §26 (c); Track Storage II, III (h); Train Load Rates (a); Transfer (i); Transportation, §5 (c) (d) (h) (k), §12 (g); Trap Cars (d); Undercharges, §1 (a); Water Carriers II, §2 (p), §3 (c) (l), §6 (a) (d) (ga) (ii); Weights and Weighing, §5 (k), §5a (b), §8 (c), §14 (a), III.

Discrimination, §2. See Blanket Rates, §1 (e); Courts, §6 (1).

Discrimination, §8. See Basing Points and Lines, §3 (g).

Distance Rates. See Blanket Rates, §6 (d), §9; Branch Lines, §1 (p); Compress Companies and Charges, II (u); Through Routes and Joint Rates, §17 (bb); Water Carriers, §3 (o).

Divisions. See Advanced Rates, §7 (6); §12 (1) (b); Allowances, §8 (7) (h), §11 (b), §13 (b), §15 (a); Association (h); Branch Lines, §3 (aa); Cars and Car Supply, §½ (q); Common Carrier, §3 (a), §8 (n), §9 (a) (b) (c) (i) (l) (m) (n); Differentials, §8 (a) (da); Discrimination, §5½ (da), §10 (aa), §13½ (s); Distance Rates, §3 (b); Drayage Charges ,(la); Evidence, §13 (2), §13 (3), §14a (a), §14 (l) (l) (m), §28 (c), §52½ (a), §57½ (ba); Express Companies, §37; Passenger Fares and Facilities, §11½; Reasonableness of Rates, §10½; River Crossings, (a); Routing and Misrouting, §1 (d), §4 (z); Tap Lines, §2 (a), §5 (a), §6 (i), §6½ (a) (b) (d) (e) (j) (l) (m) (n), §7, §9 (a) (jk), §10 (b), §11 (a) (b); Telephone and Telegraph Companies, §1 (f); Terminal Facilities, §11 (d); Through Routes and Joint Rates, §1 (z) (aa), §2 (cc), §3 (i), §4 (z) (aa), §5, §9 (t), §11 (2) (ce) (n) (p) (s), §13 (j) (t) (4x) (5b), §13½ (b) (u) (w) (z) (za) (aa) (bb) (ff), §14, §23a (b); Time Zone, (g); Water Carriers, §6 (jj), §6½a (a), §7 (o); Weights and Weighing, §6 (p).

Drayage Charges. See Allowances, §8 (8).
Dockage. See Divisions, §9 (c); Equalization of Rates, §3 (h).
Dressing-In-Transit. See Differentials, §8 (ua).
Dunnage. See Allowances, §8 (2½) (c); Courts, §11 (i).
Duplicate Shipment. See Classification, §12½.

E

Elevation. See Allowances, §7 (e), §8 (3), §13 (1) (a); Facilities and Privileges, §9½ (o); Through Routes and Joint Rates, §18 (h); Transportation, §5 (y).

Elkins Act. See Allowances, §4 (b), §16 (a); Courts, §6½ (ww); Crimes, §1 (b), §2 (i) (l) (r), §8 (a), §9 (a), §12 (a); §13 (b), §14 (a) (b); §15 (j), §16 (a), §17 (u), §18 (a), §19 (b), §20 (a), §21 (a), §24 (a), §26½ (f), §28 (a) (b), §28½ (q), §29 (a), §31 (e), §32 (a); Discrimination, §1 (u); Undercharges, §5 (c).

Embargoes. See Cars and Car Supply, §40 (a); Demurrage, §3½, §9 (a), §12 (c), §22 (c); Discrimination, §3 (3la); Export Rates and Facilities, §6 (hh); Reconsignment, Routing and Misrouting, §4¼, §7 (q) (w); Transportation, §2 (z), §12 (h).

Emergency Rates. See Evidence, §21½; Tariffs, §7 (3e).

Employes. See State Rates and Regulations, (qq).
Empty Cars. See Cars and Car Supply, §7⅝.
Equalization of Rates. See Evidence, §15½ (j); State Rates and Regulations, (6r); Water Carriers, §3 (v).
Erroneous Rates. See Evidence, §22¼: Reasonableness of Rates, §13a; Reparation, §8; Tariffs, §3 (2).

Evidence. See Act to Regulate Commerce, §2 (uu); Actions at Law (u) (z); Advanced Rates III, §6 (½) (e), §9 (j) (o), §9½ (1), §13 (e), §21 (b); Bills of Lading, §7 (d); Blanket Rates, §6 (j), §12½(1) (f), §13 (vb), VII; Cars and Car Supply, §36; Classification, §19; Common Carrier, §2 (b); Courts, §6 (n), VI, §9 (p); Crimes, §17 (p), §24½ (gg) (kk) (mm), §28½a (r) (v); Demurrage, §23 (a); Differentials, §8 (mm); Discrimination, §3 (bd), V, §17 (c), §18 (i); Divisions, §1 (jj) (ll) (mm), §7, §10; Equalization of Rates, §4 (4) (g), §7 (aa); Express Companies VII, XIII, §17 (i); Interstate Commerce Commission, §1 (w); Live Stock Shipments, (ea); Long and Short Hauls, §12; Loss and Damage, §3 (i), III, §10 (2) (p); Procedure Before Commission, §1 (e) (na) (xx), §5 (g), VII, VIII; Proportional Rates, IV; Reasonableness of Rates, §7½ (3m), §9 (ta), §25 (g); Reduced Rates, §9; Reparation, §3½ (b), §7½ (cc), §10½ (z) (aa); State Rates and Regulations, (vv), (4l) (6f); Statutes, (dd) (ff); Storage in Transit, (d) (f); Switch Tracks and Switching, §3 (t), §12a; Tariffs, §7 (4a), §10 (d), §19 (b); Through Routes and Joint Rates, §13 (a) (5c), §14 (v), §15½ (c); Undercharges III, §5 (d); Water Carriers V; Weights and Weighing, §2½ (q) (s), III, §9 (b) (f), §10 (a).

Evidence I. See Advanced Rates, §18 (½) (b), §19 (h); Discrimination, §14.
Evidence §13. See Advanced Rates, §15 (i).
Evidence §62. See Reasonableness of Rates, §39.
Evidence §63. See Divisions, §6 (c), §8 (j); Reasonableness of Rates, §40.
Explosive and Dangerous Articles. See Storage, §3 (u).

Export Rates and Facilities. See Blanket Rates, §10 (b); Compress Companies and Charges III, (p) (q) (u); Discrimination, §4½ (m).

Express Companies. See Cars and Car Supply, §8 (k); §8½ (a); Consolidation of Carriers, (d); Courts, §14 (zz); Credit Account, (g); Crimes, §17 (i) (k); Routing and Misrouting, §7 (x); Taxes, (4p) (5y) (6x) (7g); Undercharges, §2 (c).

F

Fabrication in Transit. See Facilities and Privileges, §15a.
Facilities and Privileges. See Express Companies II.
Ferry Charges. See Special Rates and Services (k).
Follow Lot Shipments. See Classification, §21.

Foreign Commerce. See Adjacent Foreign Country, (e); Advanced Rates, §23 (a); Bills of Lading, §12 (d); Courts, §16 (c); Discrimination, §11½ (e); State Rates and Regulations, (7z) (12f) (12v); Water Carriers, §1 (u), §23 (g).
Free Transportation. See Express Companies, §5; Passenger Fares and Facilities, §12; Reconsignment, §2 (h), §3 (n), §3½ (m); Reduced Rates, §3 (d).
Freight Bills. See Courts, §6½ (ww).
Freight Charges. See Classification, §16 (uu); Demurrage, §8 (f); Reparation, §1 (c), §4 (a) (b), §6 (g) (q) (nn) (ss) (yya) (3c) (3d) (3gb), §10½ (bb); Through Routes and Joint Rates, §13 (a).

G

Government Guaranty. See Interstate Commerce Commission, §9½.
Government Operation. See Evidence, §25.

H

Heater Cars. See Cars and Car Supply, §9½; Demurrage, §5½.
Heater Service. See Facilities and Privileges, §9a.

I

Industrial Lines. See Allowances, §12 (2) (a); Tap Lines, §6½ (h).
Initial Carrier. See Bills of Lading, §9 (1) (d); Cars and Car Supply, §10 (j), §17 (b), §30 (b); Classification, §16 (nn) (3a); Demurrage, §3½ (c), §22 (f); Divisions, §3 (e); Drayage Charges, (d) (1c); Loss and Damage, §1 (c), §5 (f), §6, §8 (c), §10 (g), §10½ (e), §15 (d) (f) (h), §16 (a); Minimums, §8 (j); Prepay Stations, (a); Rail and Water Rates, (oa); Routing and Misrouting, §1½ (a), §2 (g), §3 (d) (h), §3½ (c), §4 (g) (n) (p) (x) (y), §4½ (c), §5 (c), §6 (b) (g), §6½ (c), §7 (e) (j) (s), §7½ (b), §8 (b), §11 (a); Procedure Before Commission, §13 (j); Special Contracts, §3 (a); Tariffs, §9 (c); Through Routes and Joint Rates, §2 (y), §4 (p); §16 (k), §22 (v) (xa) (ii) (3t), §26 (b); Transportation, §3 (a); Weights and Weighing, §7 (c).
Injunctions. See Courts §6½ (xx), §14; Crimes, §24½ (qqrr), §26½ (c); Taxes, (3y) (5c); Wages (p).
Inspection. See Agency, (1); Allowances, §14½ (d); Bills of Lading, §9½, §12 (1); Cars and Car Supply, §7½; Classification, §12¾; Courts, §1 (zz); Crimes, §5 (c); Express Companies, §31; Facilities and Privileges, §9¼; Safety Appliance Acts, (a); State Rates and Regulations, (4b) (4d) (4i) (8p) (9b) (9c) (9h); Tariffs, §6 (q); Weights and Weighing, §12.
Insulated Cars. See Cars and Car Supply, §9⅝.
Insurance. See Allowances, §8 (9) (a); Divisions, §9 (c).
Interchange of Cars. See Electric Lines VII, (d), VIII (d).
Interchange of Traffic. See Divisions, §1 (cc); State Rates and Regulations, (12j); Switch Tracks and Switching, §4 (xa); Tap Lines, §6½ (g); Terminal Facilities, §2 (a); §3 (d) (f) (cc); Through Routes and Joint Rates, §9 (o), §13 (3x).
Interest. See Reparation, §17½.
Intermediate Points. See Through Routes and Joint Rates, §13 (ff), §16 (a).
Interstate Commerce. See Act to Regulate Commerce I (e), II (3u); Advanced Rates, §20 (b); Allowances §1 (f); Anti-Trust Laws and Monopolies, (n) (q); Boiler Inspection Act, (a); Bridges and Tolls. §3 (f) (t) (aa); Cars and Car Supply, §½ (ca), §10½ (d); Consolidation of Carriers, (b); Courts, §1a (p), §10 (gg) (ii), §16 (c); Crimes, §24½ (3b) (3d); Discrimination, §4½ (v), §18 (h); Electric Lines, (d); Evidence, §10 (1); Express Companies, §1 (aa); Long and Short Hauls, §4½a (a); Loss and Damage, §10 (k); Passenger Fares and Facilities, §12 (d); Pipe Lines, §4 (c); Reports (b) (c) (e); Routing and Misrouting, §6 (a); Safety Appliance Acts, (b) (c) (e) (j) (dd); Side Tracks and Spur Tracks, (s); Special Contracts, §2 (m) (o) (p) (aa); State Rates and Regulations, (c) (d) (e) (f) (j) (l) (n) (t) (kk) (nn) (rr) (xx) (4e) (4f) (5f) (5q) (5uv) (5y) (6h) (6s) (7t) (7uv) (8a) (8b) (8e) (8g) (8h) (8j) (8k) (8l) (8m) (8n) (8r) (8t) (8v) (9e) (9f) (9g) (9h) (9m) (9n) (9o) (9p) (9y) (9z) (10c) (10i) (10o) (11k) (12f) (12h) (12m) (12n) (12o) (12v); Statutes (nn); Stock Yard Companies (n) (q) (s) (t) (w) (vv)

(ww) (yy); Switch Tracks and Switching, §1 (a) (j), §2 (j), §6 (p) (x) (z), §7½ (a); Tap Lines §6 (d), §13 (f); Taxes, (a) (d) (j) (k) (l) (o) (s) (3e) (3ja) (3n) (3v) (3z) (4c) (4e) (4p) (4z) (5i) (5n) (5q) (5r) (5u) (5v) (5w) (5x) (6k) (6l) (6s) (6u) (6w) (6x) (7e) (7l) (7r); Telephone and Telegraph Companies, §3 (a) (d) (e) (i) (q) (y) (ff) (oo) (3o); Terminal Facilities, §3 (c); Through Routes and Joint Rates, §1 (f) (jj) (3b), §4 (g); Track Storage I, (a) (b); Transportation, §9 (a); Water Carriers, §1 (i).

Interstate Commerce Commission. See Accounting §1 (e), §2 (a); Advanced Rates, §1 (2) (a); Allowances, §14½ (b); Anti-Trust Laws and Monopolies (hha) (qqb); Attorney Fees (c); Blanket Rates, §1 (c), §13 (x) (y); Cars and Car Supply, §½ (j) (s) (cc), §10 (q), §12 (aa), §14½ (k), §30 (a) (r), §32½ (u) §33 (h) (ia); Cartage and Drayage, (o); Classification, §2 (a), §17 (i), §19 (d), §25 (d), §26 (b); Common Carrier, §1 (d); Compress Companies and Charges II (ff); Courts §1 (a), §5 (a) (b) (c); §6½ (pp) (uu) (3d) (3n), §10 (m) (t) (jj), §11 (n), (w), §12 (o), §14 (m), (dd), §16 (f); Demurrage, §1 (d) (e); Differentials, §½ (a); Divisions, §1 (ee) (ff) (gg) (hh) (ii) (jj) (kk) (ll) (mm) (nn) (oo) (pp) (qq) (rr) (ss) (tt) (uu), §2½, §9 (ee), §10 (o) (q); Discrimination, §1 (jj), §2 (p) (q) (r); §2½ (b) (c) (d); §11½ (e) (h); §13½ (h) (q); Emergency Rates (d) (e) (f) (j); Equalization of Rates, §2 (kk); Evidence, §1 (k), §14 (l) (n) (3s), §44¼ (d); Evidence, §66 (j) (k), §69 (a); Export Rates and Facilities, §1 (e); Facilities and Privileges, §10 (s); Finance Dockets, §5 (j), §8 (b) (c) (d) (e); Hours of Service Law (a); Immunity of Witnesses, (aa); Import Traffic, §1 (i) (j) (m) (p); Interstate Commerce, §5 (mm) (nn); Live Stock Shipments, (x); Long and Short Hauls, §2 (c) (d) (l) (m), §4 (o) (gg), §4½ (hh), §5 (3k), §14 (d); Loss and Damage, §2¼ (b), §6 (i), §10 (1) (j), §10 (2) (q), §13¾ (j) (k); Overcharges, (ff) (oo) (pp);Passenger Fares and Facilities, §1 (a) (b) (g), §3 (2) (a), §6 (mm) (nn), §13½ (a); Penalty Rates, (h); Physical Valuation, (hi) (j); Procedure Before Commission, §1 (o) (ii), §1a (a) (b), §2 (o), §4 (n), §8 (d) (g), §10 (l) (nb) (ob) (p) (r) (t), §11 (g) (n) (v) (w), §13 (q) (s) (t) (v) (w), §14½a (c), §15½ (d), §17 (a), §18 (c) (g), §22 (i) (m), §28 (e); Reasonableness of Rates, §1 (q); Receivers (bb) (ee) (ff) (11); Reconsignment, §4½ (j); Reduced Rates, §1 (a) (b) (da), §4 (j) (k) (n) (r), §4½ (k); Refrigerator Lines, (b); Released Rates, §6 (c) §7 (cc); Reparation, §2 (a), §17½ (g); Routing and Misrouting, §1 (h), §4½ (c), §5 (q); Safety Appliance Acts, (z) (aa) (bb) (ff); Special Contracts, §2 (u) (pp) (qq), §5½ (g) §6 (h); Special Rates and Services, (d); State Rates and Regulations, (x) (12k) (12t) (12z) (13q) (13r) (13s) (13v); Stock Yards Companies, (x) (zz); Storage, §3 (b); Switch Tracks and Switching, §2 (o), §4 (tt), §6 (q) (s) (t) (u) (v) (w), §7 (r), §10 (a); Tap Lines, §2 (b), §6½ (p) (q), §7 (dd), §10 (g) (k), §12 (b); Tariffs, §1 (m); Tariffs, §3 (1) (c) (g) (i) (ff) (gg) (jj) (kk) (ll) (mm) (nn) (oo), §3 (2) (a), §3 (3) (q), §4 (c), §7 (4a) (4d), §11 (n), §18 (vv) (ww), §19 (a) (b), §20 (a) (b) (c); Taxes (7q) (7s) (7t); Telephone and Telegraph Companies, §1, (a), §2 (v), §3 (3m) (3p), §3½ (a) (b); Terminal Facilities, §1, (j) §2 (j), §3 (iijj), §4 (d); Through Routes and Joint Rates, §1 (g) (k) (s) (v), §2 (sa), §4 (r), §13 (5h), §22 (3t) (3x); Transportation, §2 (ee); Undercharges, §4 (a), §6 (a); Water Carriers, §1 (m) (w), §2 (z), §4 (m), §6 (c).

Interstate Commerce Commission I. See Courts, §5 (p); Loss and Damage, §4 (j); Special Contracts, §4; Through Routes and Joint Rates, §22 (m).

Interveners. See Claims, §5¾.

Intoxicating Liquors. See State Rates and Regulations, (ee)

J

Judicial Notice. See Evidence, §67.

Junction Point Rates. See Restricted Rates (l); Routing and Misrouting, §5½.

Jurisdiction of Commission. See Act to Regulate Commerce II, (3g), IV (d); Adjacent Foreign Country, (g) (i) (j); Advanced Rates, §3 (h); Allowances, §1 (c); Baggage Transfer, §1; Bills of Lading, §1; Cars and Car Supply, §1 (c), §3 (c); Classification, §2; Demurrage, §1; Discrimination, §2; Facilities

and Privileges I; Long and Short Hauls, §4¼a (a); Loss and Damage, §4; Passenger Fares and Facilities, §1; §14¾ (d); Proportional Rates V; Port-To-Port Rates, (cb); Reparation, §7 (r) (t), §7½ (dd); §19 (s); Routing and Misrouting, §1; Special Contracts, §4 (1), §4 (2); State Rates and Regulations (oo) (10n) (11d) (11e) (11r) (11s) (11w); Storage, §1 (d); Switch Tracks and Switching, §2, §7 (b); Tap Lines, §2; Tariffs, §1; Telephone and Telegraph Companies, §3 (3c); Through Routes and Joint Rates, §1, §3 (i); Transportation, §1½; Undercharges, §1; Water Carriers, §2; Weights and Weighing, §2.

K

Knocked-Down Shipments. See Classification, §4½.

L

Land Grant Roads. See Reduced Rates, §4½a.

Lateral Allowances. See Allowances, §8 (3¼).

Leakage. See Allowances, §8 (3½); §8 (4¼) (a) (b) (c).

Lease. See Restricted Rates, (g) (j); Special Contracts, §2 (pp); Taxes, (3w); Trackage Agreements, (f).

Legal Rates. See Advanced Rates, §19¼ (a); Demurrage, §15½; Distance Rates, §1 (1), §2 (h); Tariffs, §18; Through Routes and Joint Rates, §20 (e).

Legality. See Advanced Rates, §2½ (fg), §15 (c); Proportional Rates III; Reconsignment I; Reduced Rates II; Released Rates III; Tariffs, §14; Through Routes and Joint Rates, §13 (4z).

Lighterage. See Allowances, §8 (4); Differentials, §8 (da); Export Rates and Facilities, §9 (a); Floatage; Through Routes and Joint Rates, §13 (3d).

Limitation of Liability. See Adjacent Foreign Country (d); Bills of Lading, §6 (e), IV; Express Companies, §8 (1); Loss and Damage, §2 (nn) (oo), §5½ (i), §10 (l) (k), §10 (2); Side Tracks and Spur Tracks. (o); Through Routes and Joint Rates, §3 (d).

Live Stock Shipments. See Advanced Rates, §17 (2j); §18 (9) (a); Allowances, §8 (4⅞) (a); Caretakers, (h) (i); Crimes, §17 (w); Discrimination, §3 (3la); Distance Rates, §1 (k); Minimums, §5 (ea); Per Car Rates, (g); Special Contracts, §2 (ww) (xx) (zz); State Rates and Regulations, (7n) (8c) (8i) (8w) (8y) (9j); Stock Yard Companies, (fa) (g) (h) (j) (k) (o) (p) (u) (z) (za) (bb) (ff) (gg) (ii) (jj) (kk) (ll) (mm) (oo) (pp) (uu); Terminal Facilities, §10 (a) (aa); Through Routes and Joint Rates, §18 (a), §22 (eea); Transportation, §5 (1); Weights and Weighing, §5 (d).

Loading and Unloading. See Additional Charges and Services, (g); Allowances, §8 (2½) (a), §8 (4⅞), §8 (5) (f), §12 (1) (d); Cars and Car Supply, §7 (3j); Classification, §5 (yy), §13; Demurrage, §1 (a), §2 (b), §9 (c), §10½ (a); §12½ (a), §15 (a) (b) (c) (d) (f), §19 (b); Divisions, §9 (c); Equalization of Rates, §3 (h); Facilities and Privileges, §10; Loss and Damage, §13⅝ (d); Stock Yard Companies, (pp) (qq) (rr) (ss) (uu); Through Routes and Joint Rates, §13 (w); Transportation, §5 (s), §10, §11½ (d); Weights and Weighing, §7½ (aa).

Local Rates and Combinations. See Crimes, §7 (e); Discrimination, §10 (e); Divisions, §10 (g); Evidence, §13 (3), §13 (5), §28; Long and Short Hauls, §5 (4w); Proportional Rates I (ma); Restricted Rates, (1); Routing and Misrouting, §4 (x); Shrinkage Rates, (b) (c); Substitution of Tonnage (s) (jj); Tap Lines, §6½ (m); Tariffs, §14 (ba), §18 (qq); Telephone and Telegraph Companies, §2 (g); Through Routes and Joint Rates, §1 (kk) (3b), §2 (k), §3 (e), §5 (a), §7 (b), §10 (a), §13 (o) (s) (xx) (3c) (3l), §13½ (m), §13½ (q), (nn), §15 (e) (fa) (fb) (g) (h) (j) (o) (p) (u), §16 (ca) (q), §17 (jj), §18 (b) (c), §19 (b), §22 (a) (c) (h) (j) (k) (p) (q) (aa), §23 (b) (c), §24 (c), §26 (e).

Long and Short Hauls. See Act to Regulate Commerce I, (g) (h); Advanced Rates, §3 (m), §6½ (b); Basing Points and Lines, §1 (e); Blanket Rates, §1 (d), §7 (h), §12a; Canada (j); Classification, §5 (3d); Courts, §12 (v); Crimes, §17 (1), §26½ (b), §34 (a); Differentials, §3½ (d); Discrimination, §2 (ma), §4 (ss); Distance Rates, §2 (e); Reparation, §10½ (g), §12 (e); State Rates

and Regulations, (10ra); Tariffs, §3 (3) (b); Through Routes and Joint Rates, §2 (n), §4 (11), §9 (a) (e) (f) (q), §13 (c) (da) (j) (y) (pp), §14 (d), §15 (a), §21 (d).

Loss and Damage. See Bills of Lading, §2 (f); Classification, §5 (3g), §10 (pp); Common Carrier, §8 (r); Concentrating Rates and Privileges, (f); Consolidation of Carriers (g); Courts, §6½ (3j), §12 (aa); Crimes, §5½ (c); Evidence, §52; Protective Service, (p); Reparation, §3, §3½; Routing and Misrouting, §7¾ (c) (d); Switch Tracks and Switching, §5 (f); Through Routes and Joint Rates, §3 (e); Transportation, §12 (c); Water Carriers, §6 (tt); Weights and Weighing, §6 (n).

M

Mails. See Anti-Trust Laws and Monopolies, (m); Crimes, §24½ (n), §34 (i).

Market Competition. See Discrimination, §8 (7) (f), §10 (k); Equalization of Rates, §4 (1) (e), §4 (5), §6 (a) (b); Evidence, §32; Reasonableness of Rates, §8 (1½).

Marking and Addressing. See Classification, §14.

Mexico. See Adjacent Foreign Country, (h).

Mileage. See Blanket Rates, §2 (1); Cars and Car Supply, §7⅝ (a), §9¾ (e), §9⅞ (3) (b), §11½ (i), §11¾ (a) (c) (d) (e) (h) (l), §11⅞ (ab), §28 (e); Commodity Rates, §1 (r), §5 (q); Consolidation of Carriers, (j); Differentials, §8 (ii); Discrimination, §4½ (g), §5½ (e); Distance Rates, §1 (a) (c) (aa) (d) (j), §2 (i), §3 (a) (aa) (ab); Divisions, §3 (b) (d) (p), §6 (g); Evidence, §1 (ma), §2 (jj), §8 (d), §20 (e) (g) (n) (o) (m) (p) (q) (ff) (3g); Long and Short Hauls, §10½ (i); Passenger Fares and Facilities, §6 (p), §16 (d), §10 (h), §28 (a); Routing and Misrouting, §4 (q); Sleeping Car Companies, (b) (d); Taxes, (5l) (5n) (5q) (7m); Through Routes and Joint Rates, §6 (c), §13 (i) (s), §14 (f).

Minimum Rates. See Interstate Commerce Commission, §10¼; Rail and Water Rates (vd); Reasonableness of Rates, §2 (5wc); Through Routes and Joint Rates, §1 (xx).

Minimums. See Advanced Rates, §13 (c), §18 (3) (a); Blanket Rates, §12 (e); Cars and Car Supply, §8 (ba), §12 (u); Classification, §4 (h), §9½ (a); Divisions, §3 (d); Duplicate Shipment, (a); Evidence, §8 (b) (c); Express Companies, §37½; Long and Short Hauls, §4½ (n); Peddler Car Service, (a) (b) (c); Pipe Lines, §7 (a); Reasonableness of Rates, §41 (b); Substitution of Tonnage, (h); Terminal Facilities, §5 (t); Through Routes and Joint Rates, §1 (oo), §13 (4d), §15 (j), §16 (h), §20¾ (a); Train Load Rates, (a); Water Carriers, §1 (p), §6 (hh) (pp); Weights and Weighing, §2½ (jj), §3 (d), §7 (f).

Mixed Carloads. See Classification, §7; Minimums, §6.

Motor Competition. See Long and Short Hauls, §8½.

N

Narrow Gauge Railroads. See Distance Rates, §2 (g); Reasonableness of Rates, §2 (a).

Navigable Waters. See Taxes, (6e); Water Carriers, §1 (c) (d).

Notice. See Demurrage, §16; Loss and Damage, §13⅝ (d); Reconsignment, §5½; Transportation, §6, §6½.

O

Order Notify Shipments. See Bills of Lading V; Demurrage, §4 (e), §7, §12 (d).

Origin of Traffic. See Reasonableness of Rates, §22.

Overcharges. See Actions at Law (y); Blanket Rates, §13 (m); Claims, §6 (a); Courts, §1 (bb), §6½ (3e), §10 (ee), §11 (t) (jj); Crimes V; Differentials, §8 (u); Drayage Charges, (m); Express Companies, §27, §28 (a); Loss and Damage, §17 (a); Reparation, §3½ (a), §6 (xx), §7 (ve) (bb), §7½ (1) (ff), §15 (b), §20½, §21 (m), §24 (b); Routing and Misrouting, §7 (c), §10½ (a); State Rates and Regulations, (zz) (7d) (7e) (11m); Storage, §2 (m); Tariffs, §3 (e), §18 (aa) (dd) (ff).

P

Panama Canal Act. See Evidence, §14 (6) (c) (d), §42; Ferry Charges, (g); Loss and Damage, §2 (mm); Water Carriers, §1 (m), §2 (e) (1), §6 (gg).

Paper Rates. See Reasonableness of Rates, §24.

Parties. See Procedure Before Commission V.

Passenger Fares and Facilities. See Caretakers, (a) (i); Electric Lines IV, (e) (f) (i).

Peddler Cars. See Cars and Car Supply, §9¾.

Penalty Charges. See Demurrage, §7½, §10½ (e), §16½; Passenger Fares and Facilities, §4½.

Percentage Rates. See Advanced Rates, §7 (8) (a) (c) (d) (e) (f) (g); Cars and Car Supply, §23 (a); Class Rates, §2 (p) (q) (r) (t) (u); Classification, §20 (1), §24 (e); Commodity Rates, §2 (ii), §5 (r); Divisions, §3 (a) (o); §8 (da), §9 (h), §10 (j); Equalization of Rates, §2 (hh) ; Evidence, §1½ (4ac), §17 (g), §43¼; Export Rates and Facilities, §5 (n); Express Companies, §11 (1) (a), §23; Live Stock Shipments, (b); Reasonableness of Rates, §2 (5s); Through Routes and Joint Rates, §13 (p); Weights and Weighing, §6 (1).

Per Diem Charges. See Cars and Car Supply, §11⅞, §30 (1), Demurrage, §18¼ (a); Divisions, §9 (g), §10 (h); Tap Lines, §12½; Water Carriers, §6½a (g) (j).

Personal Injuries. See Act to Regulate Commerce II, (3d); Courts, §10, (p).

Physical Valuation. See Advanced Rates, §6 (3) (a), §10½a; Interstate Commerce Commission, §8.

Pipe Lines. See Equalization of Rates, §4 (1½); Evidence, §14 (2½).

Pool Cars. See Cars and Car Supply, §10¾.

Port-to-Port Rates. See Suspended Rates, (b); Through Routes and Joint Rates, §17 (x); Water Carriers, §2 (h) (t) (ta).

Potential Competition. See Evidence, §14 (2).

Previous Decision of Commission. See Advanced Rates, §14¾; Discrimination, §3½; Evidence, §44¼.

Private Sidings. See Side Tracks and Spur Tracks, (r); Switch Tracks and Switching, §11 (d), §12a (e); Transportation, §5 (q) (kk).

Private Cars. See Cars and Car Supply, §10½, §13, §31; Demurrage, §10.

Procedure Before Commission. See Classification, §19; Differentials VI; Discrimination V; Divisions, §10; Evidence, §69 (b); Express Companies XIII; Long and Short Hauls V; Passenger Fares and Facilities, §19; Reconsignment V; Reduced Rates IV; Reparation, §20¾; Switch Tracks and Switching, §12; Tap Lines, §13; Through Routes and Joint Rates, §23.

Prior Adjudication. See Reasonableness of Rates, §26½.

Proportional Rates. See Act to Regulate Commerce II (qq); Divisions, §3 (o); Equalization of Rates, §4 (1½) (a); Evidence, §5½ (b), §13 (5); Export Rates and Facilities, §1½ (c); Facilities and Privileges, §13 (u); Long and Short Hauls, §5 (4w), §6¼ (a); Reparation, §7½ (k); Shrinkage Rates, (a) (b); Substitution of Tonnage, (jj); Tap Lines, §6½ (m); Tariffs, §9a (c), §11 (g), §14 (ba); Through Routes and Joint Rates, §2 (aa), §18, §19 (i), §22 (z), §26 (e); Water Carriers, §2 (w); Weights and Weighing, §2½ (a).

R

Rail and Water Rates. See Advanced Rates, §6 (7) (a); Break-Bulk Rates, (a); Long and Short Hauls, §7 (4m)); §10 (nn); Routing and Misrouting, §6½; Transportation, §2 (u); Water Carriers, §2 (o) (v), §3 (u), §6 (u) (v), §7 (a) (l).

Railroad Competition. See Equalization of Rates, §4 (2) (a); Evidence, §14 (3); Long and Short Hauls, §9; Reasonableness of Rates, §8 (2).

Reasonableness of Rates. See Accounting, §3 (a); Advanced Rates, §1 (1) (c), §3 (o), §5 (½) (g), §7 (1) (b), §7 (9) (c), §8 (1) (d), §9 (i), §9½ (h), §11½ (d), §13 (h); Association (b); Blanket Rates, §2 (i), §11, IV, §12, §12½ (1) (b), §15 (c), §15½ (l) (o); Branch Lines, I, §3 (d), §7 (de); Bridges and Tolls, §1 (a) (e); Canada, (b) (c) (e); Cars and Car Supply, §9½ (f), §9⅞ (3); Class Rates, §1 (g); Classification, §10 (bb) (dd),

§22 (dd); Commodity Rates III; Compress Companies and Charges II; Courts, §1 (g) (j); Courts, §6 (b), §9 (a); Crimes, §30 (b); Differentials, §2 (a), §5 (b), §8 (tc), §10 (b), IV; Discrimination, §1a (l), §3 (4f), §18 (h); Distance Rates, §3; Divisions, §3 (f), V; Evidence, §1 (ea) (f) (dd), §1½ (bb) (4ac), §4 (b), §7 (c) (d), §13 (1) (a), §13 (2) (a) (c) (d), §13 (5) (aa) (b) (e), §14 (l) (mm), §17 (n) (o) (p) (t) (w), §40 (a), §43 (d) (h), §45 (j), §61; Export Rates and Facilities V; Express Companies, §10, §22½; Facilities and Privileges VI, §12½ (e); Import Traffic II; Lighterage, §3; Long and Short Hauls, §4 (kk), §6⅞, §10 (bb) (dd), §12 (a) (g); Minimums, §7; Passenger Fares and Facilities II; Pipe Lines, §6; Procedure Before Commission, §1 (r), §2 (uua), §10 (2) (ga) (g) (ffa), §13 (m) (n), §14½ (d); Proportional Rates II; Reconsignment III; Reduced Rates, §4½; Refrigeration, §4; Released Rates IV; Reparation, §1 (b), §2, §6 (y), §7½ (x), §19 (f), §21 (l) (p), §22 (a); Special Contracts, §7 (a); State Rates and Regulations, (3e) (3f); (6k); Statutes, (ee); Storage, §2 (bb) (kk); Switch Tracks and Switching III, §3 (bc), §4 (pp), §12 (d); Telephone and Telegraph Companies, §1 (h); Terminal Facilities, §5; Through Routes and Joint Rates, §13, §13a (e), §13½ (n) (ll) (mm), §14 (bc) (i), §15 (k) (p), §17 (v) §18 (m), §23 (a) (g); Track Storage II; Transportation, §12 (g); Undercharges, §3 (d); Water Carriers II, VI, §7 (b) (c) (d) (e) (f) (g) (h) (i); Weights and Weighing, §13; Wharfage (b).

Reasonableness of Rates II. See Advanced Rates, §6 (6) (a), §15 (e); Blanket Rates, §17 (c), §18 (b).

Reasonableness of Rates, §10. See Blanket Rates, §12 (a) (i); Equalization of Rates, §7 (aa).

Reasonableness of Rates, §11. See Advanced Rates, §15 (g); Divisions, §6 (b), §8 (j), §10 (b) (j); Equalization of Rates, §4 (4) (g); Evidence, §4 (h), §7 (a), §8 (g) (i); Interstate Commerce Commission, §8¼; Pooling of Traffic, (b) (f) (l).

Reasonableness of Rates, §39. See Evidence, §62.

Reasonableness of Rates, §40. See Evidence, §63.

Reasonableness of Rates, §40½. See Evidence, §64½.

Receivers. See Transportation Act, (a).

Reciprocal Switching. See Absorption of Charges, §3 (d); Switch Tracks and Switching, §6 (a) (c) (m) (r); Water Carriers, §6½a (f).

Reconsignment. See Bills of Lading, §12 (hi); Business Secrets (d); Cars and Car Supply, §7½a (b); Courts, §17 (a); Demurrage, §3½ (m) (o), §5¾ (a), §7 (d), §9 (a) (b), §11 (a), §12 (j), §16 (j); Embargoes, (p) (u) (z) (ee) (jj) (3n) (3na) (3p); Export Rates and Facilities, §7 (j); Express Companies, §16¾, §33; Facilities and Privileges, §15 (ea), §17 (e), §21 (g); Loss and Damage, §4 (j); Routing and Misrouting, §5¾, §7 (u); Stoppage in Transit, (c); Storage, §2 (u), §3 (o); Switch Tracks and Switching, §4 (x), §13 (f); Tariffs, §7 (hh); Through Routes and Joint Rates, §13 (3m) (4k), §17 (x) (aa) (ee) (ff), §19 (g), §22 (ll) (oo) (3c); Transfer (a) (h); Transportation, §2 (w), §5 (bb).

Reduced Rates. See Classification, §29; Evidence, §2 (c), §14 (1) (d); Long and Short Hauls, §6⅞ (c), §7½ (a); Passenger Fares and Facilities, §7¼; Reparation, §2 (e) (f), §8½ (g), §12 (a); Restricted Rates (b); State Rates and Regulations (a); Through Routes and Joint Rates, §1 (pq); Weights and Weighing, §5a (a).

Refrigeration. See Allowances, §8 (½) (b), §8 (3⅛) (b); Cars and Car Supply, §4 (c), §7¼ (a), §9⅝, §9⅞ (a) (b); Classification, §5 (j); Courts, §6½ (3i); Exclusive Contracts, (bc); Minimums, §7 (i); Perishable Freight, (3c); Precooling, (g) (s) (k) (o) (p) (w); Season Rates, (e); Ventilation, (c) (d); Water Carriers, §1 (j).

Relative Rates. See Advanced Rates, §18 (½) (d); Blanket Rates, §12½; Discrimination, §4 (3d); Equalization of Rates, §8 (c); Evidence, §2 (n); Reasonableness of Rates, §7½ (gg), §28 (1).

Released Rates. See Express Companies, §16½; Loss and Damage, §19 (b).

Reparation. See Act to Regulate Commerce IV (c); Advanced Rates VII, §17 (b) (u), §22 (i); Allowances VI, §8 (5) (n), §14 (a) (b) (f); Alternative Rates I (g); Association, (gb) (n) (p); Bills of Lading VI; Blanket Rates, §19½; Canada (f); Caretakers, (e) (i); Cars and Car Supply, §6 (f), §24 (c), §32 (f), §32½ (d) (m) (n); Claims, §1 (e) (l); §3 (a); §5½ (a), §6 (e), §6¾ (c), §7 (d) (f) (g), §8 (a) (d) (e) (f) (g), §9 (a) (b) (c); Class Rates, §2 (h) (w) (x) (y) (z); Classification, §27; Courts, §5 (u), §6 (f), §6½ (yy), §11 (1), §12 (c) (d) (f) (g) (h), §13 (i), §17 (a); Crimes, §5½ (b); Demurrage V, §8 (ab), §11 (e); Differentials V, §9 (a); Discrimination, §5½ (j), §15 (e) (j), §17; Divisions, §11; Drayage Charges (l) (lc); Embargoes, (f); Export Rates and Facilities VIII; Evidence, §14 (l) (n), §66 (u); Facilities and Privileges V, §17 (1), §22 (e); Long and Short Hauls, §13; Loss and Damage, §4 (g); Mexico, (e); Minimums, §8 (d), §11; Passenger Fares and Facilities, §14¾ (c) (d); Procedure Before Commission, §4 (m) (ma), §10 (I) (x); Proportional Rates VII (a); Rail and Water Rates, (va); Reasonableness of Rates, §24 (e); Reconsignment, §4 (d), V, §10, VI; Routing and Misrouting, §1 (a), §1½ (h), §4 (h) (j) (l) (m), §5 (f) (g) (i) (k) (n), §7 (h), §7¾ (a), §9 (a) (c), §10 (a) (b) (d) (e), §10½, §11 (d), §12 (a); Special Contracts, §2 (dd); State Rates and Regulations, (11b) (11f) (11g) (11p); Switch Tracks and Switching, §3 (bc) (b), §4½ (a), §5 (j), §9; Tap Lines, §12; Tariffs, §10 (a); Telephone and Telegraph Companies V; Terminal Facilities, §5a; Through Routes and Joint Rates, §13 (3w), §15 (h) (w), §15½ (b), §16, §17 (x), §18 (p), §20 (g); Track Storage III, (c); War Taxes, (a); Water Carriers, §5; Weights and Weighing V, §10 (a).

Reparation, §18. See Allowances, §8 (4½) (e).

Reparation §20. See Allowances, §8 (4½) (b).

River Crossings. See Evidence, §13 (l) (nn), §52½.

Routing and Misrouting. See Bills of Lading, §9 (1), §9 (3) (a), §10; Loss and Damage, §4 (g); Through Routes and Joint Rates, §26 (g).

S

Scaleage and Shrinkage. See Allowances, §8 (4¾); Evidence, §17 (hh), §26½ (b); Facilities and Privileges, §12; Loss and Damage, §2 (1); Weights and Weighing, §5½ (c), §7, §11 (a) (b).

Shrinkage Rates. See Proportional Rates II (g).

Side Tracks and Spur Tracks. See Transfer, (i); Transportation, §5 (q) (ee).

Sleeping Car Companies. See Taxes, (b) (l).

Special Contracts. See Accounting, §1 (b); Express Companies, §8; Transportation, §21 (a).

Spotting. See Allowances, §5 (a) (n) (o), §7 (f) (g) (h), §8 (5), §10 (a), §11 (g) (h), §12 (2) (d) (e) §13 (1) (b), §14 (e) (f); Common Carrier, §7½ (h); Demurrage, §16 (q); Facilities and Privileges, §12½; Switch Tracks and Switching, §5 (d); Weights and Weighing, §2½ (cc).

State Rates and Regulations. See Cars and Car Supply, §6⅞; Demurrage, §1½; Discrimination, §4¾, §8 (6); Evidence, §13 (6); Express Companies, §1½; Facilities and Privileges, §12½; Interstate Commerce, §4; Tariffs, §17; Through Routes and Joint Rates, §16½; Transportation, §9.

Statute of Limitations. See Association (l); Claims §1 (a), (b) (h) (j), §2½ (a), §3 (a), §4 (a), §5¾ (a), §6 (c) (d), §7 (a) (e), §8 (b) (c) (h) (j); Courts, §15 (f); Crimes, §28; Loss and Damage, §17 (a); Procedure Before Commission, §4 (k) (l); Reparation, §2 (hh), §6 (xx) (zz); Undercharges, §7½ (a).

Statutes. See Act to Regulate Commerce II, (3w), III (a); Anti-Trust Laws and Monopolies, (ii); Association, (o); Courts, §1 (hh) (mm), §6 (q) (s), §6½ (ii) (jj); Discrimination, §1 (s), §4 (t); Tariffs, §4 (b); Taxes (vv) (xx) (3o) (3p) (6b) (6p) (6z) (7a) (7b) (7h); Telephone and Telegraph Companies, §3 (m) (vw) (jj) (mm) (nn); Terminal Facilities, §6 (b); Through Routes and Joint Rates, §7 (f), §9 (e).

Stock Yard Companies. See Common Carriers, §2 (c), §5.

Stoppage in Transit. See Bills of Lading, §15 (c); Compress Companies and Charges II, (b) (c); Express Companies, §34½; Facilities and Privileges, §15c; Tariffs, §9 (b).

Storage. See Crimes, §6 (b); Demurrage, §9½ (a), §12 (e) (f), §20 (a); Divisions, §8 (c); Explosive and Dangerous Articles, (f); Export Rates and Facilities, VI; Express Companies, §35; Facilities and Privileges, §16½; §17 (e).

Storage in Transit. See Facilities and Privileges, §14 (c); Routing and Misrouting, §6 (1); Weights and Weighing, §2 (d).

Strikes. See Crimes. §24½ (d); Demurrage, §10⅝. Wages (o).

Suspended Rates. See Advanced Rates, §1 (4) (a), §8½ (a).

Suspension of Rates. See Long and Short Hauls, §4 (fa); Procedure Before Commission, §12a.

Switch Tracks and Switching. See Absorption of Charges, §2 (c); Allowances, §8 (5) (l) (m) (n) (o) (p) (q); §10 (a), §12 (2) (e); Common Carrier, §7½ (h), §9 (j); Courts, §14 (3r); Credit Account, (a); Demurrage. §8 (a); Electric Lines VIII (b); Evidence, §13 (6½) (b) (c); Side Tracks and Spur Tracks (k); Tariffs, §18 (uc) (11); Terminal Facilities, §3 (dd), §5 (f); Trackage Agreements (n); Track Storage II (f); Transportation, §5 (aa); Weights and Weighing, §6 (n).

T

Tank Cars. See Agency (a); Cars and Car Supply, §4 (c), §7 (p), §10, §17 (a); Common Carrier, §6 (b); Minimums, §10; Taxes. (7p); Weights and Weighing, §5 (v) (w).

Tap Lines. See Advanced Rates, §15 (e); Allowances, §9 (h) (i), §11 (b); Divisions, §5 (a), §8 (n).

Transfer. See Allowances, §8 (7); Facilities and Privileges, §9½ (o), §15½; Passenger Fares and Facilities, §7⅞.

Tariffs. See Additional Charges and Services, (e); Advanced Rates, §1 (1) (d), §8 (½) (a), §8½a (a) (c), §9½ (b) (e) (f) (g), §16 (a), §19¼ (d) (e) (g); Allowances, §4 (d) (e), §8 (3½) (a); Basing Points and Lines, §3 (j); Bills of Lading, §9 (2); Blanket Rates, §4 (d), §16 (b); Branch Lines V; Bridges and Tolls V, §6 (a); Cars and Car Supply, §6¾ (d) (e), §7 (31), VIII, §8 (g), §9¾ (j), §11 (b), §28 (b), §32 (a), §32¼ (a), §37 (a); Classification, §7 (i) (j), §10 (ee), §16 (bb), §24 (e), §25 (d), §28 (aa); Common Carrier, §7½ (d); Courts, §1 (o) (ff); Credit Account, (n); Crimes, §8 (b), §10, §11 (a); Demurrage, §1 (d) (e), III, §9 (d), §11 (b), §12 (k), §16 (b), §22 (a); Discrimination, §4½ (aa), §7½ (a); Divisions, §1 (bb), §2 (b); Embargoes, (tt); Equalization of Rates, §7 (aa); Export Rates and Facilities IV; Express Companies VI; Facilities and Privileges III; Import Traffic IV; Lighterage, §6 (b) VI; Long and Short Hauls, §16 (h); Loss and Damage, §5½ (ib); Pipe Lines III; Proportional Rates VI; Reconsignment, §4½ (f) (g); Reduced Rates, §7; Refrigeration, §1 (de), IV; Reparation, §9; Restricted Rates, (n); Routing and Misrouting, §1 (c) (d), §1½ (k) (l); Season Rates, (f); Special Contracts, §2 (ff); State Rates and Regulations, (3d); Storage in Transit, (b); Storage, §2 (h), §3 (n); Substitution of Tonnage, (a); Switch Tracks and Switching, §13 (j) (k) (l); Tap Lines. §11; Tariffs, §14 (ba); Through Routes and Joint Rates V, §16 (b), §17 (ca) (f), §20½ (m), §21 (b) (c), §22 (z); Track Storage III; Trainload Rates, (c); Terminal Facilities, §4; Transportation, §2 (w), §5 (i) Warehousing, (k); Water Carriers III; Weights and Weighing VI, §6 (d).

Tariffs §1½. See Advanced Rates, §19½ (d).

Taxes. See Divisions, §6 (g); State Rates and Regulations, (k) (8o).

Telephone and Telegraph Companies. See Courts, §5 (e) (f), §6½ (ff), §10 (b); Taxes, (u) (w) (3d) (3e) (5b) (5f) (5z) (6g) (6q) (6r); State Rates and Regulations, (6s) (6z) (7a).

Terminal Facilities. See Absorption of Charges, §2 (b), §5½ (a), §7 (c); Demurrage, §4 (g); Divisions, §8 (h); Evidence, §57¾; Forwarders (a); Reasonableness of Rates, §34; Switch Tracks and Switching, §1 (e); Transportation, §5 (h).

Through Routes and Joint Rates. See Absorption of Charges, §1 (c); Advanced Rates, §7 (6) (b); Allowances, §13½ (a); Branch Lines, §7 (g); Blanket Rates, §7 (h) §10½ (m); Canada, (f) (j) (k) (l) (m) (p) (q); Cars and Car Supply, §7 (rr); Common Carrier, §3 (a), §8 (n), §9 (g); Compress Companies and Charges III (t); Courts, §3 (f); Differentials, §4; Discrimination, §2 (n), §4 (c) (ii), §10 (e), §11¼ (b), §11½ (g); Divisions, §1 (a), §4 (a) (d), §9 (cc); Electric Lines II, (a) (c); Evidence, §13 (2) (a) (c) (d); Express Companies, §1 (i), XI, §12 (e); Facilities and Privileges, §17 (d); Foreign Countries, §1 (o); Interchange of Traffic, (ae); Lighterage IV; Long and Short Hauls, §7 (3x); Passenger Fares and Facilities, §14; Reparation, §6 (ee) (ll), §7½ (p) (dd), §8½ (b), §19 (g) (l) (m) (q) (s) (u); Restricted Rates, (l); Routing and Misrouting, §1 (c), §4 (w) (x), §7 (a) (d) (q) (r), §8½ (a); §9 (a); State Rates and Regulations, (8d) (10w) (11n); Stock Yard Companies, (za); Substitution of Tonnage, (y); Switch Tracks and Switching, §2 (f), §3 (v), §6 (i) (o); Tap Lines, §3 (1) (b), §5 (b), §6½ (a) (o), §10; Tariffs, §7 (bb), §14 (s), §18 (z) (dd) (qq) (ss); Terminal Facilities, §1 (b) (f), §10 (c), §11 (d); Transportation, §3 (a) (b), §5 (e), §7 (b); Water Carriers, §1 (p), §2 (a) (e) (k) (n) (o) (u) (x), IV, §4 (g) (h), §6 (b) (h) (j) (q) (r) (s) (u) (v) (bb) (ee) (gg) (ii) (ka) (ll) (mm) (nn) (oo), §8 (a) (b) (c).

Ton Mile Revenue. See Evidence, §13 (1) (vv), §20 (zz), §58 (u) (v) (w); Reasonableness of Rates, §36 (m).

Tonnage. See Advanced Rates, §7 (8) (b), §15 (e); Bills of Lading, §11½ (d); Commodity Rates, §1 (q); Crimes, §3 (f); Demurrage, §8½ (a); Equalization of Rates, §4 (1) (c); Evidence, §17 (qq), §20 (jj), §61 (b), §63 (s), §65 (a) (b); Facilities and Privileges, §18 (n); Minimum, §5 (ea); Port Handling Charges (a); Reasonableness of Rates, §40 (d) (f) (g) (h); Tap Lines, §6½ (d); Through Routes and Joint Rates, §9 (h) (k), §13 (4x); Water Carriers, §7 (p); Wharfage, (a).

Trackage Agreements. See Cars and Car Supply, §14½ (a) (c) (d) (e); Long and Short Hauls, §5 (4v); Stock Yard Companies, (g) (m); Transportation, §8 (e).

Track Scales. See Weights and Weighing, §2½ (hh), §7½ (d) (e) (i) (k) (l) (n) (s) (t).

Transit. See Facilities and Privileges, §15 (cc), §22 (c).

Transportation. See Absorption of Charges, §4 (a); Accounting, §3 (c); Act to Regulate Commerce II (kk); Adjacent Foreign Country, (b); Advanced Rates, §2½ (fga), §5 (4) (a), §15 (d); Advertising II (b); Allowances, §7 (a) (d), §8 (4½) (d), §8 (5) (c), §8 (7) (k), §9 (f), §10; Any Quantity Rates, (j); Baggage Car Service, (a); Bills of Lading, §6 (b); Branch Lines, §1 (s); Canada, (a); Cars and Car Supply, §½ (s), §6 (b), §6¾ (b), §6⅞ (b) (c), §7 (qq) (3x), §15 (g), §20 (h), §28 (i), §33 (w) (gg); Class Rates, §2 (f); Classification, §3 (e), §3½ (a) (o), §16 (11), §17 (h), §26 (b); Commodities Clause II (h); Commodity Rates, §2 (k), Credit Account, (m); Crimes III, §12; Demurrage, §1 (aa), §2 (a), §10 (h), §14 (b); Differentials, §½ (b); Discrimination, §1 (i) (j), §4 (ta), §8 (1) (e); Divisions, §2 (a), §3 (i) (m) (n) (s), §6 (g), §10 (j); Drayage Charges, (d) (e); Embargoes (m); Equalization of Rates, §2 (t) (z), §4 (1) (e), §4 (4) (a), §4 (5) (b), §5 (a), §6 (h); Evidence, §1 (t), §2 (d), §8½ (b), §9 (d), §10 (g), §10 (a), §13 (1) (x) (bb) (kk) (ll), §13 (1½) (a), §14 (1) (e) (bb), §14 (3) (d) (f) (h) (j), §14 (5) (g) (u) (aa), §18 (e) (fa) (g) (ha) (i) (x) (tt) (yy); Express Companies, §6a (a); Facilities and Privileges, §17 (c), §18 (t); Finance Dockets, §7 (a) (b); Forwarders, (g); Interstate Commerce, §½ (a) (b) (d) (i); Long and Short Hauls, §7 (s) (u) (y) (3da) (3i), §10 (b) (g) (h) (pq) (r) (t), §11 (b), §12 (2) (n), §13 (b) (c); Loss and Damage, §3 (i), §4½ (fa), §5 (4v), §5½ (h); Minimums, §7 (i) (j); Refrigeration, §1 (b) (h) (l) (m),

§6 (a) (b) (d); Reparation, §6 (tt) (uu) (vv), §7½ (gg), §8½ (f), §10½ (i), §17a (b), §18 (a); §19 (c); Routing and Misrouting, §2 (b); Sleeping Car Companies, (b); Special Rates and Service, (n); State Rates and Regulations, (b) (3c) (11q) (12c); Storage, §1 (e), §2 (ee), §3 (d) (o); Substitution of Tonnage, (hh); Tap Lines, §10 (u); Tariffs, §1 (i), §3 (1) (z), §14 (bbc); Telephone and Telegraph Companies, §2 (a); Terminal Facilities, §3 (r); Through Routes and Joint Rates, §3½ (f) (g), §13 (vv), §25 (a); Unpublished Rates, (d); Water Carrier, §1 (m) (w), §7 (d) (e) (g); Weights and Weighing, §5 (q), §6 (j).

Transportation Act. See Act to Regulate Commerce, §1 (c) (e) (f); Claims, §1½; Coal Pools, (b); Discrimination, §2½ (b) (d) (e); Divisions, §1 (k) (l) (jj) (ll) (mm) (oo) (rr) (uu); Electric Lines I (i); Finance Dockets, §6 (y) (aa), §8 (c); Long and Short Hauls, §4¾ (l); Loss and Damage, §13½ (g); Port-to-Port Rates, (cc); Reparation, §6 (ww), §7 (d) (e), (f) (g) (j) (k) (n) (q) (qa) (vb) (vd) (w), §19 (o); State Rates and Regulations, (10q) (11g) (12e) (13p); Stock Pile, (a); Stock Yard Companies, (qq) (rr); Undercharges, §1 (b).

Trap Cars. See Cars and Car Supply, §9⅞ (2) (a); Demurrage, §10; Drayage Charges, (ld); Evidence, §44½ (h).

Transshipment. See Facilities and Privileges, §15½.

Twenty-Eight Hour Law. See Courts, §17 (w); Crimes, §34 (m); Loss and Damage, §7 (c).

Two-line Haul. See Reasonableness of Rates, §37.

U

Undercharges. See Express Companies, §27 (d); Interstate Commerce Commission, §12; Reparation, §20½.

Unpublished Rate. See Evidence, §60 (a); Interstate Commerce Commission, §13; Routing and Misrouting, §12.

V

Voluntary Rates. See Evidence, §64.

W

Wages. See Evidence, §17 (dd); Reasonableness of Rates, §40½.

Warehousing. See Facilities and Privileges, §16½.

Water Carriers. See Discrimination, §8 (5); Evidence, §14 (5) (d), §60 (a); Long and Short Hauls, §2½ (s); Routing and Misrouting, §12 (b).

Water Competition. See Classification, §5 (q) (ll), §6 (j), §8 (f) (rb), §8 (1) (e), §8 (5) (a); Distance Rates, §2 (a); Equalization of Rates, §4 (1) (b) (c), §4 (3) (a), §4 (4); Evidence, §2 (g), §14 (1) (f) (g), §14 (5), §20 (c) (r), §32 (c); Long and Short Hauls, §7 (h) (g), §9 (m), §10; Rail and Water Rates (r); Reasonableness of Rates, §7½ (j), §8 (4).

Weather Interference. See Demurrage, §19.

Weights and Weighing. See Allowances, §8 (10) (a); Bills of Lading, §7; Reasonableness of Rates, §41; Refrigeration V.

Wharfage. See Allowances, §8 (8); Dockage, (q); Facilities and Privileges, §16; Water Carriers, §3 (m); §6¾.

Y

Yardage. See Allowances, §8 (8); Cars and Car Supply, §11¾ (f), §28 (d).

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